

149 FERC ¶ 61,046  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

October 15, 2014

In Reply Refer To:  
Destin Pipeline Company, L.L.C.  
Docket No. RP14-1200-000

King & Spalding LLP  
1700 Pennsylvania Avenue, NW  
Washington, D.C. 20006-4707

Attention: Neil L. Levy, Counsel for Destin Pipeline Company, L.L.C.

Dear Mr. Levy:

1. On August 25, 2014, pursuant to Rule 207(a)(5) of the Commission's regulations,<sup>1</sup> Destin Pipeline Company, L.L.C. (Destin) submitted a petition for approval of a Stipulation and Agreement of Settlement (Settlement) regarding Destin's Slug Catcher Expansion Project (Project), which addresses issues relating to increased natural gas liquids on Destin's system. The Settlement provides that Destin will expand its natural gas liquids slug catcher in Pascagoula, Mississippi, and will recover the cost of installing those facilities through a new Auxiliary Installation Reimbursement (AIR) Fee.<sup>2</sup> The Commission will approve the Settlement as it appears to be fair and reasonable and in the public interest, subject to Destin filing the actual tariff records as included in Exhibit C of the Settlement.

2. Destin states that it filed the Settlement on behalf of itself and its offshore customers who hold contracts to transport natural gas on Destin's pipeline system from offshore receipt points to the Pascagoula Processing Plant. According to Destin, the offshore customers represent all of its firm customers with capacity from offshore receipt points to the Pascagoula Processing Plant, and more than 98 percent of the offshore

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<sup>1</sup> 18 C.F.R. § 385.207(a)(5) (2014).

<sup>2</sup> Destin included *pro forma* tariff records to implement the Settlement with its filing.

volumes shipped on Destin during the past year. Destin requests that the Commission approve the Settlement as soon as possible, and no later than October 15, 2014, so that construction cost savings can be maximized. The principle terms of the Settlement are summarized below.

3. Article I provides a description of the background events and describes the increased frequency and size of natural gas liquids slugs<sup>3</sup> received by Destin at its current slug catcher in recent years and the corresponding need to undertake the Project. Article II describes the Project, including Destin's construction of the Project as an "auxiliary installation" under section 2.55(a) of the Commission's regulations,<sup>4</sup> the estimated capital cost of the project, and Destin's commitment to commence construction of the project by the date a Commission order approving the Settlement becomes final.

4. Article III details the AIR Fee, which will employ a two-step process of: (1) determining the monthly amount to be reimbursed by all customers shipping natural gas on the Destin system upstream of the Pascagoula Processing Plant (monthly installment); and (2) allocating the monthly installment amount among each individual shipper. It also describes the "Gap Agreement" between Destin and an affiliate of one of its joint venture owners, BP America Production Company (BP) in which BP agrees to reimburse Destin for certain costs of the Project not covered by the Settlement and which will not be reimbursed by the offshore customers under the AIR Fee.

5. Article IV describes the tariff changes Destin will make to implement the AIR Fee. Destin will initially specify the amount to be included in each of the first 12 monthly installments, to apply to all natural gas transported under firm and interruptible agreements from offshore sources. After the Project has been in-service for 12 months, Destin will file under section 4 of the Natural Gas Act (NGA) to incorporate the actual total Project cost for the monthly installments for months 13 through 36. It also states that Destin will provide its customers certain updates on construction progress, anticipated in-service date, any changes in estimated Project costs, etc. Within 90 days of the end of the 36-month recovery period, Destin will file with the Commission a final accounting of actual Project cost, total AIR Fees received, and to remove the AIR Fee from its tariff.

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<sup>3</sup> Liquids in the pipeline tend to accumulate into "slugs," which do not move ratably within the pipeline, and are collected by a "slug catcher," the purpose of which is to receive, separate, and store liquids transported with the offshore natural gas stream.

<sup>4</sup> 18 C.F.R. § 2.55(a) (2014). The proposed slug catcher qualifies as an "eligible facility" under section 2.55(a).

6. Article V provides that each customer shipping natural gas on Destin upstream of the Pascagoula Processing Plant will pay its proportionate share of the monthly installments under the AIR Fee without regard to the customer's contracted rates, that the AIR Fee will not be discountable, and each customer's transportation service agreement will be deemed amended as necessary to provide for the payment of the AIR Fee.

7. Article VI details the accounting and rate case treatment for Destin's cost of construction, operating and maintaining the Project. After all reimbursement amounts have been collected, Destin states that there will be no Project rate base investment on Destin's accounting records, and agrees it will not include a cost that has been recovered under this Settlement or the Gap Agreement in any future rate case.

8. Article VII states that all the customers have either expressed their support for this Settlement or have agreed not to oppose it. Article VIII states that the Settlement will become effective the first day of the month following the date the Commission issues an order approving it, without any material modification or condition unacceptable to the settling parties, and the order becomes final. Article IX provides that Commission approval of the Settlement will constitute any and all waivers necessary to effectuate the Settlement in accordance with its terms.

9. Article X provides various statements concerning the Settlement in the context of the Commission's Rules of Practice and Procedure and the reservations of the settling parties' rights. Pursuant to Article 10.3, once the Settlement is effective, the standard of review for any change to the Settlement during its term shall be the "public interest" standard established in *United Gas Pipeline Co. v. Mobile Gas Services Corp.*, 250 U.S. 332 (1956) and *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Article 10.3 further provides that the standard of review for any modification to the Settlement proposed by a non-settling party, or the Commission itself, shall be "the most stringent standard permissible under applicable law."

10. Destin requests that the Commission issue an order approving the Settlement, unmodified, no later than October 15, 2014, so that Destin may begin construction of the Project. No party filed adverse comments.

11. In this case, Destin and its customers have all engaged in extensive negotiations to address the concerns of all participants. The Settlement, which resolves by mutual agreement Destin's and its customer's liquid slug problems, without the need for an NGA general section 4 rate proceeding, represents the culmination of those efforts.

12. Because the Settlement provides that the standard of review for changes to the Settlement by the Commission or a non-party is "the most stringent standard permissible under applicable law," we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement.

13. The *Mobile-Sierra* “public interest” presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Ass’n, Inc. v. FERC*,<sup>5</sup> however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.

14. The Commission finds that the proposed Settlement appears to be fair and reasonable and in the public interest, and is hereby approved, to be effective October 15, 2014, subject to Destin filing actual tariff records as included in Exhibit C of the Settlement.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>5</sup> *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).