

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 1, 2005

In Reply Refer To:
Gulfstream Natural Gas System, L.L.C.
Docket No. RP02-361-049

Gulfstream Natural Gas System, L.L.C.
5400 Westheimer Court
P.O. Box 1642
Houston, TX 77251-1642

Attention: P. Martin Teague
Associate General Counsel

Reference: Letter Order Accepting Tariff Sheets and Agreements Subject to Condition

Dear Mr. Teague:

1. On May 2, 2005, Gulfstream Natural Gas System, L.L.C. (Gulfstream) filed revised tariff sheets,¹ and a service agreement and a negotiated rate agreement with Florida Power & Light (FPL). As discussed below, the Commission accepts the revised tariff sheets, service agreement and negotiated rate agreement to be effective on June 1, 2005, subject to condition. This order benefits customers by ensuring that Gulfstream's negotiated rate transactions are consistent with its tariff and Commission policy.

2. Gulfstream states that it has completed the construction of Phase II of the Gulfstream Project which has extended its mainline to Martin County, Florida to connect FPL's Martin generating complex to the Gulfstream system. As an anchor shipper for the expansion, Gulfstream explains that FPL signed a long term agreement under Rate Schedule FTS for firm service to the Martin generating complex (Service Agreement), along with a negotiated rate agreement governing the rate for such service (Negotiated Rate Agreement). Gulfstream states that when it filed the Phase II certificate amendment application on July 23, 2003, it included the precedent agreement with FPL, the Service Agreement, and the Negotiated Rate Agreement. Gulfstream states that it noted in the certificate application that the Service Agreement contained some provisions that were

¹ See Appendix.

not in Gulfstream's FTS form of service agreement but that Gulfstream indicated that it would make a filing under section 4 of the Natural Gas Act to include the appropriate provisions in its tariff. According to Gulfstream, it is making the instant filing now that the Service Agreement and Negotiated Rate Agreement will become effective on June 1, 2005. Gulfstream requests that the Commission accept these agreements as well as the proposed tariff changes so that the Service Agreement will conform to the form of service agreement.

3. In order to make provisions in the FPL service agreement available to other similarly situated shippers, Gulfstream is proposing two modifications to its form of service agreement under Rate Schedule FTS. These modifications would be available to any shipper entering into a new service agreement with, or extending an existing service agreement to include, a primary term of 23 years or longer and effective on or after June 1, 2005. First, Gulfstream proposes to modify the term provision of its FTS form of service agreement to permit a shipper to reduce its Maximum Daily Quantity (MDQ) or terminate the service agreement in the event that Gulfstream incurs a force majeure event and such event prohibits Gulfstream from providing service for 185 or more consecutive days in any 365 consecutive day period.

4. The second modification that Gulfstream proposes to its FTS form of service agreement is to permit a shipper to assign its rights and obligations under the agreement, outside of the capacity release provisions of the tariff, under certain circumstances in the event that regulatory authorizations for the direct generation of electricity have been granted. In the event that electric generating facilities are sold to a third party, Gulfstream explains that the tariff modification would operate similar to the succession language in its currently effective form of service agreement except that the revised language would not require all or substantially all of the assets of the shipper to be acquired before the shipper avails itself of this provision. In the case of an assignment to an affiliated entity, Gulfstream states this provision is intended to recognize that if and when the regulatory authorizations for the direct generation of electricity have been granted and an electric utility served directly by Gulfstream reorganizes itself internally, certain functions, which originally were all performed by the distribution function of the utility, may be assigned to other companies within the same corporate family. Gulfstream submits that this type of assignment is not inconsistent with the Commission's capacity release mechanism because either the holder of the capacity will be the new owner of the electric generation facility the service agreement was intended to serve on a primary basis or because the assignment merely reflects the internal reorganization of the utility but does not change the ultimate control of the capacity.

5. In addition, Gulfstream is also proposing to change the definition of "Delivery Point MDQ" in the General Terms and Conditions (GT&C) of its tariff. Gulfstream states that this change will permit shippers that have more than one electric generating plant connected to and served by the Gulfstream system to have each of their plants as

primary delivery points on their service agreement as long as Gulfstream is not obligated to deliver in the aggregate on any given day a quantity of gas in excess of the MDQ and as long as the additional delivery points are upstream of the furthest downstream delivery point and within the Primary Route reserved under the service agreement.

6. Gulfstream has also submitted Original Sheet No. 8.01p, which identifies and describes the negotiated rate transaction between Gulfstream and FPL. In addition, Gulfstream has attached the Negotiated Rate Agreement that sets out the rate that FPL will pay under the Service Agreement (Appendix B); the Service Agreement redlined against the form of service agreement that was in effect at the time the Service Agreement was executed (Appendix C); and the Service Agreement redlined against the currently effective form of service agreement that reflects changes to the form of service agreement approved by the Commission since the Service Agreement was executed (Appendix D). Gulfstream asserts that, if the Commission accepts the tariff proposals discussed above, the Service Agreement will conform to the FTS form of service agreement in all material respects.

7. Notice of the referenced filing was issued on May 6, 2005, with comments, protests, or interventions due on or before May 16, 2005, 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. On May 16, 2005, Seminole filed a motion to intervene and comments. On May 26, 2005, Gulfstream filed an answer to the comments of Seminole. In its answer, Gulfstream proposes to modify its proposal to address Seminole's concerns. The Commission's Rules of Practice and Procedure do not permit answers to either protests or answers (18 C.F.R. §385.213(a)(2) (2002)). However, the Commission finds good cause to admit Gulfstream's answer since it will assist the Commission in understanding the issues raised, and will insure a complete record upon which the Commission may act.

8. Seminole states that Gulfstream's proposed modification (that would allow any customer entering into an agreement after June 1, 2005, with a primary term of 23 years or longer to terminate its agreement or reduce its MDQ due to certain force majeure events) should be read to permit any shipper, including a shipper with an existing service agreement, to be entitled to the force majeure-based contract reduction right if the shipper is willing to enter into an agreement that, in the aggregate, will provide Gulfstream with the contract duration specified in the proposed addition to the form of service agreement. Since the proposed force majeure-based contract reduction rights should be generally available, Seminole asserts that the proper place in the tariff for such a provision is in the GT&C and not simply a clause in the form of service agreement. To the extent that the Commission permits Gulfstream to include such language in its form of service agreement, Seminole states that the Commission should require Gulfstream to include parallel terms in the GT&C of its tariff to make clear that the trigger mechanism for the

force majeure benefit is not simply an item in the form of service agreement, and that the tariff language should state that any customer willing to enter into a new contract with a primary term of at least 23 years, including a contract that replaces or extends an existing contract, should be permitted to enter into such a contract and receive the force majeure benefits.

9. After considering Seminole's comments, Gulfstream agrees in its answer that all existing long term firm shippers (firm shippers with a contract primary term of service of more than one year, with contracts in effect prior to May 2, 2005) have the option to add the force majeure provision (and also the assignment provision) to their service agreements. Gulfstream states the requirement of a 23 year term will be prospective only and will not apply to existing long term firm shippers. Gulfstream indicates that if a shipper desires the new provisions and notifies Gulfstream in writing within six months after the date its proposal is accepted and implemented, Gulfstream will tender such party a new Rate Schedule FTS service agreement (with the same MDQ and primary term as the shipper's existing service agreement, but otherwise it will be based on the proposed modified Rate Schedule FTS form of service agreement) to supersede the existing service agreement. Gulfstream states it will make a compliance filing to modify the language in the force majeure-based contract demand reduction/termination rights and assignment provisions.

10. The Commission will accept the filing subject to condition and further order of the Commission. The Commission does not require pipelines to permit their customers to terminate or reduce their contractual obligations before the end of their contracts.² However, to the extent the pipeline does offer such an option, it must do so pursuant to conditions that are not unduly discriminatory. Therefore, we will require Gulfstream to make a compliance filing to fully explain the basis of its revised proposal to provide the subject force majeure-based contract demand/termination rights and assignment rights to existing shippers with a primary term of more than one year, while requiring new shippers to enter into a service agreement with a primary term of 23 years to be afforded these rights. Gulfstream must file this explanation along with *pro forma* tariff sheets setting forth its proposed changes within 15 days of the date of this order.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.

² *ANR Pipeline Co.*, 99 FERC ¶ 61,310 (2002) and *Florida Gas Transmission Co.*, 101 FERC ¶ 61, 401 (2002).

APPENDIX

Gulfstream Natural Gas System, L.L.C.
Docket No. RP02-361-049

Revised Tariff Sheets
to FERC Gas Tariff, Original Volume No. 1
Accepted Effective June 1, 2005, Subject to Condition

Original Sheet No. 8.01p
First Revised Sheet No. 102
Second Revised Sheet No. 302
Second Revised Sheet No. 305
Second Revised Sheet No. 306