

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

(October 24, 2003)

In Reply Refer To:  
Gulf South Pipeline Company, LP  
Docket No. RP96-320-061

Gulf South Pipeline Company, LP  
20 East Greenway Plaza, Suite 900  
Houston, TX 77046

Attention: Michael E. McMahon,  
Senior Vice President of Rates

Reference: Compliance Filing

Dear Mr. McMahon:

1. On August 27, 2003, Gulf South submitted to the Commission tariff sheets<sup>1</sup> intended to comply with the Commission's order issued July 28, 2003,<sup>2</sup> in this proceeding concerning Gulf South's proposed Parking and Lending Option Service (PAL Option Service). In its August 27, 2003 filing, Gulf South states that it is withdrawing its PAL Option Service proposals and is proposing changes to its existing PAL Rate Schedule (Parking and Lending Service) intended to address concerns raised in the Commission's July 28, 2003 Order. Gulf South proposes a September 29, 2003 effective date for its proposed tariff sheets. In this order, the Commission accepts Gulf South's filing, effective September 29, 2003, subject to the condition that it make further revisions to its tariff to remove certain proposed changes to its PAL rate schedule to prevent potential undue discrimination and to remove all references to the withdrawn PAL Option Services.

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<sup>1</sup> Fifth Revised Sheet No. 604, Third Revised Sheet No. 605, First Revised Sheet No. 606 and Second Revised Sheet No. 607 to FERC Gas Tariff, Sixth Revised Volume No. 1.

<sup>2</sup> Gulf South Pipeline Co., LP, 104 FERC ¶ 61,138 (2003) (July 28 Order).

## **Background**

2. In an order issued March 14, 2001,<sup>3</sup> the Commission accepted four negotiated rate contracts filed by Gulf South for so-called PAL Option Service subject to the condition that Gulf South either refile the contracts to remove negotiated terms and conditions of service from the contracts or to file proposed revised tariff provisions and a recourse rate for such PAL Option Services. In its July 28, 2003 Order, the Commission reviewed Gulf South's filing to comply with the March 14, 2001 Order, rejecting two aspects of the filing. First, the Commission concluded that Gulf South's proposed revisions to its PAL rate schedule gave it the discretion to negotiate parking, lending and payback rights that would apply to a specific transaction so as to render it impermissibly vague, with the potential for undue discrimination. As the Commission explained:

Under its proposed language, [Gulf South] could negotiate terms and conditions of service for an individual shipper different than that provided under the PAL rate schedule with no obligation to make such negotiated provisions generally available to all shippers on a non-discriminatory basis[.] [<sup>4</sup>]

Second, the Commission held that Gulf South had failed to follow the March 14, 2001 Order's directive that, in order to provide a separate PAL Option Service, it must file recourse rates for the new service.

3. On August 27, 2003, Gulf South filed to comply with the July 28, 2003 order. In the transmittal letter to the instant August 27, 2003 filing, Gulf South explains that, because it has met market demand by offering PAL service at its just and reasonable recourse rates, it is withdrawing its request to provide PAL Option Service. However, Gulf South states that it is proposing certain changes to its existing PAL Rate Schedule, in order to meet the concerns raised by the July 28, 2003 Order. It states that it was directed to modify its tariff to address those situations where a customer agrees to specific injection and withdrawal schedules and/or particular volumes. It states that it is proposing to change Section 2(d)(i) and (ii) of the PAL rate schedule to state that, whenever it has an agreement with a customer on specific injection withdrawal schedules and/or volumes in order to secure a discounted rate, it will post the specifics of the agreement on its website. According to Gulf South, posting this information "will eliminate concerns about potential undue discrimination and will ensure that market participants know the

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<sup>3</sup> Gulf South Pipeline Co., LP, 94 FERC ¶ 61,258 (March 2001 Order), reh'g denied, 95 FERC ¶ 61,196 (2001).

<sup>4</sup> 104 FERC ¶ 61,138 at P 3.

precise basis upon which a discount was offered.”<sup>5</sup> Second, Gulf South states that it is proposing to amend Section 4 of its PAL rate schedule to allow the parties to a PAL agreement to modify the terms of that agreement, with any such modification also to be posted on Gulf South’s website.

4. In addition to the foregoing changes discussed in the transmittal letter, Gulf South proposes to include a provision in Section 2(d) that Gulf South and the customer may provide for "specific payback and parking rights that apply to a given PAL transaction at the discounted rate." Further, it proposes a new Section 5(b) to the PAL Rate Schedule to specifically state that it and the customer "may use the factors established in Section 7.7 of the General terms and Conditions of its Tariff (GT&C) to arrive at a discounted rate." Gulf South requests that its revised tariff sheets be accepted to be effective September 29, 2003.

### **Public Notice, Interventions and Comments**

5. Notice of Gulf South’s August 27, 2003 compliance filing was published in the Federal Register, 68 Fed. Reg. 52,916 (2003), with protests due on or before September 8, 2003. BP America Production Company and BP Energy Company (collectively BP) filed a motion to intervene out of time Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure.<sup>6</sup> BP’s motion to intervene, although exceedingly untimely, is granted in light of the fact that Gulf South has withdrawn its original proposal and is proposing new changes to its PAL Rate Schedule. Indicated Shippers<sup>7</sup> filed comments on Gulf South’s filing which we detail below. On September 16, 2003, Gulf South filed a motion for leave to answer and an answer to Indicated Shippers’ comments.<sup>8</sup>

6. Indicated Shippers expresses concern about Gulf South’s proposed revision to Section 2 of its PAL rate schedule, which states:

For discounted PAL Service, Gulf South and Customer may specifically provide in the service agreement the precise parking and payback rights that

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<sup>5</sup> Gulf South Filing at 2.

<sup>6</sup> 18 C.F.R. § 385.214 (2003).

<sup>7</sup> Indicated Shippers consists of BP and ChevronTexaco Natural Gas, a division of Chevron U.S.A., Inc., which previously intervened in this docket.

<sup>8</sup> Although, pursuant to Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2) (2003), no response is generally permitted to a protest, we will grant Gulf South’s motion and accept its answer for filing, as it provides information helpful to a decision in this case.

apply to a given PAL transaction at the discounted rate. Gulf South shall post the specific payback terms as part of the initial auction under Section 33, or as a transactional posting at the time a non-auctioned PAL transaction is nominated.<sup>9]</sup>

Specifically, Indicated Shippers state that they believe that this language could lend itself to discriminatory conduct by the pipeline. It states that the reference to the negotiation of "parking and payback rights" could potentially allow Gulf South to negotiate any of the service conditions that apply to park-loan service. This approach, Indicated Shippers maintains, is counter to the Commission's July 28 Order, which recognized that "allowing a pipeline to negotiate special service conditions with a shipper would 'create the potential for undue discrimination.'"<sup>10</sup> Indicated Shippers, therefore, requests that the Commission clarify that the parking and payback rights which can be negotiated by Gulf South are only those that are consistent with its tariff.

7. In its answer to Indicated Shippers, Gulf South contends that the language in question only provides tariff authority "for PAL shippers and Gulf South to specify upfront the precise parking/lending and payback periods in a discounted PAL transaction."<sup>11</sup> It states that nearly all of its discounted PAL services have specified when gas would be parked/lent and when the gas would be paid back to qualify for a specific discounted rate. It clarifies that the tariff language it now proposes does not, however, require all PAL customers to agree when gas would be parked or paid back; nor will it allow Gulf South to negotiate any other aspect of the agreements such as scheduling priority as suggested by Indicated Shippers. Thus, it asserts, granting Gulf South and its customers this authority is no different than the pricing flexibility provided in Section 7.7 of its tariff for firm and interruptible transportation service and is similar to the Commission practice of allowing pipelines to grant point-to-point transportation discounts. Finally, the risk of undue discrimination, Gulf South contends, has been eliminated by its proposal to post the parking and payback terms on the internet.

### **Discussion**

8. The Commission finds that, with the exceptions discussed below, the tariff revisions in the instant filing are just and reasonable and consistent with the Commission's prior orders in this proceeding, and accepts Gulf South's filing, subject to the conditions discussed below. We agree with Gulf South that the posting of the specific elements of PAL service agreements on the internet helps provides necessary

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<sup>9</sup> Rate Schedule PAL § 2(d), Fifth Revised Sheet No. 604.

<sup>10</sup> Id., citing July 28, 2003 Order at P 3.

<sup>11</sup> Gulf South Response at 4.

transparency with respect to such transactions. However, such posting does not provide a complete remedy for potential undue discrimination. We share Indicated Shippers' concern that Gulf South's proposed revision to add a sentence to Section 2(d) of the PAL rate schedule to provide for negotiation of "parking and payback rights" could be read to allow Gulf South to negotiate service conditions applying to PAL service beyond those consistent with its tariff, which we specifically forbade in the July 28, 2003 Order. Further, the language is far broader than Gulf South itself clarifies it intends in its Answer. Accordingly, the proposed language is rejected.

9. However, Commission policy permits the parties to agree to conditions for qualifying for a discounted rate, provided that the maximum rate applies if the conditions are not met. That is, such conditions are permissible only if they affect the rate and not the service itself.<sup>12</sup> Gulf South clarified in its Answer that the intent of its proposed revision to Section 2 of the PAL Rate Schedule is to allow the parties to specify the parking or lending periods that will qualify for a discounted PAL rate and we believe it intends that the maximum rate would apply for other periods such that only a rate condition, not a condition of service, is intended. Further, Section 7.7 of the General Terms and Conditions (GT&C) of its tariff sets forth the types of discount terms it is permitted to use in agreeing to offer discounted rates without the terms being considered material deviations from the pro forma service agreement. These discount terms specifically include, in Section 7.7(a)(4), discounted rates that apply "only . . . over specifically defined periods of time." Accordingly, Gulf South already has the appropriate tariff authority to establish conditions in its PAL service agreements for providing a discounted rate for specific injection or withdrawal periods, or that apply any of the other qualifying criteria authorized by Section 7.7(a). However, Gulf South's proposal to establish a new Section 5(b) to the PAL Rate Schedule to state that it and the customer "may" use the factors established in Section 7.7 to arrive at a discounted rate is ambiguous in that it does not reflect that the discount factors listed in that section are the only factors that may be used in offering discounts and, in any event, is unnecessary and will be rejected. Finally, in view of Gulf South's decision to withdraw its PAL Option Service proposal, we direct Gulf South to file to revise its tariff to remove all references to the PAL Option Services, including in its entirety the pro forma PAL Option Service Agreement.

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<sup>12</sup> See, e.g., Dominion Transmission, Inc. 93 FERC ¶ 61,177 at 61,572 (2000); Panhandle Eastern Pipe Line Co., 81 FERC ¶ 61,234 at 61,973 (1997).

10. Gulf South's filing is hereby accepted, to be effective September 29, 2003, subject to the condition that it files the tariff revisions as directed in the body of this order, within 15 days of the issuance of this order.

By direction of the Commission.

Magalie R. Salas,  
Secretary.