

120 FERC ¶ 61,150  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

August 10, 2007

In Reply Refer To:  
Docket No. RP06-540-000

Mr. Richard W. Porter  
Director, Rates & Regulatory Affairs  
Enterprise Products Partners L.P.  
1100 Louisiana Street  
Suite 1000  
Houston, TX 77002

RE: High Island Offshore System, L.L.C.  
Docket No. RP06-540-000

Dear Mr. Porter:

1. On May 23, 2007, High Island Offshore System, L.L.C., (HIOS) filed an Offer of Settlement and Explanatory Statement (offer) and a Stipulation and Agreement (settlement) to resolve all of the issues in HIOS' general section 4 rate proceeding. The Commission's Trial Staff filed initial comments supporting the settlement on May 30, 2007. Trial Staff states that the settlement is the product of extensive negotiations over a lengthy period, resolves all outstanding issues in this proceeding, and is fair, reasonable, and in the public interest. No other comments were filed. On June 8, 2007, the Presiding Administrative Law Judge certified the settlement to the Commission as an uncontested settlement.<sup>1</sup>

2. Article I of the settlement sets forth the rates that HIOS will be authorized to charge in settlement of all issues in this proceeding. The rates are set forth in Appendix A, to be placed in service on an interim basis on June 1, 2007,<sup>2</sup> subject to HIOS' right to surcharge its shippers for the difference between the settled rates

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<sup>1</sup> *High Island Offshore System, L.L.C.*, 119 FERC ¶ 63,012 (2007).

<sup>2</sup> On June 4, 2007, the Chief Administrative Law Judge authorized HIOS, in Docket No. RP06-540-003, to charge the interim rates subject to refund pending certification of the settlement and consideration by the Commission.

and the subject-to-refund rates in the event that the settlement does not become effective. Article I states that these rates implement a “black box” settlement with a 100 percent load factor recourse rate for long haul service equal to \$0.24/Dth, and for short haul service equal to \$0.096/Dth. Article I also sets forth the depreciation rates that the “black box” settlement rates are assumed to incorporate.

3. Article II describes the service and tariff revisions that will be implemented under the settlement. Article II provides that the minimum term of service for the Rate Schedule FT-1 service proposed in this proceeding be eliminated. This article further provides that HIOS will modify its proposed revisions to Rate Schedule FT-2 service to make clear that any maximum daily quantity (MDQ) re-determinations that are required under the new tariff mechanism that HIOS has proposed in this proceeding will be effective only for the remainder of the same contract year. In addition, the settlement’s revisions to Rate Schedule FT-2 will apply only to services “entered into on or after October 1, 2006.” Rate Schedule FT-2 services in effect on the date HIOS filed its rate change application will continue to be billed on a commodity basis under the terms of the negotiated rate agreements then in effect. Article II also provides that HIOS agrees to withdraw its proposed Rate Schedule FT-3 service, which would have established term-differentiated rates. Finally, the article provides that within thirty days of the settlement’s Effective Date, HIOS will file, and will be permitted to place into effect, the tariff sheets contained in Appendix A to the settlement.

4. Article III sets forth various provisions related to the costs for non-routine services received under HIOS’ third-party operations and maintenance agreement (O&M Agreement). Starting March 1, 2008, and continuing until HIOS’ next general section 4 rate change application is filed, HIOS will be required to file annual reports detailing its expenditures under the O&M Agreement and identifying the bookkeeping entries recording those expenditures. In Article IV, HIOS agrees not to file a general section 4 rate change application with a proposed effective date earlier than June 1, 2009, that changes any of the settlement rates. For the same time period, the Settling Participants<sup>3</sup> waive any right they might otherwise have, under section 5 of the National Gas Act (NGA) or otherwise, to challenge the level of the settlement rates or any other provision of the settlement as being unjust unreasonable, unduly discriminatory, or otherwise unlawful. Article V requires HIOS to file a new NGA section 4 general rate case no later than September 1, 2010. This article also specifies how the approval or

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<sup>3</sup> HIOS states that the Settling Participants are HIOS, the active intervenors, and the Trial Staff. HIOS further states that it has served this filing on all the participants in this proceeding and all persons required to be served with the filing that initiated this proceeding.

establishment of new, post-settlement rates will affect the provisions of the settlement.

5. Article VI states when and under what conditions the settlement shall become effective. Section 6.1 provides that the various provisions of the settlement are not severable, and neither the settlement, nor any of its provisions, shall become effective unless and until each of the following has occurred: (a) the Commission has issued an order, no longer subject to rehearing, approving the settlement, without any condition or modification that is materially adverse and unacceptable to HIOS or the other Settling Participants; and (b) such Commission order approving the settlement has waived, if necessary, compliance by HIOS with the requirements of the Commission's rules and regulations in order to carry out the provisions of the settlement. The first day of the month following the month in which both of the conditions in section 6.1(a) and (b) have been satisfied, constitutes the Effective Date of this settlement. For purposes of the settlement, any modification made, or condition attached, to the settlement by the Commission shall be deemed acceptable to a Settling Participant unless such Participant notifies the other Participants, within twenty days of such Commission order, that such modification or condition is materially adverse to such Settling Participant and is not acceptable. Article VI provides that, if the Commission approves the settlement with any modification or condition that is materially adverse and unacceptable (and such modification or condition is not removed on rehearing), then any Participant shall have the right, to be exercised in good faith, to withdraw its consent to the settlement. Article VI also provides that, in such event, the settlement shall thereafter be null and void and of no force and effect. Finally, this article states that the settlement rates shall remain effective until changed under NGA sections 4 or 5.

6. Article VII explains HIOS' refund obligations. No later than sixty days after the Effective Date, HIOS shall refund to its shippers (*i.e.*, those that took service at recourse rates from March 1, 2007 to June 1, 2007) their *pro rata* share of an amount equal to \$ 750,000.00, inclusive of interest. Article VIII sets forth certain general reservations applicable to the settlement.

7. The Explanatory Statement contained in the offer states that: the settlement resolves all issues in the proceeding, including the issues related to rate base, cost of service, cost allocation, rate design as well as numerous other tariff and services issues that arose in the proceeding; the resolution of these pending issues will not affect any Commission policy or pending Commission case; and the settlement neither addresses issues of first impression nor reverses prior decisions. The Explanatory Statement further states that the Settling Participants agree that, if the Commission considers any change to the settlement after it becomes effective, the proper standard of review would be the "public interest" standard set forth in

*United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956), and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).<sup>4</sup>

8. The Commission finds that the settlement is fair, reasonable, and in the public interest. The settlement is therefore approved, to become effective as proposed. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

9. This letter order terminates Docket No. RP06-540-000.

By direction of the Commission. Commissioners Kelly and Wellinghoff dissenting in part with a separate statement attached.

Nathaniel J. Davis, Sr.,  
Acting Deputy Secretary.

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<sup>4</sup> As a general matter, parties may bind the Commission to a public interest standard. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1<sup>st</sup> Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006). In this case, we find that the public interest standard should apply.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

High Island Offshore System, L.L.C.

Docket No. RP06-540-000

(Issued August 10, 2007)

KELLY, Commissioner, *dissenting in part*:

The parties to this settlement agreement request that the *Mobile-Sierra* “public interest” standard of review apply with respect to any future changes to the settlement, whether proposed by a party, a non-party or the Commission acting *sua sponte*. This settlement sets forth rates, terms and conditions of service provided by High Island Offshore System, L.L.C.

As I explained in *Transcontinental Gas Pipe Line Corporation*,<sup>1</sup> I do not believe the Commission should approve a “public interest” standard of review provision to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, without an affirmative showing by the parties and a reasoned analysis by the Commission as to the appropriateness of approving such a provision. In addition, as I have previously noted,<sup>2</sup> this is particularly the case where, as here, the settlement agreement will impact generally applicable tariff rates, terms and conditions of service for all customers, including any new customers that did not have the opportunity to participate in the settlement negotiations.

Accordingly, I dissent in part from this order.

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Suedeem G. Kelly

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<sup>1</sup> 117 FERC ¶ 61,232 (2006).

<sup>2</sup> *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,169 (2007).

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Docket No. RP06-540-000

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WELLINGHOFF, Commissioner, dissenting in part:

The Settlement involves the resolution of HIOS' general section 4 rate proceeding in Docket No. RP06-540-000. The parties in this case have asked the Commission to apply the "public interest" standard of review when it considers any change to the Settlement that may be sought by the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,<sup>1</sup> I believe that it is inappropriate for the Commission to grant the parties' request and agree to apply the "public interest" standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,<sup>2</sup> I disagree with the Commission's characterization in this order of case law on the applicability of the "public interest" standard.

For this reason, I respectfully dissent in part.

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Jon Wellinghoff  
Commissioner

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<sup>1</sup> 117 FERC ¶ 61,055 (2006).

<sup>2</sup> 117 FERC ¶ 61,149 (2006).