

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

AES Ocean Express LLC

Docket No. RP04-249-000

v.

Florida Gas Transmission Company

ORDER ON COMPLAINT

(Issued June 18, 2004)

1. On April 5, 2004, AES Ocean Express LLC (Ocean Express) filed a complaint against Florida Gas Transmission Company (Florida Gas) under sections 5 and 7 of the Natural Gas Act (NGA) alleging that Florida Gas has insisted on unreasonable and onerous conditions in a proposed Interconnection Agreement. As discussed below, the order requires that Florida Gas make a tariff filing within 30 days of this order to incorporate provisions to address the introduction of re-gasified liquefied natural gas (LNG) into its system. The order also sets for hearing issues concerning the flow requirements, gas temperature and the need for a gas-fired heater. This order benefits the public by ensuring that the terms and conditions of Florida Gas' tariff and the proposed interconnection agreement on Florida Gas' system are just and reasonable and promote the efficient development of LNG facilities.

Background

2. Florida Gas' pipeline system was constructed in 1959 to transport gas from traditional gas producing areas in Texas, Louisiana, Mississippi, and Alabama into Florida, which Florida Gas designates as its market area. When constructed, Florida Gas received domestically produced gas supply from onshore producers and upstream pipelines. Currently, Florida Gas' supply comes mostly from sources in the Gulf of Mexico and some from onshore producers.¹ Florida Gas provides service for electric

¹ Florida Gas' FERC Form 567.

generation and local distribution companies (LDC) in Florida. Its electric generation customers constitute approximately 80 percent of its throughput. The generation customers take natural gas from Florida Gas' system to serve their peak loads. Florida Gas states that typically these peaks occur over a 16-hour period during the day. It also states that the LDC's peak on a 16-hour basis in the winter season. Florida Gas asserts that its pipeline and its contractual arrangements are designed to serve this peak load in a 16-hour period.²

3. In 2001, the Commission issued Gulfstream Natural Gas System, L.L.C. (Gulfstream) a certificate to construct and operate a new pipeline to serve load in Florida.³ Florida Gas states that it was able to develop interconnection agreements for the two new supply input points required by Gulfstream that accommodated Florida Gas' system operations and tariff structure. Florida Gas states that the Gulfstream interconnection agreements require that gas be delivered at the hourly rate of six percent of the daily quantity to match Florida Gas' six percent per hour firm service tariff provision. Gulfstream supplies Florida Gas' system with gas produced in the Gulf of Mexico.

4. On January 29, 2004, the Commission issued Ocean Express a Presidential Permit and NGA sections 3 and 7 authorizations to construct and operate natural gas pipeline facilities to transport re-gasified LNG between the Exclusive Economic Zone (EEZ) of the United States and the Commonwealth of the Bahamas to onshore delivery points in Broward County, Florida.⁴ Ocean Express' proposed facilities would transport re-gasified LNG from the EEZ boundary through a 24-inch diameter pipeline for approximately 48 miles to landfall in Broward County, Florida. The proposed pipeline would continue onshore for approximately 6.3 miles to proposed interconnections with

² Section 6 (Sheet 109) of the General Terms and Conditions (GT&C) of Florida Gas' FERC Gas Tariff allows firm customers to take volumes at an hourly rate of up to six percent versus a 4.17 percent continuous rate over a 24-hour period.

³ Gulfstream Natural Gas System, L.L.C., 91 FERC ¶ 61,119 (2000), order issuing certificate and on reh'g, 94 FERC ¶ 61,185 (2001), order denying reh'g, 95 FERC ¶ 61,100 (2001).

⁴ AES Ocean Express, LLC, 103 FERC ¶ 61,030 (2003), order amending preliminary determination, 103 FERC ¶ 61,326, order issuing presidential permit and NGA sections 3 and 7 authorization, 106 FERC 61,090 (2004) (Ocean Express).

Florida Power & Light (FP&L) and Florida Gas in the market area.⁵ Ocean Express intends to transport gas from international LNG sources, most likely in the Atlantic Basin.

5. Florida Gas states that four suppliers have requested interconnections to deliver re-gasified LNG directly into its market area.⁶ Florida Gas asserts that these new interconnections will introduce large volumes of re-gasified LNG directly into Florida Gas' market area.

Notice

6. Public Notice of the Complaint was issued on April 6, 2004, with interventions and comments due on or before April 15, 2004.⁷ All timely motions to intervene are granted under Rule 214 of the Commission's regulations. Florida Gas and FP&L filed answers to Ocean Express' complaint. On May 24, 2004, Ocean Express filed an answer to Florida Gas' answer. While the Commission's Rules of Practice and Procedure generally prohibit answers to protests, the Commission will accept the answer to provide a better understanding of the issues in this proceeding.⁸

Complaint

7. Ocean Express states that it has reached agreement on many issues in the proposed Interconnection Agreement, including cost responsibilities, certain operating procedures, construction arrangements and access to rights, gas quality specifications (except for

⁵ The proposed interconnection is located on Florida Gas' Fort Lauderdale Lateral at the Lauderdale meter station in close proximity to the Fort Lauderdale generating facility of FP&L.

⁶In its June 14, 2004, response to staff's June 7, 2004 data request, Florida Gas identified the four suppliers requesting an interconnection as: (1) AES Ocean Express, LLC; (2) Seafarer US Pipeline System, Inc. (Seafarer); (3) Tractebel Calypso Pipeline, LLC (Calypso); and (4) Southern Natural Gas Company (Southern Natural)(regarding the 1999 Cypress pipeline project). Both Seafarer and Southern Natural are affiliates of Florida Gas' parent company, El Paso Corporation.

⁷ 69 Fed. Reg. 19,413 (April 13, 2004).

⁸ 18 C.F.R. § 385.213(a)(2) (2003).

temperature), and a maximum heat content standard (Btu/cf) for the re-gasified LNG to be delivered by Ocean Express. It states that with one exception, a gas-fired heater which it believes is unnecessary, Ocean Express has accepted Florida Gas' specifications for the facilities to be constructed.

8. Nevertheless, Ocean Express maintains that Florida Gas has insisted on additional burdensome conditions that are not justified by Florida Gas' FERC Gas Tariff or pipeline operational considerations. Specifically, Ocean Express alleges that Florida Gas has conditioned the interconnection on:

- (1) Ocean Express' allowing Florida Gas to control flows from Ocean Express in order to increase receipts into Florida Gas' system at a level in excess of hourly ratable deliveries so as to best facilitate the operation of Florida Gas' system;
- (2) Ocean Express' delivering gas at a minimum temperature of 80° F, even though this temperature is not set forth in Florida Gas' tariff and is not required for any valid operating reasons;⁹
- (3) Ocean Express' accepting unspecified, vague quality standards in addition to a comprehensive set of agreed-upon, detailed gas quality specifications relating to gas composition and heating value;
- (4) Florida Gas' retaining absolute authority to adopt, alter, enforce at any time any interchangeability standards that it deems appropriate, in advance of a formal tariff amendment, with no input from Ocean Express;
- (5) Ocean Express' waiving its NGA right to propose either higher gas Btu levels¹⁰ or different temperature specifications and agreeing to support any tariff filing Florida Gas may choose to make regarding gas quality or interchangeability standards;

⁹ A minimum temperature of 80° F requirement will require that Ocean Express install gas-fired heaters at the interconnection.

¹⁰ While Ocean Express states that it agreed to a maximum Btu level of 1075 Btu/scf in the proposed Interconnection Agreement, it maintains that a 1085 Btu/scf is more appropriate.

- (6) Florida Gas' retaining absolute discretion to shut-in deliveries from Ocean Express for minor deviations from quality specifications, even when receipt of such gas will have no material impact on the operations of Florida Gas or Florida Gas' customers;
 - (7) Florida Gas' allowing its customers to veto any proposed adjustment of the quality specification listed in the proposed Interconnection Agreement or incorporated in Florida Gas' tariff; and
 - (8) Ocean Express' accepting a completely one-sided indemnity obligation.
9. Ocean Express states that by insisting on terms that shift costs and risks to Ocean Express and add uncertainty, Florida Gas is creating barriers to an interconnection with Florida Gas' system. Ocean Express concludes that Florida Gas has created an impasse that necessitates the Commission's intervention to enforce its interconnection policy.

Florida Gas' Answer

10. Florida Gas states that its primary goal in requiring the disputed provisions in the proposed Interconnection Agreement is to protect the operations of its system and the certificated and contractual commitments to its customers in compliance with the Commission's policy stated in Panhandle Eastern Pipeline Company (Panhandle).¹¹ Florida Gas maintains that the proposed Interconnection Agreement requires certain provisions because of: (1) the properties of the LNG to be delivered (pressure and temperature) and the characteristics of LNG (its distinct make-up, as compared to traditional supplies); (2) the location of the proposed interconnect in Florida Gas' market area and its proximity to customers; (3) the historical demands of Florida Gas' customers; (4) the adverse operational impacts on Florida Gas' system from the LNG facilities; and (5) the potential for harm to customers' facilities.

11. Generally, Florida Gas contends that in order to continue to render the service it now provides its customers under its tariff, which allows customers to take gas at an hourly rate of six percent instead of an even 24-hour flow rate of 4.17 percent per hour, Ocean Express must deliver volumes to Florida Gas at the six percent hourly rate when required. Further, Florida Gas states that it requires flow control facilities. It asserts that without flow control facilities, Florida Gas, which has no system storage, will not be able to maintain its line pack.

¹¹ 91 FERC ¶ 61,037 (2000).

12. Florida Gas also claims that in order to continue to avoid significant liquid hydrocarbon fall-out in its system, resulting from lower temperatures and pressure drops upon and after deliveries, it has required that Ocean Express install heaters at the interconnection to meet certain design temperature requirements. Florida Gas maintains that unless heaters are installed, it will suffer operational problems and potential equipment damage for the fall-out of liquid hydrocarbons.¹² Additionally, it states that its generator customers that operate turbine units could suffer significant equipment damages.

13. Finally, Florida Gas points out that the Commission has a pending inquiry concerning interchangeability standards and the possibility that industry standards will be developed.¹³ It maintains that Florida Gas should be in a position to incorporate any subsequent development in these areas into the Interconnection Agreement.

FP&L's Answer

14. FP&L states that almost half of its power is generated by newer, highly-efficient combustion turbines that require certain specific quality limitations and a controlled and predictable level of gas quality variation. FP&L also asserts that it has an additional 1,900 MW of this type of natural gas-fired generation under construction that will be operational in 2005.

15. FP&L states that the gas supplies delivered to it by Florida Gas are primarily sourced in the Gulf of Mexico and come from Florida Gas' facilities in a highly blended quality

¹² In its June 14, 2004, response to staff's June 7, 2004, data request, Florida Gas states that the only substantive difference among the various draft interconnection agreements with the other potential LNG providers is that the minimum gas temperature requirement is 65° F for the Seafarer project, whereas the minimum gas temperature requirement is 80° F for Ocean Express and Calypso. Florida Gas distinguishes its requested 80° F minimum gas temperature requirement from the 65° F required of Seafarer, which it claims are justified because of its mainline location and distance from markets. Florida Gas also claims that it is requiring gas heater equipment be installed by Seafarer.

¹³ On February 18, 2004, the Commission held a conference to address the impacts of natural gas interchangeability on the nation's energy consumers and the companies regulated by the Commission. On February 20, 2004, the Commission issued a Notice Requesting Written Comments concerning natural gas interchangeability in Docket No. PL04-3-000.

stream. It points out, however, that the industry has begun to recognize that introducing re-gasified LNG directly into a pipeline market area may require new and different gas quality and interchangeability standards than it has seen in the past. FP&L contends that failure of gas supplies to meet a certain, predictable standard level could have negative impacts for FP&L and its customers.

16. FP&L states that liquid hydrocarbon fall-out may lead to loss of Btus in already purchased gas, as well as increased cost for liquids disposals. It also contends that inadequate gas quality inhibits efficient power plant operations. It claims that newer generating machines have to be carefully tuned to fire on a certain quality of gas. If gas quality specifications are too broad, the variation in quality may require a plant shutdown to enable the plant to be re-tuned, or physical changes to be incorporated in the fuel combustion system. Further, FP&L states that a large swing in fuel quality could even cause a catastrophic failure of the generating equipment.

17. FP&L also maintains that there may be environmental ramifications for failing to maintain an appropriate standard gas quality stream. FP&L states that it and other end users need reasonable gas quality specifications and timely reporting of the constituents of gas in order to meet strict emissions compliance rules. Finally, FP&L asserts that there could be safety and operational integrity concerns for FP&L if appropriate quality standards are not met. It states that excess high-end liquids in the gas stream may lead to the buildup of undesirable liquids in the pipeline, and in the laterals off the pipeline used to serve end users, which could create operational risks to generation equipment.

18. FP&L points out that Florida Gas has contractual and tariff obligations to provide FP&L with merchantable quality gas that: (1) is of a sufficient quality that FP&L's generation equipment continues to be able to operate in a reliable and efficient manner and FP&L is able to maintain its turbine warranties; (2) is of a sufficient temperature and Btu content to ensure the gas is interchangeable with Florida Gas' existing stream so there is no liquid fall-out or freezing of FP&L's generating equipment; and (3) enters the Florida Gas' system at a sufficient pressure and hourly flow to accommodate Florida Gas' obligation to deliver supplies to FP&L at an hourly flow rate of six percent of FP&L's daily scheduled requirements.

Discussion

A. Commission's Interconnection Policy

19. Under the Commission's policy established in Panhandle a pipeline seeking an interconnection with another pipeline must satisfy five conditions:

- (1) the party seeking the interconnection must be willing to bear the costs of the construction if the pipeline performs that task. In the alternative, the party seeking the interconnection could construct the facilities itself in compliance with the pipeline's technical requirements;
- (2) the proposed interconnection must not adversely affect the pipeline's operations;
- (3) the proposed interconnection and any resulting transportation must not diminish service to the pipeline's existing customers;
- (4) the proposed interconnection must not cause the pipeline to be in violation of any applicable environmental or safety laws or regulations with respect to the facilities; and
- (5) the proposed interconnection must not cause the pipeline to be in violation of its right-of-way agreements or any other contractual obligations with respect to the interconnection facilities.¹⁴

20. The Commission adopted the interconnection policy in Panhandle in an effort to ensure that competitive forces operate freely and that open access pipelines do not impose artificial restrictions on those who seek access to that pipeline system.¹⁵ It stated that when pipelines are able to accommodate the interconnection, subject to the reasonable conditions established in the Panhandle order, the pipeline may not deny such requests.¹⁶

21. In the Panhandle order, the Commission emphasized that it is not requiring a pipeline to construct or acquire facilities.¹⁷ It stated that the interconnection policy seeks only to ensure that when a pipeline responds to requests for interconnections, it does so in a manner that causes no undue discrimination and furthers the Commission's policies

¹⁴ Panhandle, 91 FERC at 61,141.

¹⁵ Id. at 61,142.

¹⁶ Id.

¹⁷ Id. at 61,144.

favoring competition across the national pipeline grid.¹⁸ The Commission also stated that it would evaluate each pipeline's interconnection policy proposal on a case-by-case basis.¹⁹

B. Gas Quality Standards: The Relationship Between the Interconnection Agreement and the Tariff

22. As previously stated, Florida Gas has traditionally received deliveries of gas supplies from the Gulf of Mexico and onshore sources. Florida Gas' tariff addresses gas quality issues associated with such supply sources. However, Florida Gas states that four new suppliers have requested interconnections that would introduce large volumes of re-gasified LNG directly into its market area.²⁰ Florida Gas indicates that large volumes of regasified LNG introduced directly into its market area could create operational issues that are not adequately addressed by the current gas quality standards in its tariff.

23. Ocean Express indicates that the gas quality standards that are ultimately approved for its deliveries may affect its construction plans, as well as its ability to attract investment. Consequently, the parties have attempted to negotiate gas quality and interchangeability standards in their Interconnection Agreement that will address these concerns.²¹ The parties intend that gas quality provisions in the Interconnection

¹⁸ Id.

¹⁹ Id.

²⁰ Florida Gas' answer at 2.

²¹ Exhibit D of the proposed Interconnection Agreement lists the various gas quality standards required by Florida Gas. They are divided into three categories: Combustible Components; Impurities- FGT Tariff; and Interchangeability Factors. The gas quality standards in the Impurities-FGT Tariff section of Exhibit D of the proposed Interconnection Agreement are consistent with section 2.A of the GT&C in Florida Gas' tariff. While section 2.B.1. of Florida Gas' GT&C discusses the removal of certain combustible components from the gas delivered to Florida Gas, its tariff does not specifically provide for minimum and maximum combustible components as provided for in Exhibit D of the proposed Interconnection Agreement. The Interchangeability Factors lists minimum and maximum heat content, modified Wobbe Index requirements, a gas index, and minimum and maximum delivered gas temperatures. The maximum Btu/cf and minimum delivered gas temperature in the proposed Interconnection Agreement are (continued...)

Agreement will be filed as tariff revisions and be applicable to transportation service on the system.

24. However, the parties disagree not only on certain substantive issues, but also on when Florida Gas should file the standards, and on protocols for revising such standards. On the one hand, Florida Gas states that if it is to execute an agreement with Ocean Express in the near future it will be necessary for it to reserve its right to incorporate such standards that may result from: (1) the Commission Gas Interchangeability proceeding; (2) industry studies that will address interchangeability issues and standards; and (3) any studies that Florida Gas may do on its own system. Florida Gas contends that the need for particular interchangeability standards and the level of such standards is an evolving question. It states that based on future developments, Florida Gas will be able to analyze the appropriate standards and level in light of its own operations and system design and then make its initial tariff filing. Florida Gas states that it will file its tariff provisions governing the quality specifications for LNG prior to commencement of any LNG deliveries.

25. On the other hand, Ocean Express asks the Commission to approve its proposal that the Interconnection Agreement require Florida Gas to file tariff revisions to incorporate the gas quality standards set forth therein within 60 days after Ocean Express obtains construction financing. Ocean Express believes such a filing requirement would prevent Florida Gas from holding Ocean Express to standards that are different from those applied to other shippers. Further, Ocean Express believes that a proposed clause in the Interconnection Agreement recognizing that standards in Florida Gas' tariff may change from time to time, would give Florida Gas the right to amend and update the standards in the tariff without violating the Interconnection Agreement, and also satisfy Ocean Express' need to know what standards will apply to its gas.

26. We agree that there is now a compelling need to address the appropriate natural gas quality and interchangeability standards that will be in place on the Florida Gas system. Given the long lead time between project inception and the beginning of operation of a new source of LNG, decisions need to be made now on gas quality and interchangeability requirements which are essential to project planning and financial arrangements.²² And

not included in Florida Gas' tariff and Florida Gas' tariff does not include an interchangeability index.

²² The development of new sources of LNG is vital to satisfying projected demands for natural gas in the United States. For example, the National Petroleum Council projects that LNG imports will grow to become a significant portion of the U.S.

(continued...)

given that Florida Gas is entertaining discussions with four potential LNG project pipelines, including one affiliated pipeline, the need for timely and comparable treatment on these issues is apparent. Furthermore, both Florida Gas and its customers need assurances that the introduction of new LNG supplies into the Florida Gas system will have no detrimental effects on them.

27. The Commission, too, would rather wait, if that were possible, until generic industry-wide discussions provided more definitive guidance on interchangeability. However, we feel that it is necessary, on balance, to approach the problem forthrightly and openly to require Florida Gas to update its tariff now; appropriate procedures exist to allow the parties to contemplate further improvements in the future to the extent industry-wide solutions become available at some later time.

28. Therefore, for reasons discussed below, the Commission will exercise its authority under section 5 of the NGA, and direct Florida Gas to file tariff revisions related to gas quality and interchangeability standards within 30 days of this order, to be effective in accordance with further Commission action. We believe that such filing is necessary to achieve several objectives beneficial not only to the parties in this proceeding, but also to Florida Gas' other shippers, potential shippers, and potential interconnected pipelines.

29. First, Florida Gas points out that the introduction of large volumes of LNG into its system directly into its market area could have a significant impact on its system and the facilities of its end users. All interested parties, including present and potential shippers, should have an opportunity to intervene and protest any proposed changes that could potentially impact service on Florida Gas' system. This process will ensure the greatest degree of certainty and transparency for Ocean Express, other LNG developers, and Florida Gas' shippers.

30. In addition, the transparency of such proceeding should allay concerns about the potential for Florida Gas to unduly discriminate among the several pipeline projects vying to deliver regasified LNG directly into its market area. Likewise, any concern

natural gas supply over the next 15 years. National Petroleum Council, Balancing Natural Gas Policy: Fueling the Demands of a Growing Economy, Volume 1, Summary of Findings and Recommendations, September 2003, at 46-49. It also recommends that the Commission and the U.S. Department of Energy "should champion the new standards effort to allow a broader range of LNG imports." Id. at 82. As a result, the Commission held a public conference on February 18, 2004 to engage industry members and the public in a dialogue about policy issues arising from natural gas interchangeability. Natural Gas Interchangeability, Docket No. PL04-3-000.

about undue discrimination should be mitigated by the fact that a tariff provision accepted by the Commission must have general applicability or be applicable to a specific class of rate schedule.

31. We also find that it is not appropriate for Florida Gas to negotiate gas quality standards individually in the interconnection agreement. This course runs contrary to the general policy that shippers should be subject to the just and reasonable and not unduly discriminatory terms and conditions of service that generally apply to open access transportation service.²³ Negotiation of “special” conditions in an interconnection agreement may subject future shippers to hidden rules, to the extent they elect to nominate service from Ocean Express. The Commission does not wish to see situations develop in the future where terms negotiated between pipelines in interconnection agreements conflict with the general terms and conditions of a pipeline’s open access tariff. To the extent terms are necessary, as they clearly are here to deal with gas quality and interchangeability issues not addressed sufficiently in the tariff, corrective action should be taken in the tariff, and should govern the operations of the pipelines appropriately.

32. Requiring a tariff filing will also resolve many of the procedural issues raised by the parties. For example, Ocean Express objects to Florida Gas’ proposal that would require deliveries to “meet any other standard or requirement established by rule or order” of the Commission. Ocean Express also objects to Florida Gas’ proposal to be able to make unilateral changes in the gas quality provisions of the Interconnection Agreement. Any changes to the gas quality tariff provisions will need to be made under the filing requirements of section 4 or section 5.

C. Gas Quality Standards: Provisions Related to Commercial Requirements and Shut-in

1. Complaint

33. Ocean Express states that it agreed with Florida Gas on a detailed set of specifications, including specific gas constituent limitations and a maximum Btu level in

²³ See e.g., 18 CFR §284.7(b)(“Non-discriminatory access”) and (c)(“Reasonable operational conditions”).

the proposed Interconnection Agreement.²⁴ Ocean Express objects, however, to other requirements proposed by Florida Gas. Ocean Express states that in addition to the gas quality standards agreed to in the proposed Interconnect Agreement, Florida Gas proposes to require that Ocean Express' gas meets the commercial requirements of Florida Gas and Florida Gas' customers. Ocean Express maintains that since the quality standards in the proposed Interconnection Agreement were designed to satisfy the commercial requirements of Florida Gas' commercial customers and to assure the interchangeability of gas from Ocean Express to Florida Gas, it is wrong for Florida Gas to insist on further requirements.

34. Ocean Express also claims that a "standardless 'commercial requirements' provision" would give Florida Gas virtually unbridled discretion to reject or accept gas even though it meets the objective quality specification set out in the proposed Interconnection Agreement. It also contends that it would give Florida Gas the discretion to shut in Ocean Express' gas. Ocean Express states that Florida Gas has refused to restrict this requirement with conditions: (1) to give notice with an opportunity to cure; (2) to require that deviations from quality specifications have a material impact on its operations; or (3) to use reasonable effort to accept out-of-spec gas where doing so would not impair the operation of its system. Citing Panhandle, Ocean Express argues that the Commission has determined that vague provisions like this would allow a pipeline to engage in undue discrimination in permitting interconnections.

2. Florida Gas' Answer

35. Florida Gas states that it has attempted to define a set of specifications that will protect itself and its customers, but argues that such specifications may not be adequate for all purposes. Florida Gas asserts that further studies will have to be done regarding the effects of introducing re-gasified LNG into its system before such introduction takes place. Similarly, it notes that the Gas Interchangeability Conference recognized, on an industry-wide level, the need for additional studies on gas interchangeability. Florida Gas believes that for re-gasified LNG to meet the commercial requirements that result from such inquiries is clearly reasonable and it should have the ability to modify the Interconnection Agreement accordingly.

²⁴ Ocean Express states that it intends to advocate a maximum 1085 Btu/scf in Florida Gas' tariff filing to change its tariff to implement the quality standards in the proposed Interconnection Agreement.

36. Regarding its proposal for shutting-in deliveries of out-of-spec gas, Florida Gas states that because the location of the interconnection would be at the inlet of the meter station for a major customer consuming large volumes, there is not time for notice and opportunity to cure. It asserts that damage from out-of-spec gas would be immediate. However, Florida Gas states that Ocean Express will have numerous opportunities to cure upstream of the interconnection. Florida Gas contends that Ocean Express can take action at the gas quality measurement equipment at the wellhead, at the inlet to the liquefaction plants, at the outlet to the liquefaction plants, and on the ships bringing gas to the LNG terminal in the Bahamas. Florida Gas reasons that in the event gas destined as cargo is out-of-spec, Ocean Express can take action (for example, to move the cargo elsewhere or to blend the cargo with some other cargos) to assure that gas coming out of the terminal will meet all specifications.

37. Florida Gas does not agree that any deviation from the quality specifications must have a material impact on its operations before it orders a shut in. It contends that the purpose of the quality specifications is to prevent harmful impact to the system. Florida Gas asserts that failing to meet the quality specification is material especially because the location of the interconnection is virtually at the delivery point to one major customer and in close proximity to the delivery points to a number of other customers. Therefore, Florida Gas maintains that there is no room to allow blending to accommodate deviations from the quality specifications. Florida Gas states that while it is possible that, under some conditions, it may be in a position to take gas that may vary slightly from one specification or another, but it will not commit to any “materiality” or “reasonable efforts” standard.

3. Commission Response

38. The Commission agrees with Ocean Express that the “commercial requirements” standard is unacceptably vague. Generally, the Commission has determined that tariff provisions that are too broad, too vague, and give the pipeline too much discretion in revising gas quality standards with inadequate notice and explanation to customers are unjust and unreasonable.²⁵ Also, Florida Gas’ tariff already provides that gas entering into its system must be merchantable. Florida Gas is advised that it will have a heavy

²⁵ See *Indicated Shippers v. Columbia Gulf Transmission Co.*, 106 FERC ¶ 61,040 at P 38 (2004)(provisions for adopting additional gas quality specifications that are too broad, too vague, and give the pipeline too much discretion are unjust and unreasonable); *Northern Border Pipeline Co.*, 104 FERC ¶ 61,264 at P 23 (2003)(procedures for awarding capacity unreasonably vague, and therefore, unjust and unreasonable); *Northern Natural Gas Co.*, 103 FERC ¶ at P 40 (2003)(credit information requirements vague and (continued...))

burden to convince the Commission that a tariff standard simply based on “commercial requirements” is appropriate.

39. Section 2.A.9 of the GT&C in Florida Gas’ tariff states that it “may refuse to accept any gas which fails to conform with the quality standards”,²⁶ but may waive them in a not unduly discriminatory manner as long as such waiver does not affect [Florida Gas’] “ability to maintain an acceptable gas quality in its pipeline and adequate service to its customers consistent with the applicable Rate Schedule and [the GT&C].”²⁷ However, the proposed Interconnection Agreement provides that Florida Gas can reject Ocean Express’ deliveries that do not meet the “commercial requirements” of Florida Gas’ customers. If Florida Gas determines that additional merchantability standards are necessary to address issues raised by the introduction of LNG into its system, it should propose new tariff language in its compliance filing.

40. Florida Gas’ proposed ability to shut-in out-of-spec deliveries from Ocean Express appears to be consistent with its existing tariff, which provides that it may refuse to accept any gas that fails to conform to quality standards listed in its tariff.²⁸

D. Issues Set for Hearing

1. Hourly Flow Rate

41. The proposed Interconnection Agreement states that Florida Gas will take gas from the interconnection at a rate that “best facilitates” the operation of its system. Ocean Express states that this gives Florida Gas wide discretion to increase receipts into the Florida Gas system well beyond hourly ratable receipts. Ocean Express contends that the only check on this discretion is that Florida Gas would limit the hourly flow rate of deliveries into its system to six percent of the daily scheduled quantities where Ocean Express determines operational condition necessitate such a limitation. Ocean Express maintains that the demand for such control of hourly flow rates has no basis in Florida Gas’ tariff and no discernable basis in the operation of Florida Gas’ system.

therefore unjust and unreasonable).

²⁶ GT&C 2.A.9

²⁷ Id.

²⁸ GT&C section 2.A.9.

42. In response, Florida Gas states that its flow control and the six percent hourly flow requirement are necessary in order to avoid adverse operational impacts and to assure that firm service to existing customers is not diminished. Florida Gas asserts that Ocean Express ignores the Commission's standard that an interconnect must not adversely affect the pipeline's operations and must not diminish service to the pipeline's existing customers. Florida Gas claims that in order to meet current firm service requirements, it must be in a position to maintain line pack, control line pressures at various locations, and control flow at market area receipt points in order to make reliable deliveries to customers in the market area in accordance with Florida Gas' service agreements.

43. Florida Gas states that because of the transient (dynamic) character of the market each day, control of flow at the market area receipt points is necessary to assure that Florida Gas can maintain operational integrity. It contends that if it did not have flow control, Florida Gas could not make reliable market area deliveries. Further, Florida Gas states that if an interconnecting pipeline had flow control and were to make significant change in the delivery rates, the resulting pressure change could leave Florida Gas without needed compression. Therefore, it concludes that the lack of flow control would not only adversely affect its operations, it would diminish its service to its existing customers.

44. Florida Gas states that in order to be able to continue to render the service under its tariff, Ocean Express must deliver volumes to Florida Gas at the six percent hourly rate when required because a large percent of Florida Gas' customers (approximately 80 percent of firm service) are power generation facilities that take contractual volumes at six percent per hour. Florida Gas states that if it is not able to serve its electric load at the necessary pressure, several things will happen. First, it contends that the electric generators will roll units off line. Further, depending on the load on the electric grid, Florida Gas maintains that there may be an effect on electric customers, including grid instability and brown outs. Therefore, Florida Gas claims that to maintain an hourly rate of flow during any day of 4.2 percent as proposed by Ocean Express will undermine Florida Gas' ability to serve its customers and may jeopardize the reliability of the service to indirect customers and the electric grid itself.

45. Florida Gas states that the six percent hourly receipt rate is a provision that Florida Gas has required for all interconnections in its market area. It asserts that it has two existing market area interconnection agreements that require a six percent hourly rate. Florida Gas also maintains that it is negotiating three other new interconnection agreements at a six percent rate with three other LNG projects competing with Ocean Express. It states that to provide Ocean Express with a more favorable 4.2 percent rate would be unduly discriminatory and anticompetitive.

2. Temperature Specifications and Gas-Fired Heater

46. Florida Gas is requiring that gas at the interconnection be a minimum of 80° F. Ocean Express would need to install heaters to attain this temperature. Florida Gas maintains that Ocean Express' gas will lower the temperature of Florida Gas' mainline gas stream below Florida Gas' hydrocarbon dewpoint of 41° F and will cause liquid hydrocarbons to fall out. Florida Gas anticipates that Ocean Express' gas will arrive onshore at a temperature of approximately 55° F. It contends that assuming only a 400 psig pressure drop from Ocean Express' system to Florida Gas system, the temperature will be reduced by 7° F for each 100 pounds of pressure drop. Florida Gas concludes that with this drop in temperature, the gas Ocean Express will deliver to Florida Gas will be 27° F, which is much less than Florida Gas' design temperature.

47. Ocean Express maintains that Florida Gas has relied on several wrong assumptions to reach this conclusion. Ocean Express asserts that Florida Gas has not supported its assumption that gas flowing in Ocean Express will be 50° F or colder at the point of interconnection. Ocean Express states that its analysis confirms that gas flowing in the Ocean Express pipeline will have warmed substantially due to nearshore water and ground ambient temperatures, reaching approximately 70° F at the interconnection.

48. Ocean Express also argues that Florida Gas' assumption that a more than 400 psig pressure drop will occur with delivery into Florida Gas' system ignores the fact that Ocean Express has offered to operate at a lower pressure so that its gas would not be delivered to Florida Gas at more than 400 psig above Florida Gas' operating pressure at the interconnect point. Ocean Express asserts that controlling the pressure drop before the gas is injected in Florida Gas' system will limit the temperature reduction. Ocean Express also maintains that its simulation models take into account large pressure drops at FP&L facilities and still meet the required temperatures. It argues that Florida Gas has never specifically challenged its analysis or pointed to any flaws in the modeling.

49. Ocean Express also challenges a statement by Florida Gas that Florida Gas' system requires gas be delivered with 50 degrees of superheat²⁹ over the hydrocarbon dew point to meet the requirements of generating plants owned by FP&L proximate to the point of interconnection. According to Ocean Express, Florida Gas' gas is currently below this asserted standard on many occasions. In any event, Ocean Express contends that because of the very dry nature of the regasified LNG, the introduction of its gas into Florida Gas' system will actually enhance Florida Gas' ability to meet the requirements of FP&L's

²⁹ Superheat is any temperature of a gas above the boiling point (liquid to gas) for that liquid. Florida Gas' statement means 50 degrees above the dewpoint.

generating plants that are near the point of interconnection.. Ocean Express maintains that the regasified LNG would have a dew point approximately 40° lower than gas that normally flows in Florida Gas' system. Further, it states that even if Florida Gas' system operates with only the unblended regasified LNG from Ocean Express, it would meet the 50° F superheat that FP&L claims is required under most operating conditions and never approach the dew point.

50. Florida Gas states that Ocean Express' analysis for the temperature of the gas entering Florida Gas' system is incorrect for the following reasons. Florida Gas maintains that Ocean Express assumes a complete mixing of the Florida Gas' gas and the Ocean Express gas which Florida Gas states will take time to occur. Florida Gas also states that the temperature results of Ocean Express' analysis are incorrect due to averaging of the hydrocarbons from C₇ to C₁₄. Florida Gas claims that the analysis fails to use the Florida Gas' gas sample used to calculate the design hydrocarbon dew point for the Florida Gas market area. Florida Gas argues that the sample used by Ocean Express has a lower level of hydrocarbons than that which Florida Gas has historically experienced.

51. Moreover, Florida Gas contends that Ocean Express' analysis is based upon the erroneous interconnection temperature of 70° F. Florida Gas states that the analysis is based upon the erroneous assumption that the pressure reduction at the interconnecting regulator will never be greater than 400 psig. Finally, Florida Gas asserts that the analysis uses incorrect Florida Gas delivery pressures; therefore temperature changes at the delivery point regulators are improperly calculated.

52. FP&L states that given the proximity of the proposed interconnection to FP&L's facilities, its gas supply will be impacted by the re-gasified LNG entering into Florida Gas' system even if FP&L does not directly take gas from Ocean Express. FP&L maintains that Ocean Express has not demonstrated that it will be able to meet Florida Gas' obligations to FP&L without installing a gas heater. It points to Ocean Express' assertion that gas flowing on its system will likely be delivered to the proposed Florida Gas take station at approximately 70° F. FP&L contends that Ocean Express' only evidence to back this assertion is an attachment that Ocean Express claims shows that once the re-gasified LNG reaches the onshore portion of Ocean Express's pipeline, it will quickly warm to the ambient ground temperature, assumed to be approximately 70° F.

53. FP&L contends that Ocean Express' arguments are speculative and not based on clear and decisive data. FP&L states that even if Ocean Express were correct that 364 days of the year the gas will warm to ambient ground temperature, it takes only one day of unusually cold weather and resultant colder ambient ground temperatures to cause liquid fall-out or catastrophic freezing of FP&L's machinery. FP&L states that it has numerous residences and businesses depending on reliable energy supply and cannot rely

on Ocean Express' hope that the ambient ground temperature will always work in its favor.

3. Commission Response

54. The Commission finds the arguments related to the temperature requirement/gas-fired heater and hourly flow requirements raise issues of material fact. Because the current record does not contain sufficient evidence to enable the Commission to resolve the issues, we will set these matters for an evidentiary hearing. The Administrative Law Judge should determine whether these requirements are necessary to avoid an adverse affect on Florida Gas' operations and diminishing the service to Florida Gas' existing customers as required under the Panhandle policy.

55. Because these issues are complex and involve the operations of the respective pipelines, and because the interconnection of Ocean Express with Florida Gas will necessitate a long term working relationship, we encourage the parties to settle these issues. Therefore, we will hold the hearing in abeyance and direct the Chief Administrative Law Judge to appoint, within 10 days of issuance of this order, a settlement judge pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.

56. Within 45 days of the issuance of this order, the settlement judge will report to the Commission and the Chief Administrative Law Judge on the status of the negotiations. If a settlement is likely, as concurred in by Florida Gas and Ocean Express, the Chief Administrative Law Judge may approve further negotiations for a period of 30 days. If settlement discussions fail, the Chief Administrative Law Judge shall assure expeditious litigation of the matters set for hearing. The Chief Administrative Law Judge shall appoint a Presiding Administrative Law Judge who shall convene a pre-hearing conference within 15 days of the settlement judge's final report.

E. Indemnification

1. Complaint

57. Ocean Express objects to Florida Gas' proposed indemnification provision in Section 3 of Article III of the Interconnection Agreement. According to this provision, in part, Ocean Express would be responsible for damage to Florida Gas' facilities from LNG that does not conform to the requirements of the agreement, and would indemnify Florida Gas against suits by Florida Gas' customers or any other parties arising from such non-conforming deliveries. This provision does not recite any obligation flowing from Florida Gas to Ocean Express. Ocean Express claims that Florida Gas has refused to

allow for the normal “mutual indemnity” related to each party’s respective obligations. Ocean Express contends that this provision would absolve Florida Gas from actions Florida Gas would take to control gas quality at the interconnect and from construction and operation obligations at the site. Ocean Express avers that this is unreasonable, and has no basis in Florida Gas’ tariff. Moreover, Ocean Express states that Florida Gas’ position is directly contrary to well-established Commission policy that prohibits pipelines from limiting or excluding their own liability from damages, claims, suits, actions, or proceedings that result from their gross negligence, undue discrimination, or willful misconduct.³⁰

2. Florida Gas’ Answer

58. Florida Gas states it should not be required to take on added risk without adequate compensation, nor should it be required to subsidize LNG project developers’ businesses. Florida Gas contends that since Ocean Express is introducing gas into Florida Gas’ system, it should be willing to stand by the quality of the gas and be responsible for any harm caused by such gas. Florida Gas asserts that there is no countervailing responsibility or rationale for Florida Gas to take on such risk. Further, Florida Gas points out that Ocean Express’ proposed tariff requires that its shippers indemnify it from any direct or indirect loss caused by out-of-spec gas.

59. In addition, Florida Gas states that it is not seeking to be indemnified for its gross negligence, undue discrimination or willful misconduct and is willing to include a provision in the interconnect agreement to that effect. Florida Gas also responds that this provision does not apply to the “construction or operation of equipment at the interconnect site,” as alleged by Ocean Express. Rather, Florida Gas asserts that Section 1 of Article VII is the indemnity provision that applies to the construction of facilities, which provides that each party indemnify the other for its own negligent acts or omissions.

3. Ocean Express’ Reply

60. Ocean Express believes that under Commission policy, it is not enough for Florida Gas to modify its proposed indemnification provisions so as not to require Ocean Express to indemnify Florida Gas for the latter’s gross negligence, undue discrimination, or willful misconduct. According to Ocean Express, Commission policy allows a pipeline only to limit its liability for negligence to direct damages. Further, for gross negligence,

³⁰ Citing Guardian Pipeline, L.L.C., 101 FERC ¶ 61,107 at P 18 (2002).

a pipeline cannot limit its liability for indirect, consequential, incidental, or punitive damages.³¹ Thus, it reasons that if Florida Gas wrongfully shuts-in Ocean Express gas, it must indemnify Ocean Express for (1) direct damages resulting from Florida Gas' negligence and (2) any and all damages resulting from Florida Gas' gross negligence, willful misconduct, or bad faith. Ocean Express adds that it is willing to take responsibility for any harm caused by its gas, provided that Florida Gas is willing to take responsibility for any harm caused if it wrongfully shuts in Ocean Express' gas.

4. Commission Response

61. Although the Commission's policy on indemnification has evolved primarily in the context of tariff filings under section 4 of the NGA, the Commission has also stated its belief that the same general principles regarding indemnity would arise in the context of private contracts.³² Therefore, the parties are advised that any indemnification provision in the Interconnection Agreement between Ocean Express and Florida Gas should be consistent with principles established by the Commission in various tariff proceedings. For example, under such principles, there should be mutuality of obligation between the parties where appropriate,³³ as well as different rules for allowing damages arising out of negligent actions or omissions depending on whether the negligence is simple or gross.

62. However, in light of the parties' pleadings, which appear to clarify and narrow the outstanding dispute between the parties, we will defer ruling on the merits and provide the parties with additional time to negotiate and reach an acceptable resolution of this issue. If the parties are unable to reach an agreement, each party should make a filing within 45 days of issuance of this order, detailing with specificity the outstanding issues and fully supporting the position it advocates.

The Commission orders:

(A) Florida Gas is required to make a compliance filing within 30 days of the date of this order to incorporate provisions in its FERC tariff to provide for the introduction of re-gasified LNG into its system.

(B) A public hearing is to be held in this proceeding concerning the flow

³¹ Gulf South Pipeline Co., 98 FERC ¶ 61,278 (2002).

³² Williams Pipe Line Co., 88 FERC ¶ 61,014 at 61,040 (1999).

³³ Texas Eastern Transmission Corp., 57 FERC ¶ 61,368 (1991).

control/hourly rate and temperature specifications/gas-fired heater issues discussed in the body of this order. Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, the Chief Administrative Law Judge is directed to appoint, within 10 days of the issuance of this order, a settlement judge. The settlement judge shall convene an initial settlement conference as soon as practicable.

(C) Within 45 days of the issuance of this order, the settlement judge shall report to the Commission and the Chief Administrative Law Judge on the status of negotiations. If settlement is likely, as concurred in by both Ocean Express and Florida Gas, further negotiations may be approved for a period of 30 days by the Chief Administrative Law Judge. The settlement judge shall report to the Commission and to the Chief Administrative Law Judge as soon as possible upon conclusion of such further 30 day period.

(D) If settlement discussions fail, a Presiding Administrative Law Judge shall assure expeditions litigation of the matters set for hearing. The Chief Administrative Law Judge shall appoint a Presiding Administrative Law Judge who shall convene a pre-hearing conference within 15 days of the date of the settlement judge's final report.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.