

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Gulfstream Natural Gas System, L.L.C.

Docket No. RP02-361-006

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued June 9, 2003)

1. On March 28, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) filed a Settlement Agreement with Florida Power Corporation (Florida Power) pursuant to which the parties have agreed to execute various transportation service agreements, negotiated rate agreements, a precedent agreement, and a favored nations agreement (Settlement Related Agreements) to comply with the Commission's order issued on July 3, 2002 (July 3 Order).<sup>1</sup> We will grant Gulfstream's requested waiver of Section 154.207<sup>2</sup> of the Commission's regulations and conditionally accept the agreements to become effective on December 1, 2002. Our action here permits Gulfstream to provide service to Florida Power, while preserving our statutory responsibility to assure service is rendered in a not unduly discriminatory manner.

**Background**

2. Gulfstream is a new interstate pipeline that is transporting natural gas from supply areas in Alabama and Mississippi across the Gulf of Mexico to new incremental markets in central and southeastern Florida.<sup>3</sup>

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<sup>1</sup>Gulfstream Natural Gas System, L.L.C., 100 FERC ¶ 61,036 (2002), order on reh'g, 101 FERC ¶ 61,368 (2002) (Gulfstream).

<sup>2</sup>18 C.F.R. § 154.207 (2002).

<sup>3</sup>Gulfstream Natural Gas System, L.L.C., 98 FERC ¶ 61,349 (2002).

3. The Commission's July 3 Order required Gulfstream to revise the Original Negotiated Rate Agreement with Florida Power dated December 20, 2000, to exclude certain provisions that did not conform to the Form of Service Agreement in Gulfstream's tariff. Gulfstream has filed a series of agreements and an associated Settlement Agreement with Florida Power to comply with the July 3 Order, which are proposed to become effective on December 1, 2002.<sup>4</sup> Gulfstream requests that the Commission accept Service Agreement No. 9000105R1 (Replacement Agreement), a Precedent Agreement and its related Service Agreement No. 9000666, a Favored Nations Agreement, and three conforming Rate Schedule FTS service agreements (Service Agreement Nos. 9000665, 9000667, and 9000848) along with related Negotiated Rate Agreements.

4. Gulfstream proposes that the Settlement Agreement and Settlement Related Agreements be made effective on December 1, 2002. It requests waiver of the notice requirements of Section 154.207 of the Commission's regulations and any other waivers necessary to permit the December 1, 2002 effective date. Gulfstream states that it will file tariff sheets with the Commission to implement the negotiated rates to be applicable to the Settlement Related Agreements on the dates contemplated in the agreements.

### **Description of Settlement Agreement and Settlement Related Agreements**

#### Settlement Agreement

5. Gulfstream and Florida Power have been negotiating to arrive at an arrangement consistent with the July 3 Order. The Settlement Agreement dated December 1, 2002, purports to resolve all issues relating to the Original Negotiated Rate Agreement. Gulfstream and Florida Power have agreed to execute the agreements, as discussed below, within fifteen business days after the date of a Commission order that approves or accepts the Settlement Related Agreements without a material adverse condition or a material adverse modification unacceptable to either or both of the parties, to the extent that such approval or acceptance is necessary to give full effect to each provision of the Settlement Related Agreements.

6. In the event the Commission issues an order accepting or approving, with a material adverse condition, material adverse modification or rejection of a material provision, all or a portion of the Settlement Related Agreements, and if either party notifies the other party that the adverse order is unacceptable, the Settlement Agreement provides that neither party shall have any obligation to execute any of the Settlement Related Agreements or have any

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<sup>4</sup>The filing is styled as a settlement agreement, but it was not filed under 18 C.F.R. § 385.602 (Rule 602) (2002).

obligation to the other under any of the Settlement Related Agreements unless and until all of the Settlement Related Agreements are fully executed by both parties.

Long Term Settlement Related Agreements:

Replacement Agreement (Service Agreement No. 9000105R1)

7. This Replacement Agreement supersedes, cancels and replaces the existing Rate Schedule FTS firm service agreement (Service Agreement No. 9000105 dated May 29, 2002). The term of the service extends from December 1, 2002 to September 1, 2022. The service agreement provides for firm transportation service to Florida Power's Hines, Intercession City and Tiger Bay electric generation facilities located in Polk and or Oscealo Counties, Florida at the following levels: (1) 72,000 Dth from December 1, 2002 through February 28, 2003, (2) 90,000 Dth from March 1, 2003 through October 31, 2004, and (3) from November 1, 2004 thereafter – 72,000 Dth during November 1 through March 31 and 90,000 Dth during April 1 through October 31. Exhibit C of the Replacement Agreement includes a Statement of Negotiated Rates.

Service Agreement No. 9000665

8. This Rate Schedule FTS service agreement is for 30,000 Dth per day also to be transported to Florida Power's Hines, Intercession City and Tiger Bay electric generation facilities. The 21 year term extends from June 1, 2003 to June 1, 2024. In addition, there is a separate Negotiated Rate Agreement for Service Agreement No. 9000665.

Precedent Agreement and Service Agreement No. 9000666

9. These two agreements concern service which would not begin until June 1, 2005. The Precedent Agreement is for 50,000 Dth per day of firm transportation service to serve the proposed expansion of Florida Power's existing Hines generation facility, known as the Hines 3 expansion. The Rate Schedule FTS service agreement (Service Agreement No. 9000666) is for 50,000 Dth per day to be transported to Florida Power's Hines electric generation facility. The 20 year primary term of service extends from June 1, 2005 to June 1, 2025. In addition, there is a separate Negotiated Rate Agreement for Service Agreement No. 9000666.

### Favored Nations Agreement

10. In connection with the above three long term service agreements, Gulfstream and Florida Power agree to a favored nations clause. The favored nations clause provides that if Gulfstream becomes a party to any negotiated rate precedent or service agreement for an equivalent service, i.e., for (i) firm, forward haul transportation of gas into the State of Florida, (ii) for a term of service equal to twenty (20) years or less, and (iii) with a Maximum Hourly Quantity (MHQ) as defined in the Service Agreements of 6% or greater, at a rate more favorable than in the abovementioned long term contracts, then Gulfstream will promptly offer the more favorable rates to Florida Power.

#### Short Term Settlement Related Agreements:

##### Service Agreement No. 9000667

11. This Rate Schedule FTS service agreement is for 20,000 Dth per day to be transported to Florida Power's Hines, Intercession City and Tiger Bay electric generation facilities. The term extends from July 1, 2004 to September 1, 2004. In addition, there is a separate Negotiated Rate Agreement for Service Agreement No. 9000667.

##### Service Agreement No. 9000848

12. This Rate Schedule FTS service agreement is for 20,000 Dth per day to be transported to Florida Power's Hines, Intercession City and Tiger Bay electric generation facilities. The term extends from July 1, 2003 to September 1, 2003. In addition, there is a separate Negotiated Rate Agreement for Service Agreement No. 9000848.

### **Notice, Interventions and Protests**

13. Notice of Gulfstream's compliance filing was issued on April 2, 2003. Interventions and protests were due on April 9, 2003 as provided in Section 154.210 of the Commission's regulations.<sup>5</sup> There were no protests filed.

### **Discussion**

14. The Commission approves the various agreements submitted by Gulfstream as filed, with the exception of the Precedent Agreement with Florida Power to serve the Hines 3 expansion with 50,000 Dth per day of firm transportation service to commence on June 1,

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<sup>5</sup>18 C.F.R. § 154.210 (2002).

2005. Paragraph 5 of the Precedent Agreement between Gulfstream and Florida Power provides Florida Power, or Shipper, an early termination provision. Paragraph 5 (B) (i) states:

5. Commencement of service under the Service Agreement and Transporter's and Shipper's rights and obligations under the Service Agreement are expressly made subject to the satisfaction of the following conditions precedent:
  - (B) Shipper's Conditions Precedent (only Shipper shall have the right to waive conditions precedent set forth in Paragraph 5(B)):
    - (i) Shipper's receipt, on terms and conditions acceptable to shipper in its sole determination, by March 31, 2004, of all authorizations, approvals and/or exemptions from the Florida Public Service Commission and from any other regulatory body having jurisdiction necessary for Shipper to construct, own and operate Shipper's Plant Expansion ("Shipper's Regulatory Approvals"), and all of Shipper's Regulatory Approvals are by March 31, 2004 final and not subject to any rehearing or appeal; provided, that Shipper shall have the right at any time on or before March 31, 2004 to (a) withdraw its applications for Shipper's Regulatory Approvals or (b) elect in its sole determination not to proceed with the Plant Expansion.

15. Specifically, if Florida Power elects not to proceed with its Hines 3 plant expansion, in its sole determination, it can discharge itself from the Precedent Agreement and Service Agreement 9000666 contract. The Commission has found that a pipeline should not be permitted to negotiate such an early termination right, unless it is offered, subject to reasonable conditions, as part of the pipeline's generally applicable tariff.<sup>6</sup> The Commission reasoned that the availability of service at the recourse rate does not provide an adequate substitute, since recourse service would not include any such provision. However, the Commission stated that if ANR Pipeline Co. wished to offer such provisions to shippers, it could file a tariff provision proposing the non-discriminatory conditions pursuant to which it proposes to offer such provisions. Therefore, consistent with the Commission's decision in ANR, we will condition the acceptance of this filing upon Gulfstream removing the provision from the Precedent Agreement. If Gulfstream wishes

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<sup>6</sup>ANR Pipeline Co., 97 FERC ¶ 61,223 at 62,018 (2001) (ANR). See also Tennessee Gas Pipeline Co., 97 FERC ¶ 61,225 (2001).

to offer such a provision to Florida Power, it may file a tariff provision proposing the non-discriminatory conditions pursuant to which it proposes to offer such provisions.

16. While we are accepting the Precedent Agreement and related Service Agreement No. 9000666 subject to the above change, we remind Gulfstream that since service under Service Agreement No. 9000666 does not commence until June 1, 2005, the capacity must be posted and otherwise be made available during the interim period for other shippers under Section 27, Requests for Service, of the General Terms and Conditions (GT&C) of Gulfstream's tariff, *i.e.*, from the present until June 1, 2005. If a shipper enters into a long term service agreement for that available capacity at the maximum cost based recourse rate during the interim period, then that shipper will be able to exercise the right of first refusal<sup>7</sup> consistent with Section 29, Right of First Refusal, of the GT&C.<sup>8</sup>

The Commission orders:

(A) The Commission grants waiver of Section 154.207 of its regulations to accept the Gulfstream's Settlement Agreement and Settlement Related Agreements, as conditioned in the body of this order, to become effective on December 1, 2002.

(B) Gulfstream must file tariff sheets within 30 days of this Commission order to implement the negotiated rates for service with Florida Power that has commenced or will commence by June 1, 2003. Gulfstream must also within 30 days file its Precedent Agreement with Florida Power to remove the early termination provision.

By the Commission. Commissioner Brownell concurring in part with a separate statement attached.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>7</sup>18 C.F.R. § 284.221(d) (2) (2002).

<sup>8</sup>See Williams Gas Pipelines Central, Inc., 97 FERC ¶ 61,249 (2001) (rejecting request to narrow regulatory right of first refusal).

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BROWNELL, Commissioner, concurring in part:

This order reminds Gulfstream that it must apply ROFR rights to interim service agreements for capacity that is already under contract for a future period. While I realize that this is current Commission policy, for the reasons I stated in my partial concurrence in Northern Natural Gas Company, 103 FERC ¶ 61,266 (2003), I believe it is time to explore whether this policy best furthers the goals of maximizing capacity utilization; optimizing expansion planning; and getting capacity to those shippers that value it most.

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Nora Mead Brownell  
Commissioner