129 FERC ¶ 61,167
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

High Island Offshore System, L.L.C. Docket No. RP10-71-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEET, SUBJECT TO REFUND AND CONDITION

(Issued November 20, 2009)

1. On October 23, 2009, High Island Offshore System, L.L.C. (HIOS) filed Ninth Revised Sheet No. 11 and supporting workpapers to implement an interim adjustment to its Company Use percentage pursuant to the fuel tracker mechanism set forth in section 28 of the General Terms and Conditions (GT&C) of HIOS' FERC Gas Tariff, Third Revised Volume No. 1. HIOS requests the proposed tariff sheet be accepted effective November 1, 2009. HIOS further requests any waivers necessary for the Commission to accept its filing. We grant waiver of the Commission's 30-day notice requirement and accept and suspend HIOS' Ninth Revised Sheet No. 11 to be effective November 1, 2009, subject to refund and conditions discussed below.

I. <u>Details of Filing</u>

2. Ninth Revised Sheet No. 11 sets forth the elements of HIOS' Company Use components and the total percentage for the prospective tracker period. The instant filing reflects a decrease from the current level in the total Company Use percentage of 0.01 percent, from 0.85 percent to 0.84 percent. The total Company Use percentage is composed of a 0.00 percent amount for Compressor Fuel, a 0.84 percent amount for Unaccounted For Gas (L&U), and a 0.00 percent amount for Company Use True Up.

3. On March 1, 2009, HIOS filed its annual fuel tracker reflecting calendar year 2008 activity in Docket No. RP09-419-000, pursuant to section 28 of the GT&C and implementing a total Company Use percentage of 0.85 percent.[1] Section 28.4 of the GT&C, which was incorporated into HIOS' FERC Gas Tariff as part of a settlement,[2]

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[1] HIOS' filing was accepted by an unpublished letter order dated March 26, 2009.

[2] *High Island Offshore System*, 117 FERC ¶ 61,163 (2006).

requires that HIOS make an interim adjustment to the Company Use percentage if the variance in actual Company Use from the posted Company Use percentage is greater than 15 percent for the period March through August of the current calendar year. HIOS states that it recently determined that its Company Use percentage exceeded the 15 percent threshold for the period from March 1, 2009 to August 31, 2009, which under the required interim adjustment methodology would result in a new Company Use percentage of 2.31 percent.

4. HIOS represents that the increased Company Use percentage was primarily the result of two factors: (1) the Company Use percentage implemented by HIOS' annual fuel tracker filing earlier in the year was understated due to Hurricane Ike's abnormal impact on 2008 activity, and (2) in August 2009, HIOS' three compressors were destroyed by a fire at the compressor station platform, and HIOS experienced abnormally high L&U during this period. HIOS further represents that these compressors have not been restored to service and therefore HIOS does not currently need to collect compressor fuel from its shippers.

5. Rather than implementing the interim adjustment of 2.31 percent as required by the tariff mechanism, HIOS proposes to mitigate the impact on shippers by eliminating compressor fuel collection from its Company Use on an interim basis and by basing L&U on a historical average of 36 months experience. HIOS asserts that the use of the 36 month average experience results in a proposed interim Company Use percentage of 0.84 percent. HIOS proposes to place the interim Company Use percentage into effect on November 1, 2009.

II. Notice, Interventions, and Comments

6. Notice of HIOS' filing was issued on October 27, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[3] Pursuant to Rule 214,[4] all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Chevron U.S.A. Inc., ExxonMobil Gas & Power Marketing Company, and Apache Corporation filed motions to intervene. BP America (BP) filed a motion to intervene and protest. On November 10, 2009, HIOS filed an answer to BP's protest. Rule 213(a)(2)[5] of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept

[3] 18 C.F.R. § 154.210 (2009).

[4] 18 C.F.R. § 385.214 (2009).

[5] 18 C.F.R. § 385.213(a)(2) (2009).

HIOS' answer because it has provided information that assisted us in our decision-making process.

7. In its protest, BP does not object to HIOS implementing a lower interim fuel rate or implementing a zero percent compressor fuel rate. However, BP argues that HIOS should not be allowed to treat gas lost as a result of the August 2009 compressor fire as L&U in its interim fuel rate calculations or next annual fuel rate filing. BP contends that the Commission has clearly established a policy disallowing pipelines from recovering extraordinary gas losses as L&U through their fuel tracker mechanisms.[6] BP further contends the Commission has instead held that extraordinary gas losses should be recovered through either insurance or the normal ratemaking process.[7] Therefore, BP requests that the Commission clarify that any lost gas associated with or caused by the August 2009 compressor fire cannot be included in the interim L&U rate or the L&U rate proposed in HIOS' next annual fuel rate filing.

8. BP also asserts that HIOS has provided only limited information regarding the gas lost as a result of the August 2009 compressor fire and that it is impossible for either shippers or the Commission to properly determine the amount of lost gas associated with or caused by the compressor fire. In addition, BP notes upon review of HIOS' 36-month actuals that HIOS reported L&U in 2008 as high as 3.69 percent and 10.81 percent and that these gas losses may be associated with Hurricane Ike. Therefore, BP requests that the Commission require HIOS to fully explain how much gas was lost due to the compressor station fire, including but not limited to gas consumed in the fire, gas vented or blown down, as well as any other gas lost, and how much gas was actual L&U lost through routine pipeline operations. BP further asserts that HIOS should be required to explain in all future fuel filings whether any of the lost gas reflected in HIOS' L&U calculations includes extraordinary gas losses, such as gas resulting from hurricanes, fires, and facility/equipment failure.

9. In its answer, HIOS states that BP's protest is based upon a mistaken assumption that as a result of the August 2009 compressor fire HIOS experienced an extraordinary loss of gas, but in fact, there were no significant volumes of gas actually lost during the fire, and therefore no such volumes are reflected in this tracker filing. HIOS represents that the safety-shut down equipment on the HIA-264 platform functioned properly and prevented the release of any significant, or at least measurable, quantities of gas after the fire erupted. HIOS states that although its filing reveals L&U experience of 4.61 percent in August 2009, which is higher than the average monthly experience of 0.84 percent over the last three years, to the best of its knowledge this abnormal experience was not attributable at all to the fire on HIA-264. HIOS states that a review of its daily physical

[6] *See, e.g., Columbia Gas Transmission, LLC,* 129 FERC ¶ 61,037, at P 31 (2009).

[7] *ANR Pipeline Co.,* 128 FERC ¶ 61,128, at P 19 (2009) (ANR Pipeline).

gas balance shows that on August 4, 2009, the day of the fire, L&U gas experience was 14,771 Dth, or approximately 5 percent of the L&U experience for the entire month. In response to BP's request to explain certain abnormal L&U quantities in 2008, HIOS states that these are lost and unaccounted-for quantities and the causes of the disappearances cannot be specifically determined. HIOS therefore contends that providing further information is unnecessary. Finally, HIOS argues that basing L&U on a historical 36 month average is particularly reasonable given that this estimated L&U amount will be trued up in the immediately following month.

III. Discussion

10. We accept HIOS' revised reimbursement percentages, subject to HIOS providing additional information supporting its L&U quantities.

11. The Commission has held that "fuel tracking mechanisms are appropriate for normal operating costs but are not appropriate for the recovery of gas losses outside the scope of normal pipeline operations."[8] Elaborating on this rule, the Commission has found that it is not reasonable for a pipeline to recover through its fuel tracking mechanism gas lost due to an unusual, non-recurring event, such as gas lost as a result of a compressor station fire.[9] In addition, the Commission has found that gas lost as a result of a hurricane is not part of a pipeline's normal operations and therefore should not be included in L&U quantities.[10] Such extraordinary losses are more appropriately recovered through a pipeline's insurance or the normal ratemaking process.[11] Therefore, any gas lost as a result of the August 2009 compressor station fire or Hurricane Ike should not be included in HIOS' L&U calculation.

12. The Commission is unable to make a determination from the information provided whether the significant increases in L&U in August 2009 and December 2008 are the result of unusual, non-recurring events or whether they are the type of losses expected as part of normal pipeline operations. Therefore, HIOS is directed to provide further detail clearly illustrating how the 294,168 Dth L&U for August 2009 and the 419,415 Dth L&U for December 2008 were calculated and to highlight any volumes that may have been lost as a result of events outside the scope of normal pipeline operations. In addition, if HIOS believes that all of the volumes stated for those months are properly classified as L&U, HIOS is directed to provide a clear explanation of why the L&U volumes increased

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[8] *Cheyenne Plains Gas Pipeline Co., LLC,* 123 FERC ¶ 61,220, at P 10 (2008).

[9] *Id*.

[10] *ANR Pipeline,* 128 FERC ¶ 61,128 at P 15.

[11] *Id.* at P 19.

significantly in those months and describe the procedures it is undertaking to minimize L&U volumes in the future.

13. In addition, HIOS is directed to provide a clear explanation as to how its 0.84 percent L&U percentage was calculated. In Attachment B, the Actual L&U percentage for each month is determined by dividing the Actual L&U by Net Receipts. However, dividing the 36 month total Actual L&U (2,670,627 Dth) by the total Net Receipts (400,552,526 Dth)[12] results in an Average L&U of 0.67 percent, not 0.84 percent. Therefore, we accept HIOS' proposed reimbursement percentages, subject to HIOS filing within 30 days of this order additional information to clarify the significant increase in L&U in December 2008 and August 2009 and to clarify the calculation of its proposed L&U rate.

IV. Suspension

14. Based upon a review of HIOS' interim fuel filing, the Commission finds that the proposed tariff sheet has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheet for filing and suspend its effectiveness for a minimal period to be effective November 1, 2009, subject to the conditions set forth in this order.

15. The Commission's policy regarding tariff filing suspensions is that such filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension). The Commission finds that circumstances exist here where HIOS is filing an interim fuel filing pursuant to an approved tariff mechanism. Therefore, the Commission will accept and suspend the proposed tariff sheet to be effective November 1, 2009, subject to refund and further orders of the Commission after HIOS provides additional information as discussed above.

[12] HIOS' filing lists total Net Receipts as 50,040,817 Dth (vs 400,552,526 Dth), which appears to be incorrect.

<u>The Commission orders</u>:

Ninth Revised Sheet No. 11 to its FERC Gas Tariff, Third Revised Volume No. is accepted and suspended to be effective November 1, 2009, subject to refund and further orders of the Commission after HIOS provides additional information as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.