

110 FERC ¶61,193
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 28, 2005

In Reply Refer To:
Kinder Morgan Interstate Gas Transmission
Docket No. RP05-162-000

Kinder Morgan Interstate Gas Transmission, L.L.C.
370 Van Gordon Street
P.O. Box 281304
Lakewood, CO 80228-8304

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

Reference: Modified Posting and Bidding Procedures and New Rollover Provisions

Ladies and Gentlemen:

1. On January 28, 2005, Kinder Morgan Interstate Gas Transmission, L.L.C., (Kinder Morgan) filed revised tariff sheets¹ to modify its posting and bidding provisions set forth in section 18 of its General Terms and Conditions (GT&C), and to add rollover provisions to its tariff. Kinder Morgan requests a March 1, 2005, effective date for the tariff sheets. Kinder Morgan's proposed tariff revisions generally conform to Commission policy and are consistent with provisions set forth in the tariffs of other pipelines.² Accordingly, we accept Kinder Morgan's proposed tariff revisions effective March 1, 2005, as proposed, subject to the two conditions discussed below. This acceptance benefits shippers by providing more flexibility and by clarifying Kinder Morgan's tariff.

¹ See Appendix.

² Kinder Morgan's proposal to require a shipper to execute a service agreement within 15 days of the date Kinder Morgan notifies it of no competing bids, should the original shipper want to pay the maximum rate, is similar to what the Commission accepted in *Southern Natural Gas Co.*, 108 FERC ¶ 61,328 (2004) (*Southern*). Further, Kinder Morgan's proposed rollover provisions are generally similar to the rollover provisions set forth in section 22 of Natural Gas Pipeline Company of America's GT&C.

2. Kinder Morgan proposes two specific changes to its posting and bidding procedures governing an existing long-term firm shipper's right of first refusal. First, it proposes to clarify in section 18.5 of its GT&C that it uses the net present value method to determine the value of competing bids received during the right of first refusal process. Kinder Morgan states that using the net present value is consistent with current Commission policy.

3. Second, Kinder Morgan proposes to revise the timeline set forth in section 18.6 governing the situation where no third party submits an acceptable bid. Currently, when a third party submits a competing bid for service, section 18.5 requires Kinder Morgan to notify the existing shipper within five business days of the best third party bid that the existing shipper must match. The existing shipper has 15 days to execute a service agreement, should it choose to match the offer. However, Kinder Morgan observes that in situations where no third party submits an acceptable bid for capacity during the right of first refusal process, the tariff provides no deadline for the existing shipper to execute a new service agreement should it intend to continue service. Kinder Morgan asserts that this prevents it from making a timely posting of the available capacity. Kinder Morgan therefore proposes to incorporate into section 18.6 language stipulating that when there are no acceptable third party bids for available capacity, Kinder Morgan will notify the existing shipper within five business days of the close of bidding. Upon such notice, the existing shipper would be required to notify Kinder Morgan within 15 days (or more if agreed upon) if it intends to exercise its option to continue receiving service at the maximum rate. Kinder Morgan contends this timeline would be consistent with its timeline when there is an acceptable third party bid, and is similar to what the Commission recently approved in *Southern*.

4. Kinder Morgan also proposes to add rollover provisions as section 18.7 of its GT&C. Specifically, Kinder Morgan's proposal provides that a firm shipper that has entered into a service agreement for a term of three years or longer will have a right to continue receiving service on a firm basis beyond the term of the existing agreement by rolling over the agreement for a term of three years or greater. Kinder Morgan proposes that a shipper's ability to roll over its agreement is conditioned on: (1) the shipper providing notice to Kinder Morgan by the earlier of the date provided in the shipper's contract or one year before expiration of the shipper's contract that it will roll over its capacity; and, (2) the shipper being creditworthy. Kinder Morgan includes in section 18.7(A) of its rollover provisions: "Any request for an increase in MDQ in total or at any primary point shall be treated as a request for new service, but only to the extent of the increase. Any notice hereunder specifying a decrease in MDQ in total or at any primary point shall not affect the existing Service Agreement during the remainder of its term." Kinder Morgan also proposes to provide a blank space in its *pro forma* service agreements for Rate Schedules FT, NNS, FSS, CMC-1, and CMC-2 for when Kinder Morgan and a shipper agree to a longer notice period than one year.

5. The Commission noticed Kinder Morgan's filing on February 1, 2005, allowing for protests to be filed as provided by 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 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. No party filed a protest or adverse comments. Midwest Energy, Inc., and Missouri Gas Energy (MGE) filed comments in support of Kinder Morgan's proposal. MGE also requests a clarification of Kinder Morgan's proposed rollover provisions, which we discuss below. Kinder Morgan filed a response to MGE's request for clarification. We accept Kinder Morgan's response since the information will assist the Commission in resolving issues in this proceeding.

6. The Commission accepts Kinder Morgan's proposal subject to two conditions. First, with regard to its rollover provisions, Kinder Morgan states in its transmittal that "[N]o discount or negotiated rates applicable to the existing agreement shall apply during the rollover term of an agreement amended pursuant to this rollover provision unless agreed to by KMITG." Kinder Morgan, however, does not incorporate this provision into its rollover tariff provisions. Accordingly, we direct Kinder Morgan to file revised tariff sheets within 15 days of the date this order issues incorporating this provision into its tariff.

7. Also, MGE requests clarification of Kinder Morgan's proposed section 18.7(c) of its GT&C. That section provides that "if Shipper and Transporter agree to an amended Service Agreement to rollover a Transportation Contract pursuant to this section 18.7, the Right of First Refusal under this section 18 shall not apply." MGE requests clarification that a shipper under an amended service agreement that resulted from a rollover of service agreement will have a regulatory right of first refusal if the amended agreement is at the maximum rate and may have a contractual right of first refusal if the amended service agreement is a negotiated service agreement containing a right of first refusal. In its response, Kinder Morgan states that it was not its intent in section 18.7(c) to negatively impact in any way a shipper's ability to utilize any applicable right of first refusal. It adds that, should the shipper secure a right of first refusal in an amended agreement that resulted from a rollover, the shipper will retain full rights to utilize that right of first refusal. Kinder Morgan adds that it is willing to file revised tariff sheets to resolve this issue. We agree that this should be clarified, and direct Kinder Morgan to file revised tariffs, within 15 days of the date this order issues, clarifying its right of first refusal for agreements that roll over.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.

Appendix

Kinder Morgan Interstate Gas Transmission, L.L.C.
Fourth Revised Volume No. 1-A

Tariff Sheets Accepted Effective March 1, 2005

First Revised Sheet No. 34
Second Revised Sheet No. 90
Second Revised Sheet No. 117
First Revised Sheet No. 169
First Revised Sheet No. 190

Kinder Morgan Interstate Gas Transmission, L.L.C.
Fourth Revised Volume No. 1-B

Tariff Sheets Accepted Effective March 1, 2005

Third Revised Sheet No. 2
Fourth Revised Sheet No. 37
First Revised Sheet No. 37A