149 FERC ¶ 61,002
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 1, 2014

In Reply Refer To:
High Island Offshore System, L.L.C.
Docket No. RP14-218-000

High Island Offshore System, L.L.C.
Attn: G. Mark Cook, Esq.
Vice President and Assistant General Counsel
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Dear Mr. Cook:

1. On July 1, 2014, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,[1] High Island Offshore System, L.L.C. (HIOS) filed an offer of settlement (Settlement), on behalf of itself and the other active parties to the proceeding.[2] Commission Trial Staff filed comments in support of the Settlement; no reply comments were filed. The presiding administrative law judge (ALJ) certified the Settlement to the Commission on August 4, 2014, as uncontested.[3] For the reasons set forth below, the Commission approves the uncontested Settlement because it appears to be fair, reasonable, and in the public interest.

2. On November 26, 2013, HIOS filed a Natural Gas Act (NGA) general section 4 rate case. The Commission accepted and suspended the tariff records, subject to refund,

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[1] 18 C.F.R. § 385.602 (2014).

[2] The active parties joining in the Settlement are the Indicated Shippers (Chevron U.S.A. Inc.; ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation; and Fieldwood Energy, LLC) and the Producer Coalition (Arena Energy, LP; Bandon Oil and Gas, LP; Castex Energy, Inc.; Century Exploration New Orleans, LLC; Dynamic Offshore Resources, LLC; M21K LLC; McMoRan Oil & Gas LLC; W&T Offshore, Inc.; and Walter Oil & Gas Corporation).

[3] *High Island Offshore System, L.L.C.*, 148 FERC ¶ 63,009 (2014).

and established hearing procedures by order issued on December 30, 2013.[4] On May 21, 2014, HIOS filed a motion to move the proposed rates into effect on June 1, 2014 (the end of the suspension period). On July 1, 2014, in addition to filing the Offer of Settlement, HIOS also filed, in Docket No. RP14-218-001, to place the Settlement rates into effect on an interim basis, effective June 1, 2014. On July 9, 2014, the Chief ALJ granted HIOS's filing to place the interim Settlement rates into effect.[5] Through a black box agreement, the Settlement establishes rates[6] below those originally filed by HIOS and generally prohibits NGA section 4 and section 5 filings by the parties until August 31, 2015. The principal terms of the Settlement are summarized below.

3. Article I sets forth the Settlement rates. Section 1.1 states that Appendix A to the Settlement contains the tariff record setting forth the Settlement rates for all current HIOS services. HIOS also agreed to place the Settlement rates into effect on an interim basis, effective June 1, 2014, subject to reinstatement of the subject-to-refund rates if the Commission does not issue an order approving the Settlement by August 31, 2015. Section 1.2 indicates that the Settlement rates were agreed to on a "black box" basis, except that they incorporate composite stated depreciation and negative salvage rates for transmission and gathering plant, which are separated by function in Appendix C.

4. Article II describes the effect of the Settlement on future rate proceedings. According to section 2.1, HIOS agrees to not make an NGA section 4 filing to change the Settlement prior to August 31, 2015. On or after August 31, 2015, HIOS can only make such a filing if either HIOS's annual throughput has decreased to 23,375,000 Dth (or less) or its annual operating and maintenance expenses, exclusive of administrative and general expenses, have increased to $18,802,500 (or more). Section 2.2 provides that, on or after August 31, 2015, the settling parties can only make an NGA section 5 filing if either of the following has occurred: (1) HIOS's annual throughput has increased to 31,625,000 Dth (or more); or (2) its annual operating and maintenance expenses, exclusive of administrative and general expenses, have decreased to $13,897,500 (or less). Section 2.3 imposes on all settling parties the obligation to provide a 30-day notice of intent to exercise the rights provided for in sections 2.1 or 2.2 and to convene a shipper meeting to seek mutual resolution. Section 2.4 covers the applicable filing trigger thresholds set forth in the clauses for post-August 31, 2015, filings if the Commission eliminates Form 2, or eliminates or modifies the requirement for HIOS to file the relevant information.

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[4] *High Island Offshore System, L.L.C.*, 145 FERC ¶ 61,288, at P 1 (2013) (Hearing Order).

[5] *High Island Offshore System, L.L.C.*, 148 FERC ¶ 63,001 (2014).

[6] The interim Settlement rates are the same as the Settlement rates.

5. Article III states that the settling parties agree that HIOS's proposed changes to Article 18 of the General Terms and Conditions of its FERC Gas Tariff, Fourth Revised Volume No. 1 (Storm Damage Repair Surcharge Tracker), as filed, may be placed into effect without condition.

6. Article IV explains that, notwithstanding the Settlement terms, HIOS is permitted to file for authorization to enact a per-Dth surcharge to recover extraordinary costs imposed by a governmental authority on an industry-wide basis, but the settling parties may challenge such filings.

7. Article V covers the effectiveness and term of the Settlement. Section 5.1 states that the terms of the Settlement are not severable and are not effective unless and until the Commission approves the Settlement in a final order, without any materially adverse condition or modification, and waives, if necessary, compliance with relevant rules and regulations. The effective date, it continues, will be the first day of the month following the month in which the above conditions have been satisfied. Pursuant to section 5.2, the Settlement terminates on the effective date of any new rates established pursuant to an NGA section 4 or section 5 proceeding.

8. Article VI states that HIOS will refund to eligible shippers, if necessary, the difference between the Settlement rates and any subject-to-refund rates collected, with interest, if the subject-to-refund rates are reinstated because the Commission does not act on the Settlement until after August 31, 2015.

9. Article VII lists the standard reservations included in settlement agreements, including that the Settlement is privileged, is not precedential, establishes no settled practices, and the terms are non-severable. In addition, section 7.5 provides the standard of review for changes to the Settlement:

> [t]he Settling Parties agree that the standard of review for any changes they may seek to the Settlement shall be the "public interest" standard. With respect to proposed changes to the Settlement sought by non-settling third parties or by the Commission acting *sua sponte*, it is recognized that the standard of review will be the just and reasonable standard.[7]

10. The Settlement resolves all issues related to HIOS's NGA section 4 rate filing set for hearing by the Commission.[8] The Commission finds that the Settlement appears to be

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[7] Stipulation and Agreement § 7.5.

[8] Hearing Order, 145 FERC ¶ 61,288 at P 1.

fair, reasonable, and in the public interest, and it is hereby approved pursuant to Rule 602(g).[9] Commission approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

11. This letter order terminates Docket No. RP14-218-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[9] 18 C.F.R. § 385.602(g) (2014).