

155 FERC ¶ 61,325
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Venice Gathering System, L.L.C.	Docket No. RP16-975-000
Venice Gathering System, L.L.C.	Docket No. RP15-1237-000
	(Consolidated)

ORDER ACCEPTING AND SUSPENDING TARIFF RECORD,
SUBJECT TO REFUND, ESTABLISHING A HEARING, AND CONSOLIDATING
PROCEEDINGS

(Issued June 30, 2016)

1. On May 26, 2016, Venice Gathering System, L.L.C. (Venice), filed a tariff record¹ pursuant to section 4 of the Natural Gas Act (NGA) proposing to reduce its transportation rates below the level proposed in its pending general section 4 case in Docket No. RP15-1237-000. Venice proposes an effective date of July 1, 2016, for its tariff record. The Commission accepts and suspends Venice's tariff record to be effective July 1, 2016, subject to refund and the outcome of the hearing proceeding established herein. The Commission also consolidates the instant proceeding with the ongoing proceeding in Docket No. RP15-1237-000.

Background

2. Venice states that it collects natural gas supplies from various sources in the Gulf of Mexico, offshore Louisiana. According to Venice, its pipeline extends to fields located in the West Delta, Grand Isle, and South Timbalier areas of the Gulf. Venice states that natural gas transported through its system is delivered onshore to the Venice Processing Complex, a non-jurisdictional processing facility located

¹ Venice Gathering System, L.L.C., FERC NGA Gas Tariff, FERC Gas Tariffs, [Sheet No. 4, Statement of Transportation Rates, 4.0.0.](#)

in Venice, Louisiana. The processing plant is connected to three interstate pipelines that transport the processed natural gas to downstream points. Venice states that its system design transportation capacity is 320,000 Dth per day.

3. On August 31, 2015, in Docket No. RP15-1237-000, Venice made an NGA general section 4 filing proposing a substantial increase in its rates due to decreased throughput on its system (2015 rate case). According to Venice, it has no firm customers paying reservation charges, and thus in its 2015 rate case it proposed a volumetric-based usage rate of \$1.2545 per Dth for Rate Schedules FTS-2 and ITS, an increase over the existing volumetric usage rate of \$0.35 per Dth. On September 29, 2015, the Commission accepted and suspended the tariff record to be effective March 1, 2016 and set the case for hearing.²

4. On January 29, 2016, Venice moved to place the rates suspended in the 2015 rate case into effect, as adjusted to reflect a reduction in the rates due to corrections to Venice's test-period calculations, effective March 1, 2016. The Commission accepted the filing by letter order on February 18, 2016, subject to the outcome of the underlying proceeding in Docket No. RP15-1237-000, consistent with the September 29, 2015 Order.³ The motion rate of \$1.1364 per Dth thus went into effect, subject to refund, on March 1, 2016, and is the currently-effective rate for customers on Venice.

5. On March 22, 2016, the Chief Judge appointed a Settlement Judge to assist the parties in their settlement negotiations. After considering a number of potential settlement mechanisms, the parties failed to reach agreement during settlement negotiations in Docket No. RP15-1237-000. As a result, the Settlement Judge reported on April 20, 2016 that the 2015 rate case is not suitable for settlement and recommended termination of the settlement negotiations. On May 10, 2016, the Producer Coalition and Trial Staff filed testimony addressing issues raised in the 2015 rate case. On June 6, 2016, after Venice filed the instant rate case, the Chief Judge issued an order suspending the procedural schedule in the 2015 rate case, finding that suspension would permit the participants' most efficient use of resources while awaiting the Commission's decision regarding consolidation of the two rate cases.⁴ The Chief Judge also required that

² *Venice Gathering Sys., L.L.C.*, 152 FERC ¶ 61,245 (2015) (September 29, 2015 Order).

³ *Venice Gathering Sys., L.L.C.*, Docket No. RP15-1237-001 (Feb. 18, 2016) (delegated letter order).

⁴ *Venice Gathering Sys., L.L.C.*, Docket No. RP15-1237-000, Order of Chief Judge Suspending Procedural Schedule (June 6, 2016).

the parties submit a joint proposed procedural schedule after issuance of a Commission order of consolidation.

Details of the Instant Filing

6. Venice states that it is filing the instant NGA general section 4 rate case for many of the same reasons that it filed its 2015 rate case: to address the exposure Venice faces from costly operation expenses, steadily declining throughput directly affecting revenue through Venice's volumetric rates, and the likelihood of a very short remaining useful life of the pipeline system. Venice contends that the severe volume decline on its pipeline system has continued over the past year and is not properly reflected in the 2015 rate case proceeding. Venice requests consolidation of the instant rate case with its pending rate case in Docket No. RP15-1237-000.

7. In its filing, Venice projects that throughput as of November 30, 2016, the end of the test period, will be 25,300 Dth per day, compared to the projected level of 25,900 Dth per day in Docket No. RP15-1237-000. In both cases, Venice asserts the throughput level reflects a severe decline in production in the shallow fields in the Gulf of Mexico. Venice notes that throughput on its system has declined by 90 percent since 2001, when Venice filed its first NGA general section 4 rate case. Venice contends that this decline is not correlated to natural gas prices, and that it expects this decline to continue after the end of the test period. Venice notes that all of its customers have contracted for volumetric service, and they pay only for the throughput they flow on the system. Venice thus asserts that it is exposed to a high risk of failing to recover its cost of service as throughput continues to decline.

8. Despite lower throughput on its system, Venice states that it proposes to lower its rates from the pending rates in the 2015 rate case as a result of a lower cost of service. Venice proposes to lower the volumetric-based rate for Rate Schedules FTS-2 and ITS to \$1.0724 per Dth from the currently-effective rate of \$1.1364 per Dth. This proposed rate is based on a cost of service of \$9,902,144 and annual billing determinants of 9,233,296 Dth (compared to a cost of service of \$11,859,809 and billing determinants of 9,453,500 Dth in the 2015 rate case). Venice proposes an annual depreciation expense of \$2,719,050, including an allowance for negative salvage of \$1,792,496. Venice further proposes a 9.15 percent overall rate of return and a debt-to-equity ratio of 48.66 percent debt and 51.34 percent equity. Venice proposes a return on equity of 13.04 percent, based on the discounted cash flow (DCF) analysis and risk comparison between Venice and pipelines owned by the proxy companies included in its DCF analysis.

Public Notice, Interventions, and Protests

9. Public notice of Venice's filing was issued on May 27, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁵ Pursuant to Rule 214,⁶ all timely filed motions to intervene and any unopposed motions to intervene filed 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. On June 8, 2016, Arena Energy, LP, EPL Oil & Gas, Inc., Fieldwood Energy LLC, Helis Oil & Gas Company, L.L.C., SPN Resources, LLC, and W&T Offshore, Inc. (collectively, the Producer Coalition) filed an untimely motion to intervene and protest. On June 10, 2016, Venice filed an answer to the protest, and on June 15, 2016, the Producer Coalition filed a motion for leave to answer and an answer to Venice's answer.⁷

10. The Producer Coalition contends that Venice has failed to show that its proposed rates are just and reasonable. The Producer Coalition states that numerous elements of Venice's filing must be closely reviewed by the Commission, including Venice's overall cost of service, its proposed depreciation expense (based on a system depreciation life of 6.9 years), the projected decrease in throughput, and a return on equity of 13.04 percent. The Producer Coalition contends that the return on equity is excessive and does not correlate to the actual risks Venice faces in the marketplace. The Producer Coalition also opposes consolidation of the new rate case with the pending rate case in Docket No. RP15-1237-000.

11. The Producer Coalition asserts that as a threshold matter, Venice's new rate filing is an abuse of the Commission's time and resources on the basis that it is duplicative of the Docket No. RP15-1237-000 proceeding. The Producer Coalition notes that the circumstances asserted by Venice in the instant proceeding, including diminished

⁵ 18 C.F.R. § 154.210 (2015).

⁶ 18 C.F.R. § 385.214 (2015).

⁷ The Commission's Rules of Practice and Procedure do not permit answers to protests or answers unless otherwise ordered by the decisional authority. 18 C.F.R. § 385.213(a)(2) (2015). However, the Commission finds good cause to accept the answers since they will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record. Further, Venice, in its answer to the protest, does not oppose the late motion to intervene or acceptance of the protest. Therefore, the Commission will accept the protest together with granting the late motion to intervene.

throughput, higher operational expenses, and the alleged shortened life of its pipeline system, are currently being litigated. The Producer Coalition urges the Commission to accept and suspend the filing to become effective on July 1, 2016, subject to refund and the outcome of a separate hearing.

12. The Producer Coalition avers that nothing material has changed in the new rate case from the 2015 rate case (diminished throughput, higher operational expenses, and alleged shortened life of its pipeline system), and that the higher costs and lower throughput are illusory and due to speculative and arbitrary adjustments. As such, the Producer Coalition takes exception to the adjustments. In addition, the Producer Coalition asserts that Venice's proposed transportation rates are egregious, and shippers will have to continue to pay the current rate until the two cases are litigated and the Commission issues final orders addressing them. The Producer Coalition states that in the current market where gas prices are below \$2.00 per Dth, a transportation rate artificially inflated to above \$1.00 per Dth is clearly unjust and unreasonable.

13. The Producer Coalition also contends that Venice has based its rates on a projected reduction in system throughput that assumes a continued level of drop-off based primarily on historical averages that have nothing to do with actual system throughput during the base period. The Producer Coalition avers that this is inconsistent with Commission precedent, and that Venice compounds this error in its use of historic averages rather than actual data on systems outages during the base period.

14. The Producer Coalition further contends that all of the above issues were set for hearing in the Docket No. RP15-1237-000 proceeding. The Producer Coalition objects to the consolidation of the instant rate case with Docket No. RP15-1237-000, stating that the filing of this new rate case results in "pancaked rates" which will only extend the resolution of the 2015 rate case proceeding, and force Venice's shippers to continue to pay the unjust and unreasonable rate from that proceeding.

15. In its answer, Venice asserts that current natural gas prices have no bearing on a just and reasonable rate for transportation on its Venice system, and that it is entitled to rates that provide a reasonable opportunity to recover its cost of service. Venice reiterates that, absent an increase from the \$0.35 per Dth rate to account for the dramatic throughput decline on its system, it will not recover its cost of service in either the near term or the long term.

16. Venice asserts that the significant throughput decline on its system since the 2015 rate case filing made it necessary to file the instant case. Venice also claims that because the underlying facts and issues in this proceeding are intertwined with the facts and issues in the 2015 rate case, the two cases should be consolidated as it would be inefficient and administratively burdensome for the parties to litigate the two cases separately. Venice further contends that by opposing the motion to consolidate, it is the Producer Coalition

who is in effect asking the Commission to conduct duplicative proceedings with overlapping issues, and that Producer Coalition underestimates the significant burden that would be imposed upon the Commission and the parties if the rate cases are not consolidated.

17. In its answer, the Producer Coalition reasserts that the drop in system throughput claimed by Venice is inaccurate, that Venice has erroneously calculated its proposed rates by using an assumed system throughput as of the last day of the test period, and that Venice has improperly tallied base period throughput by using historical average impacted volumes during the system outage Venice experienced in October 2015 rather than actual nominated volumes just prior to the outage.

Discussion

18. The Commission finds that Venice's proposed rate changes raise issues which are best addressed in a hearing. Accordingly, the Commission accepts Venice's proposed tariff record for filing and suspends it for a nominal period to become effective July 1, 2016, subject to refund and the conditions set forth in this order. The Commission also sets all issues in the subject filing for hearing before an administrative law judge.

19. The Commission finds that the rate and cost of service issues concerning whether Venice's proposed rates are just and reasonable are present both here and in the ongoing hearing in Docket No. RP15-1237-000. Accordingly, the Commission finds that it is appropriate to consolidate the two proceedings for purposes of hearing and decision. Consolidation is appropriate where there are common questions of law or fact and consolidation will result in greater administrative efficiency.⁸ The Commission notes that the Producer Coalition itself recognizes that "the circumstances asserted by Venice for filing the new rate case (diminished throughput, higher operational expenses, and the alleged shortened life of its pipeline system) are currently being litigated in the [Docket No.] RP15-1237-000 proceeding," and that "this new rate filing is virtually identical to the pending Docket [No.] RP15-1237-000 case."⁹ As such, the Commission finds that it is reasonable to consolidate the instant rate case with the ongoing proceeding addressing the 2015 rate case. Consolidation will avoid redundant hearings and

⁸ *Cities of Anaheim v. Trans Bay Cable L.L.C.*, 146 FERC ¶ 61,100, at P 24 (2014); *NorthWestern Corp.*, 137 FERC ¶ 61,248, at P 34 (2011); *ISO New England Inc.*, 124 FERC ¶ 61,013, at P 36 (2008). See also *ConocoPhillips Transportation Alaska, Inc., et al.*, 155 FERC ¶ 61,294 (2016).

⁹ Producer Coalition Protest at 6.

repetitive discovery, and will allow the parties to develop in a single proceeding a comprehensive record to address the common issues.

Suspension

20. Based upon a review of the filing, the Commission finds that the proposed tariff record has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept such tariff record for filing and nominally suspend its effectiveness.

21. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.¹⁰ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.¹¹ Such circumstances exist here. Accordingly, the Commission will suspend the referenced tariff record for a nominal period and will permit it to take effect July 1, 2016, subject to refund and subject to the outcome of the hearing.

The Commission orders:

(A) The referenced tariff record is accepted and suspended for a nominal period, to be effective July 1, 2016, subject to refund and subject to the outcome of the hearing proceeding established in this proceeding.

(B) Pursuant to the Commission's authority under the Natural Gas Act, particularly sections 4, 5, 8, and 15, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP16-975-000 concerning Venice's proposed tariff record.

¹⁰ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹¹ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(C) The instant proceeding is consolidated with Docket No. RP15-1237-000, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.