

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D. C. 20426  
107 FERC ¶ 61, 096  
April 30, 2004

In Reply Refer To:  
Kinder Morgan Interstate Gas  
Transmission LLC  
Docket No. RP97-81-016

Kinder Morgan Interstate Gas Transmission LLC  
370 Van Gordon Street  
P. O. Box 281304  
Lakewood, Colorado 80228-8304

Attention: Bentley W. Breland, Vice President, Certificates and Rates

Reference: Negotiated Rate Transactions

Ladies and Gentlemen:

1. On March 31, 2004, Kinder Morgan Interstate Gas Transmission LLC (KMI) filed revised tariff sheets<sup>1</sup> to reflect two negotiated rate transactions pursuant to section 36 of the General Terms and Conditions in its tariff and various Commission orders that address KMI's negotiated rate authority for its firm and interruptible transportation services.<sup>2</sup> The filing also includes: (i) a tariff sheet to remove two footnotes applicable to a negotiated rate transaction that expired on November 12, 2002; and (ii) a redline page from one of the negotiated rate contracts showing a non-conforming contract term extension right that ties the term of the contract to the shipper's potential acquisition of capacity on a planned pipeline expansion. KMI requests an April 1, 2004, effective date for the tariff sheets to correspond with the commencement of services under the contracts.

2. KMI's revised tariff sheets are accepted to become effective April 1, 2004, subject to KMI complying with the conditions discussed below, within 15 days of the date this order issues. Acceptance of this filing benefits the public because it furthers the

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<sup>1</sup> Eleventh Revised Sheet No. 4G, Original Sheet No. 4G.01, and Third Revised Sheet No. 4J to FERC Gas Tariff, Fourth Revised Volume No. 1-A.

<sup>2</sup> Kinder Morgan Interstate Gas Transmission LLC, 77 FERC ¶61,350 (1996) and 93 FERC ¶ 61,230 (2000).

Commission's policy of providing flexibility to meet the needs of a shipper and the pipeline.

3. The filing was noticed on April 7, 2004, permitting comments, protests or interventions as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. ' 385.214) all timely filed motions to intervene and any motions to intervene out-of-time filed before the date this order issues are granted. No protests or adverse comments were filed. Seminole Energy Services LLC filed in support of the instant filing.

4. In the instant filing, KMI submits two statements of negotiated rate sheets showing Contract Nos. 550383 and 29067 for firm transportation service to Ag Processing, Inc. (AGP) from April 1, 2004 through December 31, 2010. According to KMI, Contract No. 55083 conforms in all material respects to the tariff form of service agreements. However, KMI states that Contract No. 29067 contains a non-conforming term extension provision. Specifically, Article XIII provides AGP the flexibility to extend the term of the negotiated rate agreement to equal the term of any contract it may obtain for capacity on the proposed Advantage Pipeline, a KMI affiliate.<sup>3</sup> According to KMI, the non-conforming provision will only apply if: (i) the proposed Advantage Project commences service; (ii) KMI capacity is available; and (iii) AGP acquires the Advantage Pipeline capacity during an open season process. KMI states that this provision does not concern capacity rights on another existing upstream pipeline where KMI could coordinate the expiration of contract terms, rather, it concerns the shipper's desire to coordinate its contract term on KMI with its contract term on another potential pipeline whose in-service date is not definitive.

5. The Commission finds that the term extension under Article XIII to AGP's negotiated rate contract (No. 29067) constitutes an impermissible material deviation from KMI's form of service agreement. Order No. 637<sup>4</sup> permits a pipeline and its shippers to agree to include a contractual right of first refusal, rollover or evergreen provision in their contracts, including where the regulatory right of first refusal does not apply. However,

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<sup>3</sup> The Kinder Morgan Energy Partners plan to build the Advantage Pipeline Project, an interstate pipeline, from the Cheyenne Hub in north-central Colorado to the Greensburg, Kansas area.

<sup>4</sup> Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,091 at 31,341 (February 9, 2000); order on reh'g, Order No. 637-A, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,099; order denying reh'g, Order No. 637-B, 92 FERC ¶ 61,062 (2000); Interstate Natural Gas Association of America v. FERC, 285 F. 3d 18 (D.C. Cir.), order on remand, 101 FERC ¶ 61,127 (2002).

the Commission has held that pipelines must offer such contract extension provisions in contracts on a non-discriminatory basis. For example, in a Columbia Gas Transmission Corporation (Columbia) certificate proceeding, we found that Columbia entered into an agreement giving a discounted rate shipper an opportunity to extend its contract term even though its tariff did not offer such extension rights generally. We required Columbia either to modify its tariff to make such provisions available on a non-discriminatory basis or eliminate the provision from its agreement.<sup>5</sup> Accordingly, we direct KMI to either modify its tariff to make the contingent rollover provision available via a generally applicable tariff provision to similarly situated shippers or remove the provision from the subject agreement.

6. In addition, KMI filed only the page of the contract that contains the non-conforming language. The Commission's regulation at section 154.112(b) requires the filing of contracts, in their entirety, that deviate in any material aspect from the form of service agreement in the pipeline's tariff. 18 CFR § 154.112(b) (2003). Accordingly, KMI is directed to file the negotiated rate agreement containing the material deviation, in toto.

By direction of the Commission.

Linda Mitry,  
Acting Secretary.

cc: All Parties

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<sup>5</sup> See Columbia Gas Transmission Corp., 101 FERC ¶ 61,337 at 62,392.