

145 FERC ¶ 61,124
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 13, 2013

In Reply Refer To:
Kinetica Energy Express, LLC
Docket No. RP13-1322-000

Jennifer N. Waters
Crowell & Moring
1001 Pennsylvania Ave., NW
Washington, DC 20004

Attention: Kinetica Energy Express, LLC

Dear Ms. Waters:

1. On September 10, 2013, Kinetica Energy Express, LLC (Kinetica) filed tariff records¹ in order to reflect a negotiated rate transaction (Agreement) that it entered into with the City of Grand Isle, Louisiana (Grand Isle) for firm transportation service under Rate Schedule LFT-1.² Kinetica states that the Agreement conforms in all material

¹ Kinetica Energy Express, LLC, FERC NGA Gas Tariff, Kinetica Energy Express LLC - NGA Gas Tariff - Volume 1A: [Cover Sheet, Sheet No 1, 1.0.0](#); [Contents, Sheet No 2, 1.0.0](#); [List Neg Rate Agreements, Sheet No 3, 1.0.0](#).

² In the instant filing, Kinetica identified its proposed tariff records and summary negotiated rate agreement as a compliance filing without a statutory Commission action date. The Commission will act on this filing accordingly. As the Commission has previously found in determining to treat NGA section 4 proposals as compliance filings “the treatment of a filing depends on the metadata code selected by the filer” *Columbia Gulf Transmission Co.*, 132 FERC ¶ 61,134, at P 35 (2010) (citing, *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 5 (2010) (“any discrepancy between the description of the filing in the transmittal letter (or other pleading) and the Type of Filing code chosen will be resolved in favor of the Type of Filing code”)).

respects with Kinetica's Rate Schedule LFT-1 Form of Transportation Agreement. Kinetica states that it attempted to submit this agreement to the Commission on August 30, 2013, but was unsuccessful in that it received a Confirmation of Receipt but not an Acceptance of Filing from the Commission's eFiling system. Kinetica requests that the tariff records be accepted effective September 1, 2013. As discussed below, the Commission finds that the Agreement contains a material deviation from the Rate Schedule LFT-1 *pro forma* service agreement, and therefore accepts the Grand Isle Agreement and Tariff Records to be effective September 1, 2013,³ subject to conditions.

2. Public notice of the filing was issued on September 11, 2013. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214,⁵ all timely filed motions to intervene and any unopposed motions to intervene out-of-time 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. No protests or adverse comments were filed.

3. We find that Article 1.2 of the Agreement does not conform to Kinetica's *pro forma* Rate Schedule LFT-1 service agreement.⁶ Article 1.2 of the instant Agreement states that:

After this Agreement becomes effective it shall continue in full force and effect for a period of ten years from the effective date of such Agreement, plus an optional roll-over of an additional three years to be exercised at Shipper's option, and from year to year thereafter until this Agreement is terminated as provided in Article I, Section 1.3 or until the dissolution of Transporter.

³ In this circumstance, the Commission will treat Kinetica's filing as if it was accepted for filing by the Commission on August 30, 2013 and waive the 30-day notice filing requirement pursuant to section 4 of the NGA.

⁴ 18 C.F.R. § 154.210 (2013).

⁵ 18 C.F.R. § 385.214 (2013).

⁶ Kinetica did not file a marked version of the Grand Isle negotiated rate agreement highlighting the differences between the agreement and its *pro forma* service agreement. Kinetica is reminded that all companies are required to file a list in the transmittal letter of the tariff sheets or sections being revised and a marked version of the sheets or sections to be changed or superseded showing additions or deletions to any tariff, executed service agreement or part thereof. 18 C.F.R. § 154.201 (2013).

4. Article 1.2 of Kinetica's *pro forma* Rate Schedule LFT-1 service agreement only allows for roll-overs from year to year after the primary term of the contract has ended. Specifically, this language states that:

After this Agreement becomes effective it shall continue in full force and effect for a period of ___ year(s) from the effective date of such Agreement and from year to year thereafter until this Agreement is terminated as provided in Article I, Section 1.3 or until the dissolution of Transporter.

5. Article 1.2 of Kinetica's *pro forma* Rate Schedule LFT-1 service agreement therefore does not permit the negotiation of a three year roll-over term with the pipeline at the sole option of the shipper. This three year roll-over provision is a material deviation from the *pro forma* service agreement.

6. In *Columbia Gas Transmission Corporation*,⁷ the Commission clarified that a material deviation is any provision in a service agreement that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (2) affects the substantive rights of the parties. A material deviation may be permissible if the Commission finds that such deviation does not constitute a substantial risk of undue discrimination.⁸ Therefore, there are two general categories of material deviations: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.

The Commission finds that Kinetica's Grand Isle Agreement contains an impermissible material deviation from the LFT-1 *pro forma* service agreement. The optional three year roll-over provision in the Grand Isle Agreement is not included in Kinetica's Rate Schedule LFT-1 *pro forma* service agreement. This provision goes beyond filling in the blank spaces with the appropriate information allowed by the tariff and it substantively affects the rights of the parties in that it confers a valuable right on Grand Isle that presents a substantial risk of undue discrimination. The option to negotiate a three year roll-over provision goes beyond the rights included in the *pro forma* agreement s and is not generally available to all shippers under Kinetica's tariff. Accordingly, Kinetica must either offer this optional negotiated roll-over provision to all shippers by revising its tariff to include this option as part of the Rate Schedule LFT-1 *pro forma* service agreement, or remove this language from its agreement with Grand Isle.⁹ The proposed tariff records

⁷ 97 FERC ¶ 61,221 (2001) (*Columbia*).

⁸ *Id.* at 62,004.

⁹ *Saltville Gas Storage Co. L.L.C.*, 110 FERC ¶ 61,324, at P 16 (2005).

are accepted subject to Kinetica filing to satisfy these conditions and, if necessary, to include the Grand Isle Agreement on its list of non-conforming contracts within 30 days of the issuance of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.