

124 FERC ¶ 61,024
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Kinder Morgan Interstate Gas Transmission LLC

Docket No. CP07-430-001

ORDER GRANTING IN PART AND DENYING IN PART REHEARING

(Issued July 8, 2008)

1. On March 24, 2008, the Public Service Company of Colorado (PSCo) filed a request for rehearing of a February 21, 2008 Commission order¹ authorizing Kinder Morgan Interstate Gas Transmission LLC (Kinder Morgan) to construct approximately 41.4 miles of 12-inch diameter pipeline and related facilities known as the Colorado Lateral Expansion Project (Colorado Lateral). The Colorado Lateral will commence at an interconnection with Kinder Morgan's existing facilities at the Cheyenne Hub in Weld County, Colorado, and terminate near Greeley, Colorado at interconnections with Atmos Energy Corporation (Atmos), a local distribution company (LDC) serving the Greeley market. The facilities will allow Kinder Morgan to deliver up to 55,000 Dth/d of natural gas to Atmos which is Kinder Morgan's only Colorado Lateral customer. Kinder Morgan also intends to construct an additional 10.78 miles of 4- to 12-inch diameter non-jurisdictional extension lines to connect the Colorado Lateral to Atmos and to convey ownership of the extension line facilities to Atmos before service commences.
2. In its request for rehearing PSCo asserts that the Commission erred in permitting Kinder Morgan to include the costs of the non-jurisdictional extension lines in the initial incremental negotiated and recourse rates that it will charge for service on the Colorado Lateral. At a minimum, PSCo requests that the extension line costs be removed from the recourse rates.
3. We will grant PSCo's request that the non-jurisdictional extension line costs be removed from the recourse rates but deny its request to remove these costs from the negotiated rates.

¹ *Kinder Morgan Interstate Gas Transmission LLC*, 122 FERC ¶ 61,154 (2008).

Background

4. Presently, Atmos obtains gas transportation service to the Greeley, Colorado market area from PSCo, which is also an LDC. When the Colorado Lateral and the non-jurisdictional extension lines are completed, Atmos will be able to serve the Greeley market directly via Kinder Morgan, thus effectively by-passing PSCo.

5. Atmos is the only customer that has contracted for service on the Colorado Lateral. Under its precedent agreement, Atmos will receive firm transportation service of 47,000 Dth/d for the first five years of the project, increasing to 55,000 Dth/d for the five years thereafter.

PSCo's Request for Rehearing

6. PSCo states that Kinder Morgan never explained why its agreement to construct and pay for the extension lines was necessary to reach agreement with Atmos. It contends that the extension lines could just as easily be operated by Kinder Morgan and that the relatively large diameter extension lines are not conventional LDC facilities of the sort usually the subject of contributions in aid of construction.

7. PSCo surmises that the transaction was structured in this way to prevent prospective shippers using the Colorado Lateral from by-passing Atmos. PSCo asserts that Kinder Morgan's rate proposal may suppress competition because PSCo and other shippers trying to reach markets being served by Atmos could be prevented from having access to the non-jurisdictional extension lines since those lines would not be subject to the Commission's open-access policies and regulations.

8. For these reasons PSCo asserts that the Commission erred in allowing Kinder Morgan to treat the extension line costs as contributions in aid of construction and to include these non-jurisdictional costs in the cost of service upon which the initial incremental recourse rates for the Colorado Lateral are based. It adds that the Commission's proposed remedy of scrutinizing the inclusion of these costs in Kinder Morgan's rate base in its next rate case will not address PSCo's present concern that it may be prevented from access to the Colorado Lateral. Thus, PSCo requests the Commission to direct Kinder Morgan to remove non-jurisdictional costs from all jurisdictional rates, including its negotiated rates.

9. In the alternative, PSCo requests that the non-jurisdictional costs be removed from the recourse rates. While this would not prevent Atmos from controlling its own facilities to prevent by-passes, PSCo contends, the resulting maximum recourse rate on the Colorado Lateral may be low enough to enable a shipper that desires to locate in an area along or at the end of the Colorado Lateral to finance the construction of facilities to interconnect with the Colorado Lateral.

Discussion

10. The Commission grants rehearing in part and directs Kinder Morgan to remove the non-jurisdictional Atmos extension line costs from its cost-based recourse rates. We recognize that in prior instances where the Commission has made recovery of contributions in the aid of construction subject to scrutiny in a future rate case,² the pipelines intended to charge their existing system-wide rates for the relevant services until a future rate case in which they would propose to include the contributions in aid of construction in their rate bases. Here, Kinder Morgan is building the Colorado Lateral in order to serve a single shipper and the Commission has approved an initial incremental recourse rate for service to that shipper. Thus, the construction costs associated with the non-jurisdictional facilities would be included in Kinder Morgan's incremental recourse rate as soon as service commences on the Colorado Lateral.³ We further note that Atmos has not subscribed the full capacity of the Colorado Lateral until the second five-year period of operation. Thus, it is possible that a shipper other than Atmos seeking to acquire available capacity on this incrementally-priced line would be required to pay for facilities that are not owned and operated by Kinder Morgan and that would not benefit such shipper.⁴ Accordingly, we will require Kinder Morgan to revise its proposed incremental recourse rates and interruptible rates to remove the costs associated with any non-jurisdictional facilities. We will not require Kinder Morgan to remove these costs from negotiated rates for service on the Colorado Lateral because these rates were freely negotiated under the Commission's negotiated rate program.⁵

² See, e.g., *Southern Natural Gas Co.*, 82 FERC ¶ 61,249, at 61,995 (1998); *Trunkline Gas Co., LLC*, 122 FERC ¶ 61,050 (2008).

³ The non-jurisdictional Atmos extension lines will cost approximately \$6.2 million, which amounts to approximately 20 percent of the total estimated costs of the Colorado Lateral Project of \$29.7 million.

⁴ Cf. *ANR Pipeline Co.*, 101 FERC ¶ 61,376, at P 17 (2002) (pipeline provides LDC with \$5.5 million as contribution in aid of construction to build approximately 6 miles of 20-inch diameter pipe to connect the pipeline to a power plant but does not include cost in rate base because line is non-jurisdictional and pipeline ratepayers neither pay costs nor receive benefits from the line).

⁵ The Commission has stated that negotiated rates "could be a viable way of achieving flexible, efficient pricing when market-based rates are not appropriate." Further, the Commission has found that "the availability of a recourse service [under the negotiated rate program] would prevent pipelines from exercising market power by assuring that the customer can fall back to cost-based, traditional service if the pipeline unilaterally demands excessive prices or withholds service." *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,240,

(continued...)

The Commission orders:

PSCo's request for rehearing of the February 21, 2008 order in this proceeding is granted in part and denied in part as discussed in this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

order granting clarification, 74 FERC 61,194, order denying reh'g and clarification, 75 FERC ¶ 61,024, reh'g denied, 75 FERC ¶ 61,066 (1996), pet. for review denied, Burlington Resources Oil & Gas Co. v. FERC, Nos. 96-1160, et al., U.S. App. LEXIS 20697 (D.C. Cir. July 20, 1998). See also Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy, 104 FERC ¶ 61,134 (2003), order on reh'g and clarification, 114 FERC ¶ 61,042, order dismissing reh'g and denying clarification, 114 FERC ¶ 61,304 (2006).