

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 17, 2004

In Reply Refer To:
Gulfstream Natural Gas System, L.L.C.
Docket Nos. CP00-6-009 and RP03-173-001

Gulfstream Natural Gas System, L.L.C.
2701 North Rocky Point Drive
Suite 1050
Tampa, FL 33607

Attention: P. Martin Teague
Assistant General Counsel

Reference: Order Accepting Tariff Sheets With Condition

Dear Mr. Teague:

1. On April 30, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) filed revised tariff sheets to comply with the Commission's April 15, 2003 Order on rehearing and compliance with Order No. 637.¹ The April 15 Order denied rehearing and accepted Gulfstream's compliance filing subject to Gulfstream making certain revisions within 15 days of the order. In this order, the Commission accepts the tariff sheets shown on the Appendix to be effective on May 1, 2003, subject to Gulfstream making the revisions discussed below. This order benefits the public because the tariff sheet provisions enhance pipeline transportation services consistent with the Commission's policies in Order No. 637.

2. Public notice of the filing was issued on May 7, 2003, with comments, protests, and interventions due on or before May 12, 2003. Florida Power and Light Company (FPL) and Florida Power Corporation (FPC) filed out-of-time protests on May 21, 2003 and May 30, 2003, respectively. Also, on June 6, 2003, Peoples Gas System filed an out-of-time intervention. We will grant the untimely intervention and protests, as we find

¹ Gulfstream Natural Gas System, L.L.C., 103 FERC ¶ 61,068 (2003) (April 15 order).

that to do so will not delay, disrupt, or otherwise prejudice the parties to this proceeding.² On June 9, 2003, Gulfstream filed an answer to the FPL and FPC protests. Rule 213 of the Rules of Practice and Procedure generally does not permit answers to comments and protests.³ In order to insure a complete and accurate record, however, we find good cause to accept Gulfstream's answer. The protests and answer are considered in the discussion below.

3. The April 15 Order directed Gulfstream to: (1) clarify its scheduling, nomination, and curtailment provisions regarding hourly entitlements; (2) provide for the posting of the Maximum Hourly Quantity (MHQ) in the capacity release process; (3) revise the curtailment provision in section 6.3 of the General Terms and Conditions (GT&C); (4) revise section 5.2 of the GT&C to accommodate the shipper's MHQ at secondary points; (5) specify that no additional rates will be charged for additional hourly flexibility provided on an interruptible basis under Rate Schedule FTS; (6) revise section 21 of the GT&C to provide that Gulfstream must enter into operational balancing agreements with interconnecting interstate and intrastate pipelines; (7) delete the transportation charge associated with netting and trading of imbalances; (8) revise section 6.5 of the GT&C to permit forward hauls and backhauls up to full contract demand to the same point at the same time; and (9) either remove the restriction in section 8.4 of the GT&C on shippers trading imbalances across posted points of restriction or explain the necessity of this provision. For the first eight identified issues, we find Gulfstream has satisfactorily complied with the Commission's directives.

4. Regarding the ninth issue, Gulfstream has provided the following explanation to justify proposed section 8.4 of the GT&C⁴ which provides that a cashout party⁵ may trade any imbalance with another cashout party, provided that the trade shall not result in a transportation path which crosses a posted point of restriction⁶ for that month. Gulfstream states that while it has defined its pipeline system as a single Operational

² 18 C.F.R. § 385.214(d) (2003) (Rule 214).

³ 18 C.F.R. § 385.213(a)(2) (2003) (Rule 213).

⁴ See Substitute Second Revised Sheet No. 137 and Substitute First Revised Sheet No. 137A.

⁵ Section 1.6 of the GT&C states the term "Cashout Party" shall mean any Shipper or other contractually liable entity who has an imbalance under any Agreement, which imbalance will be resolved in accordance with Section 8 of these General Terms and Conditions.

⁶ Section 1.41 of the GT&C defines a "Posted Point of Restriction" as any point or segment on Gulfstream's pipeline system for which Gulfstream has posted on its website a reduction of scheduled capacity notice, a notice that the point or segment is scheduled at its capacity, or a notice of expected restrictions due to weather, operating conditions or maintenance.

Impact Area (OIA), there are certain times when Gulfstream needs to limit imbalance trades to smaller, more specifically defined areas in order to eliminate the opportunity for customers to achieve, with an imbalance trade following the month of flow, what could not be derived by the nominations and scheduling process on the day of the restriction. Gulfstream states that restrictions will be posted either in advance of or at the time the restriction is imposed.

5. According to Gulfstream, physical transportation occurs on Gulfstream's system any time there is a trade between shippers where a "due shipper" imbalance is upstream of a "due pipe" imbalance. Gulfstream argues that if a customer wanted to circumvent an operational restriction, the customer would simply go "due shipper" on the upstream side of the restriction and get another customer to go "due pipe" on the downstream side during the time the restriction is in place. Gulfstream states that physical transportation has now occurred and the customer has thus utilized trading to evade the posted point of restriction. Gulfstream also states that its proposal is not a total ban on trading on the days the posted point of restriction is in effect. Rather, trading may still occur on each side of, without crossing, the posted point of restriction while the restriction is in place.

6. FPL protests and requests rejection of Gulfstream's proposed GT&C section 8.4, because it provides Gulfstream with too much discretion to limit imbalance netting and trading. FPL states that the Commission found in Maritimes I,⁷ that Maritimes had not supported limiting trades that would cross a posted point of restriction. Moreover, FPL states that Gulfstream has not demonstrated that netting and trading will impact system operations. FPL also opposes allowing Gulfstream to place posted points of restriction on its website with little or no notice to customers. It asserts that this provides Gulfstream the discretion to set forth a posted point of restriction after the end of a flow month, with no prior justification and little or no notice, which would limit shippers' ability to clear imbalances, thereby forcing them to cash out imbalances.

7. FPC protests and requests that the Commission reject Gulfstream's proposal to implement its proposed tariff language that limits trading and netting of imbalances that cross a posted point of restriction. FPC adopts and fully supports the FPL protest.

8. In its answer to the FPL and FPC protests, Gulfstream reiterates its position that gaming of the system and actual transportation across posted points of restriction could occur with minimal deterrent or financial impact to those gaming the system during times of restriction if it did not have the ability to deny netting and trading of imbalances after the fact. Gulfstream also states it will give customers as much notice as is practicable; however, it claims that events may occur with little or no notice that may require immediate implementation of posted points of restriction consistent with the tariff. Gulfstream also claims that FPL misunderstands its limitation, because it cannot declare a

⁷ Maritimes & Northeast Pipeline, L.L.C., 100 FERC ¶ 61,030 (2002) (Maritimes D).

posted point of restriction after the fact in order to prevent netting and trading of imbalances that occurred when there was no posted point of restriction. Specifically, Gulfstream notes that the limitation is intended to prevent netting and trading of imbalances that occurred in the previous month only during the period when there was a posted point of restriction in place, and the imbalances are across the particular point.

9. For the following reasons, we will approve Gulfstream's proposal for limiting trades that would cross a posted point of restriction with one modification. On rehearing of the Maritimes I order cited by the protestors, the Commission explained that it would permit a posted point of restriction limitation in situations where the pipeline does not have adequate means to discourage conduct potentially harmful to the system.⁸ In that order, the Commission rejected Maritimes' proposal to restrict trading across posted points of restriction for shipper imbalances because Maritimes had the ability to impose scheduling penalties on shippers and therefore had adequate means to discourage conduct potentially harmful to its system. However, the Commission permitted a posted point of restriction limitation for OBA imbalances because the pipeline did not have a tariff provision permitting it the ability to assess scheduling penalties with respect to OBA imbalances. Gulfstream's tariff does not contain scheduling penalties for either shipper or OBA imbalances. Thus, Gulfstream does not have a mechanism in place to discourage conduct potentially harmful to its system. Accordingly, consistent with our order in Maritimes II, we will accept Gulfstream's proposal to restrict trading across posted points of restriction for both shipper and OBA imbalances.

10. However, Gulfstream is only permitted to restrict trades of imbalances that occurred on days when the posted point of restriction is in effect. Therefore, Gulfstream's tariff regarding netting and trading must adequately identify and isolate imbalances that occurred on days when there was a posted point of restriction in effect. Under section 8.3 of the GT&C, for each month, all cumulative imbalances are netted among each cashout party's firm and interruptible agreements. Section 8.4 states that posting and trading of the previous month's netted transportation imbalances will be allowed from the first day of the current month to the 17th business day of the current month, as long as the trade does not result in a transportation path which crosses a posted point of restriction for that month. Because imbalances under an agreement for any month are cumulative and then netted among all of a cashout party's agreements before trading can occur, Gulfstream's existing tariff does not provide the means to adequately identify and isolate imbalances that occurred on days when there was posted point of restriction in order to restrict the trading of only those volumes. Accordingly, our acceptance of Gulfstream's posted point of restriction proposal is conditioned upon Gulfstream filing revised tariff sheets that provide for the identification of imbalances that occurred on days when there was a posted point of restriction in effect.

⁸ Maritimes & Northeast Pipeline, L.L.C., 103 FERC ¶ 61,316 at P 40-41. (2003) (Maritimes II).

11. We also find that the cashout provisions in section 8.7(b) of Gulfstream's tariff need clarification. Section 8.7(b) provides that "the payment of cashout charges relating to excess deliveries shall be made in addition to the payment of transportation charges applicable to such excess deliveries." The Commission has found that it is appropriate for a pipeline to collect additional transportation charges for OBA imbalances that result from actual deliveries of the pipeline in excess of scheduled volumes when the imbalances are cashed out.⁹ This is because shippers at such OBA points are billed based on their scheduled deliveries at the point, regardless of actual deliveries. In these circumstances, the pipeline has performed a transportation service for which it has not been paid. However, the Commission has found that a pipeline must also give credits at points where actual deliveries are below scheduled amounts and thus the shippers have been overcharged for the service actually provided. Gulfstream must file revised tariff sheets to be effective March 1, 2004, to clarify that transportation charges are only applicable to OBA imbalances and to provide for credits of transportation charges in situations where actual deliveries are below scheduled amounts.

12. In addition, Gulfstream must specify in its tariff the rate it will charge or credit. In Maritimes III, the Commission found that there are two reasonable methods to determine an appropriate charge. One method would determine which shippers behind the point are responsible for the variation and charge those shippers the appropriate rate provided under their rate schedules. The second method would treat the variation as a service performed for the OBA operator and for the pipeline to determine an appropriate charge for that service. If Gulfstream's rate proposal deviates from either of these methods, it must fully support the reasonableness of its rate proposal.

13. In response to FPL's concern that Gulfstream should not be allowed to post the restriction with little or no notice to customers, we find that Gulfstream's answer adequately addresses this concern. First, Gulfstream explained that it cannot declare a posted point of restriction after the fact in order to prevent netting and trading of imbalances that occurred while there was no posted point of restriction. Second, Gulfstream explains that it will give as much notice as practicable but events may occur that require immediate implementation of posted points of restrictions. FP&L has not shown that providing Gulfstream discretion to determine in its reasonable judgment how much notice to provide based on specific circumstances, is unreasonable. If FP&L believes that Gulfstream is abusing its discretion, it can file a complaint.

14. Finally, our review of Gulfstream's Sub First Revised Sheet No. 131 finds the tariff language in section 6.5 of the GT&C is inconsistent with the Commission's segmentation policy. Section 6.5 states, that "Releasing Shippers can also segment

⁹ Maritimes & Northeast Pipeline, L.L.C., 106 FERC ¶ 61,074 at P 23-24 (2004) (Maritimes III).

capacity in their Primary Route....”¹⁰ In Order No. 637-A,¹¹ the Commission held that shippers must be given the right to segment outside their capacity path. This follows from the fact that a shipper may move to any point within the zone from which it has paid even if that point is outside the contractual path, because the shipper has the right to utilize all points within the zone. Accordingly, Gulfstream must revise section 6.5 of the GT&C and make any related conforming changes to its tariff to provide that shippers may segment capacity outside their contractual path. Gulfstream is directed to file a revised tariff sheet removing this language effective as of the date of this order.

15. Within 15 days of the date of this order, Gulfstream must file revised tariff sheets to comply with the conditions of this order.

By direction of the Commission. Commissioner Kelly not participating.

Magalie R. Salas,
Secretary.

¹⁰ Section 1.44 of the GT&C states the term “Primary Route” shall mean the transportation route from the Primary Receipt Point to the Primary Delivery Point or if there is no Primary Delivery Point, a transportation route which includes a reservation of mainline capacity but does not have a Primary Delivery Point.

¹¹ Order No. 637-A, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,099 (May 19, 2000).

Appendix

Gulfstream Natural Gas System, L.L.C
Docket Nos. CP00-6-009 and RP03-173-001

Tariff Sheets Accepted Effective May 1, 2003, Subject to Condition

First Revised Sheet No. 20
First Revised Sheet No. 106
Substitute First Revised Sheet No. 128
Substitute First Revised Sheet No. 130
Substitute First Revised Sheet No. 131
Substitute Second Revised Sheet No. 137
Substitute First Revised Sheet No. 137A
First Revised Sheet No. 155
First Revised Sheet No. 159
First Revised Sheet No. 178