

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

GulfTerra Texas Pipeline, L.P.

Docket No. PR00-9-000

ORDER ON STATEMENT OF OPERATING CONDITIONS

(Issued March 24, 2005)

1. In this order, the Commission approves the Statement of Operating Conditions (SOC) filed by GulfTerra Texas Pipeline, L.P. (Gulf Terra)¹ on December 10, 2002, subject to GulfTerra making the changes discussed below. The request by Falcon Gas Storage Company and Hill-Lake Gas Storage, L.P. (Falcon) for a staff panel or technical conference is denied. This approval will provide for non-discriminatory access for third party storage providers, in keeping with Commission policy.

I. Background

2. This order addresses objections to Gulf Terra's Statement of Operating Conditions raised by Falcon concerning imbalances, penalties and third party storage providers. On August 3, 2001, GulfTerra filed a revised Statement of Operating Conditions, which, among other things, amended section 18.11 and added a new section 16.2.5 to establish penalties for violations of the hourly flow requirements. This filing was not protested. However, Falcon raised objections to the August 3, 2001 filing in a late-filed request for rehearing of the Order on Staff Panel issued in this proceeding on June 11, 2002,²

¹ When the August 3, 2001 Statement of Operating Conditions was filed, the name of the applicant was PG&E Texas Pipeline, L.P. On December 22, 2000, the company was acquired by El Paso Energy Corporation and renamed EPGT Texas Pipeline, L.P. On June 10, 2003, the Commission was informed that EPGT's corporate name had been changed to GulfTerra Texas Pipeline, L.P. This order refers to the applicant company by its current name, GulfTerra Texas Pipeline, L.P., although earlier filings and orders refer to GulfTerra's predecessors.

² 99 FERC ¶61,295 (2002), *reh'g*, 106 FERC ¶ 61,184 (2004).

approving in part GulfTerra's proposed rates and terms and conditions for offering firm interstate transportation service and a parking and lending service.

3. On December 10, 2002, GulfTerra filed additional revisions to the Statement of Operating Conditions. This revised Statement of Operating Conditions includes a new section 16.3, Imbalance Remedies, which, among other things, permits shippers to remedy daily imbalances by the transportation of gas to and from a third-party Imbalance Service Provider (ISP). The December 10, 2002 filing also eliminated the 10 percent tolerance for hourly balances contained in the prior version of the SOC. Falcon filed a protest to this filing.

4. On December 23, 2002, Falcon filed a motion to intervene and protest the December 10, 2002 filing. On January 7, 2003, GulfTerra filed a response to Falcon's protest. On January 24, 2003, Falcon filed a Motion to Sever Third-Party Storage Provider Issues, Supplemental Comments on Third-Party Storage Provider Access, and Request for Staff Panel. GulfTerra responded to Falcon's supplemental filing on February 10, 2003.

5. In its order on rehearing of the June 11, 2002 Order³ the Commission denied Falcon's request to intervene out of time in the Staff Panel Proceeding, but noted that Falcon had filed a protest to GulfTerra's December 10, 2002 filing to amend its Statement of Operating Conditions. The Commission explained that the issues raised by Falcon in its request for rehearing would be addressed in response to Falcon's protest to Gulf Terra's December 10, 2002 filing. The issues raised by the parties are discussed below.

II. The Statement of Operating Conditions

6. The provisions of GulfTerra's Statement of Operating Conditions, as amended August 3, 2001 and December 10, 2002, that are at issue here involve the provisions of the SOC regarding third party imbalance service providers, uniform hourly flows, imbalances, and penalties.

7. Section 18.11 of GulfTerra's Statement of Operating Conditions provides:

Scheduled quantities will be received and delivered at uniform hourly rates of flow of scheduled quantity divided by 24. Transporter shall have the

³ 106 FERC ¶ 61,184 (2004).

sole discretion to accept variations from such hourly rates and may assess an hourly imbalance charge as set forth in section 16.2.5 if hourly fluctuations are not permitted by transporter.

8. Section 16.2.5 provides that an hourly imbalance exists if the quantities delivered to a point of delivery are greater to or less than the uniform hourly rate of scheduled quantities divided by 24. That section further states that fluctuations in hourly flows are permitted at the sole discretion of GulfTerra. It further provides that if GulfTerra does not permit a shipper's hourly fluctuation and the shipper does not adjust its hourly flows to the uniform rate of flow upon Transporter's notice, then the shipper will be assessed an hourly penalty charge.

9. Section 16.3, Imbalance Remedies, was added to the Statement of Operating Conditions by the December 10, 2002 revisions. This section provides that daily imbalances may be remedied without the imposition of penalties by using GulfTerra's Automatic Parking and Lending Service or by transporting gas to or from a third party Imbalance Service Provider. In the December 10, 2002 filing, GulfTerra states that the Imbalance Service Provider has the opportunity to assist the pipeline in operationally accommodating hourly fluctuations in flow by receiving or delivering gas as requested by GulfTerra after the standard nomination timelines.

10. Section 16.3.2 (v) of the SOC provides that to accommodate fluctuations in flow at a point of delivery, GulfTerra may request that a shipper tender specified quantities of gas at the ISP Point of receipt, or receive specified quantities of gas at the ISP Point of delivery after the nomination and scheduling timelines set forth in section 18. Gulf Terra explains that this gives shippers the flexibility of using their Imbalance Service Provider to receive or deliver gas "on call" when GulfTerra cannot meet the hourly variations in flow at a delivery point. GulfTerra states that this option gives shippers, such as gas-fired electric generators, greater certainty that their load can be followed by GulfTerra even when GulfTerra cannot accommodate the flows using its own resources.⁴

11. Additionally, GulfTerra states, the December 10, 2002 revisions modify the hourly balancing penalties set forth in section 16.2.5 so that penalties will be imposed only if the pipeline cannot permit hourly fluctuations in flow. The December 10, 2002 filing also eliminated the 10 percent tolerance for hourly imbalances contained in the prior version of the SOC.

⁴ See GulfTerra's Answer of January 7, 2003 at 5 and its Answer of February 10, 2003 at 7.

III. Discussion

A. Statutory Standard

12. The Commission regulates intrastate pipelines pursuant to Section 311 of the Natural Gas Policy Act (NGPA). One purpose of the NGPA was to induce intrastate pipelines to participate in the interstate pipeline grid by ensuring that it would not be burdensome to do so. Thus, intrastate pipelines are subject to the “fair and equitable” standard for rates charged, as opposed to the more stringent “just and reasonable” standard used for interstate pipelines regulated under the Natural Gas Act (NGA).⁵

13. Consistent with that “light-handed” approach, the Commission specifically exempted intrastate pipelines operating under Section 311 of the NGPA from the requirements of Order Nos. 436 and 636.⁶ Likewise, Order No. 637 did not make intrastate pipelines subject to the same requirements as interstate pipelines operating under the NGA.⁷ However, in *ANR Pipeline Co. v. FERC*,⁸ the court held that the Commission must give a reasonable explanation for excluding an intrastate pipeline from the Order No. 636 requirement that interstate pipelines use the Straight Fixed Variable Rate Design method, which the Commission had concluded was necessary to promote the Congressional directive of a national natural gas market.

⁵ Intrastate pipelines are allowed to charge maximum rates pursuant to section 311 which are “reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.” (Section 311(a)(2)(B)(i) of the NGPA)

⁶ Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992), footnote 89; and Order No. 636-B, 61 FERC ¶ 61,272, footnote 26.

⁷ 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 (Feb. 9, 2000); order on rehearing, Order No. 637-A, FERC Stats. & Regs. Regulations Preambles (July 1996 - December 2000) ¶ 31,099 (May 19, 2000). Order No. 637 amended Part 284 of the Commission's regulations.

⁸ 71 F.3d 897, 902 (D.C. Cir. 1995).

14. As the Commission explained in the February 25, 2004 Order in *GulfTerra Texas Pipeline, L.P.*,⁹ GulfTerra is a large intrastate pipeline with a significant impact on the operation of the national transportation grid. GulfTerra has over 6,200 miles of pipeline that traverse the entire state of Texas. This area includes a large and significant path connecting production with gas markets. The Commission pointed out that GulfTerra has stated that it plays a significant role as part of the national transportation grid. At the Staff Panel convened earlier in this proceeding, GulfTerra stated that it is positioning itself to become a competitive link in the nationwide grid, and that its proposal is a further expansion of the national grid. The Commission found that in these circumstances, the policies behind some requirements of Order No. 637 apply equally to GulfTerra as to interstate pipelines.

B. Falcon's Facilities and Operation

15. Falcon states that it owns and operates the Hill-Lake Gas Storage (Hill-Lake) project in northern Texas, approximately 100 miles northwest of the Dallas-Ft. Worth metroplex and connected to GulfTerra's North Texas Pipeline system in close proximity to the major gas-fired electric generators on the North Texas system.¹⁰ Falcon received authority from the Commission to provide open access NGPA section 311 storage services at market based rates in Docket No. PR02-8-000 on April 11, 2002.¹¹ Falcon states that its Hill-Lake Storage Facility is a high-deliverability, multi-cycle storage facility that is specially designed to meet the needs of gas-fired electric generators whose takes vary hourly or periodically throughout the day based on changes in the dispatch of electric generating capacity. Falcon states that it can offer these shippers load following and hourly balancing services that can match receipts and deliveries for gas-fired electric generators on an hourly basis so that the shippers stay physically in balance each hour, despite intraday changes in generator fuel consumption.

⁹ 106 FERC ¶ 61,184 (2004).

¹⁰ The North Texas line is jointly owned by TXU Fuels Company (TXU) and GulfTerra.

¹¹ *Hill-Lake Gas Storage, L.P.*, 99 FERC ¶ 61,037 (2002).

C. Provisions Regarding Third Party Imbalance Service Providers

1. Procedures for Use of Third Party Imbalance Service Providers

16. Falcon objects to the provisions of GulfTerra's SOC that provide for imbalance services from third party providers and argues that these provisions improperly limit access of third party Imbalance Service Providers to GulfTerra's system. Falcon states that the SOC limits the role of the third party ISP solely to after-the-fact resolution of daily imbalances and does not provide for access to GulfTerra's system for third party imbalance service providers who can help shippers to avoid hourly or daily imbalance penalties or charges by physically balancing loads on a real-time basis. Falcon states that if the limitations on its access to the GulfTerra system were removed, it could keep GulfTerra's system in balance on an hourly basis by splitting deliveries between the Imbalance Service Provider point and the generator. Under Falcon's split receipt/delivery point proposal, gas would be delivered to the Imbalance Service Provider during slack periods of the day, while in peak periods, the Imbalance Service Provider would redeliver gas to the pipeline for redelivery to the generator. Falcon states that under its proposal, the system would always be in balance. In addition, Falcon explains that under its proposal, the gas-fired electric generator customer would sign up for enough pipeline capacity so that it never exceeds the hourly allotment.

17. Falcon argues that GulfTerra should be required to include a provision in its Statement of Operating Conditions that allows a shipper to split receipts and deliveries using a swing receipt and delivery point like the ISP point described in Section 16.3.2 of the Statement of Operating Conditions. Falcon states that the shipper could then schedule deliveries from the ISP point to stay in balance. Falcon further asserts that the SOC should be amended to provide that a shipper that has a contract for hourly balancing service with an ISP is not subject to hourly or daily imbalance penalties if its total receipts and deliveries are within a 10 percent tolerance level.

18. GulfTerra responds that its Statement of Operating Conditions, as amended December 10, 2002, provides flexibility to shippers to correct imbalances, accommodates for the use of third party Imbalance Service Providers, and provides flexibility in the accommodation by GulfTerra of non-uniform hourly flows of gas by shippers. Further, GulfTerra states, its SOC provides for the use of third party Imbalance Service Providers for alleviating daily imbalances, as well as a backup source of capacity for dealing with hourly flow variations when GulfTerra's own system resources cannot accommodate them. In addition, GulfTerra states its SOC provides that deliveries to and receipts from an Imbalance Service Provider are not subject to penalties.

19. However, GulfTerra argues, it is not required to perform on a firm basis any service that is not operationally feasible or which degrades other services. GulfTerra states that its own imbalance services, as well as services by a third party ISP can be accommodated only on a reasonable efforts basis. GulfTerra states that it cannot accommodate Falcon's split receipt/delivery proposal on its system. GulfTerra states that it has only 400,000 MMcf/d of capacity to serve the north Texas market, and has already subscribed 397,000 of that capacity to firm customers. Additionally, GulfTerra states that its point capacity is also inadequate in order to implement the split receipt/delivery proposal, and that Falcon's proposal would adversely impact other holders of point capacity at the points that would experience hourly swings. GulfTerra states that it must protect other scheduled services from interruption and cannot offer firm hourly services on its system or accommodate third party Imbalance Service Providers that want to have firm hourly rights. GulfTerra states that it does not offer hourly firm service to any shipper and is not required to do so. GulfTerra states that the Commission does not require that interstate or intrastate pipelines offer hourly services, and Falcon has cited no Commission precedent requiring hourly service. Moreover, GulfTerra argues, even if it could accommodate hourly service, the Commission has held in *Texas Eastern Transmission, L.P.*¹² that hourly variations cannot bump previously scheduled service at specific points. GulfTerra states that Commission policy precludes bumping other scheduled transportation after the first intraday nomination cycle, which in itself makes Falcon's business model impractical.

20. Falcon filed a response to GulfTerra and disputes GulfTerra's contention that the integration of services as proposed by Falcon is not operationally feasible on GulfTerra's system. Falcon states that the issue here is not whether GulfTerra can accommodate firm shipper's hourly transportation rights within normal nominating/scheduling cycles, but instead is whether GulfTerra will bump or not schedule IT service to accommodate hourly variations in firm deliveries that are scheduled in advance and do not exceed the firm shipper's hourly entitlement of 1/24th MDQ.¹³

21. Falcon asserts that GulfTerra has booked essentially all available firm service on its system, *i.e.*, 397,000 out of 400,000 Mcf/d, thereby maximizing the collection of reservation charges. Then, Falcon states, GulfTerra aggressively markets IT to fill the capacity above that reserved for firm service. Falcon argues that efforts to market IT

¹² 98 FERC ¶ 61,215 at 61,836-37 (2002).

¹³ Falcon states that its service will keep shippers physically in balance each hour and in no hour will a shipper's deliveries exceed 1/24th of MDQ.

service should not be at the expense of firm shipper's rights. Falcon states that if a firm shipper using an ISP that offers firm hourly balancing service schedules service on GulfTerra at normal nomination/scheduling cycles, with hourly deliveries that do not exceed 1/24th of firm MDQ, the firm shipper's service should be given priority over IT service up through the Intraday 1 nomination cycle.

22. Falcon further asserts that no new capacity is necessary to accommodate the integration of ISP service with firm transportation service. Falcon states that the ISP service will be integrated with existing service simply by adding the ISP Point as a receipt/delivery point under a shipper's existing service agreement. Falcon also argues that integrating ISP service with firm transportation service will not degrade existing scheduled service. Falcon states that under its proposal nominations for firm service needed to match real-time hourly balancing service will be submitted at the normal nomination/scheduling opportunities set forth in GulfTerra's amended SOC, and, therefore, the only service that will be affected is IT. Falcon states that it has been providing hourly balancing service to electric generators on TXU Fuel Company's portion of the capacity on the North Texas Pipeline since the summer of 2002 with no operational problems.

23. As explained above, Order No. 637 and section 284.12 of the regulations do not by their terms apply to intrastate pipelines. However, GulfTerra has voluntarily adopted provisions in its SOC to implement the requirements of Order No. 637 with regard to imbalance services by third party providers, and the Commission agrees that in the circumstances on GulfTerra, such compliance is appropriate. Consequently, the policies applied to interstate pipelines will inform our decision whether the provisions of GulfTerra's SOC are fair and equitable.

24. In Order No. 637, the Commission sought to provide shippers with more options for handling imbalances and required that interstate pipelines provide their shippers with the opportunity to obtain imbalance management services from third-party providers. The Commission stated that interstate pipelines will not be permitted to give undue preference to their own storage or balancing services over such services that are provided by a third party.¹⁴ Further, in Order No. 637-A, the Commission stated that the pipeline's tariff should not contain unnecessary restrictions that prevent third-party imbalance providers from competing with the pipeline.¹⁵ However, the Commission stated, a

¹⁴ Order No. 637, III Ferc Stats. & Regs. Regulations Preambles 31,091 at 31,310 (slip op. at 149).

¹⁵ Order No. 637-A at (slip op. at 144-145).

pipeline may include in its tariff provisions for coordinating with third party providers if such requirements are needed for operational purposes.¹⁶

25. These requirements are contained in section 284.12(b)(iii) of the Commission's regulations which provides that an interstate pipeline with imbalance penalty provisions must provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of shippers to manage transportation imbalances.¹⁷ These regulations also require interstate pipelines to provide shippers the opportunity to obtain similar imbalance management services from other providers and to provide shippers using those providers access to transportation and other pipeline services without undue discrimination or preference.¹⁸

26. In applying these requirements to interstate pipelines, the Commission has stated that pipeline tariffs should contain language clarifying that third party imbalance management services will be accommodated on a non-discriminatory basis. The Commission has accepted tariff language that states that third party providers will be accommodated if their services do not adversely impact the pipeline's operations.¹⁹

27. The Commission has also accepted tariff provisions that attach reasonable conditions to the third party service. Thus, in *Panhandle Eastern Pipeline Co.*²⁰ and *Kinder Morgan Interstate Gas Transmission*,²¹ the Commission approved tariff conditions that provided that (1) the third party provider must enter into an agreement with the pipeline detailing how the service will be provided and the parties' obligations, (2) the customer must enter into an agreement with the pipeline detailing the exact nature of the third party service (3) the points where the service is to be offered must have real time metering, and (4) the pipeline may include additional conditions at its discretion. In *Panhandle*, the Commission indicated that it is appropriate to give the pipeline latitude to

¹⁶ Order No. 637-A at 145.

¹⁷ 18 C.F.R. § 284.12(b)(iii)(2004).

¹⁸ *Id.*

¹⁹ *E.g.*, *PG&E Gas Transmission*, 98 FERC ¶ 61,365 at 61,365 (2002), *reh'g*, 103 FERC ¶61,020 at 61,078 (2003).

²⁰ 97 FERC ¶ 61,046 (2001).

²¹ 103 FERC ¶ 61,216 at 61,823 (2003).

impose conditions given the lack of operating history.²² The Commission stated that the incorporation of reasonable conditions would allow third parties to provide imbalance management services to shippers while appropriately protecting the integrity of the system and ensuring that existing and future shippers suffer no degradation of service.²³

28. However, the Commission has not imposed additional requirements on interstate pipelines or required pipelines to adopt specific procedures for accommodating third party service providers. Thus, in *Mojave Pipeline Co.*,²⁴ the Commission found that because the pipeline had complied with the requirement of Order No. 637 that it provide shippers with the opportunity to obtain similar imbalance management services from other providers on a non-discriminatory basis, the Commission would not require the pipeline to adopt the specific procedures proposed by the interveners.

29. The Commission finds that the provisions of GulfTerra's SOC generally comply with the requirements of Order No. 637 and the regulations and offer shippers adequate flexibility to manage imbalances on its system. Section 16.3 of GulfTerra's SOC provides that shippers may remedy daily imbalances without the imposition of penalties by using GulfTerra's Automatic Parking and Lending Service or by transporting gas to or from a third party Imbalance Service Provider. In addition, OBAs or Point Balancing Agreements are useful tools for shippers in managing imbalances. Further, GulfTerra states that it will allow variations in hourly flows unless the variations threaten system integrity and that the SOC provides for third party ISPs to provide hourly balancing when GulfTerra cannot accommodate hourly flow variations. Thus, GulfTerra's SOC provides its shippers with options for managing imbalances, including the option of using a third party service provider.

30. As discussed above, the Commission has allowed interstate pipelines to attach reasonable conditions to the use of third party providers to protect system operations, and has not imposed specific procedural requirements on those pipelines. The procedures that Falcon seeks to impose on GulfTerra to enable Falcon to provide firm hourly balancing services on GulfTerra's system go beyond what the Commission has required of interstate pipelines. Pipelines are not required to adopt procedures that are incompatible with system operation. We will not require GulfTerra to amend its SOC to accommodate Falcon's split receipt/delivery proposal or to provide any shipper with firm hourly

²² See 97 FERC ¶ 61,046 at 61,268.

²³ 103 FERC ¶ 61,216 at 61,823 (2003).

²⁴ 99 FERC ¶ 61,287 at 62,209 (2002).

service. Pipelines are not required to provide firm hourly service and there is no basis for imposing such a requirement on GulfTerra.²⁵ Falcon is able to offer its imbalance management services on the GulfTerra system in accordance with the provisions of the SOC.

31. Falcon's suggestion that GulfTerra's inability to accommodate firm hourly balancing service is a result of GulfTerra's selling 97 percent of its capacity as firm service and marketing the rest of its capacity as IT is not on point. GulfTerra is not required to undersell its firm or interruptible service in order to accommodate Falcon's proposed imbalance service, and withholding available capacity from shippers is inconsistent with the Commission's regulations.²⁶

32. While the Commission finds that GulfTerra's accommodation of third party imbalance service providers is generally consistent with Order No. 637, a clarification is necessary. Section 16.3.2 (v) of the SOC provides:

To operationally accommodate fluctuations in flow at a Point of Delivery, Transporter may request that Shipper tender specified quantities of Gas at the ISP Point of Receipt, or receive specified quantities of Gas at the ISP Point of Delivery after the nomination and scheduling timelines set forth in Section 18. Shipper shall not be subject to the penalties set forth herein for causing such receipt or delivery of Gas, provided the ISP receives or delivers Gas as requested by Transporter.

33. Gulf Terra states that this provision gives shippers the flexibility of using their Imbalance Service Provider to receive or deliver gas "on call" when GulfTerra cannot meet the hourly variations in flow at a delivery point. However, GulfTerra has not sufficiently clarified how this backup service by the Imbalance Service Provider would work. The Statement of Operating Conditions does not provide specifically for hourly balancing service. GulfTerra must revise its Statement of Operating Conditions to clarify the role of the Imbalance Service Provider in providing hourly flexibility.

²⁵ As the Commission explained in *Standards for Business Practices of Interstate Natural Gas Pipelines*, under the NAESB scheduling standards, shippers schedule gas for an entire day, not for specific hourly flows. 99 FERC ¶ 61,348 at P 23 (2002).

²⁶ § 284.7 and § 284.9. See also *Tennessee Gas Pipeline Company*, 91 FERC ¶61,053 (2000).

2. Transportation Agreement for Imbalance Service Provider Services

34. Falcon also objects to section 16.3.2 of the SOC to the extent that it suggests that a shipper must obtain a new transportation agreement to handle deliveries to and from an ISP point. Falcon argues that that provision is unnecessary and discriminatory against ISPs. Falcon asserts that shippers that use a “within the path” ISP point should be permitted to use their existing transportation service agreements to handle deliveries to and from the ISP point. Falcon states that all that is required is that the ISP point be designated as an additional receipt and delivery point under the shipper’s existing transportation service agreement. GulfTerra responds that it does not require shippers to execute a separate agreement for transportation service to and from an ISP, but requires only that shippers amend their existing transportation agreement to include the ISP as a point of receipt and delivery.

35. Section 16.3.2 of the SOC provides that the shipper must have a valid, executed transportation service agreement that designates the ISP responsible for correcting imbalances, and that the point of interconnect with the ISP must be designated as a point of receipt and a point of delivery in the shipper’s transportation service agreement. The SOC does not require a new transportation agreement. This resolves Falcon’s concern.

3. Undue Discrimination

36. Falcon argues that GulfTerra’s SOC is unduly discriminatory because it favors the services provided by GulfTerra over those provided by third party providers and relegates ISP service to the lowest priority on the system. Falcon also objects to the SOC because it provides that balancing service must be provided with interruptible, rather than firm, capacity. GulfTerra responds that its SOC is not unduly discriminatory and that its own park and loan service is performed only on an interruptible basis and has no higher priority than other third party service.

37. GulfTerra’s SOC provides all imbalance services provided by itself as well as by third parties will be provided on an interruptible basis with the lowest scheduling priority. Thus, section 2.4.1 of the SOC provides that GulfTerra’s parking service is interruptible in nature and will be provided to the extent that GulfTerra determines that provision of such service will not prevent GulfTerra from meeting all of its firm and interruptible transportation obligations, including system needs. Similarly, section 2.5.1 of the SOC provides that the lending service is interruptible and will be provided only to the extent that GulfTerra determines that provision of the service will not prevent it from meeting all of its firm, interruptible, and system obligations. Section 7.4 of the SOC provides that GulfTerra’s park and loan service has a priority “lower than Firm, Interruptible, and Authorized Overrun Service.” All imbalance management services on GulfTerra’s

system, whether provided by GulfTerra or a third party provider, are afforded the same low priority.²⁷ Therefore, there is no undue discrimination against third party providers with regard to service priority.

38. In addition, Falcon argues that GulfTerra's SOC is currently structured to give an undue preference to its park and loan service under sections 3.11 and 4.10 over competing services offered by ISPs. Falcon states that while GulfTerra's park and loan service is not subject to any transportation fee for parking gas with GulfTerra or delivering gas to resolve a prior day's imbalance, the delivery of gas to or from the ISP point for either of these purposes is subject to a transportation fee by GulfTerra. Falcon states that to put daily or hourly swing services offered by ISPs on the same footing as GulfTerra's Automatic Park and Loan Service, section 17.1(b) and 17.2(c) dealing with the assessment of commodity charges for each MMBtu delivered to a "Point of Delivery" should be modified to exclude an ISP point of delivery. On the other hand, Falcon states, if a transportation fee is retained for deliveries to an ISP point, it must be assessed in connection with the parking of gas under GulfTerra's service.

39. GulfTerra responds that Falcon's claim is erroneous and that section 3.11.1 of the SOC clearly provides that automatic park and loan service requires a parking agreement which in turn is subject to charges as set forth in the SOC. Further, GulfTerra states, to the extent that it transports parked gas, that service is subject to a fee. GulfTerra states that Falcon's request that it waive all transportation charges to ISPs is unfair and would deny GulfTerra the opportunity to obtain a fair and equitable rate for its service.

40. Falcon's assertion that GulfTerra discriminates in favor of its own park and loan service is not accurate. In the June 11, 2002 Order on Staff Panel,²⁸ the Commission approved GulfTerra's park and loan rate as fair and equitable. Because the park and loan service involves receipt and delivery at the same point, it does not require additional transportation charges. However, ISP service clearly requires two services: transportation to the ISP and storage by the ISP. The SOC clearly provides for PAL as well as transportation charges provided by the pipeline. This is consistent with Commission policy and the pipeline's right to charge for services rendered. Consequently, Falcon has not demonstrated any discrimination in favor of its Park and Loan Service.

²⁷ This lower priority is appropriate for imbalance services because imbalance services should not threaten the integrity of firm and scheduled interruptible service.

²⁸ 99 FERC ¶ 61,295 at 62,265 (2002).

41. However, under section 16 of the SOC, a shipper is allowed 3 days in which to make up an imbalance, but will not be subject to penalties if the pipeline is unable to provide transportation of makeup quantities. A customer using an ISP should be offered a comparable exemption from penalties in the event that the pipeline is unable to accept makeup quantities from the ISP. GulfTerra will be required to modify its SOC accordingly.

D. Uniform Hourly Flows

42. As stated above, section 18.11 of GulfTerra's SOC provides that scheduled quantities must be received and delivered at uniform hourly rates of flow, *i.e.*, the daily scheduled quantity divided by 24. That section further provides that GulfTerra has sole discretion to accept variations from hourly rates of flow and may assess an hourly imbalance charge if fluctuations are not permitted.²⁹ Section 16.2.5 of the SOC states that if fluctuations are not permitted, and the shipper does not adjust its hourly flows to a uniform rate of flow upon Transporter's notice, the shipper will be assessed a penalty.

43. Falcon objects to these provisions. Falcon asserts that GulfTerra has provided no operational justification to explain why it needs to impose hourly balancing penalties on shippers who physically balance receipts and deliveries each hour, but whose deliveries vary from 1/24 of daily scheduled quantity during some or all hours of the day. Falcon asserts that keeping GulfTerra's system in balance does not require that a shipper actually consume 1/24 of its daily scheduled quantity each hour at a single delivery point or deliver gas ratably into the system over a 24-hour period at a single point as mandated by the SOC. Falcon states that a shipper should be considered in balance for purposes of system integrity when it matches its receipts and deliveries each hour through a combination of actual gas receipts at the supply points and actual gas deliveries at the delivery points, in conjunction with the use of storage or other balancing service that balances the net differences between receipts of supply and actual gas consumption.

44. Falcon asserts that the uniform hourly flow requirement has been imposed on shippers to enable GulfTerra to market IT and argues that efforts to market IT service should not be at the expense of firm shipper's rights. Falcon states that in *Texas Eastern Transmission, L.P.*,³⁰ the Commission held that a pipeline may not impose a uniform

²⁹ Section 16.2.5 of the SOC also states that fluctuations in hourly flow will be permitted at the sole discretion of GulfTerra.

³⁰ 98 FERC ¶ 61,215 P 78 (2002).

hourly flow condition unless necessary to satisfy the pipeline's firm obligations. Therefore, Falcon argues, a uniform hourly flow condition cannot be used to protect IT service at the expense of firm service.

45. GulfTerra responds that its terms of service have always maintained that hourly variations are permitted at its sole discretion, and it is imperative that it maintain the right to accept or reject variations in flow without obligation to perform non-uniform service on a firm basis. GulfTerra states that the December 10, 2002 amendments to its SOC relaxed the provisions for hourly penalties so that shippers who vary their receipts and deliveries on an hourly basis will be penalized only if they intentionally impact GulfTerra's pipeline's operations after being notified that hourly variations cannot be accommodated. Further, GulfTerra states that because it cannot accommodate all fluctuations in flow that may be desired by shippers, it has provided the additional flexibility for shippers to request non-scheduled receipts and deliveries to an Imbalance Service Provider to sustain such non-uniform service.³¹

46. In this case, GulfTerra has had a requirement for uniform hourly flows on its system and the December 10 filing has limited the circumstances in which penalties will apply for variations in this uniform hourly rate. Under the amended SOC, GulfTerra will grant variations from the uniform hourly flow requirement, and penalties will be assessed only during critical periods. GulfTerra states that under the filed provisions of section 16.2.5 of the SOC, hourly penalties are imposed only if GulfTerra cannot accommodate the fluctuations in flow desired by the shipper without adversely affecting the scheduled receipts and deliveries of other shippers. Further, GulfTerra states that penalties would be imposed in these circumstances only if a shipper did not adjust its hourly flows to a uniform rate after GulfTerra provided notice. Thus, GulfTerra states, penalties would apply only if all of the following conditions were met: (1) GulfTerra could not accommodate the variation in flow; (2) deliveries to or receipts from the shipper's ISP did not resolve GulfTerra's operational concerns; and (3) the shipper did not adjust its variations as requested by GulfTerra.

47. The Commission has permitted pipelines to include in their tariffs requirements for uniform hourly rates of flow. The portion of the *Texas Eastern* decision cited by Falcon clarified Texas Eastern's tariff and stated that under the terms of its then-effective tariff, uniform hourly takes were required when necessary to protect the integrity of the system or satisfy the pipeline's firm obligations. The Commission did not, as Falcon

³¹ As discussed above, the Commission has directed GulfTerra to further explain how third party imbalance service providers will provide hourly balancing services.

suggests, hold that as a general matter a uniform hourly flow conditions may be imposed only to protect firm service.

48. We find that in the circumstances described by GulfTerra, its SOC requirements are reasonable. However, while GulfTerra states that it will not impose penalties unless variations in hourly flow cannot be accommodated without threatening system integrity or scheduled service to other customers, this condition is not included in the language of the SOC. The SOC merely states that variations will be allowed in its sole discretion. GulfTerra is directed to amend the language of section 16.2.5 to reflect its stated intention that penalties for variations in hourly flows will be imposed after notice to the shipper only when system integrity is threatened.

49. Falcon also objects to the elimination of the 10 percent tolerance and argues that there is no operational justification for removing the 10 percent tolerance level that was previously included in section 16.2.5 for assessment of hourly imbalance penalties.³² Falcon states that rather than showing harm to the system, GulfTerra suggests that the likelihood of hourly imbalances has been reduced. GulfTerra responded that a ten percent tolerance is no longer appropriate under the terms of its SOC because under the filed provisions of section 16.2.5 of the SOC, hourly penalties are imposed only if GulfTerra cannot accommodate the fluctuations in flow desired by the shipper without adversely affecting the scheduled receipts and deliveries of other shippers.

50. Under the SOC with the modification directed above, penalties will be imposed only if the shipper deliberately compromises system integrity by failing to adjust its flows after a specific request from the pipeline. The Commission agrees with GulfTerra that in these circumstances, a ten percent tolerance is no longer appropriate.

E. Penalty Revenues

51. Falcon asserts that GulfTerra retains the revenue it collects from penalties. Falcon further asserts that GulfTerra's imbalance penalty regime is not tied strictly to the operational integrity of the system, as required by Commission policy, but is calculated to preclude competition from Imbalance Service Providers. GulfTerra responds that Falcon's characterization is inaccurate and that penalties on its system are not intended to be a source of revenue, but are imposed only as a deterrent mechanism to protect the operational integrity of its system and its scheduled transportation business.

³² Falcon cites Transcontinental Gas Pipeline Co., 91 FERC ¶ 61,004 at 61,020, *reh'g*, 91 FERC ¶ 61,282 (2000).

52. In Order No. 637, the Commission held that interstate pipelines may include penalties in their tariffs only to the extent necessary to prevent the impairment of reliable service,³³ and further, must credit to shippers all revenues from all penalties net of costs.³⁴ As discussed above, the requirements of Order Nos. 636 and 637 do not specifically apply to intrastate pipelines, but some of their policies may be applicable to intrastate pipelines if necessary to promote a competitive national natural gas market. In determining whether to apply the requirements of Order No. 637 to intrastate pipelines, the Commission must balance the policy of applying a light-handed approach to the regulation of intrastate pipelines under section 311 of the NGPA with the goal of promoting a competitive national natural gas market. In the preceding sections of this order, we have already found that GulfTerra has shown that the penalties about which Falcon has raised concerns are necessary for operational reasons. In these circumstances, we see no need to apply to GulfTerra the detailed requirements concerning penalty levels developed in the interstate pipelines' filings to comply with Order No. 637.

53. In addition, we will not apply the Order No. 637 requirement concerning penalty revenue crediting to GulfTerra. Consistent with our light-handed regulation of intrastate pipelines, we find it sufficient to address the issue of intrastate pipelines' penalty revenues in their individual rate cases, without automatically requiring all intrastate pipelines to credit their penalty revenues. No party raised an issue with regard to GulfTerra's penalty revenues in the Staff Panel Proceeding addressing GulfTerra's rates, or asserted that such revenues permit GulfTerra to overrecover its cost of service.³⁵ GulfTerra is required to file a new rate case in 2007. The issues of whether GulfTerra's penalty provisions result in significant revenues and whether penalty revenues should be credited or otherwise taken into account in developing its rates may be addressed in GulfTerra's next rate case.

F. Investigate OBAs

54. Falcon states that the Commission should investigate GulfTerra's selective use of OBAs as a means of providing imbalance management services. Falcon states that it has reason to believe that GulfTerra is selectively enforcing the imbalance penalties in its SOC by entering into OBAs with certain of its transportation customers. Falcon states that therefore, GulfTerra has agreed to waive the imbalance penalties contained in its

³³ Order No. 637 at (slip op. at 159).

³⁴ Order No. 637 at (slip op. at 161).

³⁵ 99 FERC ¶ 61,295 (2002), *reh'g*, 106 FERC ¶ 61,184 (2004).

SOC, but only on the condition that the shipper enter into an OBA with GulfTerra. Falcon states that by entering into OBAs with certain shippers, it is effectively waiving imbalance penalties and substituting imbalance management services, but only for certain shippers selected by GulfTerra. Falcon states that GulfTerra has not offered the OBA option to all shippers on its system. Further, Falcon argues that GulfTerra does not offer the waiver of imbalance penalties to shippers who have contracts with third party providers.

55. GulfTerra states that OBAs are not available as a means for shippers to avoid other applicable imbalance penalties, but only assign responsibility for imbalances at specific points. GulfTerra states that it has recently renamed the forming of balancing agreements with end users, such as generation facilities, as Point Balancing Agreements, and that often the delivery point operator chooses to be responsible for imbalances, rather than third party shippers. GulfTerra states that this allows the shippers to be kept whole while delivery point operators assume the responsibility of correcting imbalances for variations in flow. GulfTerra states that such agreements also set forth the fees to be paid for penalties by the end-user (point operator), as opposed to the shippers.

56. Gulf Terra states that there is no discriminatory behavior involved, but instead, OBAs are a mechanism for assigning responsibility for imbalances, which is an industry wide practice. GulfTerra states that section 16.5 of the SOC provides that shippers may elect to have the point operator responsible for imbalances. GulfTerra states that this provision of service is requested by shippers and point operators as a way to manage the business effectively, and is not a discriminatory practice by GulfTerra.

57. While the Commission regulations require interstate pipelines to have an OBA at points of interconnection between pipelines, there is no requirement for an OBA at other points. However, an OBA is an option available to point operators and shippers at those points. GulfTerra makes clear that it is open to OBAs at such points.³⁶

58. There is no evidence to support Falcon's contention that GulfTerra allows OBAs in a discriminatory manner. For example, no shipper has intervened in order to make that contention. Therefore, the Commission declines to take any action on Falcon's contentions.

³⁶ See section 16.5 of the SOC and page 12 of the February 10 answer.

G. Technical Conference

59. Falcon requests a staff panel technical conference to discuss the issues raised in its pleadings. GulfTerra states that it does not oppose a technical conference, but does not believe that one is necessary.

60. The Commission finds that Falcon's arguments can be resolved without a staff panel or a technical conference and that a staff panel or technical conference in this case would serve no purpose. The request is denied.

The Commission orders:

(A) The December 10, 2002 Statement of Operating Conditions is approved, subject to GulfTerra making the changes discussed in the body of this order within 30 days.

(B) Falcon's request for a staff panel or technical conference is denied.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

(S E A L)

Linda Mitry,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

GulfTerra Texas Pipeline, L.P.

Docket No. PR00-9-000

(Issued March 24, 2004)

KELLY, Commissioner, *dissenting in part*:

I disagree with this order to the extent that it does not apply to GulfTerra the requirement set forth in Order No. 637 that a pipeline must credit revenues from penalties to eligible shippers. Rather, the order finds it sufficient to address issues related to penalty revenues after GulfTerra files its new rate case in 2007.

The Commission's objective in requiring the crediting of penalty revenues is to eliminate any incentive for the pipeline to rely on penalties instead of imbalance management services to control imbalances.³⁷ Although Order No. 637 and the regulations implementing the crediting requirement³⁸ apply to interstate pipelines, I believe this requirement should extend to GulfTerra as well. This view is consistent with the Commission's findings in this proceeding that "GulfTerra is a large intrastate pipeline with a significant impact on the operation of the national transportation grid"³⁹ and that "the policies behind some requirements of Order No. 637 apply equally to GulfTerra as to interstate pipelines."⁴⁰

The Commission's regulations governing penalties are intended to increase the efficiency of the national transportation grid. Since the Commission has found that GulfTerra has a significant impact on the grid, I believe it is appropriate to require GulfTerra to amend its Statement of Operating Conditions to credit penalty revenues net of costs to eligible shippers and not defer consideration of this issue until GulfTerra's next rate case.

³⁷ Order No. 637 at 31,316.

³⁸ 18 C.F.R. § 284.12(b)(2)(v) (2004).

³⁹ Order at P 14 *citing GulfTerra Texas Pipeline, L.P.*, 106 FERC ¶ 61,184 (2004).

⁴⁰ *Id.*

For these reasons, I dissent in part from this order.

Sudeen G. Kelly