

140 FERC ¶ 61,259
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

High Point Gas Transmission, LLC

Docket Nos. RP12-945-001

ORDER ACCEPTING TARIFF RECORDS SUBJECT TO FURTHER REVIEW

(Issued September 28, 2012)

1. On August 14 and 16, 2012,¹ High Point Gas Transmission, LLC (High Point) filed a baseline tariff pursuant to the Commission's June 21, 2012 order.² The June 21 Order authorized High Point to acquire, own, and operate the Southern Natural Gas Company, LLC's (Southern) pipeline system south of the Toca Compressor Station (South of Toca Facilities). High Point requests that the tariff records be made effective October 1, 2012 commensurate with the planned date that High Point will become the operator of the facilities.³ As discussed below, the Commission accepts the tariff records subject to further order of the Commission, to be effective on the latter of October 1, 2012 or the date on which High Point places the South of Toca Facilities into service.

¹ High Point submitted its compliance filing on August 14, 2012, in Docket No. RP12-945-000. High Point submitted revised tariff records in Docket No. RP12-945-001 which divided the tariff into individual tariff record sections, as required by 18 C.F.R. §154.102(b) (2012).

² *Southern Natural Gas Co., L.L.C.*, 139 FERC ¶ 61,237 (2012) (June 21 Order).

³ High Point Gas Transmission, LLC, FERC NGA Gas Tariff, FERC Gas Tariff, Volume No. 1

Background

2. High Point is a newly-formed limited liability company.⁴ On October 13, 2011, High Point filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)⁵ and Parts 157 and 284 of the Commission's regulations⁶ requesting certificate authorization to acquire and operate the South of Toca Facilities as jurisdictional transportation facilities.⁷ High Point proposed to provide transportation and pooling services on the South of Toca Facilities. Specifically, High Point proposed to offer: (1) firm transportation service under Rate Schedule FTS; (2) interruptible transportation service under Rate Schedule ITS; (3) park and loan service on an interruptible basis under Rate Schedule PAL; (4) pooling service for the aggregation of gas supply under Rate Schedule PS; and (5) title transfer service under Rate Schedule TTS.

3. The June 21 Order authorized Southern to abandon by sale the east leg of its pipeline system south of the Toca Compressor Station. Concurrently, High Point was authorized to acquire, own, and operate the South of Toca Facilities as a NGA jurisdictional transportation service provider. High Point was authorized to provide transportation, park and loan, and pooling services.

4. The June 21 Order found that portions of the South of Toca Facilities provide non-jurisdictional natural gas gathering service and that some portion of the Facilities had not been used in the last year.⁸ The June 21 Order required High Point to refunctionalize

⁴ High Point is owned by High Point Energy, LLC, a limited liability company formed and organized under the laws of Texas, and ArcLight Capital Partners, LLC, a limited liability company formed and organized under the laws of Delaware. High Point Energy, LLC, is a midstream energy company that owns and operates non-jurisdictional natural gas gathering pipelines through its wholly-owned subsidiary High Point Gas Gathering, LLC (High Point Gathering) and a natural gas liquids transmission pipeline through its wholly-owned subsidiary Dry Trails Midstream Energy.

⁵ 15 U.S.C. § 717f(c) (2006).

⁶ 18 C.F.R. Parts 157 and 284 (2012).

⁷ Southern's South of Toca Facilities are located on the East Leg of Southern's system upstream of the Toca Compressor Station in Plaquemines and St. Bernard Parishes, Louisiana, and the offshore Louisiana areas of Mississippi Canyon, West Delta, Main Pass, South Pass, Viosca Knoll, and Breton Sound

⁸ June 21 Order, 139 FERC ¶ 61,237 at P 76-84.

several portions of the facilities found to be either gathering or not in use for the prior year. In the instant proceeding High Point proposes to remove the gathering and facilities not in use from its initial transportation rates, and proposes various tariff revisions in compliance with the June 21 Order.

5. Further, the June 21 Order required High Point to make tariff revisions to: (1) provide a maximum and minimum rate for the Hurricane Surcharge; (2) remove language stating that the Hurricane Surcharge is not discountable; (3) provide waiver of shippers' obligations on a not unduly discriminatory basis; (4) develop a penalty revenue crediting mechanism; (5) identify the penalty revenues which will be subject to crediting; (6) conform its reservation charge crediting provision to Commission Policy; (7) revise its service priorities for nominations and scheduling of transportation capacity such that all firm service is of equal priority; (8) provide a cash-out provision that includes allowances for netting and trading of imbalances, cash-out refunds, and language defining imbalance costs; (9) set the Annual Charge Adjustment (ACA) to zero; (10) remove Rate Schedule TTS, accompanying form of service agreement, and the TTS fee; (11) reflect the latest version of the North American Energy Standards Board (NAESB) Wholesale Gas Quadrant (WGQ) Standards adopted by the Commission; and (12) file a table of all the NAESB WGQ Standards incorporated by reference and a cross-reference to the tariff provisions in which Standards that are not incorporated by reference are contained.

Details of the Instant Filing

6. On August 14, 2012, High Point filed its baseline tariff reflecting revised rates for its proposed transportation, park and loan, and pooling services. High Point indicates that its revised initial rates reflect the cost of service of transmission services over the transmission facilities. High Point asserts that it has removed the cost of service related to the non-jurisdictional and unused facilities from the revised initial jurisdictional transmission rates, as required by the June 21 Order.⁹

7. High Point states that its affiliate, High Point Gathering, will become the owner of the non-jurisdictional facilities and that High Point Gathering currently owns three systems that provide non-jurisdictional gas gathering and intrastate services. High Point states that it will not provide any gathering services and therefore it has not proposed a gathering rate in its tariff.¹⁰ High Point proposes to allocate 93 percent of its cost of

⁹ High Point's August 14 Transmittal Letter at 2.

¹⁰ *Id.*

acquiring the South of Toca Facilities to the transmission facilities and the remainder to the non-jurisdictional facilities.¹¹

8. High Point proposes rates based solely on transmission facilities, offering an initial firm monthly reservation rate under Rate Schedule FT of \$8.8844 per Dth with no usage charge; an interruptible service rate under Rate Schedule ITS of \$0.2921 per Dth; and a park and loan service rate under Rate Schedule PAL of \$0.2921 per Dth. The proposed transportation rates are derived using a first year cost of service of \$27,838,140,¹² reflecting a rate base of \$53,849,947, and an overall rate of return of 11.87 percent. High Point designed its initial firm rate using the same throughput reported in the June 21 Order of 261,115 Dth per day.

Interventions

9. Public notice of High Point's August 14 and 16, 2012 filings was issued on August 16 and 17, 2012, respectively. Interventions were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed 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. Protests were filed by: Arena Energy, LP (Arena), Indicated Shippers,¹³ LLOG Exploration Company, LLC (LLOG), Producer Coalition,¹⁴ and Walter Oil & Gas Corporation (Walter). On September 7, 2012, High Point filed an answer to the protests. While the Commission's regulations do not permit the filing of answers to protests,¹⁵ the Commission will accept this answer because it provides

¹¹ *Id.* P. 3.

¹² The cost of service is composed of: (1) Operation and Maintenance expense of \$14,280,881; (2) Depreciation Expense of \$2,085,917; (3) Negative Salvage of \$1,202,418; (4) Other Taxes of \$815,606; (5) Return on Rate base of \$6,390,912; (6) State Income taxes of \$425,789; and (7) Federal Income Taxes of \$2,636,618.

¹³ Indicated Shippers consists of Apache Corporation; BP America Production Company and BP Energy Company; and Shell Offshore, Inc.

¹⁴ Producer Coalition consists of Century Exploration New Orleans, LLC; Dynamic Offshore Resources, LLC; Energy XXI (Bermuda) Ltd.; Hilcorp Energy Company, Inc.; McMoRan Oil & Gas LLC; Pisces Energy LLC; and W&T Offshore, Inc.

¹⁵ 18 C.F.R. § 385.213 (2012).

additional information which aids in our decision making process. On September 6, 2012 staff issued a data request to High Point seeking additional information. On September 13, 2012 High Point filed a response to the data request.

Discussion

10. As discussed below, based upon our initial review of the instant tariff records filed by High Point, the Commission cannot find that such tariff records fully comply with the Commission's June 21 Order. Accordingly, the Commission accepts the instant tariff sheets to be effective the latter of October 1, 2012 or the date the facilities are placed into service, subject to refund and further order of the Commission.¹⁶

11. When High Point files notice of its commencement of service in compliance with 18 C.F.R. §157.20(c)(2) (2012), it should also make an informational filing with the Commission through the eTariff portal using a Type of Filing Code 620. In addition, High Point is advised to include as part of the eFiling description, a reference to Docket No. CP12-9-000, and the actual in-service date for this project.

Abandonment and Functionalization Issues

12. Protesters argue that High Point's compliance filing is deficient because it did not include gathering rates for the portions of the South of Toca Facilities that the June 21 Order determined performed a gathering function.¹⁷ Protesters assert that the

¹⁶ See *Black Marlin Pipeline Co.*, 48 FERC ¶ 61,024 (1989), and *KN Energy, Inc.*, 50 FERC ¶ 61,290 (1990), in which the Commission held that it may issue a section 7 certificate, subject to further review of the proposed initial rates and refund if it later finds the initial rates unreasonable. In *Transcontinental Gas Pipe Line Corp. v. FERC*, 54 F.3d 893, 899 (D.C. Cir. 1995), the court cited those decisions and then stated:

The norm seemingly represented by these FERC decisions . . . is that where service starts under § 7 before final determination of the rates, the rate finally determined will be applied retroactively to the start of service. . . The norm makes a good deal of sense, as it means that the "right rate", i.e., whatever rate the Commission lawfully determines to be right, is applied throughout the period despite the Commission's initial uncertainty and delay.

¹⁷ Protestors make a number of other arguments challenging the findings in the June 21 Order. The June 21 Order authorized Southern to abandon the South of Toca Facilities to High Point, including the gathering facilities because under Southern's ownership those facilities were certificated, and thus could not be sold to High Point, or

(continued...)

Commission should summarily reject High Point's filing as not being in compliance with the June 21 Order and require High Point to refile its initial recourse rates and baseline tariff to set forth the separately stated gathering rate(s) to be charged on the facilities in question along with all other applicable terms and conditions of service.¹⁸ High Point answers that because it will not provide non-jurisdictional gathering services, there is no requirement for a gathering rate to be included in High Point's Statement of Rates.

Commission Determination

13. The June 21 Order authorized Southern to abandon its certificated facilities, i.e., all of Southern's South of Toca Facilities, to High Point.¹⁹ The order also analyzed the facilities under the primary function test and found each facility to be transmission, gathering, or unutilized. The order directed High Point to remove the costs of the gathering and unutilized facilities from its transportation rates,²⁰ and, "to the extent High Point seeks to assess rates for service utilizing" the gathering facilities, to file an "in connection with" gathering rate.²¹

14. High Point did not submit a gathering rate as part of its compliance filing, because it is not requesting to assess a rate for any service using the gathering facilities. Therefore, the Commission finds that since High Point does not intend to assess a rate for gathering service, the June 21 Order does not require it to submit an "in connection with" gathering rate.²²

any other entity, without abandonment authorization. Any challenges to the abandonment authorization, primary function test analysis, or certificate authorization will be considered in a subsequent order addressing issues currently on rehearing in those proceedings.

¹⁸ Producer Coalition Protest at p. 7, LLOG Protest at p. 5, Arena Protest at p. 5.

¹⁹ See 139 FERC ¶ 61,237, at ordering para. (A).

²⁰ *Id.* ordering paragraph (I).

²¹ *Id.* PP 139 and 223.

²² The June 21 Order authorized Southern to abandon its South of Toca Facilities, all of which were certificated facilities prior to the June 21 Order, to High Point. Absent Southern's seeking and receiving amendment of its authorization to abandon the facilities by transfer to High Point's gathering affiliate, Southern may only transfer the facilities to High Point.

15. The Commission finds that issues pertaining to the Commission's June 21, 2012 abandonment authorization of Southern and findings related to High Point's acquisition of the South of Toca facilities and any resulting continuity of service concerns will be addressed in the rehearing of the June 21 Order.²³

Reconciliation of Rate Calculations

16. Indicated Shippers requests that the Commission require High Point to file a detailed reconciliation and explanation of all the adjustments between the jurisdictional and non-jurisdictional facilities to determine that the adjustments are not specifically tied to the facilities that were refunctionalized or removed from service.²⁴ Indicated Shippers contends that because High Point has not filed a gathering rate or work papers, it is impossible to trace whether costs have been properly allocated between gathering rate and transmission rates. Indicated Shippers argue that unless High Point makes a filing which includes work papers comparing the as-filed case to the transportation rate design proposed in the instant compliance filing, it is unable to determine if those adjustments are appropriate given that the adjustments are not specifically tied to the facilities that were refunctionalized or removed from service.

Answer

17. High Point responds that it has complied with the June 21 Order and revised the initial transmission rates to reflect the Commission's functionalization analysis. High Point asserts that it: (1) removed the cost of service related to the non-jurisdictional facilities; (2) determined the amount of accumulated depreciation for the transmission facilities; (3) re-filed rates and supporting cost data; (4) removed the non-jurisdictional facilities from rate base; (5) allocated the total acquisition cost based on the proportion of total net book value attributable to the transmission facilities; (6) allocated the transmission portion of the total acquisition cost to respective plant accounts (except for certain operation and maintenance expenses; removed the operation and maintenance expense associated with the non-jurisdictional facilities from the revised rate calculations; (7) removed the depreciation expense related to the non-jurisdictional facilities; and

²³ On July 23, 2012, the Indicated Shippers, LLOG Exploration Co., LLC, Arena Energy LP, and Century Exploration New Orleans, LLC, *et. al.*, filed for rehearing of the Commission's June 21, Order. These rehearing requests are pending before the Commission. Action taken in the instant proceeding is without prejudice to the pending rehearing requests.

²⁴ Indicated Shippers Protest at p.10-11.

(8) revised the depreciation rate and the negative salvage rate to reflect the original cost of the transmission facilities.²⁵

Commission Determination

18. The Commission is unable to verify that High Point has complied with the June 21 Order regarding its directives concerning High Point's initial rates, including those focused upon the proper refunctionalization and/or the removal from the cost of service of specific facilities costs. However, the Commission accepts High Point's proposed tariff records to be effective October 1, 2012 or the date upon which the facilities are placed into service, subject to the outcome of a further order. This acceptance is also subject to the outcome of the rehearing of the June 21 Order.

19. In its compliance filing, High Point proposes to allocate the acquisition cost of the South of Toca Facilities between jurisdictional and non-jurisdictional facilities based upon the net book value of the facilities. However, the June 21 Order required High Point to account for the gas plant acquired as an operating unit or system and allocate those costs based on original cost pursuant to the Commission accounting and ratemaking regulations. Specifically, the June 21 Order stated:

Commission accounting and ratemaking regulations require that gas plant acquired as an operating unit or system be recorded at its original cost, which, as applied to gas plant, means the cost of such property to the first person devoting it to public service. Because Southern previously devoted these facilities to public service, High Point must reflect in its gas plant accounts the original cost of the South of Toca Facilities as reflected on Southern's books and records. High Point is directed to refile rate and supporting cost data to reflect utilization of the original cost of the South of Toca Facilities in its rate determination.²⁶

20. On September 6, 2012, staff issued a data request to High Point seeking revised cost of service work papers, revised initial transmission rates, rate derivation, and work papers showing functionalized rates based upon the original cost of the transmission, gathering, and unutilized facilities. On September 13, 2012, High Point submitted a revised cost of service including revised work papers and reflected adjustments based on

²⁵ High Point's Answer at p.11-12.

²⁶ June 21 Order, 139 FERC ¶ 61,237 at P 135.

the use of original cost rather than net book value. This September 13, 2012 filing was noticed on September 17, 2012 with comments due by September 24, 2012.

21. The Commission will review this information and any comments to determine whether the proposed adjustments and the newly filed data satisfies the requirements of the June 21 Order and the Commission's requirements that the rates provided are correctly derived.

Reservation Charge Credit Language

22. In the June 21 Order, the Commission held that the reservation charge crediting provisions in High Point's *pro forma* tariff were inconsistent with Commission policy in certain respects.²⁷ The Commission determined that High Point had improperly provided that it would only give credits when it failed to deliver volumes of gas it had confirmed or scheduled, rather than undelivered volumes that were nominated for scheduling. High Point was directed to file language correcting its proposed language. High Point was also directed to specify in its tariff a reasonable measure of the credit the shipper should receive under a *force majeure* situation, consistent with Commission policy.

23. In the instant compliance filing, High Point proposes language to correct Section 3.4 of its General Terms and Conditions (GT&C) as directed by the June 21 Order. The Commission accepts the proposed language as in compliance with its June 21 Order.

24. In addition, the Indicated Shippers has raised issues with language in Section 3.4 that the June 21 Order did not require High Point to revise. Specifically, Indicated Shippers states that the language of Section 3.4 suggests that the Shipper is obligated to pay even if Transporter performs only a part of its obligations. Indicated Shippers asserts that if firm service is provided only in part, the Shipper should receive reservation charge credits for the "part" of transportation service that is not provided. Secondly, it argues that language in Section 3.4 states that "High Point shall assess each Shipper receiving firm transportation services that Shipper's proportionate share of reservation charges for any period beyond ten (10) days during which High Point is incapable of performing all of its firm transportation obligations." Indicated Shippers argues that this sentence appears to undermine the entire crediting obligation, under which full credits must be given when service is not being provided after 10 days under the "safe harbor" method. Therefore, Indicated Shippers also request elimination of this sentence.

²⁷ June 21 Order at P 188-194.

Answer

25. In its Answer, High Point states that its proposed reservation charge crediting mechanism is consistent with Commission policy and similar to other Commission approved tariffs.²⁸ High Point clarifies that if it provides a portion of the transportation services, the shipper will be expected to pay reservation charges associated with that portion of the provided transportation services.²⁹ However, High Point will provide credits with respect to the portion of service not provided.

Commission Determination

26. As stated above, the Commission finds that High Point has complied with the directives of the June 21 Order regarding the language the Commission required to be clarified. Second, Indicated Shippers takes issue with language that the Commission did not order to be changed in the June 21 Order. The only issue on compliance is whether the filing complies with the directives of the Commission's order.³⁰ Moreover, while Indicated Shippers contends that the language of Section 3.4 is still unclear, the Commission finds that Section 3.4 is consistent with its policies and sufficiently clear given High Point has explained that reservation charge credits will be given for the portion of service High Point was unable to provide after the 10 day period.

²⁸ High Point Answer at p. 13 (citing Venice Gathering System L.L.C. FERC Gas Tariff Section 26.2).

²⁹ High Point Answer at p. 13.

³⁰ *Monroe Gas Storage Co., LLC*, 131 FERC ¶ 61,258, at P 24 (2010) (citing *Great Lakes Gas Transmission, L.P.*, 108 FERC ¶ 61,308, at P 11 (2004); *East Tennessee Natural Gas Co.*, 108 FERC ¶ 61,135, at P 4 (2004)). It is well-established that the scope of a pipeline's compliance filing is limited to "only those changes required to comply with the order" necessitating the filing. 18 C.F.R. § 154.203(b) (2012).

The Commission orders:

(A) High Point's proposed tariff identified in footnote 3 above is accepted, subject to the outcome of a further Commission order, to be effective the latter of October 1, 2012, or the actual date on which the acquired facilities are placed into service subject to the conditions described in this order.

(B) High Point is directed to notify the Commission of the exact date the tariff records are to be put into effect.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.