

156 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

KO Transmission Company

Docket No. RP16-1097-001

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS, SUBJECT TO
REFUND, AND ESTABLISHING A HEARING

(Issued August 31, 2016)

1. On July 14, 2016, as amended July 27, 2016, KO Transmission Company (KO Transmission) filed revised tariff records¹ pursuant to section 4 of the Natural Gas Act (NGA) proposing a general increase in its transportation rates and changes to its rate schedules and General Terms and Conditions. KO Transmission proposed an effective date of September 1, 2016, for its tariff records. The Commission accepts and suspends KO Transmission's revised tariff records to be effective February 1, 2017, subject to refund and the outcome of the hearing established herein.

Background

2. According to KO Transmission, its natural gas pipeline system originates east of Lexington, Kentucky, and extends northward to the Cincinnati, Ohio and northern Kentucky markets. KO Transmission states that it owns a 48.77 percent undivided interest in pipeline facilities originating at Means, Kentucky at an interconnection with Columbia Gulf Transmission Corporation (Columbia Gulf) and extending for about 70 miles to the Foster Station located in Bracken County, Kentucky. KO Transmission further states that the remaining ownership interest in these facilities is held by Columbia Gas Transmission Corporation (TCO), and that pursuant to an Operating Agreement between KO Transmission and TCO, TCO operates and maintains these facilities, including the facilities owned by KO Transmission. KO Transmission states that TCO

¹ See Appendix.

is currently completing four replacement and upgrade projects on the portion of the line shared with KO Transmission (E System Project).²

3. According to its filing, KO Transmission also owns and operates 100 percent of the pipeline facilities north of the Foster Station, which extends about 24 miles and interconnects with Duke Energy Kentucky, Inc. (DEK) at the Alexandria, Cold Spring, and Pendleton Stations, and with Duke Energy Ohio, Inc. (DEO), near the California Station and at the Bracken County Station.

Details of the Filing

4. According to KO Transmission, this is its first section 4 rate case since it received certificate authorization in 1996. KO Transmission states it has made investments in new facilities and has incurred operation and maintenance expenses to maintain the system that have increased its overall cost of service from \$968,226 to \$12,567,611, resulting in an increase to its current FT Monthly Demand Charge from \$0.356/dth to \$2.6168/dth. According to KO Transmission, the rate increase reflects the increased expenditures as well as its share of the costs associated with the E System Project. KO Transmission is proposing rolled-in rate treatment for its share of costs associated with the E System Project. KO Transmission states the expenditures are necessary to maintain a reliable, safe, and compliant system.

5. KO Transmission states that its filed capital structure is comprised of 54.27 percent equity and 45.73 percent debt, and is based on the capital structure of its parent company, DEO. KO Transmission also states that its overall rate of return is 9.52 percent, which it computes using an embedded cost of debt of 5.37 percent and an after-tax return on equity of 13.0 percent.

6. KO Transmission proposes a new firm and interruptible transportation service, Rate Schedules FTS-F and ITS-F, for service beginning at the interconnection with TCO at the Foster Station to the DEO and DEK city-gates. To qualify for the service, shippers will be: (1) required to hold an upstream contract on the TCO system with a designated delivery point at the Foster Station and (2) separately nominate and schedule service on KO Transmission to utilize the new services.

7. KO Transmission proposes to continue to design its rates pursuant to the Commission's Straight Fixed-Variable rate design and contends the proposed rates

² KO Transmission and TCO previously received Commission authorization for the E System Project. *Columbia Gas Transmission, LLC*, 153 FERC ¶ 61,042 (2015).

accurately reflect the investment and the costs of operating and maintaining the system during the base period (April 1, 2015 through March 31, 2016) and the test period (nine months ending December 31, 2016). In addition to the proposed maximum reservation rate of \$2.6168 Dth/Month for Rate Schedule FTS, KO Transmission proposes a \$0.3034 Dth/Month maximum reservation rate for Rate Schedule FTS-F. KO Transmission bases the proposed ITS and ITS-F rates on a 100 percent load factor equivalent to the FTS and FTS-F rates. KO Transmission proposes a daily maximum commodity rate of \$0.0861 Dth for Rate Schedule ITS and \$0.0100 Dth for Rate Schedule ITS-F.

Public Notice, Interventions, and Protests

8. Public notice of KO Transmission's filings was issued on July 20, 2016 and July 28, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.³ Pursuant to Rule 214,⁴ all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed 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 July 26, 2016, protests were filed by the Office of the Ohio Consumers' Counsel; Interstate Gas Supply, Inc. and Direct Energy Business Marketing, LLC (Indicated Shippers); and DEO and DEK (collectively, Protestors). On August 10, 2016, KO Transmission filed a motion for leave to answer and an answer to Indicated Shippers' protest.⁵

9. Protestors request that the Commission accept and suspend the filing for the full five-month suspension period, to become effective on February 1, 2017, subject to refund and the outcome of a hearing. Protesters raise general rate case issues with the instant filing, including, but not limited to: the increase in rates and cost of service, return on equity and capital structure, depreciation, net negative salvage rates, Operation and Maintenance expense, unsubscribed capacity, rolled-in rate treatment for the E-System Project, the proposed FTS-F and ITS-F rate schedules, and various tariff revisions.

³ 18 C.F.R. §154.210 (2016).

⁴ 18 C.F.R. § 385.214 (2016).

⁵ 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) (2016). However, the Commission finds good cause to accept KO Transmission's answer since it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record. Further, KO Transmission, in its answer to the protest, does not oppose the acceptance of the protest. Therefore, the Commission will accept KO Transmission's answer.

10. In its answer, KO Transmission asserts that Indicated Shippers misstate that KO Transmission has acknowledged that this rate proceeding does not constitute the recent review of rates required by the Commission for institution of a rate mechanism to track recovery of cost of capital expenditures made to modernize system infrastructure.⁶ KO Transmission states that the outcome of the instant section 4 rate proceeding is intended to and will constitute a “recent review of rates” as noted in the Commission’s Modernization Policy Statement.⁷

Discussion

11. The Commission finds that KO Transmission’s proposed tariff records raise issues of material fact that cannot be resolved based upon the record before us and which are best addressed in a hearing. Accordingly, we accept KO Transmission’s proposed tariff records for filing and suspend their effectiveness for the period set forth below, to become effective February 1, 2017, subject to refund and the outcome of the hearing established in this order. The Commission also sets all issues in the subject filing for hearing before an administrative law judge.

12. KO Transmission has not proposed a modernization cost tracker in this section 4 rate case. Therefore, whether this rate case would qualify as a “recent review of rates” for purposes of the Modernization Policy Statement is not appropriately considered unless and until KO Transmission files such a proposal.

Suspension

13. Based upon a review of the filing, the Commission finds that the proposed tariff records listed in the Appendix to this order have 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 records for filing and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

14. 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

⁶ KO Transmission Answer at 2, citing Indicated Shippers Protest at 9.

⁷ *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities*, 151 FERC ¶ 61,047, at P 45 (2015).

it may be inconsistent with other statutory standards.⁸ 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.⁹ Such circumstances do not exist here. Accordingly, the Commission will suspend the revised tariff records listed in the Appendix to this order for five months and will permit them to take effect February 1, 2017, subject to refund and subject to the outcome of the hearing.

The Commission orders:

(A) The tariff records listed in the Appendix to this order are accepted and suspended, to be effective February 1, 2017, subject to refund and subject to the outcome of the hearing established in this proceeding.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, 9, and 15 thereof, a public hearing will be held in Docket Nos. RP16-1097-000 and RP16-1097-001 concerning the lawfulness of KO Transmission's filing.

(C) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304 (2016), shall convene a prehearing conference in this proceeding to be held within twenty (20) days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference is for the purpose of clarification of the positions of the participants and consideration by the presiding judge of any procedural issues and discovery dates necessary for the hearing.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

⁹ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

Appendix

KO Transmission Company **FERC NGA Gas Tariff** **Tariffs, Rate Schedules and Service Agreements**

Tariff records accepted and suspended to be effective February 1, 2017, subject to refund and conditions:

[Gas Tariff Vol. No 1, FERC Gas Tariff Volume No. 1, 3.0.0](#)

[Part 1, Preliminary Statement, 2.0.0](#)

[Part 3, Currently Effective Rates, 12.0.0](#)

[Rate Schedule FTS, Firm Transmission Service, 3.0.0](#)

[Rate Schedule ITS, Interruptible Transportation Service, 2.0.0A](#)

[Rate Schedule FTS-F, Firm Transportation Service - Foster, 1.0.0](#)

[Rate Schedule ITS-F, Interruptible Transportation Service - Foster, 1.0.0](#)

[Part 5, General Terms and Conditions, 3.0.0](#)

[1, Definition of Terms, 3.0.0](#)

[3, Auction of Available Firm Service, 2.0.0](#)

[6, Operating Conditions, 2.0.0](#)

[10, Billing, 2.0.0](#)

[12, Nominating, Scheduling and Monitoring, 5.0.0](#)

[14, Max. Daily Del. Oblig. at DPs & Max. Daily Quantity at RPs, 2.0.0](#)

[17, Non-Emergency Service Interruption, 2.0.0](#)

[18, Force Majeure and Curtailment, 2.0.0](#)

[19, Operational Flow Orders, 2.0.0](#)

[20, Penalties, 2.0.0](#)

[25, Internet Web Site, 2.0.0](#)

[30, Notices, 2.0.0](#)

[31, Operational Balancing Agreements, 2.0.0](#)

[Part 6, Forms of Service Agreement, 2.0.0](#)

[Misc. Form 1, Request for Service, 2.0.0](#)

[Misc. Form 2, Form of Release Notice, 4.0.0](#)

[Misc. Form 3, Form of Assignment Agreement, 3.0.0](#)

[Misc. Form 4, Informational Posting Form for Prearranged Assignments, 2.0.0](#)