144 FERC ¶ 61,159
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 28, 2013

In Reply Refer To:
Kinetica Energy Express, LLC
Docket No. RP13-1116-000

Crowell & Morning
Attention: Jenifer N. Waters, Counsel
1001 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Ms. Waters:

1. On July 29, 2013, Kinetica Energy Express, LLC (Kinetica) filed baseline tariff records[1] to place into effect services and rates on facilities it acquired from Tennessee Gas Pipeline Company, L.L.C. (Tennessee) pursuant to the Commission's May 31, 2013 order authorizing Tennessee to abandon such facilities to Kinetica.[2] The Commission accepts the tariff records filed under Option A, effective September 1, 2013 as requested, subject to conditions as discussed below. The tariff records filed under Options B and C are rejected.

2. On July 26, 2012, in Docket No. CP12-490-000, Tennessee filed to abandon by sale the majority of its offshore jurisdictional natural gas transportation facilities to Kinetica.[3] Concurrent with Tennessee's application for abandonment, in Docket

---

[1] Kinetica Energy Express, LLC, FERC NGA Gas Tariff, Kinetica Energy Express LLC - FERC Gas Tariff.

[2] *Tennessee Gas Pipeline Co., L.L.C., et al.*, 143 FERC ¶ 61,196 (2013) (May 31 Order*). See also Tennessee Gas Pipeline Co.*, 137 FERC ¶ 61,105 (2011), *order on clarification*, 138 FERC ¶ 61,082 (2012), *order on reh'g*, 138 FERC ¶ 61,179 (2012).

[3] Tennessee's non-jurisdictional offshore gathering facilities were sold to Kinetica Midstream LLC.

No. CP12-489-000, Kinetica filed an application under section 7(c) of the NGA[4] and Parts 157 and 284 of the Commission's regulations[5] to acquire and operate the facilities Tennessee proposed to abandon. Kinetica also filed information to revise its cost of service and initial rate proposal on January 31, 2013.[6]

3. On May 31, 2013, the Commission authorized Tennessee's request to abandon by sale to Kinetica and for Kinetica to acquire and operate Tennessee's jurisdictional offshore transmission pipeline facilities. The May 31 Order conditioned the issuance of the certificate upon Kinetica making several revisions to its proposed tariff and initial rates.[7] The Commission required that Kinetica: 1) remove from jurisdictional rate base facilities that the Commission determined to be performing a gathering function or to be unutilized; 2) revise the negative salvage rate to 0.40 percent; 3) revise its Return on Equity (ROE) to 11.59 percent; 4) revise the cost of debt to its actual cost of debt; 5) utilize 237,767,130 Dth as the proper billing determinants; 6) remove its proposed Infrastructure Investment Surcharge; 7) revise the reservation charge crediting language to be consistent with Commission policy; 8) remove Section 2.1 of the proposed Form of Reserve Commitment and similar tariff provisions; and, 9) remove the NGL Bank Agreement and all language related to the NGL Bank Agreement.

4. Numerous parties requested rehearing of the May 31 Order. Those requests for rehearing are pending before the Commission and will be addressed in a subsequent Commission order.

5. To comply with the requirements of the May 31 Order, Kinetica proposed three sets of tariff records.[8] Kinetica states that the tariff records it identifies as Option A

---

[4] 15 U.S.C. § 717f(c) (2006).

[5] 18 C.F.R. Pts. 157 and 284 (2013).

[6] Kinetica's January 31, 2013 Data Response, Revised Exhibit P.

[7] May 31 Order, 143 FERC ¶ 61,196 at PP 190, 195-231.

[8] Kinetica's PDF Transmittal Letter document fails to comply with the Commission's requirements regarding text-searchable formats. These PDF documents must be either created through the print-to-PDF process or saved after applying Optical Character Recognition. *Electronic Tariff Filings*, Order No. 714, FERC Statutes and Regulations ¶ 31,276 at n.29 (2008), noting that Order No. 703's (*Filing Via the Internet*, Order No. 703, FERC Statutes and Regulations, Regulations Preambles 2006-2007 ¶ 31,259, at P 23 (2007)) requirements for the filing of electronic documents apply to eTariff filed documents. The Commission expects Kinetica to comply with these requirements with all its future electronically filed documents.

reflect its recalculated initial rates and revised tariff language as required by the May 31 Order. Kinetica states that these revised initial rates only reflect the costs of service related to its jurisdictional transmission services and that all costs related to facilities determined to be performing a gathering function or determined to be unutilized have been removed.

6. Kinetica provides work papers which it states reflect that it allocated costs to the gathering function on the basis of original plant cost and an inch-mile study. Kinetica also states that in its work papers the cost of service figures labeled "As Filed" were originally proposed in its January 31, 2013 data response and reviewed by the May 31 Order.

7. Kinetica states that it requested rehearing of several findings of the May 31 Order and that it therefore included in the instant filing recalculated initial rates and tariff language under Options B and C consistent with its position in its request for rehearing. Kinetica refers to these options as its Alternate Case.

8. Public notice of the instant filing was issued on July 30, 2013. Comments were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2013)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2013)), all timely filed motions to intervene and any unopposed motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. The Producer Coalition,[9] Deep Gulf Energy LP (Deep Gulf), Walter Oil & Gas Corporation (Walter) and Arena Energy, LP (Arena) filed protests. In the instant order all references to the Producer Coalition will include Deep Gulf, Walter and Arena because all parties filed identical protests. The Indicated Shippers also protests the instant filing.[10] The Indicated Shippers' protest is, with the exception of its objection concerning the cost of debt used by Kinetica in the instant filing, limited to Kinetica's Options B and C. The Commission will discuss the comments made by the parties to Kinetica's Option A tariff records below.

9. The Commission finds that the tariff records filed by Kinetica as Option A generally comply with the requirements of the May 31 Order and accepts the tariff records, subject to refund, to be effective September 1, 2013. However, as indicated by

---

[9] Castex Offshore, Inc., Century Exploration New Orleans, LLC, Dynamic Offshore Resources, LLC, Energy XXI (Bermuda) Ltd., Pisces Energy LLC, and W&T Offshore, Inc.

[10] The Indicated Shippers are comprised of Apache Corporation, BP Energy Co., BP America Production Co., Chevron U.S.A. Inc., ExxonMobil Gas & Power Marketing Co., a division of Exxon Mobil Corp., and Shell Offshore Inc.

our discussion below, the Commission has not yet found that the proposed compliance initial rates that we are permitting to go into effect on September 1, 2013 are in full compliance with the May 31 Order. Therefore, those rates are accepted subject to further review and refund.[11] Kinetica is required to file revised tariff records reflecting recalculated rates along with the supporting work papers and clean tariff records within 30 days of the date of this order.

10. In addition, the Commission rejects the tariff records in Options B and C referred to as the Alternative Case. In the instant proceeding, the Commission is reviewing Kinetica's filing in order to determine whether it has complied with the requirements of the May 31 Order. The Commission has not issued an order on the various requests for rehearing of the May 31 Order. Therefore, it is premature to review the tariff records Kinetica has proposed under its Options B and C.

11. Kinetica states that its initial rate recalculation stems from its January 31, 2013 figures and the only adjustments for these figures are made in compliance with the May 31 Order. The Producer Coalition object to several calculations made by Kinetica in the instant filing. The Producer Coalition do not take issue with Kinetica's starting point but rather argue that in the instant filing Kinetica made an unexplained and unsupported upward adjustment to operating expenses of $3,984,427. They point out that in the instant filing Operation and Maintenance (O&M) and Administrative and General (A&G) expenses appear to have been increased by $2,998,554 and $985,873, respectively.[12]

12. The Commission's review of the instant filing reveals no support or explanation for the increase of O&M and A&G expenses from the proposed amount approved by the Commission as the starting point for its rate recalculations. While the May 31 Order noted a Kinetica error concerning the functionalization of Line 527A-600,[13] there is nothing in Kinetica's filing that ties these costs to that line. Accordingly, the Commission finds that Kinetica must refile its tariff records to reflect the O&M and A&G costs from its January 31, 2013 Data Response filing which the Commission approved as the starting point for Kinetica's rate recalculations in the May 31 Order. If Kinetica's O&M and A&G expenses have increased from those approved by the May 31 Order, it may propose and support such a change in a NGA section 4 general rate case.

---

[11] *See Southern Natural Gas Co., L.L.C. and High Point Gas Transmission, LLC*, 143 FERC ¶ 61,207, at PP 93-101 (2013).

[12] Kinetica's Attachment A, Cost of Service, Column 3, Lines 1, 2 and 3.

[13] May 31 Order, 143 FERC ¶ 61,196 at fn. 168.

13. The May 31 Order found that Kinetica did not provide adequate support for its proposed 10 percent cost of debt and directed Kinetica to file its actual cost of debt with supporting documents and to revise its proposed rates to reflect its actual cost of debt.[14] In the instant compliance filing Kinetica recalculated its initial rates utilizing a cost of debt of six (6) percent, which it states is its best estimate of its actual cost of debt at the time of the filing. Kinetica states that it will include its actual cost of debt when it files its three-year cost and revenue study, recalculate its rates as necessary, and supply supporting documentation at that time.

14. Indicated Shippers and the Producer Coalition state that Kinetica failed to comply with the May 31 Order. They request that the Commission require Kinetica to file its actual cost of debt with supporting documents or, in the alternative, provide documentation of its determination of its new estimated cost of debt such that the parties and the Commission can determine if Kinetica's estimate accurately reflects current market conditions.

15. The May 31 Order directed Kinetica to file its actual cost of debt with supporting documents. In its compliance filing Kinetica failed to do so. Moreover, it failed to support its new six (6) percent estimate for its cost of debt. As discussed below, the Commission will require Kinetica to file revised tariff records with additional compliance requirements after it goes into service on September 1, 2013. At that time Kinetica will have acquired the facilities as well as financing and will have actual data to include in its rate recalculation. Accordingly, the Commission directs Kinetica to either use its actual cost of debt or provide supporting documentation thereof, or file support for the proposed the six (6) percent cost of debt. Kinetica's proposal to delay providing supporting documentation and recalculation of the initial rate until the three-year cost and revenue study is rejected. Kinetica's proposal would leave its maximum recourse rates at an unknown level for up to three years or more.

16. The May 31 Order noted that several parties objected to language proposed by Kinetica as a Form of Reserve Commitment Agreement under Kinetica's Rate Schedule IT. They argued that an IT shipper should not be required to commit reserves to Kinetica Energy under any circumstances, unless and to the extent a shipper voluntarily chooses to do so. In response, Kinetica stated that its proposed tariff language would not alter an IT shipper's service priority and stated that the association of a reserve commitment with IT service is entirely voluntary and available to shippers as an option.[15]

---

[14] May 31 Order, 143 FERC ¶ 61,196 at P 207.

[15] May 31 Order, 143 FERC ¶ 61,196 at PP 244-245.

17. The Commission found that Kinetica's proposed Section 2.1 of the Form of Reserve Commitment Agreement under Rate Schedules LFT-1 and IT was inappropriate. The Commission found that the proposal required that, in exchange for the provisions of Article XI of Kinetica's *pro forma* tariff which provided for a "further agreement," shippers would agree to transport their gas through Kinetica's pipeline facilities for the producible life of any committed leases. The Commission determined that forms of agreement that provide for "further agreement" followed by a blank space were contrary to the Commission's policies. The Commission determined that such a provision was not transparent and therefore, the Commission rejected Section 2.1 of the proposed Form of Reserve Commitment Agreement under Rate Schedules LFT-1 and IT and directed Kinetica to remove this provision, and any similar tariff provisions, from its tariff.[16]

18. In the instant filing, Kinetica did not remove Section 2.1 from its Form of Reserve Commitment Agreements under Rate Schedules LFT-1 and IT. Kinetica explained that, as it points out in its request for rehearing of the May 31 Order, it believes the Commission misstated the tariff revisions that would require modification. Instead, Kinetica made other changes which it states are consistent with the intent of the May 31 Order on its *pro forma* Sheet Nos. 18 and 63. For example, Kinetica completely removed Article XI which provided the blank space. Further, Kinetica modified Section 2.1 as follows:

> ~~In exchange for the provisions of Article XI as set forth in that certain Transportation Service Agreement dated ______________, ______ between Transporter and Shipper, and subject~~ Subject to the provisions of Section 2.4, Shipper hereby agrees to deliver Shipper's Gas into and transport Shipper's Gas through Transporter's pipeline facilities under a Transportation Agreement pursuant to Rate Schedule LFT-1 between Shipper and Transporter for the producible life of the Committed Lease(s).

19. The Producer Coalition argues that Kinetica has not complied with the May 31 Order. They argue that the remaining provisions of Section 2.1 imply, if not expressly require, that a shipper interested in obtaining interruptible transportation service must commit its gas reserves to Kinetica in order to receive service. The Producer Coalition argue that the Commission should require Kinetica to insert language in its Rate Schedule IT stating that a shipper shall not be required to execute a Reserves Commitment Agreement as a condition for receiving interruptible transportation service. The Commission finds that the May 31 Order contemplated that the concerns of the

[16] May 31 Order, 143 FERC ¶ 61,196 at P 246.

interruptible shippers would be mitigated by the requirement that Kinetica remove the language in question.

20. The fact that in the instant filing Kinetica revises the language instead of removing it appears to adequately address the Commission's concerns regarding its above stated transparency of contract issues. But such action does not address the concerns of interruptible shippers as noted in the May 31 Order. Therefore, the Commission requires that, consistent with Kinetica's position noted in the May 31 Order that "the association of a reserve commitment with IT service is entirely voluntary and available to shippers as an option,"[17] Kinetica refile revised tariff records stating that a shipper will not be required to execute a Reserves Commitment Agreement as a condition for receiving interruptible service. The Commission's findings herein are subject to its determination on rehearing of the May 31 Order.

21. Kinetica's clean tariff filing includes headers and footers. The Commission no longer requires headers and footers on tariff records. However, if a company wishes to include headers and footers on tariff records, the information therein must not be contrary to other Commission requirements or information provided by the company to the Commission. The tariff record headers submitted by Kinetica are incorrect in that the Commission requires that the identification contained thereon to read "FERC NGA Gas Tariff," not "FERC Gas Tariff" as the headers submitted by Kinetica currently read.[18] In addition, the Tariff Title[19] Kinetica currently has on file with the Commission is "Kinetica Energy Express LLC - FERC Gas Tariff," not "Original Volume No. 1" as Kinetica has styled its Tariff Title in the header of its instant filing. Kinetica's revised tariff records do not include headers or footers. Therefore, Kinetica is directed to refile only its clean tariff document to reflect these corrections.

22. The Commission accepts, subject to refund, the tariff records of Kinetica's *Kinetica Energy Express LLC - FERC Gas Tariff*, Option A, to be effective September 1, 2013, subject to the following conditions. Kinetica is required to use its proposed O&M and A&G costs from its January 31, 2013 filing as the basis upon which to recalculate the costs recoverable from the jurisdictional transmission rates. In addition, Kinetica is required to use actual debt costs and provide support for those costs, or if those costs are not available, Kinetica must support its proposed use of six (6)

---

[17] May 31 Order, 143 FERC ¶ 61,196 at P 245.

[18] *See Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings* (August 12, 2013) (*Implementation Guide*) p. 7, *available at* *http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf*.

[19] The data elements such as "Tariff Title" are defined in the *Implementation Guide*.

percent. Kinetica is required to file supporting work papers in spread sheet format, including formulas.[20]

23. To the extent not discussed in this order, the Commission finds that Kinetica has complied with the remaining findings of the May 31 Order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[20] The manner in which Kinetica complied in the instant proceeding with the supporting work paper format requirements of the May 31 Order was acceptable.