

153 FERC ¶ 61,014
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Kinetica Energy Express, LLC

Docket Nos. RP13-1116-001
RP13-1360-000

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued October 5, 2015)

1. On September 27, 2013, Kinetica Energy Express, LLC (Kinetica) filed a request for rehearing of the Commission's August 28, 2013 order in Docket No. RP13-1116-000.¹ In addition, in Docket No. RP13-1360-000, Kinetica also filed revised tariff records to comply with the Commission's August 28, 2013 Order.² As discussed herein, Kinetica's request for rehearing is granted in part, and dismissed in part as moot. Kinetica's compliance filing is accepted in part and denied in part.

2. On May 31, 2013, the Commission issued an order³ approving an application by Tennessee Gas Pipeline Company, L.L.C. (Tennessee) to abandon by sale to Kinetica and for Kinetica to acquire and operate certain facilities located onshore and offshore in the Gulf of Mexico and Louisiana. The May 2013 Certificate Order accepted Kinetica's proposed initial rates, subject to certain modifications. Among other things, the Commission required Kinetica to: (1) remove from jurisdictional rate base facilities that the Commission determined to be performing a gathering function or to be unutilized; (2) reduce its negative salvage rate from 0.49 percent to 0.40 percent; and (3) revise its cost of debt from 10.0 percent to its actual cost of debt. The May 2013

¹ *Kinetica Energy Express, LLC*, 144 FERC ¶ 61,159 (2013) (August 2013 Order).

² *Kinetica Energy Express, LLC*, FERC NGA Gas Tariff, *Kinetica Energy Express LLC - FERC Gas Tariff, SCHEDULE OF RATES, Sheet Number 005, 3.0.0* and *RATE SCHEDULE IT, Sheet Number 054, 2.0.0*.

³ *Tennessee Gas Pipeline Co., L.L.C.*, 143 FERC ¶ 61,196 (2013) (May 2013 Certificate Order), *order on reh'g*, 147 FERC ¶ 61,196 (2014).

Certificate Order also required Kinetica to remove Section 2.1 of its proposed Form of Reserve Commitment Agreement under Rate Schedule LFT-1 and Rate Schedule IT because the proposed language provided for blanks to accommodate “further agreement,” contrary to the Commission’s policies governing forms of service agreements.⁴ Finally, the May 2013 Certificate Order required Kinetica to file a three-year cost and revenue study justifying its approved cost-based recourse rates.

3. On July 29, 2013, Kinetica filed to comply with the May 2013 Certificate Order, in Docket No. RP13-1116-000 (July 2013 Compliance Filing).⁵ Kinetica stated that it had recalculated its initial rates, using as a starting point the cost-of-service figures in its January 31, 2013 data response in the certificate proceeding and then adjusting those figures only as required by the May 2013 Certificate Order. Among other things, Kinetica reduced its cost of debt from 10.0 percent to six percent, stating that this figure was its “best estimate” of its actual cost of debt at that time, and that it would provide its actual cost of debt with documentation when it filed its three-year cost and revenue study. Kinetica also increased its Operation and Maintenance (O&M) and Administrative and General (A&G) expenses from the amounts included in the January 2013 data response.

4. In the July 2013 Compliance Filing, Kinetica did not remove Section 2.1 from its Form of Reserve Commitment Agreements under Rate Schedules LFT-1 and IT. However, Kinetica made other changes to the two forms of service agreements which it stated were consistent with the intent of the May 2013 Certificate Order. For example, Kinetica completely removed Article XI of the forms of service agreements for Rate Schedules LFT-1 and IT which it stated provided the blank space about which the Commission had expressed concern.

5. On August 28, 2013, the Commission accepted Kinetica’s tariff records submitted in its July 2013 Compliance Filing, subject to refund and conditions. The Commission found that Kinetica had generally complied with the requirements of the May 2013 Order. However, the Commission required Kinetica to recalculate its initial rates “to reflect the O&M and A&G costs from its January 31, 2013 Data Response filing which the Commission approved as the starting point for Kinetica's rate recalculations

⁴ May 2013 Certificate Order, 143 FERC ¶ 61,196 at P 246 (citing, *Northern Natural Gas Co.*, 102 FERC ¶ 61,171, at PP 14-18 (2003)).

⁵ Kinetica’s July 2013 Compliance Filing included three sets of tariff records. Kinetica stated that the tariff records it identified as Option A reflected its recalculated initial rates and revised tariff language as required by the May 2013 Certificate Order. Because the Commission rejected the other two sets of tariff sheets, in this order we only discuss the Option A tariff records.

in the May 2013 [Certificate] Order.”⁶ The August 2013 Order also required Kinetica to recalculate its rates to use actual debt costs or file support for the proposed six percent cost of debt.⁷ The August 2013 Order made Kinetica’s initial rates effective September 1, 2013, subject to refund, finding that “the Commission has not yet found that the proposed compliance initial rates that we are permitting to go into effect on September 1, 2013 are in full compliance with the May [2013 Certificate] Order.”⁸ The August 2013 Order required Kinetica to file revised tariff records reflecting recalculated rates along with the supporting work papers and clean tariff records within thirty days of the issuance of the order.⁹

6. The August 2013 Order also found that Kinetica’s revisions to the Rate Schedule LFT-1 and IT forms of service agreements had adequately addressed the May 2013 Certificate Order’s concerns that about a blank space for an undefined “further agreement.” However, the August 2013 Order held that Kinetica had failed to adequately address concerns that Kinetica’s tariff might permit it to require a shipper to enter into a reserve commitment in order to receive interruptible service. Therefore, the August 2013 Order required Kinetica to refile revised tariff records stating that a shipper will not be required to execute a reserve commitment agreement as a condition for receiving interruptible service.¹⁰

7. On September 27, 2013, Kinetica filed a request for rehearing of the August 2013 Order. Kinetica raises issues concerning the August 2013 Order’s imposition of a refund condition on Kinetica’s initial rates and the condition relating to the requirement that Kinetica refile its initial rates to reflect O&M and A&G expenses from its January 31, 2013 data response. In addition, on September 27, 2013, in Docket No. RP13-1360-000, concurrent with this request for rehearing, Kinetica filed revised tariff records¹¹ to comply with the Commission’s August 2013 Order (September 2013 Compliance Filing).

⁶ 144 FERC ¶ 61,159 at PP 12, 22.

⁷ *Id.* PP 15, 22.

⁸ *Id.* P 9.

⁹ *Id.*

¹⁰ *Id.* P 20.

¹¹ *See supra* footnote 2.

September 2013 Compliance Filing in Docket No. RP13-1360-000

8. In its September 2013 Compliance Filing, Kinetica states that, as directed by the August 2013 Order, it provided a recalculation of its initial rates “to reflect the O&M and A&G costs from its January 31, 2013 Data Response filing which the Commission approved as the starting point for Kinetica's rate recalculations in the May 31[, 2013 Certificate] Order.”¹² Kinetica states that it followed the Commission’s directives and included workpapers detailing its calculations and a tariff record reflecting the recalculated rates.

9. Kinetica also states that the August 2013 Order required it to “either use its actual cost of debt or provide supporting documentation thereof, or file support for the proposed six (6) percent cost of debt.”¹³ Kinetica states that it filed documentation reflecting that its actual cost of debt is the same 6 percent that it estimated in its July 2013 Compliance Filing. Lastly, Kinetica states that it has filed tariff language to comply with the August 2013 Order’s requirement that shipper will not be required to execute a Reserves Commitment Agreement as a condition for receiving interruptible service.

10. Public notice of Kinetica’s September 27, 2013 filing in Docket No. RP13-1360-000 was issued on October 1, 2013. Comments were due as provided in section 154.210 of the Commission’s regulations (18 C.F.R. § 154.210 (2015)). The Producer Coalition,¹⁴ Deep Gulf Energy LP, and Arena Energy, LP, and Walter Gas & Oil Corporation filed protests. On October 18, 2013 Kinetica filed an answer to these protests. Rule 213(a)(2) of the Commission’s regulations prohibits answers to protests and answers to answers unless otherwise ordered by the decisional authority.¹⁵ In this circumstance the Commission will permit Kinetica’s answer because doing so will not cause undue delay and it will assist the decision-making process.

¹² September 2013 Compliance Filing at 3 (citing August 2013 Order, 144 FERC ¶ 61,159 at PP 12, 22). Kinetica also stated that it was filing for rehearing of this directive as is discussed below.

¹³ *Id.* (citing August 2013 Order, 144 FERC ¶ 61,159 at PP 15, 22).

¹⁴ The Producer Coalition is composed of Castex Offshore, Inc., Century Exploration New Orleans, LLC, Dynamic Offshore Resources, LLC, Energy XXI Ltd., Pisces Energy, LLC, and W&T Offshore, Inc.

¹⁵ 18 C.F.R. § 385.213(a)(2) (2015).

11. The Commission finds that Kinetica has complied with the August 2013 Order as it relates to the use of actual debt costs in its cost of service and the requirement that it not impose a reserves commitment on its shippers in order for them to receive interruptible service.

12. In its July 2013 Compliance filing Kinetica stated that the six percent interest rate it used in that filing was its “best estimate” of its actual cost of debt as of that time. In its September 2013 Compliance Filing, Kinetica provided documentation that its actual debt cost is six percent. Accordingly, Kinetica has complied with the requirement of the May 2013 Certificate Order that it utilize its actual cost of debt to calculate its recoverable cost of service.¹⁶

13. The protesters argue that Kinetica failed to comply with the Commission’s requirement that it “refile revised tariff records stating that a shipper will not be required to execute a Reserves Commitment Agreement as a condition for receiving interruptible service.”¹⁷ The protesters argue that Kinetica’s proposal to modify its tariff to read, “[n]o shipper will be required to execute a Reserve Commitment Agreement as a condition to receiving interruptible service *at recourse rates*.” (Emphasis added). They argue that this is unreasonable, because it suggests that a prospective shipper must execute a Reserve Commitment Agreement in order to receive a discounted rate. They assert that this is contrary to Section 24, of Kinetica’s tariff which provides that a shipper’s execution of a Reserves Commitment Agreement is but one of circumstances under which Kinetica and a shipper may agree to a discounted rate.

¹⁶ Kinetica did not request rehearing of the August 2013 Order’s condition relating to cost of debt. Kinetica stated in its July 2013 Compliance Filing that the six percent interest rate it used in that filing was its “best estimate” of its actual cost of debt as of that time. However, in its September 2013 Compliance Filing it stated that its actual debt cost is six percent, as projected in its July 2013 Compliance Filing. Accordingly, Kinetica has complied with the requirement of the May 2013 Certificate Order that it file its actual cost of debt. As the Commission found in its June 10, 2014 order on rehearing:

Thus, Kinetica Energy has provided actual debt costs and recalculated its initial rates reflecting those costs, mooted its request for rehearing of the May 31 [2013 Certificate] Order’s condition that it file its actual cost of debt. 147 FERC ¶ 61,196, at P 39 (2014).

¹⁷ August 2013 Order, 144 FERC ¶ 61,159 at P 20. On January 30, 2014 and February 3, 2014, respectively, Walter Gas & Oil Corp. and W&T Offshore, Inc. filed to withdraw their protests of Kinetica’s September 2013 Compliance filing.

14. Kinetica answers that a reserve commitment is voluntary in connection with obtaining IT service, and that a reserve commitment may be “available to the shipper as an option, perhaps in connection with obtaining a discounted IT rate.”¹⁸ Kinetica argues that language stating that because a reserve commitment is not required for one thing, does not mean that a reserve commitment is required for everything else. Kinetica states that its language is intended to mean that it is possible that Kinetica might require a reserve commitment under certain circumstances in connection with obtaining certain discounted rates, but that a reserve commitment will not be required for obtaining IT service. Kinetica requests that the Commission reject the protests and approve its filing.

15. The Commission finds that the language filed by Kinetica does not necessitate that a reserve commitment is required to obtain IT service or that a reserve commitment is a necessary requirement to obtain all discounted service and finds that the tariff language proposed by Kinetica generally complies with the Commission’s August 2013 Order. Accordingly, the Commission finds that the tariff records submitted by Kinetica (with the exception of those related to the recalculation of O&M and A&G expenses) in its September 2013 Compliance Filing satisfy the dictates of the August 2013 Order.

Rehearing of the August 2013 Order

16. The August 2013 Order found that Kinetica’s July 2013 Compliance Filing made unexplained and unsupported modifications to its O&M and A&G expenses that had been included in its January 31, 2013 data response and accepted by the May 2013 Certificate Order. The August 2013 Order directed Kinetica to refile its tariff records to reflect the O&M and A&G costs from its January 31, 2013 data response which the Commission approved as the starting point for Kinetica's rate recalculations in the May 2013 Certificate Order.

17. On rehearing, Kinetica argues that in the August 2013 Order, the Commission stated that the May 2013 Certificate Order approved a starting point for O&M and A&G costs, not a final level. Kinetica argues that this is because the Commission simultaneously ordered Kinetica to complete a process of refunctionalizing all its costs into transmission or gathering as well as removing any unutilized facilities. Kinetica states that it accomplished this directive in its July 2013 Compliance Filing where it adjusted these starting figures to reflect the refunctionalization of facilities as directed by the Commission in the May 2013 Certificate Order.

18. Specifically, Kinetica points out that completing the final refunctionalization of facilities changed the proportion of the facilities classified as transmission, and therefore

¹⁸ Kinetica Answer at p. 2.

changed the percentages to be used for allocation of operating expenses between gathering and transmission. Kinetica argues that the total operating costs did not increase, as suggested in the August 2013 Order, but rather these amounts were refunctionalized, to follow the facilities to which they had been allocated through the use of the inch-mile study which served as the basis for the functionalized operating expenses since the inception of the proceeding. Kinetica argues that to disallow the adjustments to the O&M and A&G costs, and send Kinetica back to the unadjusted January 2013 figures, directly conflicts with the May 2013 Certificate Order and unjustly punishes Kinetica.

19. The Commission has reexamined Kinetica's June 2013 Compliance Filing and finds that Kinetica initiates its calculations with the total O&M and A&G costs approved in the May 2013 Certificate Order. The fact that the O&M and A&G costs used as a basis for calculating Kinetica's cost of service appeared to differ from the costs approved by the Commission in the January 2013 filing appear, as argued by Kinetica, to be the result of the requirement of the May 2013 Order that Kinetica refunctionalize certain facilities. Therefore, Kinetica's request for rehearing is granted.

20. The rates that are currently in effect on Kinetica's system are those proposed by Kinetica in its July 2013 Compliance Filing,¹⁹ and, given our finding above, such rates properly reflect the refunctionalized O&M and A&G costs. No further issue related to Kinetica's rates remains outstanding. Therefore, the Commission finds that, the rates currently in effect are in compliance with the May 2013 Certificate Order and the August 2013 Order and it removes the conditions put in place by the August 2013 Order that the rates be recalculated in regard to A&G and O&M expenses. Accordingly, the Commission rejects the September 2013 Compliance Filing's [SCHEDULE OF RATES, Sheet Number 005, 3.0.0](#), because this tariff record was proposed to revise rates to comply with the August 2013 Order requirement to modify O&M and A&G expenses which, as discussed above, is no longer necessary.

21. In the August 2013 Order, the Commission stated that because it had not found that the proposed compliance initial rates that took effect on September 1, 2013 were in full compliance with the May 2013 Order, such rates would be accepted subject to further review and refund.²⁰ On rehearing of the August 2013 Order, Kinetica raises issues with

¹⁹ Kinetica Energy Express, LLC, FERC NGA Gas Tariff, Kinetica Energy Express LLC - FERC Gas Tariff, [SCHEDULE OF RATES, Sheet Number 005, 1.0.0](#), A.

²⁰ August 2013 Order, 144 FERC ¶ 61,159 at P 9 (citing, *Southern Natural Gas Co., L.L.C. and High Point Gas Transmission, LLC*, 143 FERC ¶ 61,207, at PP 93-101 (2013)).

the Commission's use of its certificate conditioning authority to accept Kinetica's initial rates subject to refund. However, given our action in the instant order, the Commission finds that refunds will not result in this proceeding. Therefore the Commission removes its refund condition and finds that Kinetica's request for rehearing on this issue is moot.

22. Accordingly, Kinetica's request for rehearing related to its refunctionalized costs is granted, and the O&M and A&G costs used to calculate Kinetica's rates in its July 2013 Compliance Filing are accepted. Kinetica's request for rehearing of the Commission's certificate conditioning authority is dismissed as moot. In addition, the rates filed in Docket No. RP13-1360-000 are rejected. The currently effective rates filed in Docket No. RP13-1116-000 reflecting updated O&M and A&G costs remain in effect and, consistent with this discussion, no further modification of those tariff records is required.

The Commission orders:

(A) The following tariff record filed on September 27, 2013 in Docket No. RP13-1360-000 is rejected: Kinetica Energy Express, LLC, FERC NGA Gas Tariff, Kinetica Energy Express LLC - FERC Gas Tariff, SCHEDULE OF RATES, Sheet Number 005, 3.0.0.

(B) The following tariff record filed on September 27, 2013 in Docket No. RP13-1360-000 is accepted effective September 1, 2013: Kinetica Energy Express, LLC, FERC NGA Gas Tariff, Kinetica Energy Express LLC - FERC Gas Tariff, RATE SCHEDULE IT, Sheet Number 054, 2.0.0.

(C) Rehearing of the August 2013 Order is granted in part, and dismissed as moot in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.