

126 FERC ¶ 61,172
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Kinder Morgan Louisiana Pipeline, LLC

Docket No. CP06-449-003

ORDER AMENDING CERTIFICATE

(Issued February 25, 2009)

1. On June 22, 2007, the Commission issued an order granting Kinder Morgan Louisiana Pipeline, LLC, (KMPL) certificate authorization under section 7(c) of the Natural Gas Act (NGA) to construct and operate its Louisiana Pipeline Project.¹ The project includes natural gas facilities that originate in Cameron Parish, Louisiana, and terminate in Evangeline Parish, Louisiana. By letter order issued August 14, 2008, KMPL's was authorized to revise the initial rates to reflect updated construction cost projections.² On December 30, 2008, KMPL filed an application to further revise its cost-based recourse rates to reflect increases in the actual and projected costs of construction. This order grants the requested authorization, as discussed below.

Background

2. KMPL's Louisiana Pipeline Project consists of: (1) approximately 132 miles of 42-inch pipeline from the Sabine LNG Terminal in Cameron Parish, Louisiana, to an interconnect with Columbia Gulf Transmission Company, in Evangeline Parish, Louisiana (Leg 1); (2) approximately one mile of 36-inch pipeline extending from the Sabine LNG Terminal to an interconnect with Natural Gas Pipeline Company of America, LLC, located just north of the LNG terminal (Leg 2); and (3) approximately 2.3

¹*Kinder Morgan Louisiana Pipeline, LLC*, 119 FERC ¶ 61,309 (2007) (June 22, 2007 Order). See also, *Kinder Morgan Louisiana Pipeline, LLC*, 118 FERC ¶ 61,211 (2007) (order setting forth preliminary determination on non-environmental issues) (March 15, 2007 preliminary determination).

²*Kinder Morgan Louisiana Pipeline, LLC*, Docket Nos. CP06-449-002 and CP06-451-002 (August 14, 2008 letter order).

miles of 24-inch pipeline extending from Leg 1 to an interconnect with Florida Gas Transmission Company, in Arcadia Parish, Louisiana. KMLP designed the project to have a firm peak day capacity of not less than 2,130,000 Dth on Leg 1 and not less than 1,265,000 Dth on Leg 2, for a total firm capacity of not less than 3,395,000 Dth of natural gas. KMLP expects to place Leg 2 of its Louisiana Pipeline Project in service on March 1, 2009.³

Proposal

3. KMLP now projects the facility costs for the Louisiana Pipeline Project to be \$983,999,090, an increase of \$390,387,174 from the costs approved in the August 14, 2008 letter order. According to KMLP, the most significant increase was \$240.9 million for labor costs. KMLP states the primary reasons for this increase were: (1) an unexpected increase in labor required in the upland areas of the project; (2) project delays and standby time caused by two hurricanes and a tropical storm (resulting in 31 days of interrupted construction); and (3) construction disruptions caused by project relocation and right-of-way issues. KMLP also contends that labor costs were higher than anticipated due to certain pipeline sections that failed in-place hydrostatic tests, requiring additional inspection and monitoring.

4. According to KMLP, \$89.7 million of the cost increase resulted from increased material costs primarily due to: (1) certain sales taxes on materials that KMLP did not include in its previous cost estimates; (2) the need to incorporate a thicker-than-anticipated concrete coating to the pipeline segments located in marshy areas; and, (3) higher-than-anticipated costs for equipment and materials at its twelve interconnects. An additional \$17.8 million in projected cost increases resulted from higher-than-anticipated engineering and inspection costs due to hurricane effects. KMLP also updated projected costs for right-of-way land, right-of-way damages, surveys, environmental factors, line pack, permit fees, legal services, overhead, and AFUDC.

5. In its amendment application, KMLP includes revised Exhibits K and P to detail its projected cost increases, overall cost of service, and rate derivation. KMLP's revised cost of service for the Louisiana Pipeline Project is \$187,879,183. KMLP states it has not proposed any changes to the rate design billing determinants, return, or other cost of service factors underlying the calculated initial rates included in the June 22, 2007 Order.

³ To facilitate its anticipated March 1, 2009 in-service date for Leg 2, KMLP filed tariff sheets and negotiated rate agreements on January 23, 2009, in Docket No. RP09-257-000, to comply with Ordering Paragraph (K) of the Commission's June 22, 2007 Order. This filing is pending Commission action.

6. KMLP sets forth its proposed recourse rates on pro forma tariff sheets. According to KMLP, the increased construction costs result in a Rate Schedule FTS reservation rate of \$4.6000 per Dth, an increase of \$1.8100 per Dth from its currently approved reservation rate of \$2.7900 per Dth. The cost increases result in a Rate Schedule ITS commodity rate of \$0.1512 per Dth, and increase of \$0.0595 per Dth from its currently approved ITS commodity rate of \$0.0917 per Dth.

7. KMLP states that its request to revise its initial incremental cost-based recourse rates is consistent with the requirement that revisions prior to placing facilities in-service be made pursuant to the filing of a certificate amendment.⁴ KMLP states that amending its certificate authorization is necessary to insure that KMLP's recourse tariff rates reflect current cost estimates at the time initial services commence. KMLP also states that its existing firm shippers on the Louisiana Pipeline Project will be paying negotiated rates under the Commission's policy statement on alternative rates,⁵ and the revised maximum cost-based recourse rates will not impact the negotiated rate shippers during the term of their contracts.

Notice

8. Notice of KMLP's application was issued on January 7, 2009, and published in the *Federal Register* on January 13, 2009 (74 Fed. Reg. 1678). No comments, interventions, or protests were filed.⁶

⁴ Citing, among others, *Gulf Crossing Pipeline Co. LLC*, 123 FERC ¶ 61,100, at P 49 (2008), *Cheniere Creole Trail Pipeline, L.P. and Cheniere Sabine Pass Pipeline, L.P.*, 121 FERC ¶ 61,071, at P 24 (2007).

⁵ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 at 61,241 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied, Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d (D.C. Cir. 1998); *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006). See also, *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011 (1996).

⁶ Atmos Energy Corporation filed an intervention which it subsequently withdrew.

Discussion

9. Because revising the initial incremental cost-based recourse rates requires amending the authorization issued in these dockets, KMLP's request is subject to the jurisdiction of the Commission and the requirements of NGA section 7(c).

10. The June 22, 2007 Order affirmed the analysis of KLMP's proposal in the March 15, 2007 preliminary determination in this proceeding⁷ in light of the Commission's Certificate Policy Statement⁸ and found that the proposal was in the public convenience and necessity.⁹ Specifically, the June 22, 2007 Order affirmed the finding that, since KLMP is a new company with no existing customers, there would be no subsidization.¹⁰ The June 22, 2007 Order also affirmed the findings that there were no identified adverse effects on existing pipelines or their customers, landowners, or communities.¹¹

11. KLMP proposes to revise its initial firm and interruptible incremental transportation rates due to the rising costs associated with constructing the Louisiana Pipeline Project. KLMP has demonstrated through its revised cost exhibits and worksheets that the cost for constructing these facilities has risen due to interruptions and delays caused by two hurricanes and a tropical storm; project relocation and right-of-way issues; the increased costs of material, labor, right-of-way acquisitions and damages, surveys, environmental factors, fees, overhead and AFUDC associated with pipeline construction; and engineering-related costs. No party has protested the proposed level of the increase.

12. The June 22, 2007 Order authorized KLMP's proposals based on the findings discussed above. KLMP's proposals to revise the firm and interruptible incremental transportation rates due to an increase in the cost to construct the Louisiana Pipeline Project do not change the basis for any of our findings in the June 22, 2007 Order. Thus,

⁷ *Natural Gas Pipeline Co. of America*, 118 FERC ¶ 61,211 (2007) (*Natural*).

⁸ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *order on clarification*, 90 FERC ¶ 61,128; *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

⁹ June 22, 2007 Order at P 14-17 affirming the March 15, 2007 preliminary determination; see *Natural Gas Pipeline Co. of America*, 118 FERC ¶ 61,211, at P 36 (2007).

¹⁰ June 22, 2007 Order at P 14.

¹¹ *Id.*

consistent with the public convenience and necessity, we will amend the June 22, 2007 Order, as amended, to authorize KLMP to revise the incremental firm and interruptible transportation rates for the project.

The Commission orders:

KMLP's certificate of public convenience and necessity issued in this proceeding, as amended, is further amended to authorize the revised initial cost-based recourse rates, subject to the qualifications and modifications required by the June 22, 2007 Order and March 15, 2007 preliminary determination as amended.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.