

110 FERC ¶61,195
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Paiute Pipeline Company

Docket No. RP05-163-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS, SUBJECT TO
REFUND, AND ESTABLISHING HEARING PROCEEDINGS

(Issued February 28, 2005)

1. On January 28, 2005, Paiute Pipeline Company (Paiute) filed a general rate case pursuant to section 4 of the Natural Gas Act (NGA)¹ to increase the rates for all its jurisdictional transportation services. This filing also satisfies the requirements of an agreement approved on December 22, 2004, which agreement required that Paiute file to decrease the rates for liquefied natural gas (LNG) storage service.² In addition, Paiute proposes a new interruptible storage service from its LNG storage facility and a new LNG storage capacity release mechanism. The Commission will accept and suspend the tendered tariff sheets subject to condition and the outcome of a hearing, as discussed below.³ The decreased LNG storage rates are to be effective March 1, 2005, and the remaining rates and provisions are to be effective August 1, 2005. This benefits the public by allowing timely effectiveness of the agreed-upon reduction in LNG storage rates, and a full suspension of the remaining tariff proposals, which have not yet been shown to be just and reasonable.

¹ 15 U.S.C. § 717c (2000).

² *Paiute Pipeline Co.*, 109 FERC ¶ 61,333 (2004) (December Order). Paiute states that, among other things, the December Order approved a settlement offer sponsored by Paiute and six other parties, including all of Paiute's LNG storage service customers (LNG Settlement), wherein Paiute committed to file a general rate change application on January 28, 2005, and further committed that, if Paiute were to propose a reduction in its LNG storage service rates, Paiute would seek permission to implement such reduced rates effective March 1, 2005. Transmittal letter at 7.

³ See Appendix.

Background

2. Paiute's currently effective tariff rates were established as the result of a general NGA section 4 rate settlement that was approved by the Commission on October 21, 1997.⁴ Subsequently, on December 22, 2004, the Commission issued an order authorizing Paiute to acquire and operate certain LNG storage facilities and approximately 61 miles of associated loop pipeline that Paiute had formerly leased for many years and operated as an integral part of its transmission system.⁵ Among other things, in granting Paiute's requested authorization, the December Order approved a settlement under which Paiute committed to file a general rate change application by January 28, 2005. Paiute also committed to request a rate reduction for the currently effective LNG storage service rates to be effective March 1, 2005. Finally, the December Order required Paiute to render service over the newly acquired facilities pursuant to the Commission's open-access regulations of Part 284 of the Commission's regulations,⁶ and to propose such Part 284 service in its January 28, 2005 general section 4 rate case filing.⁷

3. In this general rate case filing, Paiute proposes to increase its jurisdictional cost of service by \$5,160,794, resulting in a total of \$33,360,794. Paiute proposes to increase its firm and interruptible transportation service rates. Paiute also proposes a \$5,160,794 increase in its jurisdictional cost of service, which results in a proposed revenue requirement of just over \$33 million. The cost of service is derived from a twelve-month base period ending October 31, 2004, as adjusted for known and measurable changes during the succeeding nine months ending July 31, 2005. The overall cost of service includes \$24.6 million in total operation and maintenance expenses, consisting of, among other things, depreciation and amortization, administrative and general expenses, and income and other taxes. The cost of service also includes an overall after-tax return of 10.24 percent applied to a rate base of nearly \$86 million. The proposed after-tax return includes an overall cost of debt of 7.58 percent and a return on common equity of 13.49 percent, based on a hypothetical capital structure of 55 percent debt and 45 percent equity. Among the other changes in its cost of service, Paiute proposes to increase the current depreciation rate for its main pipelines from 1.8 percent to 3.67 percent. Paiute has developed the proposed transportation and storage rates based upon projected throughput of 36,555,424 Dth.

⁴ *Paiute Pipeline Co.*, 81 FERC ¶ 61,077 (1997).

⁵ December Order at P 24.

⁶ 18 C.F.R. Part 284 (2004).

⁷ December Order at P 34.

4. In addition, Paiute states that, in accord with its obligations under the December Order, it proposes to decrease its currently effective rates for firm LNG storage service from \$0.3424 to \$0.2643 per dekatherm. The December Order, consistent with the Commission's open-access policy for transportation and storage services, required Paiute to provide service, in this case LNG storage, pursuant to Part 284 of the Commission's regulations. As a result, Paiute states that it proposes several modifications to its firm LNG storage service to accommodate the requirements of the December Order, including a capacity release provision and a revenue crediting provision.

5. Paiute proposes that its interruptible storage service be available to shippers on a first-come, first-served basis for the liquefaction, storage, and gasification of natural gas. Any shipper taking interruptible storage service must gasify and withdraw from storage all volumes held in storage prior to April 1 of each year. In addition, Paiute proposes that if it determines that storage capacity being utilized under the interruptible storage service is needed to meet Paiute's firm obligations under its firm storage service rate schedule, then Paiute shall require shippers to gasify and withdraw all volumes held in storage under the interruptible storage service within seven days of notification. According to Paiute, the proposed interruptible storage service was a required part of the Commission's acceptance of the settlement agreement in the December Order. Paiute requests that its proposed LNG storage service rates become effective March 1, 2005, after a nominal suspension, even if the Commission determines to suspend Paiute's newly proposed transmission service rates for a longer period.

6. Paiute states that it will require several additional months to modify its gas scheduling and capacity release programs to accommodate the implementation of the open-access storage services as provided in the proposed tariff sheets. Accordingly, Paiute requests that the Commission accept the tariff sheets for filing and suspend the effectiveness of the sheets for five months, in order that Paiute can complete the necessary system enhancements.

Public Notice, Interventions, and Protests

7. Public notice of Paiute's filing was issued on February 1, 2005. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). 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 interventions at this stage of the proceeding will not disrupt this proceeding or place additional burden on existing parties.

8. Sierra Pacific Power Company (Sierra Pacific), the Nevada Attorney General, Bureau of Consumer Protection (Nevada AG), and the Northern Nevada Industrial Gas Users (Nevada Industrials) filed timely motions to intervene and protest (collectively,

Protestors).⁸ Sierra Pacific requests that the Commission make effective March 1, 2005, subject to refund and without refund floor, Paiute's proposed rate decrease to the LNG firm storage service; requests the maximum five-month suspension of Paiute's proposed rate increases for firm and interruptible transportation services; and concurs with Paiute's request for the maximum five-month suspension of all tariff sheets on terms for LNG services, subject to refund and an evidentiary hearing.

9. Protestors state that rate issues such as return on equity, depreciation rates for the transmission lines, forecast operation and maintenance expenses, and allocation of costs may be inappropriate and therefore should be examined in hearing proceedings. Protestors contend that the rates for firm and interruptible transportation be suspended for the maximum five-month period. Nevada Industrials, among other things, state that such examination is required to ensure the removal of any costs for facilities not in service by the end of the adjustment period.

Discussion

10. As set forth above, Paiute's instant filing is comprised of a general rate increase for its transportation services, as well as a decrease in its firm LNG storage service rates that Paiute agreed to as a part of its certification authorization. In addition, Paiute filed to propose new services to comply with the December Order's open access requirements of Part 284 (18 C.F.R. Part 284); namely, a new interruptible LNG storage service, the ability to discount rates, and releases of firm capacity entitlements.

11. Protestors to the instant filing have raised numerous issues with Paiute's proposals. The Commission finds that the filing raises general NGA section 4 rate case issues and issues related to the proposed new services and provisions to institute open-access services that must be examined at hearing. Accordingly, except as related to Paiute's proposed decreases of firm LNG storage service pursuant to the Commission's approval of the LNG Settlement in the December Order, the Commission accepts Paiute's tariff sheets and suspends them subject to refund and the outcome of a hearing, to be effective August 1, 2005.

12. Paiute has filed Thirteenth Revised Sheet No. 10 reflecting a decrease in its firm LNG storage service pursuant to the Commission's approval of the LNG Settlement in the December Order. Paiute states that it has agreed to propose that such a decrease be effective March 1, 2005, were Paiute to propose a reduction in its LNG storage service rates. Accordingly, the Commission will accept the decreased rate reflected on this tariff sheet to be effective March 1, 2005, subject to refund and the outcome of the hearing

⁸ The Nevada Industrials include various entities including casinos and hotels, manufacturing and machining operators, and hospitals.

proceedings instituted herein. However, the Commission notes that all the proposed rates in this proceeding are contained on this one tariff sheet; namely, Thirteenth Revised Sheet No. 10. In order to allow the decreased rates for Firm Storage Service to become effective March 1, 2005, we are directing Paiute to file a tariff sheet separately identifying the Firm Storage Service rate, and the effective date granted by this order of March 1, 2005.

13. Paiute requests that, if this proceeding is to be set for hearing, the Commission state in the suspension order that the rates placed into effect shall reflect any rate adjustments or surcharges (*e.g.*, Annual Charge Adjustment Surcharge) that become effective pursuant to Paiute's FERC Gas Tariff or any other Commission authorization issued prior to the effectiveness of the instant proposal. The Commission grants this request.

Suspension

14. Based on a review of the filing, the Commission finds that the proposed tariff sheets have 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 sheets for filing, and suspend their effectiveness for the period set forth below, subject to the conditions in this order.

15. The Commission's policy regarding rates suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filings may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.⁹ 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.¹⁰ The rate reduction proposed by Paiute as a condition of the settlement discussed in the December Order constitutes such a circumstance, where suspension for the maximum period would deprive shippers of a proposed rate decrease from existing rates. Accordingly, we will suspend the effectiveness of the rates for the firm LNG storage service and allow them to become effective March 1, 2005, subject to refund and to the outcome of the hearing in this proceeding. However, we will suspend the effectiveness of the remaining rates and all other proposed changes, for five months, to become effective August 1, 2005, subject to refund and to the outcome of the hearing.

⁹ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980).

¹⁰ See *Valley Gas Transmission Inc.*, 12 FERC ¶ 61,197 (1980).

The Commission orders:

(A) The tariff sheets as listed in the Appendix are accepted and suspended to be effective August 1, 2005, or March 1, 2005, subject to refund and to the outcome of the hearing, as discussed in the body of this order and the ordering paragraphs below.

(B) Within 15 days of the issuance of this order, Paiute is directed to file revised tariff sheets to replace its proposed Thirteenth Revised Sheet No. 10 so that the rates for LNG firm storage service may be separately stated to take effect March 1, 2005, as discussed in the body of this order.

(C) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP05-163-000 concerning Paiute's filing.

(D) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, must convene a prehearing conference in this proceeding to be held within 20 days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference is for the purpose of clarification of the positions of the participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The presiding judge is authorized to conduct further proceedings in accordance with this order and the Commission's rules of practice and procedure.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

Appendix

Paiute Pipeline Company
FERC Gas Tariff
Second Revised Volume No. 1-A
Accepted and Suspended, Effective August 1, 2005

Third Revised Sheet No. 1
Thirteenth Revised Sheet No. 10 *
Second Revised Sheet No. 30
Second Revised Sheet No. 31
Second Revised Sheet No. 32
First Revised Sheet No. 33
First Revised Sheet No. 34
Original Sheet No. 35
Original Sheet No. 36
Original Sheet No. 37
Original Sheet No. 38
Original Sheet No. 39
Original Sheet No. 40
Sheet Nos. 41 through 49
Fourth Revised Sheet No. 104A
Seventh Revised sheet No. 111
Second Revised sheet No. 141
Second Revised Sheet No. 142
First Revised Sheet No. 143

Accepted and Suspended, Effective March 1, 2005

Thirteenth Revised Sheet No. 10 *
(portion reflecting reduced LNG firm storage service rate)

* To be re-filed to implement the proposed decrease in LNG storage service rates and to replace its proposed Thirteenth Revised Sheet No. 10 so that the rates for LNG firm storage service may be separately stated to take effect March 1, 2005.