

127 FERC ¶ 61,097
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

High Island Offshore System, L.L.C.

Docket No. RP09-487-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO
REFUND AND CONDITIONS AND ESTABLISHING HEARING PROCEDURES

(Issued April 30, 2009)

1. On March 31, 2009, High Island Offshore System, L.L.C. (HIOS) filed revised tariff sheets comprising a Natural Gas Act (NGA) general section 4 rate case.¹ HIOS proposes an effective date of May 1, 2009 for its proposed tariff sheets.² As discussed below, the Commission will accept and suspend the instant tariff sheets to be effective October 1, 2009, subject to conditions and the outcome of a hearing established in this proceeding.

Details of the Instant Filing

2. HIOS states that the instant filing is necessary because of cost increases and reductions in throughput that have occurred on its system since implementation of the settlement rates from the last rate case in Docket No. RP06-540. HIOS states that these costs include damage to its facilities as a result of Hurricane Ike in September 2008, as

¹ See Appendix.

² HIOS states that if the Commission does not suspend the effectiveness of the proposed rates for the maximum statutory period of five months, HIOS will not seek to move the proposed rates into effect prior to June 1, 2009. HIOS states that this is consistent with the moratorium it agreed to in the settlement of its last general NGA section 4 rate case in Docket No. RP06-540-000. *High Island Offshore System, L.L.C.*, 120 FERC ¶ 61,150 (2007).

well as additional unanticipated increases in insurance premiums. HIOS asserts that its throughput has continued to decline below those levels reflected in the prior rate proceeding and that its current rates are no longer sufficient to enable HIOS to recover its overall cost of service. Therefore, HIOS proposes the instant rate increase for existing services, and changes in certain terms and conditions of service.

3. Specifically, HIOS states that its proposed rates are designed to recover its overall cost of service, and have been developed using a base period consisting of the twelve months ended December 31, 2008, adjusted for known and measurable changes projected to occur through the end of the adjustment period on September 30, 2009. HIOS asserts that the proposed rates and charges will recover a total system annual revenue requirement of approximately \$58.0 million annually, which is \$37.1 million higher than the revenues produced by the currently effective rates. In its proposal, HIOS also estimates that design throughput will fall to 217,347 Dth per day, 180,244 Dth per day below the design level of 397,591 Dth per day submitted in the last rate case.

4. HIOS states that its proposed overall rate of return is based on a hypothetical capital structure of 40 percent debt and 60 percent common equity. HIOS states that the proposed revenue requirement reflects an overall proposed rate of return of 12.50 percent with a return on common equity (ROE) of 15.50 percent. HIOS states that this ROE is derived from a range of returns of comparable entities in a proxy group developed consistent with Commission policy.

5. HIOS also proposes to refunctionalize, for rate design purposes only, certain of its transmission facilities as gathering. HIOS states that the Long Haul and Short Haul rates that it proposes to change in the instant filing will reflect components for those transportation services that use facilities functionalized as gathering and for those transportation services that use transmission facilities.³

³ On March 31, 2009 HIOS submitted a petition for a declaratory order in Docket No. CP09-91-000. In its Petition, HIOS requested that the Commission find that the facilities proposed to be refunctionalized as gathering for rate purposes do in fact function as gathering facilities. Specifically, HIOS requested a finding that all HIOS facilities located at and upstream of High Island Area Block A-264 are, in their entirety, gathering facilities and not subject to the Commission's jurisdiction under Section 1(b) of the NGA. HIOS also requested that the Commission issue an order by no later than September 30, 2009, to coincide with the anticipated end of the suspension period in the instant rate proceeding in order to provide certainty regarding the function of the subject facilities for purposes of the rate proceeding.

6. In addition, HIOS states that concurrent with the date of this application, HIOS has acquired the non-jurisdictional deepwater facilities known as the East Breaks Gathering System.⁴ HIOS states that the gathering component of the proposed Long Haul rate will include the costs of both those pre-existing HIOS facilities that it proposes to refunctionalize as gathering, and the former East Breaks facilities, which are now integrated into a new and expanded gathering function.

7. HIOS states that it proposes to retain its existing Long Haul and Short Haul rate design and billing methodology so that all volumes received at or upstream of High Island Area Block A-264 (HIA-264) will pay the Long Haul rate and all volumes received downstream of HIA-264 will pay the Short Haul rate. Therefore, HIOS maintains that, in essence, the Long Haul rate will include the gathering and transmission rate components and the Short Haul rate will include the transmission component only. HIOS states that in order to minimize the rate impact on its shippers, HIOS proposes to revise its definitions of Long Haul Volumes and Short Haul Volumes to reflect the addition of these separately stated rate components. HIOS asserts that for those shippers that desire to receive service on HIOS using gathering functionalized facilities only, HIOS will provide a credit to such shippers equal to the Short Haul rate, thereby assuring that shippers only pay for those services that they choose consistent with Commission policy.

Public Notice, Interventions, and Protests

8. Public notice of the filing was issued on April 2, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2008)). Pursuant to Rule 214, (18 C.F.R. § 385.214 (2008)) all timely 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 the proceeding or place additional burdens on existing parties.

9. Indicated Shippers;⁵ ExxonMobil Gas & Power Marketing Company, a Division of Exxon Mobil Corporation (ExxonMobil); LLOG Exploration Offshore, Inc. (LLOG) and Arena Energy, LLC (Arena) filed protests.

⁴ Concurrently, HIOS has submitted a request in Docket No. RP09-492-000 that it be permitted to use its currently effective rates on an interim basis for services that use the East Breaks system, pending the effectiveness of the rates proposed in the instant proceeding.

⁵ Indicated Shippers consist of Apache Corporation, Chevron U.S.A. Inc., Badger Oil Corporation and Mariner Energy, Inc.

10. Indicated Shippers assert that HIOS' significant increase in its rates and all cost of service components, as well as the cost allocation between the Short Haul and Long Haul rates and the discount adjustments to throughput must be thoroughly examined. Indicated Shippers also argues that the proposed ROE of 15.5 percent was derived using a cash flow analysis that does not comply with the Commission's policy statement on gas pipeline proxy groups.⁶ Indicated Shippers also protests that the proposed hypothetical capital structure, is skewed too heavily towards equity financing.

11. Indicated Shippers also assert that HIOS' proposed rate design changes are premised on the success of its request to refunctionalize certain facilities from transmission to gathering. The Indicated Shippers state that the proceeding to determine this functionalization has not been completed and that the proposed rate design changes are completely speculative at this point. The Indicated Shippers, Arena and LLOG assert that these changes should be rejected or, at a minimum, the Commission must condition any suspension order on the outcome of the Petition for Declaratory Order filed by HIOS in Docket No. CP09-91-000. Indicated Shippers request the Commission require HIOS to file alternative rates that do not reflect the proposed refunctionalization.

12. ExxonMobil states that the filing raises a number of issues including operation and maintenance expenses, return, billing determinants, acquisition of the East Banks system, the proposed refunctionalization of significant facilities, depreciation and negative salvage. LLOG and Arena state that the three-fold increase from HIOS' existing rates appears to be wholly unsupported. All protestors request that the Commission establish an evidentiary hearing for all issues raised by the rate case filing and suspend the effectiveness of the rate case filing for the maximum allowable period, subject to refund.

Discussion

13. HIOS' filing raises many typical rate case issues that warrant further investigation. Accordingly, the Commission will accept the proposed tariff sheets and suspend their effectiveness for the maximum period subject to refund and conditions and the outcome of a hearing. The hearing established in this proceeding will explore the issues set forth by the instant filing and the protests including, but not limited to, HIOS' proposed rate and cost of service increases, its proposed allocation of costs, including between its proposed Short Haul and Long Haul services, and its proposed throughput. Furthermore, HIOS' proposed ROE of 15.5 percent and its proposed capital structure must be fully examined at hearing.

⁶ Indicated Shipper's Protest at 4, citing, *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 123 FERC ¶ 61,048 (2008).

14. In addition, HIOS has based certain rate design changes on a refunctionalization of facilities from the transmission function to the gathering function. That proposal appears to be dependent on the outcome of its Petition for Declaratory Order filed by HIOS in Docket No. CP09-91-000 where issues related to such refunctionalization are under consideration. Accordingly, the Commission also conditions its acceptance of the instant tariff sheets on the outcome of the Petition for Declaratory Order in Docket No. CP09-91-000. Given this action, the Commission does not find it necessary to require HIOS to file alternative rates that do not reflect the proposed refunctionalization.

Suspension

15. 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 and suspend HIOS' revised tariff sheets shown in the Appendix, to be effective October 1, 2009, subject to refund and the outcome of the hearing ordered herein.

16. The Commission's policy regarding suspensions is that tariff 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 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) (one-day suspension). Such circumstances do not exist here. Therefore, the Commission will accept and suspend the proposed tariff sheets in the Appendix to be effective October 1, 2009, subject to refund, the conditions of this order and the outcome of a hearing in this proceeding.

The Commission orders:

(A) The proposed tariff sheets listed in the Appendix are accepted and suspended to be effective October 1, 2009, subject to refund and the outcome of the hearing established in this order.

(B) The proposed tariff sheets are accepted subject to the outcome of the proceeding in Docket No. CP09-91-000, as discussed in the body of this order.

(C) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, 9 and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held in the captioned docket concerning the lawfulness of HIOS' proposed rates.

(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, shall convene a prehearing conference in this proceeding in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and consideration by the presiding judge of any procedural issues and discovery dates necessary for the ensuing hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix
List of Proposed Tariff Sheets

Accepted and Suspended to be effective October 1, 2009

High Island Offshore System. L.L.C.
Third Revised Volume No. 1

Third Revised Sheet No. 9
Eighth Revised Sheet No. 10
Fourth Revised Sheet No. 15
Fifth Revised Sheet No. 16
Second Revised Sheet No. 20
Fifth Revised Sheet No. 28
Third Revised Sheet No. 29
Fifth Revised Sheet No. 31
First Revised Sheet No. 38
Third Revised Sheet No. 54
Fourth Revised Sheet No. 55
First Revised Sheet No. 58
Third Revised Sheet No. 67
Sixth Revised Sheet No. 69
Fourth Revised Sheet No. 89
Fifth Revised Sheet No. 124
Third Revised Sheet No. 144
Second Revised Sheet No. 149
Second Revised Sheet No. 33

Sixth Revised Sheet No. 34
Third Revised Sheet No. 45
Fourth Revised Sheet No. 150
Fifth Revised Sheet No. 151
Second Revised Sheet No. 152
Second Revised Sheet No. 153
Second Revised Sheet No. 154
Second Revised Sheet No. 155
Second Revised Sheet No. 156
Fifth Revised Sheet No. 178
Second Revised Sheet No. 185
First Revised Sheet No. 189
First Revised Sheet No. 190
First Revised Sheet No. 193
Fourth Revised Sheet No. 196
First Revised Sheet No. 197
Second Revised Sheet No. 198
Second Revised Sheet No. 199
Second Revised Sheet No. 200