UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

High Island Offshore System, L.L.C. Docket No. RP06-244-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO REFUND AND ESTABLISHING A TECHNICAL CONFERENCE

(Issued March 31, 2006)

1. On March 1, 2006, High Island Offshore System, L.L.C. (HIOS) filed primary tariff sheets and one alternate tariff sheet, listed in the appendices, to modify and implement in part its first annual filing pursuant to the fuel tracker mechanism in section 28 of the General Terms and Conditions (GT&C) of HIOS's FERC Gas Tariff. HIOS also proposed to modify certain cash-out language contained in section 8 of the GT&C. HIOS requests the proposed tariff sheets become effective April 1, 2006.

2. For the reasons set forth below, the Commission accepts Alternate Third Revised Sheet No. 11, effective April 1, 2006, and rejects Third Revised Sheet No. 11 included in HIOS's proposed primary tariff sheets. The Commission accepts and suspends the remaining primary tariff sheets, to become effective September 1, 2006, or on an earlier date specified by subsequent Commission order, subject to refund and the outcome of the technical conference established herein.

Background

3. On January 24, 2005, the Commission required HIOS to modify its tariff to establish a mechanism to track its fuel and lost and unaccounted gas costs, including a mechanism to true up over- and under-recoveries.[1] HIOS complied with this requirement by proposing a new section 28 of its GT&C setting forth the required tracking mechanism. The Commission accepted HIOS's compliance filing, subject to certain

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[1] *High Island Offshore System, L.L.C.*, 110 FERC ¶ 61,043 (2005).

changes, effective August 1, 2005.[2] As approved by the Commission, GT&C section 28.2 requires HIOS to submit an annual filing, effective April 1 of each year, to establish its prospective Company Use retention percentage for the next twelve month period. The Company Use percentage includes two components, one to recover compressor fuel and one to recover Unaccounted for gas. The prospective Company Use percentage is determined based on HIOS's fuel use and throughput over the preceding three years. Further, GT&C section 28.3(c) requires that each annual filing include a surcharge to true up HIOS's Company Use experience. The Commission held that HIOS's first annual filing under the new mechanism would include a surcharge to true up under- and over-recoveries during the period August 1- December 31, 2005.

Description of the Filing

4. Alternate Third Revised Sheet No. 11 sets forth HIOS's Company Use reimbursement percentages, including both the individual components and total reimbursement percentage, and calculates those percentages consistent with the requirements of new section 28 of the GT&C. The alternate tariff sheet reflects a reduction from the current level of the Total Company Use reimbursement percentage from 1.54 percent to 1.23 percent. The proposed reduced Total Company Use percentage is composed of 0.77 percent for Compressor Fuel, 0.63 percent for Unaccounted-For Gas, and a negative 0.17 Annual True-up percentage to return over-recoveries during the August 1-December 31, 2005 true-up period.

5. HIOS's primary tariff sheets propose significant revisions in (1) the new fuel tracking mechanism in GT&C section 28, and (2) HIOS's current imbalance cash-out tariff provisions, which govern HIOS's resolution of imbalances between scheduled and actual quantities at receipt points. Primary Sheet No. 11 sets forth the Company Use reimbursement percentages that would result for the revised fuel tracking mechanism. The proposed changes in section 28 would provide for HIOS and its shippers to true up the Company Use quantities and operational imbalances every month through the cash-out procedures set forth in HIOS's tariff. HIOS would cash out Company Use variances in the same manner as it cashes out shipper operational imbalances. HIOS would allocate to shippers over- and under-recovered fuel and unaccounted-for gas as imbalances to be netted, traded, and cashed-out based on average monthly index prices along with shippers' operational imbalances.

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[2] *High Island Offshore System, L.L.C.*, 112 FERC ¶ 61,050, *reh'g*, 113 FERC ¶ 61,202 (2005).

6. HIOS states that its proposal reflects the unique operating characteristics of its system. Each month HIOS determines shippers' imbalances at the receipt side of the system by comparing volumes scheduled for receipt during the month to actual volumes received during the month. Simultaneously, HIOS determines the total level of system imbalance at the downstream Operational Balancing Agreement (OBA) points by comparing volumes scheduled for delivery and actual volumes delivered. HIOS cashes out its system each month both at the upstream receipt points and at its four downstream pipeline interconnect points. HIOS, which is a "straight line" system with limited points of receipt and delivery, states that it does not have any storage on its system, and retains little line pack on its books. Accordingly, unlike many other interstate pipelines, HIOS contends that it does not have "system balancing gas" or a similar account or pool of gas from which to draw without bearing market price risk month-to-month. HIOS asserts that any difference between the imbalance amount downstream at the OBAs and the shipper imbalances determined at the receipt points is fundamentally due to variance in Company Use gas it collects and actual Company Use. The cost of cashing-out OBA imbalances each month includes the cost of shipper imbalances and the variance in Company Use. Therefore, HIOS incurs a cost each month related to the cash-out of the variance in Company Use. HIOS states that the price risk of carrying imbalance volumes became obvious during the period since August 2005 when the Commission-imposed fuel tracker went into effect. HIOS states that it is for this reason that it proposes to "link" the cash-out and fuel recovery tariff mechanisms to reduce the variations in annual Company Use percentage levels.

7. In addition, HIOS proposes to revise the base period for calculating the prospective Company Use percentages from three years to the immediately previous calendar year. HIOS contends that this change will better align current recovery percentages with recent use levels. HIOS further contends that the shorter base period will result in a greater reduction in the current Total Company Use percentage than if it were calculated under the three-year base period mechanism. Specifically, under the proposed mechanism as reflected in the primary tariff sheets, the Total Company Use percentage effective on April 1, 2006, would be reduced from 1.54 percent to 1.03 percent.

8. While the Company Use tracking mechanism proposed in the primary tariff sheets will retain the true-up requirement as provided for in section 28.3(c) of HIOS's tariff, HIOS proposes to defer the true-up for the initial five-month period that the new Company Use mechanism was in effect, August 1, 2005 – December 31, 2005. HIOS explains that its experience during this period was characterized by abnormal and unusually severe swings due to Hurricanes Katrina and Rita. HIOS contends that the

disproportionate and unrepresentative magnitude of the downward adjustment that would be required by a mechanical application of the tariff would reduce the Company Use percentage to levels that would risk significant under-collections and associated price risk during the April 1, 2006 – March 31, 2007 annual period. HIOS proposes to defer the five-month initial true-up period for a year, and combine it with 2006 Calendar Year activity for true-up purposes.

Notice, Interventions, and Protests

9. Public notice of HIOS's filing was issued on March 8, 2006, with interventions and protests due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2005). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2005), all timely filed motions to intervene and any motions to intervene out-of-time filed before the date of issuance 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. On March 13, 2006, ExxonMobil Gas & Power Marketing Company, A Division of Exxon Mobile Corporation (ExxonMobil) filed a protest. On March 14, 2006, after submitting a timely intervention, BP America Production Company and BP Energy Company (collectively referred to as BP) filed an out-of-time protest. The Commission will consider this protest in its analysis of the instant filing. On March 20, 2006, HIOS filed an answer to the protests. Generally, the Commission does not permit answers to protests. The Commission will permit HIOS's Answer as it aids in the Commission's review of the instant proposal.

10. ExxonMobil submits that HIOS has not shown its primary tariff sheets to be just and reasonable under section 4(e) of the Natural Gas Act.[3] ExxonMobil believes HIOS's proposal represents a significant departure from the current Company Use true-up mechanism and requires clarification and modification. ExxonMobil states that under the proposal, HIOS would "link," for purposes of cash-out and true-up; (1) shipper imbalances based on the difference between scheduled and actual receipts into HIOS's system, and (2) system imbalances based on the difference between actual receipts and actual deliveries into three downstream pipeline companies connected to the HIOS system, ANR Pipeline Company, Enbridge Offshore Pipelines L.L.C., and Tennessee Gas Pipeline Company. ExxonMobil contends that combining these two different types of imbalances would make HIOS's Company Use accounting and tracker filings more

[3] 15 U.S.C. § 717c(e).

opaque. ExxonMobil believes this is contrary to the purpose and structure of the current mechanism and the Commission's periodic rate adjustment regulations, which require a detailed, step-by-step accounting to allow the Commission and shippers to analyze tracker filings.

11. Although ExxonMobil does not object in principle to the concept underlying the primary tariff sheets filed by HIOS, ExxonMobil argues that certain of the specific details of HIOS's proposal are problematic and should be addressed before it is permitted to become effective. Further, ExxonMobil seeks clarification and modification with respect to several issues raised by HIOS's proposal. Therefore, ExxonMobil requests that the Commission direct a technical conference be convened to evaluate HIOS's primary tariff sheets. Further, ExxonMobil requests that the Commission accept Alternate Third Revised Sheet No. 11, effective April 1, 2006, subject to the possible future implementation of the primary tariff sheets following a technical conference.

12. BP argues that HIOS's primary proposal to require shippers to cash out fuel is unjust, unreasonable, and not supported by HIOS in its filing and should be rejected by the Commission. BP believes that HIOS's proposal represents a radical change from historic practices that would adversely affect existing marketing arrangements relying on payments of in-kind fuel charges. Furthermore, cash-outs of pipeline's over-collection of monthly fuel charges after the fact penalize shippers who do not control HIOS's fuel charge. In addition, BP argues that HIOS should be required to use actual measurements to determine the lost-and-unaccounted-for component of its fuel rates.

13. BP requests that the Commission reject HIOS's proposal to cash-out fuel over- and under-collections on a monthly basis and deny HIOS's request to defer for one year the true-up of its over-collections of Company Use gas from last year. In the alternative, BP requests that the Commission convene a technical conference for the purpose of examining HIOS's proposal.

Answer to Protests

14. On March 20, 2006, HIOS filed an Answer to the protests filed by ExxonMobil and BP. HIOS argues that its primary proposal offers shippers and HIOS a variety of benefits by providing a means to monetize and resolve HIOS's Company Use experience on a monthly basis, regardless of the causation factors, and to allow for the reduction or elimination of price risk versus the current tracking mechanism. HIOS also submitted a revised proposed *pro forma* sheet No. 173B, changing its proposed Company Use true-up mechanism. HIOS believes that, by providing additional clarification to address the concerns of ExxonMobil, it has shown that its primary proposal is just and reasonable within the meaning of section 4 of the Natural Gas Act.

15. HIOS requests that the Commission accept the primary proposal effective April 1, 2006, subject to the modifications it proposed in its Answer. In addition, HIOS requests that the Commission reject BP's protest as untimely, or on the grounds that it seeks to raise collateral matters not at issue under either of HIOS's tariff proposals. Further, HIOS submits that a technical conference is unnecessary in light of the clarifications provided to ExxonMobil. On March 22, 2006, ExxonMobil filed an answer to HIOS's Answer.

Discussion

16. HIOS's proposal to modify the existing fuel tracking mechanism set forth in section 28 of its GT&C raises issues that warrant further review and consideration. The parties have argued that there are numerous specific aspects of the filing that render the proposal unacceptable in its present form and have requested that the Commission reject them and establish a technical conference. HIOS has proposed modifications to its primary proposal in its Answer.

17. In these circumstances, the Commission will establish a technical conference to gather additional information and to provide parties with a forum to discuss relevant issues and concerns raised by the filing. HIOS should be prepared to address all issues raised by the protests and any concerns others may have with the primary proposal. Because of the significant concerns raised with HIOS's proposal to change its fuel tracking mechanism, the Commission accepts and suspends the primary tariff sheets proposing changes in section 8 and 28 of its GT&C,[4] until the earlier of five months or the date established in a further Commission order following the technical conference.

18. Because the Commission has suspended HIOS's proposal to modify section 28 of its GT&C, the Commission finds that it would be premature for HIOS to implement Company Use reimbursement percentages based on its proposed revised section 28. Accordingly, the Commission rejects primary Third Revised Tariff Sheet No. 11. Instead, the Commission accepts Alternative Third Revised Sheet No. 11 to be effective April 1, 2006. The Commission finds that the alternate tariff sheet sets forth the appropriate Company Use reimbursement percentages determined consistent with section 28 of the GT&C as now in effect. Finally, the Commission encourages the parties to use the Commission's Dispute Resolution Services to resolve the remaining issues and concerns raised by the protests.[5]

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[4] These tariff sheets are listed in Appendix A.

[5] The Director of the Dispute Resolution Services is Richard L. Miles, who may be reached at (202) 502-8702 or 1-877-FERC-ADR (1-877-337-2237).

Suspension

19. Based on a review of the filing, the Commission finds that the proposed primary tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the primary tariff sheets for filing, and suspend their effectiveness for the period set forth below, and permit them to become effective, subject to the conditions in this order.

20. The Commission's general policy is to suspend rate filings 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.[6] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.[7] Such circumstances do not exist here. Accordingly, the Commission will exercise its discretion to suspend the primary tariff sheets for the maximum period and permit the primary tariff sheets to become effective the earlier of September 1, 2006, or on the date specified by subsequent Commission order, subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) Alternate Third Revised Sheet No. 11, listed in Appendix B, is accepted, effective April 1, 2006. Third Revised Sheet No. 11 is rejected.

(B) HIOS's primary tariff sheets, listed in Appendix A, are accepted and suspended, to be effective the earlier of September 1, 2006, or on the date the Commission specifies in any future order issued in this proceeding, subject to refund and the outcome of the technical conference.

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

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

(C) The Commission staff is directed to convene a technical conference to further explore HIOS's proposal to revise its Company Use true-up mechanism and its current imbalance cash-out tariff provisions. Staff must report to the Commission on the technical conference within 150 days of the issuance date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix A

High Island Offshore System, L.L.C.
FERC Gas Tariff, Third Revised Volume No. 1

Tariff Sheets Effective September 1, 2006

Fourth Revised Sheet No. 69
Second Revised Sheet No. 104
Fourth Revised Sheet No. 105
Original Sheet No. 105A
Second Revised Sheet No. 106
First Revised Sheet No. 107
First Revised Sheet No. 108
Second Revised Sheet No. 173A
First Revised Sheet No. 173B

Appendix B

High Island Offshore System, L.L.C.
FERC Gas Tariff, Third Revised Volume No. 1

Tariff Sheet Effective April 1, 2006

Alternate Third Revised Sheet No. 11