

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Gulf South Pipeline Company, LP

Docket Nos. RP03-64-003  
RP03-64-004

ORDER ON REHEARING AND COMPLIANCE

(Issued April 20, 2005)

1. On July 19, 2004, Gulf South Pipeline Company, LP (Gulf South) filed tariff sheets<sup>1</sup> in compliance with the Commission's June 17, 2004 Order (June 17 Order)<sup>2</sup> in this proceeding, requesting an August 17, 2004 effective date. Gulf South also filed a request for rehearing of the June 17 Order on July 19, 2004, and the Commission issued an order granting rehearing for further consideration on August 18, 2004. In this order, the Commission grants and denies rehearing, issues clarification, finds that Gulf South has generally complied with the June 17 Order, and conditionally accepts the proposed tariff sheets, effective August 17, 2004, subject to modification as directed below. This order is in the public interest because it permits the implementation of reasonable tariff provisions regarding shipper creditworthiness.

**Background**

2. On November 5, 2002, Gulf South filed proposed tariff sheets, pursuant to section 4 of the Natural Gas Act (NGA), to implement more stringent creditworthiness provisions in section 5 of the General Terms and Conditions (GT&C) of its tariff. On December 5, 2002, the Commission accepted Gulf South's proposal and suspended its effectiveness until May 5, 2003, or an earlier date specified by subsequent Commission

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<sup>1</sup> Fourth Substitute Original Sheet No. 1205, Fourth Substitute Original Sheet No. 1206, Second Substitute Original Sheet No. 1207, Original Sheet No. 1208, Sheet Nos. 1209-1299, and Third Substitute Second Revised Sheet No. 2502, to FERC Gas Tariff, Sixth Revised Volume No. 1.

<sup>2</sup> 107 FERC ¶ 61,273 (2004) (June 17 Order).

order, subject to refund and the outcome of a technical conference.<sup>3</sup> On January 16, 2003, staff convened the technical conference. Gulf South clarified certain issues and agreed to modify its proposed tariff sheets to reflect concerns that were raised at the conference. On January 28, 2003, Gulf South filed *pro forma* tariff sheets reflecting the modifications discussed at the technical conference. Certain parties filed comments and protests in response to Gulf South's filing.

3. The May 5 Order<sup>4</sup> accepted Gulf South's creditworthiness provisions subject to modification, finding that the proposed tariff sheets, with modifications, would benefit the pipeline and its customers by permitting Gulf South to implement reasonable tariff provisions concerning shipper creditworthiness. Various parties filed requests for rehearing of the May 5 Order. Subsequently, in the June 17 Order, the Commission granted and denied requests for rehearing of the May 5 Order and conditionally accepted Gulf South's proposal to revise existing tariff provisions related to shipper creditworthiness, subject to modification. Gulf South filed a request for rehearing of the June 17 Order on July 19, 2004.

### **Gulf South's Compliance Filing**

4. Gulf South states that it has revised section 5 of its General Terms and Conditions to reflect the requirements of the June 17 Order. Specifically, Gulf South made the tariff modifications required to section 5.3(a)(4) so that this provision only applies to non-creditworthy customers. In addition, Gulf South clarified that when a non-creditworthy customer defaults on an imbalance and Gulf South calls on that collateral, that money will be credited to the cash pool rather than retained by Gulf South.

5. Gulf South clarified that sections 5.3(b) and (c) generally apply only to non-creditworthy customers. Gulf South also clarified that the 30 days notice of Gulf South's intention to terminate a service agreement provided by section 5.3(c)(ii) applies to all customers, not just non-creditworthy customers, that fail to pay any non-disputed obligations in a timely manner. Gulf South revised sections 5.3(c)(ii) and 18.5 to provide that a service agreement cannot be terminated with less than 30 days notice. Gulf South also removed language from section 18.5 that stated its right to pursue in the courts any damages that resulted from a customer's default.

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<sup>3</sup> 101 FERC ¶ 61,279 (2003).

<sup>4</sup> 103 FERC ¶ 61,129 (2003) (May 5 Order).

6. Gulf South revised section 5.3(d) to provide that all credit re-evaluations will be made within five business days. Gulf South states that no additional changes were required to section 5.3(d) because the other changes required by Paragraph 22 of the June 17 Order had already been incorporated into that section.

7. Gulf South removed from section 5.4, regarding collateral required for the construction of receipt and delivery facilities, the references to facilities constructed pursuant to section 7 of the NGA or other tariff provisions. Gulf South's obligation to review a customer's collateral requirements under this provision will be performed on a monthly, rather than an annual, basis. Gulf South also included a parental guaranty as an alternative form of security available to customers under this section of the tariff. Gulf South claims that it added language to this section consistent with that approved by the Commission in Tennessee Gas Pipeline Company's creditworthiness proceeding<sup>5</sup> and other language that provides that Gulf South will only get paid once for new facilities constructed pursuant to section 24.4.

#### **Notice and Protests to Compliance Filing**

8. Notice of Gulf South's compliance filing was published in the *Federal Register*, 69 Fed. Reg. 45,694 (July 30, 2004). Calpine Energy Services, L.P. (Calpine) filed a protest. Calpine stated two objections to the compliance filing. First, Calpine states that Gulf South has not provided further explanation and justification for its proposal that new, non-creditworthy shippers post security based on 10 percent of the shipper's monthly maximum daily quantity (MDQ). Second, Calpine also states that Gulf South has failed to modify its tariff to reflect the Commission's determination that Gulf South's interest in security on imbalance gas is rightfully limited to the level reflective of imbalances actually owed to Gulf South. Calpine requests the Commission to direct Gulf South to comply with P 78 of the June 17 Order.<sup>6</sup> Both the protest and the answer of Gulf South are considered and resolved below.

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<sup>5</sup> *Tennessee Gas Pipeline Company*, 105 FERC ¶ 61,120 (2003).

<sup>6</sup> On August 11, 2004, Gulf South filed a motion to answer the protest of Calpine. Where answers to protests have been found to provide information useful in the Commission's resolution of issues, they may be approved. *See, e.g., Buckeye Pipeline Co.*, 45 FERC ¶61,046 (1988). The Commission will grant Gulf South's motion.

### **Issues on Rehearing**

9. Gulf South identifies the following issues on rehearing<sup>7</sup> and argues the Commission erred in: (1) requiring revision of the proposed ten percent standard for adequate collateral for transportation imbalances; (2) requiring Gulf South to reduce its collateral holdings on a monthly basis; (3) requiring Gulf South to credit the cash-pool with any collateral collected when a customer fails to clear a transportation imbalance; (4) requiring Gulf South to limit its reliance on certain types of collateral; and (5) not clarifying Paragraph 47 of the June 17 Order, regarding recovery of certain construction costs.

### **Discussion**

#### **A. Collateral for Transportation Imbalances**

##### **1. June 17 Order**

10. Gulf South had proposed that new non-creditworthy transportation customers could be required to post security for transportation imbalances in an amount up to 10 percent of that customer's estimated monthly usage. In the May 5 Order, the Commission gave initial approval to this tariff provision, finding that "a pipeline is entitled to reasonable security for the value of gas it loans to customers, and customers running imbalances are in effect borrowing gas from the pipeline."<sup>8</sup>

11. On rehearing of the May 5 Order, Calpine stated that the ten percent level could lead to excessive collateral requirements. Calpine argued that the evidence of the history of resolution through trades of Gulf South's imbalance amounts shows that one percent is an appropriate level.<sup>9</sup> In the June 17 Order, the Commission sought further information and rationale in support of the proposed 10 percent standard, and directed Gulf South to address the Creditworthiness NOPR's discussion of calculating an appropriate collateral

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<sup>7</sup> Rehearing Request at 2.

<sup>8</sup> May 5 Order at PP 41-46, 106 FERC at 61,422-23 (2003) ("Gulf South based the 10 percent level on the ten percent imbalance level permitted before penalties are incurred, which the Commission finds reasonable.").

<sup>9</sup> June 17 Order at P 74.

level for new customers without an imbalance history. Further, Gulf South was directed to identify a period of time necessary to establish such a history.<sup>10</sup>

## 2. Gulf South's Rehearing Request

12. Gulf South argues that the Commission failed to make any findings of fact, cite precedent, or cite any record evidence that would support the reversal of its holding in the May 5 Order.<sup>11</sup> Gulf South challenges the June 17 Order's requirement, that further information about the ten percent standard be presented, as not supported by substantial record evidence.<sup>12</sup> Moreover, states Gulf South, the Commission failed to specify what changes, if any, Gulf South must make to its tariff, and the lack of clarity regarding this aspect of Gulf South's tariff was arbitrary and capricious.

13. The Commission denies rehearing. First, the Commission did not reverse its prior decision; it merely requested additional information to determine whether to grant rehearing. Thus, the Commission had not yet made a final decision and Gulf South's rehearing request is premature. The June 17 Order simply requested that information be provided and Gulf South does not challenge the Commission's authority under sections 10 and 14 of the NGA to require pipelines to submit additional information necessary for the Commission to make a reasoned decision. Second, as discussed below, this issue is moot, because, based on Gulf South's compliance filing, the Commission is accepting

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<sup>10</sup> June 17 Order at PP 75-76, *citing Creditworthiness Standards for Interstate Natural Gas Pipelines*, Docket No. RM04-4-000, 69 *Fed. Reg.* 8587, *Notice of Proposed Rulemaking, FERC Stats. & Regs.* ¶ 32,573 (February 27, 2004) (*Creditworthiness NOPR*) at P 34 (2004).

<sup>11</sup> *Citing* May 5 Order at P 45 (May 5 Order found that 1) pipelines are entitled to reasonable security for value of gas loaned to customers, and 2) customers do not always clear their imbalances).

<sup>12</sup> *Citing* Natural Gas Act § 19(b), 15 U.S.C. § 717r(b) (2004); *Permian Basin Area Rate Cases*, 390 U.S. 747, 791-92 (1968) ("[T]he court must examine the manner in which the Commission has employed the methods of regulation . . . and must decide if each of the order's essential elements is supported by substantial evidence."); *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 516 (D.C. Cir. 1985); *Tarpon Transmission Co. v. FERC*, 860 F.2d 439, 442 (D.C. Cir. 1988) (agency determination must show reasoned and principled decision-making); *FPL Energy Maine Hydro, LLC*, 93 FERC P 61,047 (2000).

Gulf South's compliance filing which justifies the use of 10 percent of projected monthly usage to determine collateral for new non-creditworthy customers.

### **3. Compliance Filing**

14. As referenced above, the June 17 Order directed Gulf South to provide information and rationale in further support of section 5(a)(4) of its tariff that requires a new non-creditworthy customer to provide collateral up to 10 percent of its projected monthly usage or MDQ. In addition, the Commission requested that Gulf South establish a minimum time period that would be necessary to constitute a history on which to rely in establishing appropriate collateral requirements. As discussed more fully below, Gulf South states that seven months would be the shortest timeframe for a customer to establish a workable imbalance track record. Gulf South states that in most cases such a time period would allow the pipeline to observe a shipper's behavior during at least one winter, shoulder, and summer month season as defined by Gulf South's tariff. Gulf South states that establishing a shorter timeframe could unfairly skew a shipper's imbalance history. Gulf South states that a seven-month period would also allow the shipper time to understand how Gulf South's imbalance resolution procedures work and become proficient at reducing its imbalance position.

#### **a. Calpine Protest**

15. Calpine protests the compliance filing made by Gulf South. Calpine cites the June 17 Order's direction that Gulf South provide further explanation and justification for its proposal that new, non-creditworthy shippers post security based on 10 percent of the shipper's monthly MDQ. Calpine argues that one cannot rely upon the "evidence" provided by Gulf South, without the underlying workpapers and documents that support the percentages. Additionally, Calpine questions why Gulf South provided only seven months of history-based information. Calpine does not oppose Gulf South's proposal of moving to a historical based requirement after seven months, but concludes that Gulf South has not justified requiring collateral using 10 percent of estimated volumes for these first seven months.

#### **b. Gulf South's Answer to Calpine's Protest**

16. Gulf South submits evidence in support of its contention that during the course of any month a non-creditworthy shipper's actual imbalance positions may vary

dramatically.<sup>13</sup> Gulf South states that the evidence demonstrates that customers do routinely short the system by more than 10 percent.

17. Gulf South provided the following table as evidence of actual imbalance positions and selected the seven-month period of 2004 because it included the most recent winter, shoulder and summer months, and such data should not be materially different than the data for any other time period that could be examined. During 2004, the monthly imbalance data for the new non-creditworthy shippers is presented below.

	Shipper 1	Shipper 2	Shipper 3	Shipper 4
February-04	-2.28	N/A	N/A	N/A
Mar-04	-2.25	N/A	N/A	N/A
Apr-04	-2.68	24.06	N/A	N/A
May-04	-8.9	0.21	7.07	N/A
Jun-04	-2.58	11.71	-0.03	0.001
Jul-04	6.97	-0.43	0.17	N/A
Aug-04 (as of August 11, 2004)	N/A	54.32	1.03	0

**c. Commission Finding on Compliance**

18. Gulf South has submitted additional justification for its proposed ten percent standard. Prior to the June 17 Order, Gulf South had provided limited data regarding its experience with new shipper imbalances. Based upon review of the entire record, including Gulf South's additional filings, we believe that Gulf South has justified the 10 percent proposal. The table above represents additional data submitted by Gulf South and focuses only on the few new non-creditworthy shippers on Gulf South's system in 2004. Gulf South submitted this data in response to Calpine's suggestion in its protest

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<sup>13</sup>Gulf South's underlying workpapers regarding all 2004 shippers in support of its discussion of imbalances were included in its motion to answer filed August 11, 2004.

that Gulf South's data should be rejected because it only focused on all shippers rather than new non-creditworthy shippers.

19. In addition to this new data on non-creditworthy shippers, Gulf South also submitted data, covering the period from January 2004 through June 2004 plus the most current four-day period in July 2004, to support the imbalance information it summarized and submitted in its July 19, 2004 compliance filing. That data, which included new and existing shippers, as well as creditworthy and non-creditworthy shippers, reflected dramatic variances in imbalances on Gulf South's system for that time period. For example, it showed an average short position in December 2003 of 18.2 percent; 8.3 percent in January 2004; 16.1 percent in February 2004; 5.5 percent in March 2004; 10.1 percent in April 2004; 11.5 percent in May 2004; 11.8 percent in June 2004; 12.2 percent on July 12, 2004; 11.3 percent on July 13, 2004; 10.9 percent on July 14, 2004; and 12.3 percent on July 15, 2004, with an average daily short imbalance position of 11.7 percent.

20. Thus, the data reflecting both the average short imbalance positions of all shippers on the system (included in Gulf South's answer to Calpine's protest) plus the short imbalance positions of non-creditworthy shippers on the system (as reflected in the table above) demonstrate the severity of short imbalances on Gulf South's system and show that customers have shorted the system by more than 10 percent.

21. Gulf South's data shows the fluctuations that occur over time in the imbalance positions of different shippers. During 2004, non-creditworthy shippers incurred short imbalances that ranged from 0.017 percent to 24.06 percent short imbalance. Gulf South states that the ten percent level may or may not be sufficient, depending upon when a default occurs during the course of a month. Gulf South cites the case of Shipper 2, who is stated to have a history of being short on Gulf South. Shipper 2 took, in the first 11 days of August, 2004, 54.32 percent more gas from the system than it had scheduled. Gulf South avers that each of the defaults and bankruptcies that have occurred on its system took place in the middle of the month.

22. Gulf South's tariff permits shippers to incur up to a 10 percent transportation imbalance during the course of a month without being subject to a penalty.<sup>14</sup> Gulf South explains that it is a monthly balancing pipeline, and a customer's imbalance position will vary over the course of the month. As Gulf South notes, defaults may occur at any point

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<sup>14</sup> Gulf South states that the 10 percent penalty level only applies after the imbalance trading period closes. Thus, at the end of the month, a shipper could have an imbalance position that is greater than 10 percent, but trade back to a level of 10 percent or less.

in the course of a month, not just at the end. Individual collateral and credit decisions are made shipper by shipper, and the approach proposed by Gulf South and initially approved in the May 5 Order takes into account a shipper's individual circumstances, based on that shipper's credit rating, estimated monthly usage and estimated imbalance rate.

23. Since new shippers have no historic record on which to base a collateral decision, we find Gulf South's tariff provision is a just and reasonable approach to balancing the interests of the parties until a customer establishes a track record. Calpine does not oppose Gulf South's proposal of moving to an experience based requirement, assuming Gulf South has justified requiring collateral using 10 percent of estimated volumes for these first months. We find that Gulf South has established such a justification, and we direct Gulf South to incorporate the requirement of seven months of service into its tariff.

## **B. Monthly Reduction of Collateral**

### **1. June 17 Order**

24. Gulf South had proposed to review annually and reduce the amount of collateral it was holding from any shipper meeting its tariff obligations who had requested that receipt and delivery facilities be constructed under section 24.4 of the tariff. Calpine argued that annual collateral reductions were inappropriate and that monthly reductions should be required. The Commission agreed, stating that collateral should be returned to the shipper "in proportion to the reduction in contract term."<sup>15</sup> The June 17 Order stated that Gulf South should revise its tariff in accordance with language approved in *Natural*.<sup>16</sup> There, the Commission required Natural to include tariff language providing that as Natural begins recovering the costs of the new facilities through its rates, it must allow a "corresponding reduction" in the amount of guarantee required from a shipper.

### **2. Rehearing Request of Gulf South**

25. Gulf South states that the Commission's holding<sup>17</sup> will be both unduly burdensome for Gulf South, and costly for non-creditworthy customers. Gulf South states that the June 17 Order requires Gulf South to calculate monthly the collateral

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<sup>15</sup> June 17 Order at P 46.

<sup>16</sup> *Citing Natural Gas Pipeline Company of America*, 102 FERC ¶ 61, 355 at P 85 (2003).

<sup>17</sup> Order on *Reh'g* at P 45-47.

obligations for each affected customer and then, for a customer that has posted cash collateral, to either credit that shipper's monthly invoice or issue that customer a check. Gulf South argues that letters of credit are not usually designed to be modified on a monthly basis; rather, they are designed to provide a pool of dollars to be drawn upon in the event of a default. Gulf South claims that a shipper will be compelled to obtain a new letter of credit each month, which would likely be costly and inefficient. Gulf South states that a rational approach to balancing these competing interests would be to require a collateral true-up on a semi-annual or annual basis.

### 3. Commission Decision

26. Gulf South does not provide sufficient reasons why its tariff should not require the pipeline to return excess collateral to a shipper on a monthly basis consistent with *Natural*.<sup>18</sup> With respect to cash held by Gulf South as collateral, Gulf South has not identified any administrative reason for not returning excess collateral on a monthly basis.<sup>19</sup> With respect to the other forms of collateral, such as letters of credit, the shipper and the pipeline need to negotiate reasonable methods for reduction of such collateral that are appropriate to the instrument used. For example, Gulf South has not explained why a letter of credit cannot be drafted in such fashion to accommodate declining balances, so that the cost to the shipper of the letter of credit may be reduced.<sup>20</sup> Therefore, with respect to a shipper's right under Gulf South's tariff, Gulf South presents no good reason why reduction of collateral held by Gulf South should not occur monthly. The shipper, of course, will have to structure any of its financial instruments so that any reduction of collateral does not create undue administrative burdens for Gulf South, and, for good cause, Gulf South can reject a shipper's proposed collateral reduction mechanism that it can demonstrate is unduly burdensome. The Commission, therefore, will deny rehearing.

#### C. Cash pool crediting for imbalance security collections

27. In the June 17 Order, the Commission concluded that the cash-in/cash-out account should be credited with any collateral recoveries by Gulf South on gas imbalances to

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<sup>18</sup> 102 FERC ¶ 61,355 at P 85 (2003).

<sup>19</sup> This proceeding is conducted under NGA section 4 and Gulf South bears the burden of proof that such a proposal is just and reasonable.

<sup>20</sup> Elsewhere, Gulf South suggests that such drafting has indeed been possible. *See* Rehearing request at 11 ("In the case of a guaranty or letter of credit, Gulf South would only draw on those instruments up to the total amount owed.").

prevent Gulf South from obtaining financial benefits that should have been credited to its shippers.<sup>21</sup>

28. Gulf South states that the Commission erred when it concluded that if a customer defaults on an imbalance it is the cash pool, not Gulf South, that faces the financial loss. Gulf South previously reported to the Commission, as of March 31, 2004, that Gulf South's cash pool has a negative \$8,074,826 balance.<sup>22</sup> While this balance is down approximately \$3,000,000 from last year, Gulf South states that it, not its customers, is currently funding the cash pool, which has been in a negative cash position for years, and thus the June 17 Order should be reversed.

29. The Commission grants rehearing. The Commission did not intend to proscribe a particular accounting methodology for handling collateral recoveries by Gulf South. Gulf South will rely on collateral for imbalances only in those situations in which the shipper has failed to pay for its imbalances. Thus, Gulf South is required to treat the use of collateral in the same manner as it would have treated the shipper's imbalance payment.

#### **D. Retention of Imbalance Security**

30. The June 17 Order addressed the issue of whether Gulf South could retain all of the security posted on imbalance gas by a defaulting shipper, even if the gas imbalance owed is less than the posted security. The Commission concluded that Gulf South cannot draw or retain security on imbalance gas in excess of that which Gulf South is actually owed.<sup>23</sup>

31. Gulf South argues that it should not be required to refund any imbalance security to a defaulting shipper that still owes Gulf South money for reasons unrelated to imbalances. Gulf South states that it should be allowed to negotiate with its non-creditworthy customers to determine the best course of action for providing adequate security.

32. Further, Gulf South states that the June 17 Order requires Gulf South to establish separate collateral accounts for facilities, transportation charges and imbalances, thus increasing a shipper's costs, especially if letters of credit are used as collateral. Gulf

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<sup>21</sup> June 17 Order at P 78.

<sup>22</sup> On May 27, 2004, in Docket No. RP04-309, Gulf South filed its annual report on its cash-in/cash-out report.

<sup>23</sup> *Id* at P 78.

South states that it has required a shipper to post only one form of security to cover all of its collateral obligations, including demand charges and imbalances, by means of a single letter of credit, parental guaranty or cash collateral amount that covered all of these items. In the event of a default, Gulf South would apply the total security being held against the total indebtedness of that shipper.<sup>24</sup> Gulf South states that June 17 Order requires multiple letters of credit to cover the different aspects of the shipper's indebtedness.

### **Compliance/Calpine's Protest**

33. Gulf South's compliance filing provided no tariff modifications in response to this aspect of the June 17 Order. Calpine states that Gulf South has failed to modify its tariff to reflect the Commission's determination that the interest in security on imbalance gas is rightfully limited to the level reflective of imbalances actually owed to Gulf South. Calpine requests the Commission to direct Gulf South to comply with P 78 of the June 17 Order.

### **Discussion**

34. We grant rehearing. To the extent that Gulf South has retained collateral with respect to a defaulting shipper, Gulf South need not return collateral to that shipper until it is no longer in default. Moreover, Gulf South can apply the total amount of collateral retained to cover any defaults. The Commission further agrees that Gulf South need not maintain separate collateral accounts for different forms of collateral.

#### **E. Clarification Request**

35. The June 17 Order noted that Gulf South had failed to comply with the May 5 Order's direction 1) to include language providing that it will reduce the collateral requirements as the shipper pays off the cost of facilities constructed pursuant to section 24.4 of Gulf South's tariff,<sup>25</sup> 2) accept alternative forms of financial protection, such as parental guarantees, and 3) include language providing that where facilities are to be constructed to serve multiple shippers, an individual shipper's obligation should be no

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<sup>24</sup> If the security being held was greater than the amount owed, then Gulf South states that it "would hold the extra cash security for the shipper's benefit." If the security being held was less than the total amount owed, then Gulf South has a claim against that shipper for the remaining amount owed. Rehearing request at 11.

<sup>25</sup> Section 24.4 of Gulf South's tariff relates to construction of receipt and delivery facilities.

more than the proportionate share of the cost of the facilities.<sup>26</sup> The June 17 Order also stated that the language of the tariff should include changes consistent with *Tennessee* and *Natural*, providing that Gulf South will mitigate the consequences of a default, ensuring that the shipper is responsible only for the difference between what it would have paid and the amount the pipeline can recover from another customer.<sup>27</sup> In addition, the Commission directed that Gulf South's language should state that Gulf South is only permitted to recover the cost of the facilities once, either through transportation rates, or by means of one of the assurances provided to Gulf South as security in the event of shipper default.

36. Gulf South filed the following language as its section 5.4 compliance filing:

Notwithstanding the foregoing requirements, in the event Gulf South constructs new facilities pursuant to section 24.4, Gulf South may require a cash prepayment deposit parental guarantee or an irrevocable letter of credit, in addition to any security required under section 5.3, from a Customer that does not meet the credit requirements established in section 5.2 hereof, in an amount up to the customer's pro rata share of the costs of the new facilities. On a monthly basis, Gulf South shall review Customer's transportation throughput and transportation commitments (or other criteria as the parties may mutually agree) related to the new facilities and pursuant to such evaluation will refund, cash prepayments or allow Customer to reduce an irrevocable letter of credit on a pro rata basis, based upon Gulf South's criteria evaluation and customer's payment history.

In the event Gulf South is required to draw on a Customer's collateral, for the facilities constructed pursuant to section 24.4, the amount of Customer's collateral retained by Gulf South shall be reduced to an amount equal to the difference between (1) the net present value of the future reservation charge revenues of the original Customer that would have been attributed to the cost of such facility and (2) the net present value of the future reservation charge revenues of a newly awarded firm customer that are directly

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<sup>26</sup> See June 17 Order at PP 44-47.

<sup>27</sup> Citing *Tennessee Gas Pipeline Company*, 105 FERC ¶ 61,120 (2003), *Natural Gas Pipeline Company of America*, 102 FERC ¶ 61,355 (2003).

attributed to the cost of such facility. In no event shall Gulf South hold collateral related to facilities constructed pursuant to section 24.4 of its tariff, if the cost of those facilities has been recovered from the firm shippers that have contracted for that capacity and/or through use of the collateral held for defaults by non-credit-worthy customers.

37. Gulf South states on rehearing that Paragraph 47 of the June 17 Order needs clarification. Gulf South understands that it has been required to propose tariff language that (1) mitigates the consequences of a shipper's default, (2) provides that the defaulting shipper is only responsible for the difference between the amount it would have paid and the amount that Gulf South recovers from other firm shippers and (3) Gulf South can only recover the cost of those facilities through either its transportation rates or security being held. It also appears to Gulf South that the context of the June 17 Order only applies to facilities constructed pursuant to section 24.4 of Gulf South's tariff. Gulf South seeks assurance that its compliance filing is responsive to P 47 of the June 17 Order, and requests that the Commission clarify that no additional obligations were imposed on Gulf South by P 47.

38. The language of section 5.4 submitted by Gulf South complies with the June 17 Order, and is accepted.

The Commission orders:

(A) Gulf South's tariff sheets are accepted, to become effective August 17, 2004, subject to further modification as more fully described in the body of this order.

(B) Gulf South is directed to file, within 30 days of the date of issuance of this order, revised tariff sheets consistent with the discussion in the body of this order.

(C) Gulf South's requests for hearing are granted and denied and found moot as discussed in the body of this order. Calpine's protest is granted and denied as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.