

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 1, 2007

In Reply Refer To:
Kinder Morgan Interstate Gas
Transmission LLC
Docket No. RP07-441-000

Kinder Morgan Interstate Gas Transmission LLC
370 Van Gordon Street
Lakewood, CO 80228-8304

Attention: Robert F. Harrington, Vice President of Regulatory Affairs

Reference: Amended Right of First Refusal and Rollover Tariff Provisions

Ladies and Gentlemen:

1. On May 3, 2007, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) filed the tariff sheets listed on the Appendix to amend its Right of First Refusal (ROFR) and Rollover Rights provisions. Initially in its transmittal letter, KMIGT requests that the tariff sheets become effective June 2, 2007. However, under Part IV of the letter, KMIGT requests an effective date of June 3, 2007.
2. Because the filed tariff sheets reflect a June 3, 2007, effective date, we will accept the tariff sheets listed on the Appendix to become effective June 3, 2007, subject to KMIGT filing within 10 days of the date this order issues, the explanations and tariff revisions required below.
3. Public notice of the instant filing issued on May 8, 2007. Interventions and protests were due as provided in Section 154.210 (2006) of the Commission's regulations. Pursuant to Rule 214, (18 C.F.R. § 385.214 (2006)), all timely filed motions to intervene and any 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 the proceeding or place additional burdens on existing parties. SourceGas Distribution, LLC (SourceGas) filed the comments, discussed below, requesting clarification.

4. In its transmittal filing, KMIGT states that the proposed tariff changes will permit it to: (i) negotiate contractual ROFR provisions in any firm agreement under section 18 of its General Terms and Conditions (GT&C); and (ii) negotiate contractual rollover rights provisions in any firm and interruptible agreements under GT&C section 18.7. KMIGT notes that its proposed tariff changes are consistent with Commission Order No. 637 and cases where the Commission accepted similar proposals by other interstate pipelines. *Citing, Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Gas Transportation Services*, Order No. 637, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,091 at p. 31,342; *Gulf South Pipeline Co., LP*, 118 FERC ¶ 61,262 at P 33 (2007), *ANR Pipeline Co.*, 103 FERC ¶ 61,084 (2003), and *Northern Natural Gas Co.*, 113 FERC ¶ 61,119 at P 41 (2005). KMIGT also revises the GT&C Table of Contents to reflect repagination of the tariff sheets due to the proposed additional language.

5. Our review of KMIGT's proposal reveals anomalies that require KMIGT to file within 10 days of the date this order issues, further clarification and the tariff revisions discussed in detail below.

6. Revised GT&C section 18 provides that "Transporter and a Shipper under a firm contract may agree that Shipper shall have the right to extend the term of its existing contract pursuant to a negotiated contractual ROFR provision, *which right shall supersede the tariff [ROFR]* set forth above in this Section 18." (*emphasis added*) KMIGT further revises section 18 to provide that "Transporter is not obligated to offer or agree, nor is Shipper required to agree, to any such contractual ROFR provision, provided, however, that to the extent transporter offers or agrees to any such contractual [ROFR] provision, it must do so on a nondiscriminatory basis for similarly situated shippers."

7. KMIGT further amends existing language under section 18 by adding the word "tariff" before each reference to "ROFR" to apply to all discounted or negotiated rate contracts, as follows:

A discounted or negotiated rate contract in effect on March 27, 2000, will be grandfathered and allowed the *tariff* [ROFR] at expiration of the contract. However, such grandfathered contract thereafter must be extended at maximum rates to keep the *tariff* [ROFR], unless otherwise agreed to in writing. The process for exercising the *tariff* [ROFR] is as follows:....
(*emphasis added*)

8. We find that KMIGT's language permitting the negotiation of a contractual ROFR with a shipper conforms to the Commission's policy established in Order No. 637. Further, KMIGT's proposed language that affords such negotiated contract right to

similarly-situated shippers on a nondiscriminatory basis conforms to precedent subsequent to Order No. 637. *See, e.g., CenterPoint Energy Gas Transmission Co.*, 101 FERC ¶ 61,16 at P 7 (2002); and *Tennessee Gas Pipeline Co.*, 99 FERC ¶ 61,285 at 62,200-01 (2002). However, we will not permit KMIGT's proposal to the extent a negotiated contractual ROFR may "supersede" the tariff ROFR. A contractual ROFR is equivalent to the tariff ROFR and is subject to the ROFR process set forth in the tariff. For this reason, we direct KMIGT to remove the language "which right shall supersede the tariff [ROFR] set forth above in this Section 18", and construct language that clearly states that its ROFR procedures in section 18 of its tariff will apply to a contractual ROFR. *See, e.g., Columbia Gas Transmission Corp.'s FERC Gas Tariff, Second Revised Volume No. 1 at GT&C section 4.1(c)(1)(b).* Because KMIGT proposes parallel language under GT&C section 18.7(B) applicable to contractual rollover rights, we require KMIGT to properly revise this language, as well.

9. The required tariff revision (clarifying that a contractual ROFR is equivalent to a tariff ROFR and subject to the ROFR process set forth in the KMIGT's tariff) will address several concerns expressed by SourceGas. Specifically, SourceGas' concerns are that KMIGT's use of the modifier "tariff" could mean that contractual ROFRs could "observe" a ROFR process that differs from the tariff ROFR process; KMIGT "has not supported, or even explicitly acknowledged, an extension of the contractual ROFR concept to the ROFR process itself;" and that the existing language on eligibility for contractual ROFR rights "seemingly is subsumed" in KMIGT's proposal to expand the eligibility for contractual ROFR to any shipper with a firm contract. The required tariff revisions will remedy such concerns in that any contractual ROFR will be negotiated on a nondiscriminatory basis and subject to KMIGT's ROFR notice procedures, bidding process, bid contents, best offer and matching requirements, and rollovers.

10. SourceGas points out that the interaction of the proposed rollover language (which unlike the existing rollover provision) contains no time frames for action, and expresses concern that a shipper could exercise its rollover right, after the ROFR process has been initiated. However, SourceGas states that after informal contact with KMIGT, it understands that once the ROFR process is initiated, "the rollover avenue is no longer available to the shipper," nevertheless, SourceGas requests that KMIGT clarify this point. We will require KMIGT to respond to SourceGas' concern when it files the required tariff revisions.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: All Parties

APPENDIX

**Kinder Morgan Interstate Gas Transmission LLC
FERC Gas Tariff, Fourth Revised Volume No. 1-B**

Tariff Sheets effective June 3, 2007:

Fourth Revised Sheet No. 2
Second Revised Sheet No. 34
Original Sheet No. 34A
Fifth Revised Sheet No. 37
Second Revised Sheet No. 37A
Original Sheet No. 37B