ORDER ON MARKET-BASED RATES APPLICATION

(Issued February 8, 2019)

1. On September 19, 2018, as supplemented on December 17, 2018 (December 17 filing), pursuant to sections 284.123(b)(2)\(^1\) and 284.502(b)(2)\(^2\) of the Commission’s regulations, Banquete Hub LLC (Banquete) filed a tariff record\(^3\) containing initial rates and a Statement of Operating Conditions (SOC). Banquete requests that the Commission grant it the authority to provide interruptible wheeling service at market-based rates. In support of its request, Banquete submitted a market power study in its December 17 filing. As discussed below, the Commission grants the market-based rate authority for interruptible wheeling service as requested by Banquete, and accepts Banquete’s proposed SOC effective September 19, 2018, as conditioned in this Order.

I. Background

2. Banquete states that it operates interruptible transportation services in Texas as an intrastate pipeline regulated by the Texas Railroad Commission. The company states that it is adding four new compression stations and 660 feet of station piping to its existing facilities to provide 300 million cubic feet (MMcf) per day of new interruptible wheeling service, which will ultimately grant shippers access to markets in the Gulf Coast Region that were previously inaccessible. According to Banquete, the facilities associated with the wheeling service will be owned by Banquete, and operated by its


\(^3\) Banquete Hub LLC, FERC NGPA Gas Tariff, NGPA Section 311 Service, Tariff, SOC for Banquete Hub LLC, 0.0.0.
affiliate Kinder Morgan Tejas Pipeline LLC (KM Tejas), which was the previous owner of Banquete’s facilities.

3. Banquete states that it is a joint venture between TrailStone NA Asset Holdings, LLC (TrailStone) and KM Tejas, each with a 50 percent ownership. According to Banquete, TrailStone (and its corporate parent TrailStone Group) is a new market entrant and owns no other physical gas assets within the United States. KM Tejas, in turn, is owned by Kinder Morgan, Inc. Through Kinder Morgan, Inc., Banquete is affiliated with several natural gas pipelines and related entities in the U.S. Gulf Coast.4

4. In the instant petition, Banquete requests authority to offer interstate interruptible wheeling service under section 311 of the Natural Gas Policy Act,5 and to charge market-based rates for this new service. Banquete states that the addition of the interruptible wheeling service will provide shippers with enhanced price discovery, create additional flexibility to meet daily fluctuations in demand for natural gas, and provide reliable deliverability along the Gulf Coast production area.

5. Banquete notes that the Commission has considered a number of requests by natural gas companies for authorization to charge market-based rates for interruptible wheeling service. Banquete further asserts that the Commission has granted such requests, finding that those companies lacked market power in circumstances similar to those presented by Banquete in its petition.6 In support of its petition, Banquete submits a market power study, which it asserts reflects its lack of market power in the provision of its proposed interruptible wheeling service.

6. Banquete states that its market power study first examines the market conditions for interruptible wheeling services in the relevant geographic regions of producing areas along the Gulf Coast in eastern Texas, Louisiana, Mississippi, and Alabama (Gulf Coast

4 These natural gas-related entities include full or part ownership in Natural Gas Pipeline Company of America (NGPL), Tennessee Gas Pipeline Company, L.L.C. (Tennessee), Southern Natural Gas Company, L.L.C., Kinder Morgan Texas Pipeline LLC, Kinder Morgan North Texas LLC, Kinder Morgan Louisiana Pipeline LLC, Midcontinent Express Pipeline LLC, Florida Gas Transmission, LLC, Camino Real Company, LLC, Eagle Ford Gathering LLC, BHP Billiton Petroleum (Eagle Ford Gathering) LLC, and Kinderhawk Field Services LLC.


Banquete asserts that its market power study demonstrates that Banquete lacks market power in the market for wheeling services in this Gulf Coast Production Area.

7. Specifically, in regards to wheeling services, Banquete states that the study reflects that its market share for receipt capacity at twenty-three existing hubs in the Gulf Coast Production Area that compete in the provision of wheeling service is 1.43 percent and for delivery capacity is 1.23 percent. Furthermore, Banquete maintains that the market for wheeling services in the Gulf Coast Production Area remains at low concentration. Banquete states that its calculated receipt capacity Herfindahl-Hirschman Index (HHI) value of 965 and delivery capacity HHI of 1,011 are each below the 1,800 threshold that the Commission considers indicative of a concentrated market. Therefore, Banquete maintains that its market analysis reflects that given such a small market share, and low concentration of the market for wheeling services, Banquete would not be able to exercise market power for interruptible wheeling service relative to the other hubs in the market with which it competes.

8. Banquete states that its market power study also provides a matrix of pipeline interconnections, known as a bingo card, which the Commission has used to evaluate applications for market-based rates for wheeling services. Banquete asserts that its bingo card shows that customers can avoid its services entirely by using other readily available pipeline interconnections.

II. Notice and Interventions

9. Public notice of the filing was issued on September 24, 2018. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations. Pursuant to Rule 214, all timely filed motions to intervene and any unopposed motion 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 the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

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7 Banquete Petition at 7.

8 Id. at 8.

9 Id. at 9 (citing, e.g., Monroe, 155 FERC ¶ 61,138 at P 14).


III. Discussion

10. Banquete requests authority to charge market-based rates for its proposed interruptible wheeling service. The Commission’s main concern in granting a pipeline the use of market-based rates is the presence that the pipeline has in the relevant marketplace. If the pipeline has market power over a service in the relevant marketplace, then the Commission will not permit it to charge market-based rates for that service.

11. Pursuant to the *Alternative Rate Policy Statement*, the Commission has developed a framework for evaluating requests for market-based rates. This framework has two principal purposes: (1) to determine whether the applicant can withhold or restrict services and, as a result, increase price by a significant amount for a significant period of time; and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions of service. To find that an applicant cannot withhold or restrict services, significantly increase prices over an extended period, or unduly discriminate, the Commission must find either that there is a lack of market power because customers have good alternatives, or that the applicant or the Commission can mitigate the market power with specified conditions. The Commission performs the same analysis for section 311 or Hinshaw pipelines that it does for Natural Gas Act pipelines.

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12 *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,194, order on reh’g and clarification, 75 FERC ¶ 61,024, reh’g denied, 75 FERC ¶ 61,066, reh’g dismissed, 75 FERC ¶ 61,291 (1996), petitions for review denied and dismissed sub nom. Burlington Resources Oil & Gas Co. v. FERC, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement), criteria modified, Rate Regulation of Certain Natural Gas Storage Facilities, Order No. 678, 115 FERC ¶ 61,343, order on clarification and reh’g, Order No. 678-A, 117 FERC ¶ 61,190 (2006).*

13 The Commission defines “market power” as “the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time.” *Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,230.*

14 A “good alternative” is an alternative that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for an applicant's service. *Id.* at 61,231.

15 *Arcadia Gas Storage, LLC, 155 FERC ¶ 61,161, at P 6 (2016).*
12. Consistent with the methodology provided by the *Alternative Rate Policy Statement*, the Commission’s analysis of whether Banquete has the ability to exercise market power includes three major steps. First, the Commission will review whether Banquete has specifically and fully defined the relevant markets to determine which specific products or services are identified, and the suppliers of the products and services that provide good alternatives to the applicant’s ability to exercise market power.\(^\text{16}\) Additionally, as part of this first step, the Commission will identify the relevant geographic market. Second, the Commission will assess Banquete’s market share and market concentration. The Commission uses market share and the HHI as screens in assessing whether a pipeline has the ability to exercise market power in the defined product and geographic markets. However, HHIs are just one factor the Commission may evaluate.\(^\text{17}\) The *Alternative Rate Policy Statement* recognizes that having a large market share in a concentrated market does not constitute market power if ease of entry and other competitive factors can prevent the applicant from exercising significant market power.\(^\text{18}\) Lastly, the Commission will evaluate other relevant factors.

**A. Relevant Geographic and Product Markets**

13. In its market power study, Banquete defines the relevant product market as interruptible wheeling service. Banquete currently identifies the relevant geographic market for its proposed service as eastern Texas, Louisiana, Mississippi and Alabama, which it refers to as the Gulf Coast Production Area. The Commission agrees that the relevant geographic market for Banquete’s proposed interruptible market-based rate wheeling service is the Gulf Coast Production Area.

14. With respect to the product market, the Commission has traditionally used a matrix, referred to as a “bingo card,” in evaluating whether shippers of an applicant seeking market-based rate authority for wheeling service could obtain the same services

\(^{16}\) The relevant product market consists of the applicant’s service and other services that are good alternatives to the applicant’s services. *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,231.

\(^{17}\) For example, the Commission has accepted an HHI of 1,800 as the threshold indicating the potential ability for an applicant to exercise market power. In cases where the HHI was higher than 1,800, the Commission has performed further review to determine whether other competitive factors will prevent the applicant from being able to exercise market power. See, e.g., *UGI Storage Co.*, 133 FERC ¶ 61,073 (2010); *Arlington Storage Co., LLC*, 125 FERC ¶ 61,306 (2008); *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141, (2005).

\(^{18}\) *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,234.
from alternative providers. The matrix identifies all possible interconnections for pipelines attached to a hub and indicates whether good alternatives exist to the proposed service. The Commission has relied on this type of analysis to determine whether shippers can avoid the pipeline interconnections described by Banquete by using alternative interconnections between the pipelines that are directly or indirectly connected to the applicant.\textsuperscript{19}

15. Banquete includes a bingo card analysis as a part of its market power study for interruptible wheeling service. The matrix for the project reflects that there are six pipelines directly connected to the Banquete header system, providing a total of five delivery points and five receipt points of interconnection.\textsuperscript{20} Banquete explains that shippers on its system are able to receive natural gas from any of the interconnections with the exception of one, wheel the gas on the header system, and redeliver the gas to any of the interconnections on the header system.\textsuperscript{21} The matrix shows 21 alternative paths that include pipelines both directly and indirectly connected to Banquete.

16. The analysis submitted by Banquete demonstrates that shippers will not be dependent on Banquete to transport natural gas in the Gulf Coast Production Area, because the area contains a number of other pipeline interconnections and alternative paths available to shippers. This bingo card analysis also demonstrates that shippers may avoid Banquete’s wheeling services by using alternative pipelines that are directly or indirectly connected to the Banquete header system. Accordingly, the Commission finds that the alternatives available to potential shippers on Banquete’s system make it likely that the market-based rates charged by Banquete for wheeling service will remain at fully competitive levels. The Commission concludes that this analysis properly identifies sufficient good alternatives to the interruptible wheeling service proposed by Banquete.


\textsuperscript{20} Banquete states that the six interstate and intrastate pipelines directly connected to the Banquete header pipeline system are NGPL, Tennessee, KM Tejas, Transcontinental Gas Pipe Line Company, LLC, Enterprise Texas Pipeline LLC (Receipts only), and EnLink LIG, LLC (Deliveries only). Banquete Market Power Study, Attachment 3.

\textsuperscript{21} Banquete Market Power Study, Attachment 4.
B. Market Share and Market Concentration

17. Banquete states there are 23 existing hubs in the Gulf Coast Production Area and that none are affiliated with Banquete.\(^{22}\) Banquete states the total receipt and delivery capacity in the market is 65,940 MMcf per day and 81,345 MMcf per day, respectively. Banquete concludes that it has a market share of 1.43 percent of receipt capacity and 1.23 percent of delivery capacity. Banquete contends that such a small market share indicates that there are numerous good hub alternatives to its proposed interruptible wheeling service. Therefore, Banquete concludes that the competition from hubs is sufficient to prevent it from exercising market power.

18. To evaluate whether it could act in concert with competing hubs to exercise market power, Banquete analyzed the HHI for market centers and hubs in the Gulf Coast Production Area. Banquete states the HHI for receipt capacity is 965 and the HHI for delivery capacity is 1,011. Banquete states these HHIs are well below the 1,800 HHI threshold used by the Commission to indicate a possible market power concern.\(^{23}\) Therefore, Banquete concludes it cannot exercise market power acting together with competing hubs in the Gulf Coast Production Area.

19. As set forth above, in order to ascertain whether additional scrutiny is needed, the Commission examines concentration in the relevant market using the HHI. The Alternative Rate Policy Statement states that an HHI of less than 1,800 indicates that sellers cannot exert market power because customers have sufficiently diverse alternatives in the relevant market.\(^{24}\) If the HHI is above 1,800, the Commission will give the applicant more scrutiny in order to make a determination about a seller’s ability to exercise market power because the market is more concentrated. In this case, as shown by the market power study, the HHIs for Banquete are well below this level at 965 and 1,011 for receipt and delivery capacity, respectively. As a result, the Commission finds that the relevant geographic area lacks sufficient market concentration for Banquete to exercise market power by acting together with other competing hubs.

C. Other Relevant Factors Mitigating Potential Market Power

20. In addition to market share and concentration, Banquete asserts that other factors support the conclusion that it will not be able to exercise market power in the Gulf Coast Production Area. Banquete asserts that as a new entrant in the provision of interruptible

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\(^{22}\) Banquete Petition at 23.

\(^{23}\) Banquete Market Power Study, Attachment 2.

\(^{24}\) Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,235.
wheeling service it must offer this new service at terms and prices that are competitive with the numerous alternatives for transferring gas from one pipeline to another available in this region. Additionally, Banquete states that market center operations can offer competition to Banquete’s wheeling services, adding that several market centers and pools exist within the geographic market of the proposed service.

D. Determination

21. Review of Banquete’s market power study shows that competitive alternatives are available to natural gas shippers in the relevant geographic area. Accordingly, the Commission finds that Banquete lacks significant market power in the relevant geographic area for the proposed market-based interruptible wheeling service. Further, for the reasons discussed above and given the fact that Banquete’s proposal for market-based rates is unopposed, the Commission accepts Banquete’s request to charge market-based rates for interruptible wheeling service subject to the conditions set forth below.

22. The Commission requires that Banquete notify the Commission if future changes in circumstances significantly affect Banquete’s present market power status. Any event which would affect Banquete’s ability to withhold or restrict services or increase its ability to discriminate unduly in price or terms of service must be reported to the Commission within 10 days of acquiring knowledge of any such changes. For example, significant changes would include, but are not limited to (1) an expansion of capacity; (2) the acquisition of additional transportation facilities; (3) an affiliate providing transportation services in the same market area; and (4) Banquete or an affiliate acquiring an interest in or being acquired by an interstate pipeline. Failure to timely file a change in circumstance report or failure to comply with the reporting requirements would constitute a violation of the Commission’s regulations. The Commission also reserves the right to require an updated market power analysis at any time.

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25 Banquete Petition at 23.

26 Id. at 24-25.

27 When Banquete reports such a change in circumstances, it should make this filing with the Commission through the eTariff portal using either its baseline docket number or a recent filing made through eTariff.

IV. **New Statement of Operating Conditions**

23. As noted above, Banquete did not offer any Commission-jurisdictional service before initiating this application; Banquete’s parent KM Tejas offered Commission-jurisdictional service on these facilities. As such, Banquete was required to submit a new SOC establishing the terms and conditions of service. Banquete submitted an SOC that is almost entirely identical to the SOC on file for KM Tejas.\(^{29}\) To the extent that Banquete’s service mirrors KM Tejas’s service, we accept this new SOC as fair and equitable, subject to the modifications discussed below.

24. Banquete’s service differs from KM Tejas’s service in one key respect – KM Tejas offers firm service, while Banquete only offers interruptible wheeling service. However, located throughout the proposed SOC are references and provisions for firm service. Because Banquete has no plans to offer firm service, and as such has not reflected the impact of firm service in its market-based rate application, Banquete must remove these provisions from its SOC within 30 days from the issuance of this order.

Banquete is directed to comply with the Commission’s electronic filing requirements set forth in Order No. 714\(^ {30}\) and Part 154 of the Commission’s regulations.\(^ {31}\)

The Commission orders:

(A) Banquete’s request to provide interruptible wheeling service at market-based rates is granted, subject to the conditions in this order.

(B) Banquete’s SOC is accepted, subject to Banquete removing references to firm service and making a compliance filing within 30 days of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.

\( ^{29} \) Kinder Morgan Tejas Pipeline LLC - NGPA Section 311 Service, Tariff, Transportation Statement of Operating Conditions, 0.0.0.
