

March 19, 2021

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Gulf South Pipeline Company, LLC
Docket No. RP21-____-____
Request for OFO Penalties Waiver

Dear Ms. Bose:

Gulf South Pipeline Company, LLC (“Gulf South”) requests that the Federal Energy Regulatory Commission (“Commission”) approve a waiver pursuant to the general waiver provision set forth in Section 6.21.7 of Gulf South’s FERC NGA Gas Tariff (“Tariff”). Gulf South proposes to waive the assessment, invoicing, collection, and crediting of potential operational flow order (“OFO”) penalties associated with the unprecedented extreme winter weather of mid-February that impacted its customers, supply sources, and delivery locations. Such waiver is permitted by Gulf South’s Tariff and is consistent with the Commission’s policy and precedent. Granting such waiver will ensure that no shipper is inequitably penalized nor bestowed a windfall. To provide certainty to shippers and to ensure the accurate characterization of these issues in the upcoming Securities Exchange Commission (“SEC”) filings of Gulf South’s parent (Boardwalk Pipeline Partners, LP), Gulf South requests that the Commission issue an order granting the requested waiver on or before April 19, 2021.

I. Background

A. The Gulf South System & the 2021 Polar Vortex

Gulf South is a reticulated system consisting of approximately 7,400 miles of pipeline with a peak day design of over 10 Bcf per day and multiple storage facilities with a total combined working capacity of approximately 120 Bcf. Gulf South transports natural gas directly from supply areas in Oklahoma, Texas, Louisiana, Mississippi, and the Gulf of Mexico to markets throughout the South Central and Southeastern United States, including power plants, local distribution companies, and industrials. Shippers on the Gulf South system include these direct end-users, producers, and marketers.

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In early February 2021, meteorologists began forecasting that a major winter storm could impact Gulf South's area of operation by mid-February.¹ Gulf South prepared in advance, ensuring that its pipes were insulated, potential water condensate was cleared, and all in-line heaters were lit. As the storm approached, Gulf South staffed critical locations around the clock, and maintained such staffing during the entire winter event that followed.

On Sunday, February 14, 2021, an arctic air mass originating at the Canadian border reached the Gulf Coast region, bringing snow, ice, and extreme cold temperatures to the entire Gulf South system ("Polar Vortex").² The Polar Vortex caused record winter power demand and impacted all types of power generation, including natural gas generation.³ Power outages began occurring Sunday evening, and by Tuesday, February 16, there were nearly 5 million power outages across Texas, Louisiana, and Oklahoma.⁴ The Electric Reliability Council of Texas ("ERCOT") and the Southwest Power Pool ("SPP") declared Energy Emergency Alert Level 3 due to operating reserves falling below the required minimum as high demands related to the ongoing severe winter weather event exceeded available generation capacity.⁵ At the same time, gas production in the U.S. South Central Region was down approximately 6.3 Bcf per day due to wellhead freeze-offs, natural gas processing plant outages, and power outages at these facilities caused by extreme cold and power outages.⁶ These supply losses represented approximately 30% of U.S. South Central output and approximately 7% of total U.S. gas production. Because of the high demand and gas production outages, substantial volumes of natural gas were withdrawn from storage, doubling the amount of pre-event withdrawals.⁷ Power outages continued for days until Friday, February 19, when the Polar Vortex began to recede.⁸

Power and gas were not the only utilities affected by the Polar Vortex. Internet and cell phone services were degraded or unavailable.⁹ Many cities across Texas lost running water, due

¹ See, e.g., U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, www.weather.gov (last visited March 15, 2021); Space City Weather, <https://spacecityweather.com/2021/02/page/8/> (last visited March 15, 2021).

² U.S. Department of Energy, Office of Cybersecurity, Energy Security, and Emergency Response, *Extreme Cold & Winter Weather Update #1* (https://www.energy.gov/sites/prod/files/2021/02/f82/TLP-WHITE_DOE%20Situation%20Update_Cold%20%20Winter%20Weather_%231.pdf) (issued 12:00 PM EST, Tuesday, February 16, 2021) ("DOE Update #1").

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ U.S. Department of Energy, Office of Cybersecurity, Energy Security, and Emergency Response, *Extreme Cold & Winter Weather Update #4*, https://www.energy.gov/sites/prod/files/2021/02/f82/TLP-WHITE_DOE%20Situation%20Update_Cold%20%20Winter%20Weather_%234%20.pdf (issued 12:00 PM EST, Friday, February 19, 2021) ("DOE Update #4").

⁹ Winter Storm Uri Update, Federal Communications Commission, Public Safety and Homeland Security Bureau, <https://docs.fcc.gov/public/attachments/DOC-370051A1.pdf> (February 17, 2021); Winter Storm Uri Update, Federal Communications Commission, Public Safety and Homeland Security Bureau, <https://docs.fcc.gov/public/attachments/DOC-370095A1.pdf> (February 18, 2021); Winter Storm Uri Update, Federal Communications Commission, Public Safety and Homeland Security Bureau, <https://docs.fcc.gov/public/attachments/DOC-370131A1.pdf> (February 19, 2021); "The Polar Vortex and

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in part to low pressure caused by burst water pipes.¹⁰ Even when water was restored and the Polar Vortex had fully receded, boil notices remained in effect for an extended period of time.¹¹

The Polar Vortex, on its own, was enough to significantly disrupt a pipeline's day-to-day business. But the Polar Vortex did not occur independently. It occurred during the height of the ongoing coronavirus pandemic, which has required large sectors of the natural gas industry to work remotely in order to ensure health and safety.

When the Polar Vortex struck, most of Gulf South's office staff was working from home. The same is true for many employees of Gulf South's customers and interconnecting pipelines. While a portion of Gulf South's office staff lives in Owensboro, Kentucky (including the Gas Control Room, which maintained visibility of the pipeline throughout the event), most of Gulf South's office staff lives in the hard-hit Houston area. The same Houston staff members responsible for managing the pipeline and ensuring that the maximum volume of natural gas could be transported to struggling electric generators and local distribution companies were struggling to maintain communication from homes that had no power, no heat, no water, no internet, and/or no cell service. It is difficult to describe the Polar Vortex as anything other than the perfect storm.

Gulf South had no significant or extended operational issues with its own facilities,¹² nor with its ability to serve its customers. Gulf South never interrupted firm service and was able to schedule interruptible transportation service where it was operationally beneficial. It did not implement flow control measures at any delivery points. It did not issue any force majeure notices, nor did it activate its most restrictive emergency plan (the System Management Plan pursuant to Section 6.18[5] of the Tariff).

Gulf South utilized all of its resources to maximize throughput on the system, including line pack, storage, and online supply. Where possible, it physically adjusted flows through its

Wireless Services", AT&T Community Forums, <https://forums.att.com/conversations/network-coverage/the-polar-vortex-and-wireless-service/602ac766cc9b580936b870bc> (February 15, 2021); Winter Storm Uri, AT&T, https://about.att.com/pages/disaster_relief/winter_storm_uri.html (last visited March 17, 2021); Verizon response: coast-to-coast winter storm update, Verizon News Center, <https://www.verizon.com/about/news/verizon-response-coast-to-coast-winter-storms> (updated Feb. 20, 2021); Winter Storm Uri Updates, Comcast Houston, <https://houston.comcast.com/2021/02/18/winter-storm-uri-comcast-techs-working-to-get-services-restored/> (last visited March 17, 2021).

¹⁰ See, e.g., Environmental Protection Agency, EPA Winter Storms Uri and Viola Update #1, <https://response.epa.gov/sites/15082/files/Winter%20Storms%20Report%201%2002172021.pdf> (issued February 17, 2021); "8.7 Million People Under Boil Water Notices in Texas," National Public Radio, <https://www.npr.org/sections/live-updates-winter-storms-2021> (February 22, 2021); "Texans now face a water crisis after enduring days without power," The Texas Tribune, <https://www.texastribune.org/2021/02/19/texas-water-power-outages/> (February 19, 2021); "Areas in the Greater Houston region remain under water boil advisory," ABC, Inc., KTRK-TV Houston, <https://abc13.com/houston-weather-winter-snow-cold/10342040/> (February 22, 2021).

¹¹ See *id.*

¹² The Gulf South system has certain electric compressor stations. Gulf South anticipates higher electricity charges during the period affected by the Polar Vortex. These increased electric fuel costs will be included in Gulf South's next annual fuel tracker filing, which must be filed by November 1, 2021. See Gulf South Tariff, General Terms & Conditions, Section 6.9.4[5].

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facilities to adapt to the changing needs of shippers.¹³ Gulf South continued to reliably deliver gas under its contracted services for the duration of the Polar Vortex. Through the timely posting of notices, Gulf South kept customers informed of the impending weather impacts, supply point underperformance, and the changing operational needs of the system. These include the Critical Period and OFO postings permitted under Section 6.18 of the Tariff, the provisions of which are discussed in more detail below. As illustrated in the table set forth in Exhibit A, Gulf South's notice postings align directly with the timeline of the Polar Vortex.¹⁴ Key notices were posted as follows:

- Weather Alert posted on 2/10/2021 at 9:44:23 a.m.
- Critical Period posted on 2/15/2021 to be effective on 2/15/2021 at 1:30 p.m.¹⁵
- OFO posted on 2/15/2021 at 8:14:55 p.m. to be effective on 2/16/2021 at 9:00 a.m.¹⁶
- Updated OFO posted on 2/16/2021 to be effective on 2/16/2021 at 1:30 p.m.¹⁷
- Underperformance Report(s) posted at various times during OFO
- Termination of OFO on 2/19/2021 to be effective on 2/19/2021 at 6:00 p.m.¹⁸

The Polar Vortex OFO was the first OFO that Gulf South had issued in nearly twenty years, and the first to be utilized under the currently-effective Tariff penalty provisions. From gas day February 14 to the start of the OFO on gas day February 16, line pack had decreased by approximately 225,000 Dth and storage withdrawals had increased by 2.8 Bcf. Gulf South determined that these operational conditions, combined with the continued forecast of extreme temperatures and demand, required the issuance of an OFO to protect the integrity of its system, in accordance with Section 6.18[4] of its Tariff.

B. Applicable Tariff Provisions Related to the Gulf South OFO

1. Section 6.18 – Operational Plans/Emergency Procedures

Pursuant to Section 6.18[4(b)] of its Tariff, Gulf South may issue an OFO when the safety and integrity of the pipeline is threatened. The Tariff provides examples of conditions which may serve as the basis for the issuance of an OFO. During the Polar Vortex the following conditions existed:

¹³ For example, Gulf South was able to flow gas west, rather than east, from the Perryville Exchange Area.

¹⁴ See, for example, *DOE Updates #1 and #4*.

¹⁵ The Critical Period was not in effect for any full Gas Days and was superseded by the OFO.

¹⁶ The full gas days during which the OFO was in effect were 2/16/2021, 2/17/2021, and 2/18/2021.

¹⁷ See Gulf South Pipeline Company, LLC, Notification to FERC Re “Issuance of OFO under General Terms and Conditions (‘GT&C’) Section 6.18” (Feb. 16, 2021).

¹⁸ See Gulf South Pipeline Company, LLC, Notification to FERC Re “Termination of OFO” (Feb. 22, 2021).

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- supply points lost production and were unable to meet scheduled deliveries into Gulf South for an extended period and threatened system integrity such that the issued Critical Period notice was inadequate to correct the condition;¹⁹
- weather conditions (changes in temperature and precipitation) were predicted to occur that would significantly increase the demand for system deliverability above current nominated and scheduled levels and projected no-notice demand, and which threatened system integrity such that the issued Critical Period notice was inadequate to correct the condition;²⁰
- the system was experiencing imbalances that, if left uncorrected, would threaten system integrity such that the issued Critical Period notice was inadequate to correct the condition;²¹ and
- the pressure on the system or a portion thereof reached a level that threatened the physical integrity of the system.²²

The overarching operational issue on the Gulf South system during the Polar Vortex was rapidly decreasing line pack during a time of maximum storage withdrawals. This was caused not only by the loss of supply due to upstream freeze-offs, but also because of a rapid and dramatic ramp-up in consumption at certain delivery points. In order to encourage increased supply and discourage excess deliveries, Gulf South issued an OFO that stated:

Shippers must ensure that receipts at each location with Electronic Flow Measurement ('EFM') are not less than scheduled quantities at that location and physical deliveries at each location with EFM do not exceed scheduled quantities at that location.

Given the reticulated nature of the Gulf South system, where the market areas are intermingled with the supply areas, and the fact that the Polar Vortex weather encompassed the entire Gulf South system, the OFO was issued to cover Gulf South's entire system. When Gulf South determined that its line pack and storage positions had improved and the threat of additional freezing temperatures and precipitation had passed, Gulf South terminated the OFO.

The Commission has held that "[i]t is up to the pipeline customers to provide the gas for [transportation] service. While a pipeline must have procedures to accommodate short-term reasonable differences between nominations and actual takes, it is up to the customers to make sure that sufficient gas is tendered to the pipeline to correct imbalances in a timely fashion."²³

¹⁹ Gulf South Tariff, General Terms & Conditions, Sections 6.18[3] and 6.18[4(b)(i)].

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at Section 6.18[4(b)(ii)].

²³ *Gulf South Pipeline Co., LP*, 98 FERC ¶61,278 at p. 62, 179 (2002) ("*Gulf South Order on Compliance*").

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Consistent with this precedent, and to ensure that only locations with sufficient supply were scheduled on the pipeline, Gulf South included the following in its OFO notice:

If shippers are unable to maintain their receipts or deliveries in accordance with this OFO, Gulf South will adjust in a NAESB standard nomination cycle nonperforming and underperforming locations to conform with this OFO requirement.

In conjunction with this OFO provision, Gulf South posted various Over-Under Performance notices which identified locations that might be reduced due to underperformance. Such locations changed frequently, and the notices represented the best data that was available as of the time of each posting.

2. Section 6.19 – Penalties

The penalty provisions under Gulf South’s Tariff, set forth in Section 6.19[1], state that if a “Customer tenders and/or takes quantities in violation of [an] Operational Flow Order by more than 3%, Gulf South shall assess against Customer, on a daily basis, a penalty, being five (5) times the Daily Hub Price per Dekatherm which is tendered or taken by Customer in violation of such Operational Flow Order.”²⁴ During the three full gas days that the OFO was in effect, the Daily Hub Price was as follows:

February Gas Day 16	\$6.00 per Dth
February Gas Day 17	\$16.96 per Dth
February Gas Day 18	\$23.61 per Dth

Section 6.19[1] also states that Gulf South “may post on its Internet Website instructions to Customers that indicate specific actions which would benefit the system and do not require specific approval... No Customer shall be assessed penalties under this section where such penalties were a result of actions taken pursuant to pipeline directives issued to assist in correcting operational problems.”

The OFO language cited above specifically permitted shippers to oversupply at receipt points and under-take at delivery points, regardless of their nominated and scheduled quantities. This activity would benefit the operational integrity of the system by increasing line pack, operating pressures, and, potentially, storage levels. Restated from an imbalance perspective, the system benefitted from shippers’ willingness to take actions that left them “long” into the system, *i.e.*, with physical receipt quantities in excess of physical deliveries.

²⁴ Section 6.19 of the Gulf South Tariff defines the Daily Hub Price as “the price as published in Gas Daily, Daily Price Survey under the heading Louisiana-Onshore South, Henry Hub Midpoint, for the day in which the applicable penalty was in effect or the average of the price in effect for the day immediately before and the day immediately after any day or days where Gas Daily is not published.”

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Gulf South has not yet assessed, invoiced, or collected any penalties.²⁵ Penalties collected under the Tariff are not retained by the pipeline; they are refunded to “non-offending” shippers, *i.e.*, “those Customers not incurring a penalty under this section [6.19] under any of their transportation contracts during the month in which penalties were incurred.”²⁶ Gulf South must refund the penalty revenues it collects in 2021 at its next “Annual Review.” The Tariff does not require the next Annual Review to be conducted until March of next year (2022).²⁷ Under the Annual Review, a Customer’s eligibility to receive a refund is determined solely by their conduct on a monthly basis. Because eligibility is determined on a monthly basis, and the Polar Vortex OFO in question was the sole OFO issued by Gulf South during the month of February, the proposed waiver will not impact the potential eligibility of any shipper to receive future penalty revenue refunds associated with other events. No other potential penalty-incurring events have occurred to date in 2021.

3. Section 6.21.7 – Waivers of Default

Section 6.21.7 of Gulf South’s Tariff contains a general waiver provision that states “Gulf South may waive all or part of any obligations of Customer on a basis which is not unduly discriminatory[.]” As described in more detail below, Gulf South is proposing to utilize this Section 6.21.7 to waive any Polar Vortex OFO penalties. This section also states that “no such waiver by Gulf South or the waiver by Customer of any one or more defaults by the other in the performance of any provision of an agreement between Customer and Gulf South shall operate or be construed as a waiver of any other default or defaults, whether of a like or a different character.” Consistent with these parameters, the requested waiver should not be construed as a waiver of any future penalties that may be applicable under Gulf South’s Tariff.

II. Requested Waiver.

Gulf South is requesting that the Commission authorize, pursuant to the general waiver provision under Section 6.21.7 of Gulf South’s Tariff, waiver of the assessment, invoicing, collection, and crediting of any OFO penalties under Section 6.19 of the Tariff associated with the Polar Vortex. Such waiver is consistent with Commission policy and precedent, and will equitably treat all shippers impacted by the Polar Vortex.

A. The Requested Waiver Is Consistent with Gulf South’s Tariff and Prior Commission Holdings.

Section 6.21.7 of Gulf South’s Tariff authorizes Gulf South to “waive all or part of any obligations of Customer on a basis which is not unduly discriminatory.”²⁸ The Commission has

²⁵ On February 24, 2021, Gulf South posted a non-critical notice stating that it “is currently evaluating data associated with OFO penalties, in accordance with Section 6.19 of its Tariff. Final assessments will not be completed for the February 2021 invoice.”

²⁶ Section 6.19[5(a)(v)].

²⁷ Gulf South Tariff Section 6.19[5] (“On or before the date March invoices are tendered each year (Annual Review), Gulf South will review the total penalty revenue *collected* under this section for the immediately preceding calendar year, plus any carry forward amounts inclusive of interest.”) [emphasis added].

²⁸ Gulf South Tariff, General Terms & Conditions, Section 6.21.7.

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explained that, “[i]n deciding whether to exercise its discretion to grant waiver of a tariff provision . . . the Commission considers whether good cause for the waiver has been shown based on the grounds presented by the requesting pipeline.”²⁹ The Commission has found good cause to grant a waiver of OFO penalties when “aggregate customer behavior resulted in pipeline operations that were sufficiently balanced during the OFO period, and as a result, there was no impairment of primary firm transportation service.”³⁰

The Commission should find good cause to approve Gulf South’s requested waiver of OFO penalties. During the OFO period, both “offending” and “non-offending” shippers took substantial measures to deliver supplies onto Gulf South’s system to ensure that Gulf South maintained sufficient line pack and pressure to meet its firm delivery commitments. As a result of this “aggregate customer behavior,” Gulf South’s system was not impaired by the cold weather event. The Commission should conclude that there is good cause for Gulf South to waive OFO penalties because, despite instances of non-compliance of the OFO, some of which are more technical in nature, the actions of both “offending” and “non-offending” shippers were sufficient to allow Gulf South to avoid interruptions of firm service.

A finding of good cause is further supported by the fact that Gulf South is proposing to waive OFO penalties on a non-discriminatory basis. The requested waiver is intended to apply to all shippers that would have incurred penalties for non-compliance with the OFO during the full period the OFO was in effect. In granting the requested waiver in *East Tennessee*, the Commission held that “discretion for such a waiver is provided for in [the pipeline’s] tariff, and as it is proposing to waive all OFO penalties for the [period of the OFO], there is nothing to indicate that such waiver is in any way discriminatory.”³¹ The Commission should apply the same reasoning here and grant Gulf South’s requested waiver.

B. The Proposed Waiver Meets All Parts of the Commission’s Four-Part Waiver Test.

The Commission has explained that when considering requests for waivers in cases involving wholesale power or electric transmission rates and services, “the Commission has granted waiver of tariff provisions where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does

²⁹ *Equitable Gas Co.*, 28 FERC ¶ 61,235 at p. 61,444 (1984).

³⁰ *East Tennessee Natural Gas, LLC*, 151 FERC ¶ 61,106 at PP 3, 10 (2015). *See also East Tennessee Natural Gas, LLC*, 166 FERC ¶ 61,096 at P 6 (2019) (finding that “the aggregate level of compliance during the OFO Period was sufficient to address the situation on the [the pipeline’s] system, which was not impaired by the minor amount of non-compliance by the offending shippers.”); *Texas Eastern Transmission, LP*, 155 FERC ¶ 61,241 at P 6 (2016) (finding that the pipeline’s system “was not impaired by the minor amount of non-compliance by the offending shippers.”); *Gulf South Pipeline Co., LP*, 98 FERC ¶ 61,054 (2002) (finding that “no firm customers were harmed since there was no interruption of those services”).

³¹ *East Tennessee*, 151 FERC ¶ 61,106 at P 10.

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not have undesirable consequences, such as harming third parties.”³² The Commission has recently proposed to incorporate this four-part test in considering both requests for prospective waivers and petitions for remedial relief related to natural gas pipeline rates and services.³³ The Commission should grant Gulf South’s waiver request in accordance with this four-part test.³⁴

1. The Underlying Error(s) of “Offending Shippers” Occurred in Good Faith

Gulf South’s waiver request should be granted because the “offending” shippers who would otherwise be penalized in the absence of such waiver acted in good faith during the OFO. The “offending shippers” took actions that, in the aggregate, benefitted the Gulf South system and, by extension, the “non-offending” shippers who relied upon that system. Gulf South found no evidence of gamesmanship by potentially “offending” shippers. Gulf South found that “offending shippers” attempted to direct as much supply into the Gulf South system as possible, often at additional financial cost to themselves. As a result of these shippers’ good faith actions, the OFO accomplished its intended purpose of ensuring the safety and integrity of the system. The assessment of penalties at this time would not serve any purpose in deterring detrimental behavior and could be viewed in the future as a deterrent to assisting pipelines during critical operating conditions.

Gulf South designed an OFO that applied to its entire system and required compliance at every receipt and delivery point with EFM. Under-performing receipt points, *i.e.*, receipt points not flowing the quantity of gas that had been nominated and scheduled, were scheduled down during intraday cycles. The message of the OFO was clear: Gulf South needed shippers to bring on as much supply as possible, and deliveries could not exceed scheduled quantities. Experience during the Polar Vortex as well as subsequent data analysis demonstrates that shippers used good faith efforts to substantially comply with the spirit of the OFO, even if they were technically in violation at certain receipt and delivery points.

The substantial compliance of “offending” shippers is evidenced by the fact that, over the course of the OFO, the net receipts of the “offending shippers” exceeded the net deliveries of such shippers by over 0.5 Bcf. “Offending shippers” actions improved line pack, one of the primary concerns underlying the necessity to issue the OFO.

³² *Waiver of Tariff Requirements*, 171 FERC ¶ 61,156 at P 18 (2020) (footnote omitted). *See also, e.g., Hecate Energy Highland LLC*, 167 FERC ¶ 61,267 at P 11 (2019); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

³³ *Id.*

³⁴ Granting Gulf South’s waiver would be further consistent with Section 16 of the NGA, which provides that the “Commission shall have the power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter.” 15 U.S.C. § 717o.

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Technical violations of the OFO were often the result of timing or circumstances over which the “offending shippers” had little control.³⁵ For example, shippers with nominations that were reduced during the last nomination cycle of the day (Intraday 3 Cycle) could not adjust their nominations in a later cycle. Other shippers relied upon Gulf South’s Over-Under Performance notices to adjust supply sources, but such postings represented a snapshot in time which did not always include every receipt point affected at the time of actual scheduling reductions. Industrial customers require time (sometimes at least 24 hours) to take their plants offline in order to prevent plant damage. The constantly changing supply picture, due to third-party outages and force majeure events, coupled with degraded lines of communication were all critical factors affecting certain “offending” shippers’ ability to bring on additional supply or reduce deliveries in a manner that complied with the OFO.

Technical violations also occurred at certain locations because the quantities flowed were insignificant when compared to the entire Gulf South system throughput. Section 6.19[1] of the Tariff permits an EFM customer to tender and/or take quantities in violation of an OFO up to 3% but does not set forth a minimum quantity threshold. At small meters, this 3% allowable variance might equal as little as 1 Dth. A variance of 1, 5, or even 100 Dth likely had no meaningful impact on the system during the OFO event.

The post-event evidence demonstrates that these technical violations did not place the system in jeopardy, though, at the time the OFO was issued, it was not possible to pinpoint or predict these discreet, case-by-case exceptions. Gulf South’s system is complex: web-like and multi-directional, with varying pressures, pipe diameters, hundreds of receipt and delivery points, diverse supply sources, large storage fields, and an array of different end-users and pipeline interconnects. Gulf South operated its system in a prudent manner and treated all shippers in a not unduly discriminatory manner. The shippers, in turn, acted in good faith to the benefit of the Gulf South system, and should not be assessed penalties.

2. The Proposed Waiver is Limited in Scope

Gulf South’s waiver request is of limited scope because it is a one-time waiver of the OFO penalty provisions set forth in Section 6.19 of the Tariff tied specifically to the particular circumstances and shipper actions during the three-day OFO period that occurred during the Polar Vortex. Consistent with the parameters of Gulf South’s general waiver provision under Section 6.21.7 of its Tariff, the waiver request is limited to these unique circumstances, and should not be construed as a waiver of any future penalties that may be applicable under Gulf South’s Tariff.

3. The Proposed Waiver Addresses a Concrete Problem

The proposed waiver addresses a concrete problem by ensuring that “offending” shippers are neither invoiced nor required to pay substantial OFO penalties.

³⁵ Certain shippers, because they are not also point operators, could not control the flows at their nominated receipt and delivery points, although they would be responsible for any assessed penalties as the holder of the transportation contract.

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4. Proposed Waiver Will Not Result in Undesirable Consequences

Granting Gulf South's waiver request will not have undesirable consequences. By contrast, *denial* of the waiver request *will* result in undesirable consequences, because it would cause a significant financial hardship on "offending" shippers who were, as a whole, acting to improve pipeline operations over the OFO period. Of concern are small municipalities and towns that may be unable to absorb the cost of such penalties in addition to the steep increases to the cost of gas supplies during the Polar Vortex. Such a hardship would be at odds with the objectives of the OFO in this instance.

The primary objective of the OFO was achieved: protection of the system's integrity and maintenance of reliable service. Gulf South was able to meet the needs of its shippers without any reductions to firm service, activating flow control, or issuance of a force majeure.

Certain "non-offending" shippers may question the waiver of penalties on the basis that they would otherwise be entitled to penalty revenue credits. But the bedrock of the Tariff is reliable transportation service and penalty revenue credits are merely a rare ancillary benefit, which, in this circumstance, would likely constitute an inappropriate windfall.

The purpose of the revenue penalty crediting provision is to reward "non-offending" shippers for assisting the system,³⁶ but during the Polar Vortex, many "non-offending" shippers contributed directly to the system integrity concerns that triggered the issuance of the OFO. These include, but are not limited to, shippers transporting at locations with Operational Balancing Agreements ("OBAs") and shippers served by asset managers.

OBAs are required by the Commission's regulations at all pipeline interconnects.³⁷ These OBAs ensure the integrity of the interstate natural gas grid and cooperation between point operators. At a location where an OBA is in place, any differential between the nominated/scheduled quantities and the physical flows is attributed to the point operator and resolved under the OBA.³⁸ A shipper's scheduled quantities and allocated quantities under transportation contracts utilizing such locations are always in balance. As a result, shippers utilizing OBA locations never technically violated the OFO, although the OBA location itself might have been out of balance.

Over the course of the OFO, the net deliveries of the OBA locations exceeded the net receipts of such locations by over 0.5 Bcf. This net short position degraded line pack, one of the primary concerns underlying the OFO. Denial of the requested waiver would result in the

³⁶ See *Gulf South Order on Compliance* at p. 62,181.

³⁷ 18 C.F.R. § 284.12(b)(2)(i).

³⁸ Gulf South is a party to certain OBAs under which imbalances are resolved pursuant to a cash-out methodology. Any cash-outs incurred by Gulf South during the Polar Vortex will be included as part of Gulf South's next annual cash pool filing, which must be filed by September 1, 2021. See *Gulf South Tariff, General Terms & Conditions, Section 6.14[1(E)(i)]*.

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undesirable consequence of rewarding shippers who transacted at points that actually contributed to the system integrity concerns during the Polar Vortex.

Certain non-offending shippers are served under asset management agreements (“AMAs”). Under an AMA, the “non-offending” shipper released its capacity to the “offending” shipper. In some circumstances during the OFO, the “offending” shipper utilized its replacement contract on the “non-offending” shipper’s behalf in a way that technically violated the OFO. The “non-offending” shippers did not technically violate the OFO under its released contract even though they were the point operators and in sole control of the quantities consumed at their delivery points and in this way contributed to the OFO violations of their asset managers. Like shippers at OBA locations, denial of the requested waiver would result in the undesirable consequence of rewarding shippers who contributed to the system integrity concerns during the Polar Vortex. The Commission should ensure that these undesirable consequences do not occur by granting the requested waiver.

III. Clarification in the Alternative

Should the Commission deny the proposed waiver, Gulf South requests in the alternative that the Commission clarify that any shipper who was not at risk of incurring a penalty under the OFO likewise cannot be considered a non-offending shipper eligible for penalty revenue credits. This would include shippers solely transacting at OBA or non-EFM locations. This clarification is consistent with Commission precedent and Gulf South’s Tariff, under which non-offending shippers are defined as “shippers that were not penalized pursuant to Section 19 [of the Tariff].”³⁹ This clarification will mitigate potential disputes over the crediting of penalty revenues and ensure equitable distribution.

³⁹ Gulf South Tariff, General Terms & Conditions, Section 19; *Gulf South Order on Compliance* at pp. 61,180-82; *Trailblazer Pipeline Co.*, 97 FERC ¶ 61,056 (2001) (“All shippers including interruptible shippers are subject to penalties, and therefore should receive their proportional share of any net penalty revenues. Consequently, the pro-rata distribution of net penalty revenues to all nonoffending firm and interruptible shippers should be calculated...”).

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IV. Conclusion

The Commission should approve, pursuant to the general waiver provision set forth in Section 6.21.7 of Gulf South's Tariff, a waiver of the assessment, invoicing, collection, and crediting of potential OFO penalties associated with Polar Vortex. For the reasons discussed above, such waiver is permitted by Gulf South's Tariff and is consistent with the Commission's policy and precedent. Gulf South requests that the Commission issue an order granting the requested waiver on or before April 19, 2021.

Service

All correspondence and communications concerning this filing should be addressed to:

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*Persons designated for service pursuant to Rule 385.203(b)(3) of the Commission's Rules of Practice and Procedure. Gulf South requests that the Commission waive Rule 385.203(b)(3) to allow designated service to each of these persons.

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2020), copies of the instant filing are being electronically served upon all of Gulf South's jurisdictional customers and to interested state commissions. A copy of this filing is available for public inspection during regular business hours at the office of Gulf South in Houston, Texas, and on its website at www.gulfsouthpl.com.

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The undersigned, having full power and authority to execute this filing, states that he has read this filing and knows its contents; that the contents are true to the best of his knowledge and belief, and that the paper copies and the electronic media contain the same information.

Respectfully submitted,

GULF SOUTH PIPELINE COMPANY, LLC

Michael E. McMahon

EXHIBIT A

Timeline of Notice Postings

Notice ID	Notice Status	Prior Notice ID	Notice Type	Post Date/Time	Notice Effective Date/Time	Notice End Date/Time	Subject	Notice Text Summary
5028919	Initiate	-	Weather Alert	2/10/2021 9:44:23AM	2/10/2021 10:00:00AM	None specified (Terminated later Notice 5028992)	Weather Alert - Below Normal Temperatures	Below normal temperatures expected over Gulf South service area over next few days. Fully expected to meet firm service obligations and other services are subject to scheduling reductions until further notice (services listed). Requesting to balances transportation and storage contracts by conforming receipts and deliveries at a uniform hourly rate of flow "as practicable." If shippers do not comply, may be forced to declare Critical Period or issue OFO, which could result in penalties for shippers.
5028951	Initiate	-	Operational Alert	2/15/2021 1:09:52PM	2/15/2021 1:30:00PM	None specified (Terminated later Notice 5028991)	Critical Notice Period	Providing notice of Critical Period for entire system. Actual receipts not less than scheduled receipts and actual deliveries equal to scheduled deliveries. Quantities received and delivered at uniformly hourly rate "as practicable." If shippers do not comply, pipeline may be forced to issue OFO.
5028955	Initiate	-	Operational Flow Order	2/15/2021 8:14:55PM	2/16/2021 9:00:00AM	None specified (Superseded later Notice 5028958)	System Wide Operational Flow Order	Covers entire system. Physical receipts at each location not less than scheduled quantities at that location and physical deliveries at each location do not exceed scheduled quantities at that location. Penalties set forth in Tariff. Shipper with operationally beneficial transactions will not be penalized if Gulf South has provided them with written notice.
5028957	Initiate	-	Customer Services Update/ Operational Alert	2/16/2021 10:04:14AM	2/16/2021 10:05:00AM	None specified (Superseded later Notice 5028963)	Underperforming receipt meters	Receipt locations in Areas 16, 17, 20 could be reduced due to underperformance beginning Gas Day 2/16/2021 in ID1 and continuing until further notice.

Notice ID	Notice Status	Prior Notice ID	Notice Type	Post Date/Time	Notice Effective Date/Time	Notice End Date/Time	Subject	Notice Text Summary
5028958	Supersede	5028955	Operational Flow Order	2/16/2021 1:17:48PM	2/16/2021 1:30:00PM	None specified (Terminated later Notice 5028983)	System Wide Operational Flow Order Revised	Updating OFO. Covers entire system. Physical receipts at each location with EFM not less than scheduled quantities at that location and physical deliveries at each location with EFM do not exceed scheduled quantities at that location. Gulf South will adjust nonperforming and underperforming locations in a NAESB standard nomination cycle if shippers are unable to maintain their receipts or deliveries in accordance with OFO. Penalties set forth in Tariff. Shipper with operationally beneficial transactions will not be penalized if Gulf South has provided them with written notice.
5028963	Supersede	5028957	Over-Under Performance	2/16/2021 6:32:18PM	2/16/2021 6:35:00PM	None specified (Superseded later Notice 5028966)	Underperforming receipt meters	Locations listed may be reduced due to underperformance for Gas Day 2/16/2021 In ID3 and continuing until further notice.
5028964	Initiate	-	Customer Services Update	2/16/2021 7:03:20PM	2/16/2021 7:05:00PM	2/17/2021 9:00:00AM (Superseded later Notice 5028965)	Gulf South gas day 2/16/2021 ID3 Nomination Deadline Extension	Nomination deadline for 2/16/2021 ID3 extended 1 hour to 8:00 PM CST.
5028965	Supersede	5028964	Customer Services Update/ Scheduling Alert	2/16/2021 7:13:43PM	2/16/2021 7:15:00PM	2/17/2021 9:00:00AM	Gulf South gas day 2/16/2021 ID3 Nomination Deadline Extension	Nomination deadline for 2/16/2021 ID3 extended 1 hour to 8:00 PM CST.
5028966	Supersede	5028963	Over-Under Performance	2/16/2021 8:13:49PM	2/16/2021 8:15:00PM	None specified (Superseded later Notice 5028971)	Underperforming receipt meters (Update)	Updated locations listed may be reduced due to underperformance for Gas Day 2/16/2021 in ID3 and continuing until further notice
5028967	Initiate	-	Customer Services Update/ Scheduling Alert	2/16/2021 9:46:23PM	2/16/2021 9:50:00PM	2/17/2021 9:00:00AM	Scheduling notifications 2/16/2021 ID3	Scheduling reports for 2/16/2021 ID3 will be delayed approximately 1 hour.

Notice ID	Notice Status	Prior Notice ID	Notice Type	Post Date/Time	Notice Effective Date/Time	Notice End Date/Time	Subject	Notice Text Summary
5028971	Supersede	5028966	Over-Under Performance	2/17/2021 10:04:17AM	2/17/2021 10:05:00AM	None specified (Superseded later Notice 5028974)	Underperforming receipt meters (Update)	Updated locations listed may be reduced due to underperformance for Gas Day 2/17/2021 in ID1 and continuing until further notice.
5028974	Supersede	5028971	Over-Under Performance	2/17/2021 4:17:55PM	2/17/2021 4:30:00PM	None specified (Superseded later Notice 5028975)	Underperforming receipt meters (Update)	Updated locations listed may be reduced due to underperformance for Gas Day 2/17/2021 in ID2 and continuing until further notice.
5028975	Supersede	5028974	Over-Under Performance	2/17/2021 4:28:09PM	2/17/2021 4:30:00PM	None specified (Superseded later Notice 5028976)	Underperforming receipt meters (Update)	Updated locations listed may be reduced due to underperformance for Gas Day 2/17/2021 in ID2 and continuing until further notice.
5028976	Supersede	5028975	Over-Under Performance	2/17/2021 8:09:36PM	2/17/2021 8:30:00PM	None specified (Superseded later Notice 5028981)	Underperforming receipt meters (Update)	Updated locations listed may be reduced due to underperformance for Gas Day 2/17/2021 in ID3 and continuing until further notice.
5028977	Initiate	-	Over-Under Performance	2/18/2021 11:43:05AM	2/18/2021 12:00:00PM	None specified (Terminated later Notice 5028995)	Underperforming Receipt Meters - Gulf Crossing	Gulf Crossing Zone may be reduced due to underperforming receipts for Gas Day 2/18/2021 in ID1 and continuing until further notice. Gulf South continues to monitor system and System Zone may be reduced due to underperforming receipts for Gas Day 2/18/2021 ID2 cycle.
5028981	Supersede	5028976	Over-Under Performance	2/18/2021 6:31:27PM	2/18/2021 7:00:00PM	None specified (Superseded later Notice 5028982)	Underperforming receipt meters (Update)	Gulf South will not post underperforming receipt meters for Gas Day 2/18/2021 ID3, 2/19/2021 Evening, or any further cycles unless otherwise noticed. OFO still in effect pursuant to Notice 5028958. Contact supply point operators to monitor flows for underperformance. Gulf South continues to monitor system and may issue underperformance postings in prospective cycles.
5028982	Supersede	5028981	Over-Under Performance	2/19/2021 10:18:23AM	2/19/2021 10:30:00AM	None specified (Superseded later Notice 5028984)	Underperforming receipt meters (Update)	Locations listed may be reduced due to underperformance for Gas Day 2/19/2021 In ID1 and continuing until further notice.

Notice ID	Notice Status	Prior Notice ID	Notice Type	Post Date/Time	Notice Effective Date/Time	Notice End Date/Time	Subject	Notice Text Summary
5028984	Supersede	5028982	Over-Under Performance	2/19/2021 2:46:37PM	2/19/2021 3:00:00PM	None specified (Terminated later Notice 5028989)	Underperforming receipt meters (Update)	Locations listed may be reduced due to underperformance for Gas Day 2/19/2021 In ID2 and continuing until further notice.
5028983	Terminate	5028958	Operational Flow Order	2/19/2021 5:30:00PM	2/19/2021 6:00:00PM	2/22/2021 9:00:00AM	System Wide Operational Flow Order Terminated	OFO terminated effective 6:00 PM 2/19/2021.
5028989	Terminate	5028984	Over-Under Performance	2/19/2021 5:46:43PM	2/19/2021 6:00:00PM	2/22/2021 9:00:00AM	Underperforming receipt meters (Update) Terminated	Over-Under Performance Notice terminated.
5028991	Terminate	5028951	Operational Alert	2/21/2021 10:45:00AM	2/21/2021 11:00:00AM	2/22/2021 9:00:00AM	Critical Notice Period	Critical Period ended when OFO was issued on 2/16/2021 9:00 AM CST.
5028992	Terminate	5028919	Weather Alert	2/22/2021 09:00:07AM	2/22/2021 9:01:00AM	2/23/2021 9:00:00AM	Weather Alert - Below Normal Temperatures (Terminate)	Notice terminated.
5028995	Terminate	5028977	Over-Under Performance	2/22/2021 12:35:58PM	2/22/2021 1:00:00PM	None specified	Underperforming Receipt Meters - Gulf Crossing (Terminate)	Underperforming receipt meter notice terminated.
5029003	Initiate	-	Rates and Charges	02/24/2021 7:39:30AM	02/24/2021 07:40:00AM	None specified	OFO Penalty Assessments	Notice the Gulf South is evaluating data associated with OFO penalties in accordance with the Tariff and final assessments will not be completed for February 2021 invoice.
5029022	Terminate	5028995	Over-Under Performance	2/26/2021 2:13:37PM	2/26/2021 6:00:00PM	None specified	Underperforming Receipt Meters - Gulf Crossing (Terminate)	Termination notice updated to add end date.

FERC rendition of the electronically filed tariff records in Docket No. RP21-00630-000

Filing Data:

CID: C000591

Filing Title: OFO Penalty Waiver Request

Company Filing Identifier: 1132

Type of Filing Code: 580

Associated Filing Identifier:

Tariff Title: Tariffs

Tariff ID: 2

Payment Confirmation:

Suspension Motion:

Tariff Record Data:

Document Content(s)

Gulf South OFO Penalty Waiver Request with Exhibit A.PDF1
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