State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: October 16, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Draper) EJD
Office of the General Counsel (Brown) MKB JSB

RE: Docket No. 080561-GP – Petition for approval of natural gas transmission pipeline tariff by SeaCoast Gas Transmission, LLC.

AGENDA: 10/28/08 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 04/19/09 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080561A.RCM.DOC

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Case Background

On August 19, 2008, SeaCoast Gas Transmission, LLC, (SeaCoast) filed a petition for an intrastate gas pipeline tariff, Original Volume No. 1, which sets forth the terms and conditions under which it will offer service. At its October 14, 2008, Agenda Conference the Commission suspended SeaCoast's proposed tariff. SeaCoast is a natural gas transmission company subject to the regulatory jurisdiction of the Commission as provided for under Chapter 368, Florida Statutes (F.S.).

SeaCoast's proposed tariff would allow SeaCoast to construct and own natural gas transmission pipeline(s) and engage in the business of transporting gas in Florida. The proposed tariff includes the general terms, conditions, and rules under which SeaCoast proposes to operate.

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The tariff does not include rates and charges, as those would be negotiated individually with each customer pursuant to Section 368.105(3), F.S.

The Natural Gas Transmission Pipeline Intrastate Regulatory Act (the Act), Sections 368.101-368.112, F.S., was adopted by the Florida Legislature in 1992 in conjunction with Sections 403.9401-9425, F.S., the Natural Gas Transmission Pipeline Siting Act (Pipeline Siting Act). At the time they were enacted, these laws contemplated the filing of a proposal for a major gas pipeline (Sunshine Pipeline Partners) that would serve local distribution companies and major electric power generators in Florida and would be regulated by this Commission rather than the Federal Energy Regulatory Commission (FERC). The statute enables an intrastate pipeline company to be exempt from FERC jurisdiction under what is known as "the Hinshaw Amendment." The Hinshaw Amendment, contained in section 1(c) of the Natural Gas Act, 15 U.S.C. § 717(c), "exempts from FERC regulation intrastate pipelines that operate exclusively in one State and with rates and services regulated by the State." Payment of regulatory assessment fees to cover the cost of regulation and jurisdiction over pipeline safety is also provided for in Chapter 368, F.S.

The Pipeline Siting Act is administered by the Department of Environmental Protection (DEP). DEP is responsible for the certification of natural gas transmission pipelines, and the Commission is responsible for determining the need for intrastate gas transmission pipelines pursuant to Section 403.9422, F.S. Section 403.524, F.S., provides for certain exemptions. Pipelines that do not cross a county line or are less than 15 miles in length do not need to be certified.

There are only two earlier instances of Commission approval of an intrastate pipeline tariff: Five Flags Pipeline Company[1] and Peninsula Pipeline Company, Inc. (Peninsula).[2] Five Flags Pipeline Company provided natural gas transportation service to one customer, the Okaloosa County Gas District. Five Flags Pipeline Company notified the Commission of its dissolution on June 18, 1999. Peninsula received Commission approval for an intrastate gas pipeline tariff in December 2007.

The Commission has jurisdiction over this subject matter pursuant to Chapter 368, F.S.

[1] See Order No. PSC-97-0609-FOF-GP, issued on May 28, 1997, in Docket No. 970361-GP, In re: Five Flags Pipeline Company – Petition for approval of existing firm and interruptible system transportation rates.
[2] See Order No. PSC-07-1012-TRF-GP, issued December 21, 2007, in Docket No. 070570-GP, In re: Petition for approval of natural gas transmission pipeline tariff by Peninsula Pipeline Company, Inc.

Discussion of Issues

Issue 1: Should the Commission approve SeaCoast's proposed natural gas transmission pipeline tariff, Original Volume No. 1?

Recommendation: Yes, the proposed tariff should be approved pursuant to Chapter 368, F.S. Upon the issuance of the consummating order in this docket, SeaCoast should pay regulatory assessment fees as required by Rule 25-7.101, Florida Administrative Code (F.A.C.). SeaCoast should also file Annual Reports as required by Rule 25-7.100, F.A.C. Within 60 days after executing a transportation service agreement, SeaCoast and the customer should file an affidavit with the Commission as required by Section 368.105(3), F.S. Upon request by the Commission, SeaCoast should make available its negotiated Transportation Service Agreements. (Draper)

Staff Analysis:

Natural gas is delivered to Florida through four FERC regulated interstate transmission pipelines: Florida Gas Transmission Company (FGT), Gulfstream Natural Gas System, Southern Natural Gas, and Gulf South Pipeline. The gas entering Florida is delivered to new or re-powered electric generating facilities, large industrial customers, municipally-operated systems, and investor-owned local distribution companies (LDCs).

SeaCoast proposes to construct and maintain pipeline facilities that would transport customer-owned gas from the interstate transmission pipeline to customers. SeaCoast will not engage in the sale of gas, and title of the gas transported on SeaCoast's pipelines would not at any point transfer to SeaCoast.

SeaCoast states that it was formed to provide high-volume intrastate natural gas transmission service throughout Florida, primarily to electric generators. SeaCoast believes that the demand for natural gas in Florida has increased significantly over the past decade, and that electric generation is Florida's primary end use for natural gas. SeaCoast has entered into a precedent agreement with its first customer, JEA (formerly, Jacksonville Electric Authority). SeaCoast plans to provide long-term transportation of natural gas to JEA's Greenland Energy Center, a planned natural gas-fired combustion turbine unit. SeaCoast's planned pipeline would connect both the FGT and Southern Natural Gas transmission pipelines to JEA's proposed power plant. SeaCoast states that it is also exploring opportunities for the future expansion of the pipeline in order to deliver natural gas to electric generators in the east and central Florida markets.

The service provided by SeaCoast is optional. Currently, pipeline laterals can be constructed by the customer itself, the interstate pipeline, or a LDC. Customers will continue to be able to choose their pipeline provider. SeaCoast will simply be available as an additional transmission pipeline provider. In addition to building and maintaining the pipeline facilities, SeaCoast will be responsible for providing administrative services related to the transportation of gas from the interconnection with the transmission pipeline to the point(s) of delivery (interconnection between SeaCoast and customer).

Regulatory Authority.

The Act provides for a different level of regulation than that prescribed to LDCs or investor-owned electric utilities under Chapter 366, F.S. Section 368.105(3), F.S., allows rates charged by a natural gas transmission company to be deemed just and reasonable without explicit Commission approval if the rates meet certain conditions as listed below. Section 368.105(3), F.S., states:

> Rates charged or offered to be charged by any natural gas transmission company for transactions with other natural gas transmission companies, transportation customers, and industrial, power plant, and other similar large-volume contract customers, but excluding direct sales-for-resale to gas distribution utilities at city gates, unless suspended and modified pursuant to this subsection, are deemed to be just and reasonable and approved by the commission, if both the natural gas transmission company and the customer files an affidavit with the commission that:
>
> (a) Neither the natural gas transmission company nor the customer had an unfair advantage during the negotiations;
>
> (b) The rates are substantially the same as rates between the natural gas transmission company and two or more of those customers under the same or similar conditions of service; or
>
> (c) Competition does or did exist either with another natural gas transmission company, another supplier of natural gas, or with a supplier of an alternative form of energy.

Section 368.105(3), F.S., thus contemplates that gas transportation service provided by an intrastate pipeline is based on negotiated agreements that reflect market conditions and the specific needs of the customer. SeaCoast will only provide transportation service and will not engage in the retail sale of natural gas. Title of the gas transported on SeaCoast's facilities will belong to the customer. The customer is responsible for purchasing its own gas supplies. Section 368.105(6), F.S., further requires that rates must not be unduly discriminatory, and they must be cost compensatory. The statute also requires the Commission to resolve any disputes between the natural gas transmission company and a person desiring transmission access.

Order No. PSC-06-0023-DS-GP[3] set out certain parameters under which a transmission pipeline would operate, in addition to the statutory requirements. These parameters were established primarily to ensure that a transmission pipeline, such as SeaCoast, would not serve a customer within the existing service territory of a LDC, without first obtaining Commission approval, in order to protect the general body of LDC ratepayers. If a LDC loses a large customer to SeaCoast, this could potentially shift costs to the LDC's remaining ratepayers.

[3] Issued January 9, 2006, in Docket No. 050584-GP, In re: Petition for declaratory statement by Peninsula Pipeline Company, Inc. concerning recognition as a natural gas transmission pipeline company under Section 368.101, F.S., et seq.

SeaCoast's tariff restates those parameters. Under its proposed tariff, SeaCoast can provide service if the customer is currently not being served with natural gas by another entity and the location of the facilities to be served is greater than one mile in distance from existing gas facilities operated by an investor-owned gas utility, a gas municipality, or gas district.

Proposed tariff.

SeaCoast's proposed tariff includes the rules and standard forms necessary to operate a natural gas transmission pipeline system. SeaCoast states that the tariff provisions are standard practice in the gas industry, and closely resemble those of a FERC-regulated interstate pipeline. SeaCoast's proposed tariff refers to the customers of SeaCoast's intrastate pipeline as "shippers." SeaCoast will provide firm and interruptible transportation service. A customer who chooses SeaCoast to transport its gas is required to enter into a Transportation Service Agreement. In addition, SeaCoast will provide an optional parking or lending service. Parking service allows SeaCoast to park gas in its pipeline for a certain period of time before returning the gas to the shipper. Lending service allows a shipper to receive gas from SeaCoast, and subsequently return the gas to SeaCoast, if it is not used.

Conclusion.

SeaCoast's proposed tariffs are reasonable and meet the requirements of Chapter 368, F.S. SeaCoast further states that it will comply with the Pipeline Siting Act when proposed pipelines fall within its requirements. Within 60 days after executing a transportation service agreement, SeaCoast and the customer should file an affidavit with the Commission as required by Section 368.105(3), F.S. Upon the issuance of the consummating order in this docket, SeaCoast should pay regulatory assessment fees as required by Rule 25-7.101, F.A.C. The Rule states that the regulatory assessment fee for natural gas transmission companies shall be 0.25 percent annually of the company's gross operating revenue. SeaCoast should also file Annual Reports as required by Rule 25-7.100, F.A.C. Upon request by the Commission, SeaCoast should make available its negotiated Transportation Service Agreements. Staff envisions that obtaining copies of the agreements will only be necessary in the event of a customer complaint.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, this tariff should become effective on October 28, 2008. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Brown)

Staff Analysis: If Issue 1 is approved, this tariff should become effective on October 28, 2008. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.