FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 22, 2004

In Reply Refer To:
Gulfstream Natural Gas System, L.L.C.
Docket No. RP02-361-028

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: Letter Order Accepting Tariff Sheet and Negotiated Rate Letter Agreement, Subject to Condition

Dear Mr. Teague:

1. On May 24, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) filed a revised negotiated rate letter agreement with Calpine Energy Services, L.P. (Calpine) and a tariff sheet summarizing the Calpine letter agreement,[1] with an effective date of November 1, 2003, in compliance with the Commission's letter order issued in Docket No. RP02-361-017 on December 24, 2003.[2] As discussed below, the Commission finds that with certain limited exceptions, Gulfstream has complied with the directives of the December 24, 2003 Order and accepts the proposed tariff sheet and the negotiated rate letter agreement, effective November 1, 2003, subject to conditions. This order benefits the public interest by ensuring that Gulfstream's service agreements are consistent with its tariff and Commission policy.

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[1] Sub Original Sheet No. 8N to its FERC Gas Tariff, Original Volume No. 1

[2] Gulfstream Natural Gas System, L.L.C., 105 FERC ¶ 61,380 (2003) (December 24, 2003 Order).

Notice, Interventions, and Protests

2. Notice of the referenced filing was issued on May 27, 2004, with comments, protests, or interventions due on or before June 8, 2004, as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214), all timely motions to intervene are granted and any motions to intervene out of time are granted as of the date of this order. No interventions or protests were filed.

Discussion

3. In order to conform the original negotiated rate letter agreement to Gulfstream's *pro forma* service agreement and Commission policy, the December 24, 2003 Order directed Gulfstream to revise the original negotiated rate letter agreement with Calpine[3] in the following ways: remove Paragraphs 9 (Confidentiality) and 10 (Publicity) entirely, remove all portions of Paragraphs 3 (Interconnection Facilities), 4(a)-(d) (Additional Rights), and 13 (Project Delay) that are pre-service conditions not affecting transportation or rates on Gulfstream, and remove all portions of Paragraph 1 (Favored Nations Clause) allowing Gulfstream to negotiate terms and conditions of service contained in the Most Favored Nations (MFN) clause. Additionally, Gulfstream was directed to revise Original Sheet No. 8N to reflect the following changes to the MFN provision: the modification of Paragraph 1 to reflect that Calpine may only change its Maximum Hourly Quantity (MHQ) subject to available capacity and generally applicable tariff procedures, and the revision of Paragraph 4(a) to require Calpine to follow the normal procedures set forth in Gulfstream's tariff for changing contract MHQ. The Commission also directed Gulfstream to revise Exhibit C to the service agreement to reflect that the negotiated rate agreement is a non-conforming service agreement. The Commission finds that Gulfstream has satisfactorily complied with these directives in its May 24, 2004 compliance filing.

4. The December 24, 2003 Order also directed Gulfstream to explain the differences between the terms in the Letter Agreement regarding Paragraph 1 (arbitration), Paragraph 2 (turnback rights), Paragraph 11 (assignment), and Paragraph 12 (choice of law), and that of its Form of Service Agreement, Rate Schedules, and General Terms & Conditions. In addition, Gulfstream was directed to explain the effect of such terms on the rights of the parties and why such deviation does not present a risk of undue discrimination as required by the 2003 Policy Statement.[4] Finally, the December 24, 2003 Order at P 17,

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[3] The name of the shipper on the letter agreement is Calpine East Fuels, L.L.C. (Calpine East). Calpine East assigned the letter agreement to Calpine by letter dated October 22, 2001, prior to the in-service date of the Gulfstream system.

[4] *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 33 (2003) (2003 Policy Statement).

directed Gulfstream to provide a revised letter agreement that includes only rates and other provisions applicable only to negotiated rates.[5]

5. Gulfstream states that the arbitration provision relates only to the MFN provision of the negotiated rate, and will be triggered in the event that Gulfstream and Calpine disagree over whether another shipper's rate triggers the MFN protection. Gulfstream states this provision applies only to the negotiated rate and, therefore, does not constitute a deviation from the Form of Service Agreement. Since the arbitration provision only applies to the negotiated rate, it does not constitute a material deviation from the Form of Service Agreement, and therefore, it does not create a risk of undue discrimination against other shippers and is approved.

6. Gulfstream explains that the shipper's turnback rights provision gives Calpine the right to turnback its capacity, *pro rata* with other firm shippers, in the context of a reverse open season. Gulfstream also states that while this provision is not in Gulfstream's Form of Service Agreement, it reflects the Commission's current policy with regard to expansion projects that existing firm shippers be given the opportunity to turnback existing capacity if it can be used to prevent overbuilding. The Commission finds that the shipper turnback provision provides a valuable right that can affect the quality of service to other shippers. In Order No. 637, the Commission determined not to allow pipelines to negotiate terms and conditions of service that it does not offer to all shippers.[6] If Gulfstream wishes to offer shippers individual terms and conditions of service not found in the current Form of Service Agreement and its tariff, it must propose a tariff provision that is generally applicable and offer such rights to all similarly situated shippers on a non-discriminatory basis. Moreover, this provision does not relate to the rate. Therefore, consistent with the Commission's directive in the December 24, 2003 Order, the turnback provision should not be contained in the negotiated rate letter agreement and should be deleted, unless Gulfstream revises its tariff's *pro forma* Form of Service Agreement. Accordingly, Gulfstream is directed to either file to delete the turnback rights provision from the letter agreement, or file a revised Form of Service Agreement to authorize it.

7. Gulfstream avers that the provision permitting assignment of the negotiated rate letter agreement only applies to the negotiated rate and not to the underlying service agreement and, therefore, is not a deviation from the Form of Service Agreement. For the reasons given by Gulfstream, the Commission finds that the rate assignment provision

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[5] Any other changes that affect service were directed to be made to the Form of Service Agreement.

[6] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, FERC Stats. & Regs. Regulations Preambles (July 1996-December 2000) ¶ 31,091 at 31,343 (2000) (Order No. 637).

is reasonable and is accepted, subject to Gulfstream filing, within 15 days of this order, a revised negotiated rate letter agreement to add a provision to clarify that capacity must be obtained in the future through the ordinary procedures set forth in the tariff.[7]

8. Finally, Gulfstream explains that the governing law provision in the revised negotiated rate letter agreement states that the agreement will be governed by the laws of the State of Texas, and the Form of Service Agreement includes a blank for governing law. Therefore, Gulfstream asserts that the governing law provision in the negotiated rate letter agreement is consistent with the service agreement and conforms to the Form of Service Agreement. For these reasons, the Commission finds that the governing law provision of the letter agreement is not a material deviation from the Form of Service Agreement and is approved.

By direction of the Commission. Commissioner Kelly not participating.

Magalie R. Salas,
Secretary.

[7] Gulfstream Natural Gas System, L.L.C., 107 FERC ¶ 61,303 at P 27 (2003).