

155 FERC ¶ 61,209
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Kinetica Deepwater Express, LLC

Docket No. RP16-900-000

ORDER ACCEPTING TARIFF RECORDS SUBJECT TO CONDITION

(Issued May 31, 2016)

1. On April 29, 2016, Kinetica Deepwater Express, LLC (Kinetica Deepwater), filed tariff records to reflect a name change, website identification, and various administrative tariff changes to conform its tariff to its new operational configuration.¹ Kinetica Deepwater proposes an effective date of June 1, 2016 for these tariff records. As discussed below, the Commission accepts the proposed tariff records to be effective June 1, 2016 subject to condition.

Details of the Filing

2. On June 21, 2012, the Commission issued an order granting a request by ANR Pipeline Co. (ANR) to abandon by sale all its offshore pipeline facilities in the Gulf of Mexico, as well as certain onshore facilities, to its wholly owned subsidiary TC Offshore LLC (TC Offshore).² In the same order, the Commission issued TC Offshore a certificate to acquire and operate the jurisdictional transmission facilities. The Commission also found that certain of the facilities being transferred were non-jurisdictional gathering facilities.³ Because TC Offshore intended to operate the non-jurisdictional gathering facilities in connection with its jurisdictional transmission

¹ See Appendix.

² *ANR Pipeline Co.*, 139 FERC ¶ 61,238, *order on reh'g*, 140 FERC ¶ 61,260 (2012), *order on reh'g*, 143 FERC ¶ 61,225 (2013), *order on voluntary remand*, 155 FERC ¶ 61,183 (2016).

³ *Id.* PP 95-108.

facilities, the Commission held that it would have jurisdiction over TC Offshore's gathering rates,⁴ and the Commission approved separately-stated rates for TC Offshore's firm and interruptible gathering services.

3. In the instant filing, Kinetica Deepwater states that on March 31, 2016, Kinetica Partners, LLC, purchased TC Offshore and changed the name of TC Offshore, LLC to Kinetica Deepwater Express, LLC.⁵ Kinetica Deepwater also states that on April 1, 2016, it transferred the non-jurisdictional gathering facilities previously held by TC Offshore to its non-jurisdictional affiliate, Kinetica Midstream Express, LLC (Kinetica Midstream). Therefore, Kinetica Deepwater asserts that it does not hold any gathering facilities or provide any gathering services and that such services are provided by Kinetica Midstream.

4. Accordingly, Kinetica Deepwater proposes to revise TC Offshore's existing tariff to reflect a name change, from TC Offshore LLC, to Kinetica Deepwater LLC, and make various administrative tariff changes to simplify certain procedures that were in the TC Offshore tariff and that are unnecessarily complicated given the way the pipeline is operated by Kinetica Deepwater. The first such change relates to the cashout and trading of imbalance procedures which Kinetica Deepwater proposes to simplify by eliminating the use of a Cashout Price Surcharge. Kinetica Deepwater proposes substitute the language accepted by the Commission for use in the tariff of its affiliate, Kinetica Energy Express, LLC (Kinetica Energy), for its cashout and imbalance procedures. Second, Kinetica Deepwater proposes to update the language on Annual Charge Adjustment in compliance with *Annual Charge Filing Procedures for Natural Gas Pipelines*, Order No. 776, FERC Stats. & Regs. ¶ 31,345 (2013).

5. Third, Kinetica Deepwater proposes to simplify the tariff provisions for recovery of its fuel costs to eliminate monthly calculations and the filing of an unnecessary annual report. Kinetica Deepwater states that its fuel retention percentage is, and has been zero, since the creation of TC Offshore, and that it expects that the percentage will remain at zero. Therefore, Kinetica Deepwater proposes to substitute language accepted by the Commission for use in the Kinetica Energy tariff for this purpose and to make any necessary conforming changes in its tariff. Fourth, Kinetica Deepwater proposes to modify its tariff provision pertaining to purchases and sales of gas to reflect the fact that as operated by Kinetica Deepwater, any purchases or sales of gas will be rare,

⁴ *Id.* P 57 n.48.

⁵ On April 7, 2016, Kinetica Deepwater informed the Commission that TC Offshore was purchased by Kinetica Partners, LLC on March 31, 2016, and that TC Offshore's name was changed to Kinetica Deepwater Express, LLC. *ANR Pipeline Co.*, 155 FERC ¶ 61,183 at n.2.

making the complex posting and reporting procedures in the instant tariff unnecessary. Kinetica Deepwater proposes to substitute language accepted by the Commission for use in the Kinetica Energy tariff for this purpose.

6. While Kinetica Deepwater states that it no longer provides any gathering services having transferred all its gathering facilities to Kinetica Midstream, Kinetica Deepwater states that it has retained some pre-existing tariff provisions that refer to gathering either for historical reasons or as potentially useful in the event Kinetica Deepwater ever does provide any gathering service.⁶ The retained provisions include TC Offshore's separately-stated rates for firm and interruptible gathering service.

Public Notice and Comments

7. Public notice of the instant filing was issued on May 2, 2016, with interventions and protests due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2016). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), 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 this proceeding or place additional burdens on existing parties. Indicated Shippers⁷ filed a timely protest to the instant filing proposal.

8. On May 20, 2016, Kinetica Deepwater filed an answer to the protest of Indicated Shippers. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure [18 C.F.R. § 385.213(a)(2) (2016)], answers to protests are prohibited unless otherwise ordered by the decisional authority. The Commission will accept Kinetica Deepwater's answer because it provides information that will assist us in our decision-making process.

9. Indicated Shippers assert that the instant filing is more than a simple name change and tariff clean-ups as described by Kinetica Deepwater. Indicated Shippers assert that this filing raises questions regarding changes of service, and existing contractual obligations. They assert that Kinetica Deepwater has not obtained the proper Commission authorization to modify the combined gathering/transportation service that was previously provided by TC Offshore and that it has not been given authority to breach its existing contracts that incorporate gathering services.

⁶ Kinetica Deepwater Transmittal Letter at n.3.

⁷ In the instant filing, Indicated Shippers are comprised of Apache Corporation, Chevron U.S.A. Inc., and Fieldwood Energy, LLC.

10. Indicated Shippers argue that Kinetica Deepwater is required to provide at least 30-days' notice before any change in service and that it has failed to do so. Indicated Shippers assert that Kinetica Deepwater merely states in a footnote to the instant filing that as of April 1, 2016, it no longer provided gathering service because the gathering facilities were transferred to an affiliate. They assert that Kinetica Deepwater should be required to provide a full explanation of the impact of the instant filing on its current jurisdictional transportation service and current gathering service, and related contracts, that are provided "in connection" with its jurisdictional transportation service.

11. Indicated Shippers assert that Kinetica Deepwater has provided no explanation to its shippers, or the Commission concerning: (1) how the transfer of gathering facilities to Kinetica Midstream will change the gathering service formerly provided to the shippers; (2) the terms under which gathering service will be provided, and (3) the impacts of these changes on its jurisdictional transportation service and existing contractual obligations. Indicated Shippers note that Kinetica Deepwater's existing contracts and the Statement of Rates in its Tariff continue to provide for gathering services and argue that a simple transfer of ownership of the facilities without terminating existing contracts does not relieve Kinetica Deepwater from its on-going contractual obligations. Moreover, they assert that there is no question that the elimination of the combined transportation and gathering service constitutes a substantial change in the service that was offered by TC Offshore, subject to the Commission's jurisdiction.

12. In addition, the Indicated Shippers assert that Kinetica Deepwater proposes to modify its cashout and imbalance trading procedures. However, they argue that Kinetica Deepwater does not provide adequate notice or explain that it will no longer permit the netting and trading of gathering imbalances with transportation imbalances, which was previously a part of the service provided by TC Offshore. They argue that Kinetica Deepwater made the change prohibiting trading and netting, effective April 1, 2016, with no prior notice to its shippers or the Commission, and no changes to the Tariff.

13. In its Answer, Kinetica Deepwater asserts that Kinetica Midstream has been providing the three members of Indicated Shippers the same gathering service without interruption that they had received from TC Offshore, and charging them the same gathering rate that they were paying to TC Offshore. Further, Kinetica Deepwater asserts that Indicated Shippers had ample notice of the changes on the Kinetica Deepwater system as evidenced by the communications between the parties to this dispute. Moreover, Kinetica Deepwater contends that Indicated Shippers' assertion that Kinetica Deepwater should be required to make an NGA section 4 filing prior to the transfer of the gathering facilities to Kinetica Midstream is incorrect and that no such filing is required because the Commission does not have jurisdiction over gathering and thus cannot impose requirements on it.

14. Kinetica Deepwater also asserts that the Indicated Shippers do not actually ask the Commission to reject its proposed tariff changes, but that they only ask Kinetica Deepwater to provide certain explanations and that the Commission require Kinetica Deepwater to continue to provide combined gathering and transportation services even though Kinetica Midstream owns the gathering facilities. Kinetica Deepwater asserts that it has properly explained its filing and that to require Kinetica Deepwater to provide the requested services would exceed the Commission's authority by requiring it to impose its jurisdiction over gathering facilities.

Discussion

15. The Commission accepts Kinetica Deepwater's filing to be effective June 1, 2016, subject to the condition that it remove all references to gathering from its tariff. The Commission has previously found that it "does not have the discretion to withhold approval for an interstate pipeline to abandon facilities that were certificated in the past but are subsequently found to perform[] non-jurisdictional gathering functions."⁸ As a result, the Commission found that it had no authority to reject or condition Kinetica Deepwater's affiliate, Kinetica Energy's, proposal to spin off its gathering facilities to Kinetica Midstream.⁹ For the same reason, the Commission finds that it has no authority to reject or condition Kinetica Deepwater's transfer of the gathering facilities obtained from TC Offshore to Kinetica Midstream. Accordingly, the Commission finds that Kinetica Deepwater has generally acted in an appropriate manner in transferring the non-jurisdictional gathering facilities previously held by TC Offshore to its non-jurisdictional affiliate, Kinetica Midstream.

16. However, the Commission finds that Kinetica Deepwater has not adequately revised its tariff to reflect the transfer of the gathering facilities to Kinetica Midstream. Kinetica Deepwater states that the instant tariff does not cover any gathering services because it applies only to the activities of Kinetica Deepwater. However, the Commission's review of the tariff records reveals that Kinetica Deepwater reflects both gathering rates and the inclusion of such rates in regard to negotiated rates. Kinetica Deepwater asserts that some of the tariff provisions that refer to gathering have been retained either for historical reasons or as potentially useful in the event Kinetica Deepwater ever does provide any gathering. To the contrary, the Commission finds that the inclusion of such references merely confuses the services that are to be performed by Kinetica Deepwater and potentially the rates that may be charged for its services. Because Kinetica Deepwater states that it no longer provides any gathering

⁸ *Tennessee Gas Pipeline Company, L.L.C. and Kinetica Energy Express, LLC*, 143 FERC ¶ 61,196, at P 94 (2013).

⁹ *Id.*

services, its tariff should not contain any references to such gathering rates and service. Accordingly, the Commission finds that Kinetica Deepwater must remove the references to gathering in its tariff. If Kinetica Deepwater provides any gathering services in the future, it may file pursuant to section 4 of the Natural Gas Act to make the necessary revisions to its tariff at that time.

17. Kinetica Deepwater's answer adequately addresses the other concerns raised by the Indicated Shippers. First, Indicated Shippers assert that Kinetica Deepwater proposes to modify its cashout and imbalance trading procedures. They argue that in April of this year Kinetica Deepwater restricted netting and trading without providing adequate notice that it would no longer permit the netting and trading of gathering imbalances with transportation imbalances, which was previously a part of the service provided by TC Offshore. In its answer, Kinetica Deepwater maintains that each of the three members of Indicated Shippers had only *de minimus* imbalances on their gathering contracts in April 2016 and very small imbalances on their IT transportation contracts and asserts that trading such small imbalances across the agreements would not have made any difference. Moreover, Kinetica Deepwater states that it would utilize an average price for cashout activity for April 2016 and waive tiering on the cashout for April 2016, because there was limited opportunity for imbalance trading and payback. Kinetica Deepwater asserts that this mitigates the harm to Indicated Shippers from any ability to trade imbalances between gathering and transportation.

18. We find merit in both the position of Indicated Shippers and Kinetica Deepwater on this issue. Indicated Shippers should not have been deprived of their netting and trading opportunities without proper notice, however, as set forth above, Kinetica Deepwater appears to have adequately mitigated the situation. On a prospective basis, the Commission finds the language related to this issue in the instant tariff records to be just and reasonable. Because the Commission no longer has jurisdiction with respect to the gathering service formerly provided by TC Offshore, the Commission has no authority to require Kinetica Deepwater to permit netting and trading of non-jurisdictional gathering imbalances with jurisdictional transportation imbalances.

19. Accordingly, the Commission accepts the tariff records in the instant filing to be effective June 1, 2016, subject to the elimination of language related to gathering services discussed above.

The Commission orders:

(A) The proposed tariff records are accepted, subject to condition, to be effective June 1, 2016.

(B) Kinetica Deepwater is directed to file revised tariff records to reflect the removal of gathering references from its proposed tariff records as discussed in the body of this order within 15 days of the issuance of the instant order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Kinetica Deepwater Express, LLC
FERC NGA Gas Tariff
TC Offshore Tariffs

Tariff Records Accepted Effective June 1, 2016

[Tariff, Original Volume No. 1, 1.0.0](#)

[PART 2, PRELIMINARY STATEMENT, 1.0.0](#)

[PART 3, MAPS, 3.0.0](#)

[4.1 - Statement of Rates, Rate Schedules FTS-1, ITS, TTS and IPLS, 1.0.0](#)

[4.2 - Statement of Rates, Statement of Surcharges, 5.0.0](#)

[4.3 - Statement of Rates, Statement of Negotiated Rates, 7.0.0](#)

[5.3 - Rate Schedules, Rate Schedule TTS, 1.0.0](#)

[5.4 - Rate Schedules, Rate Schedule IPLS, 1.0.0](#)

[6.1 - GT&C, Definitions, 3.0.0](#)

[6.2.1 - GT&C, Requests, 1.0.0](#)

[6.2.2 - GT&C, Request for Transportation, 1.0.0](#)

[6.2.10 - GT&C, Sale of Service, 1.0.0](#)

[6.6 - GT&C, Nominations, 2.0.0](#)

[6.6.1 - GT&C, Submission of Nominations, 2.0.0](#)

[6.6.2 - GT&C, Implementation of Intraday Nominations, 2.0.0](#)

[6.6.6 - GT&C, Scheduled Nominations, 1.0.0](#)

[6.14.2 - GT&C, Allocation of Receipts, 1.0.0](#)

[6.14.5 - GT&C, Trespass Gas, 1.0.0](#)

[6.14.8 - GT&C, Information Availability, 1.0.0](#)

[6.15.1 - GT&C, Cashout of Imbalances, 1.0.0](#)

[6.15.5 - GT&C, System Cashout Mechanism, 1.0.0](#)

[6.15.6 - GT&C, Imbalance Netting, 1.0.0](#)

[6.15.7 - GT&C, Imbalance Trading, 1.0.0](#)

[6.16 - GT&C, Spot Price Index, 1.0.0](#)

[6.17 - GT&C, Billing and Payment, 2.0.0](#)

[6.20.1.4 - GT&C, Recall Rights, 2.0.0](#)

[6.20.1.5 - GT&C, Bidding Period, 2.0.0](#)

[6.20.1.7 - GT&C, Required Information for the Release of Capacity, 2.0.0](#)

[6.20.1.8 - GT&C, Open Bidding Process, 3.0.0](#)

[6.20.1.9 - GT&C, Pre-arranged Release not Subject to Bidding, 2.0.0](#)

[6.20.1.10 - GT&C, Matching Rights for Pre-arranged Releases Open for Bidding, 2.0.0](#)

[6.20.1.11 - GT&C, Awarding of Capacity Available for Release, 2.0.0](#)

[6.22 - GT&C, Internet Site, 1.0.0](#)

[6.23 - GT&C, FERC Annual Charge Adjustment, 2.0.0](#)

[6.24 - GT&C, Hurricane Surcharge, 1.0.0](#)

[6.29 - GT&C, Transporter's Use, 2.0.0](#)

[6.30 - GT&C, Operational Purchases and Sales of Gas, 1.0.0](#)

[7.1 - Service Agmts, Transporter's Rate Schedules FTS-1, ITS, TTS and IPLS, 2.0.0](#)

[7.1.1 - Service Agmts, Transporter's Rate Schedules - Primary Path Exhibit, 1.0.0](#)

[7.2 - Service Agmts, Master Service Agreement, 1.0.0](#)

[7.3 - Service Agmts, Transportation Service Request Form, 1.0.0](#)

[Tariff, Original Volume No. 2, 1.0.0](#)