

124 FERC ¶ 61,302  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

September 30, 2008

In Reply Refer To:  
Kinder Morgan Interstate Gas  
Transmission, LLC  
Docket No. RP97-81-050

Kinder Morgan Interstate Gas Transmission, LLC  
370 Van Gordon Street  
P.O. Box 281304  
Lakewood, Colorado 80228-8304

Attention: Robert F. Harrington, Vice President  
Regulatory Affairs

Reference: Compliance Filing and Negotiated Rate Agreement

Ladies and Gentlemen:

1. On August 29, 2008, Kinder Morgan Interstate Gas Transmission, LLC, (Kinder Morgan) filed revised tariff sheets<sup>1</sup> to comply with the following three Commission orders: the February 21, 2008 order<sup>2</sup> issued in Docket No. CP07-430-000; the July 8, 2008, order<sup>3</sup> issued in Docket No. CP07-430-001; and the August 22, 2008, order<sup>4</sup> issued in Docket No. CP07-430-002. Kinder Morgan's tariff sheets set forth rates the Commission previously approved for service under Rate Schedules FT and IT on its

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<sup>1</sup> See Appendix.

<sup>2</sup> *Kinder Morgan Interstate Gas Transmission, LLC*, 122 FERC ¶ 61,154 (2008) (February 21 Order).

<sup>3</sup> *Kinder Morgan Interstate Gas Transmission, LLC*, 124 FERC ¶ 61,024 (2008).

<sup>4</sup> *Kinder Morgan Interstate Gas Transmission, LLC*, 124 FERC ¶ 62,147 (2008).

Colorado Lateral.<sup>5</sup> Kinder Morgan incorporates into its rates Commission-directed adjustments to the design capacity of the pipeline, the elimination of certain non-jurisdictional costs, and changes in construction costs.

2. To comply with the Commission's February 21 Order, Kinder Morgan also filed for Commission approval its non-conforming, negotiated rate agreement with Atmos Energy Corporation (Atmos). Kinder Morgan identifies the non-conforming provisions of the Atmos agreement, which are discussed below. Kinder Morgan also filed revised tariff sheets summarizing that negotiated rate agreement on its Statement of Negotiated Rates table, and including the contract on a list of non-conforming agreements. Kinder Morgan requests an October 1, 2008, effective date for the tariff sheets to coincide with the expected in-service date of its Colorado Lateral facilities.

3. Kinder Morgan's filing was noticed on September 3, 2008, allowing for protests pursuant to section 154.210 of the Commission's regulations. No adverse comments or protests were filed.

4. Kinder Morgan's revised tariff sheets generally comply with the three Commission orders identified above. Accordingly, we accept Kinder Morgan's revised tariff sheets effective the later of October 1, 2008, or the date the Colorado Lateral Expansion Facilities are placed in service. This acceptance is subject to the following condition.

5. Kinder Morgan's agreement with Atmos contains the following MDQ adjustment provision:

During the Open Season or primary term of the FTSA, should an existing end-use consumer (i.e., an end-use customer connected to Shipper's LDC system prior to or as of the effective date of the FTSA) create a bypass situation by connecting directly to Transporter's facilities and subscribe to Firm Transportation Service on Transporter; Shipper may reduce the MDQ under the FTSA for an equivalent quantity and for a term equal to the term such end-user holds firm capacity directly from Transporter. Shipper must provide notice of its election to so reduce its MDQ within sixty (60) days of

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<sup>5</sup> The jurisdictional element of Kinder Morgan's Colorado Lateral Expansion Project consists of 41.4 miles of 12-inch-diameter natural gas pipeline commencing at Cheyenne Hub and extending to Kinder Morgan's Greeley, Colorado, market area. Kinder Morgan expects that its Colorado Lateral facilities will be completed and will begin service on or about October 1, 2008.

any such bypass, or it shall be deemed to have waived its MDQ reduction rights associated with the specific bypass.

6. Kinder Morgan argues that while this is a non-conforming provision, the Commission should find it permissible since the provision does not pose a risk of undue discrimination. Kinder Morgan asserts that the negotiation of the provision was a necessary incentive to induce Atmos to commit to the project as the anchor shipper for what represents nearly the full requirements of its Greeley service territory. It states that the Atmos agreement calls for an initial volume of 47,000 Dt per day, stepping up to 55,000 Dt per day for years five through ten of the agreement, and the MDQ adjustment provision was a necessary adjunct to Atmos' obligations to step up its contract quantities in subsequent years. Kinder Morgan argues that the Commission, in other proceedings, has found that certain non-conforming provisions are necessary in light of the unique circumstances involved with the construction of a new infrastructure and to provide the needed incentives to secure the viability of the project, citing *Rockies Express Pipeline LLC*.<sup>6</sup>

7. In *ANR Pipeline Company*,<sup>7</sup> the Commission determined that contract provisions allowing for MDQ adjustment are generally impermissible since they present a significant potential for discrimination among shippers. The Commission held that a shipper's right to reduce its contractual MDQ before the expiration of the agreement is a valuable right, since it could enable the shipper to avoid significant liability for future reservation charges. Accordingly, such a right may be granted only in a non-discriminatory manner.

8. Although Kinder Morgan argues that the Commission approved certain non-conforming provisions in the Rockies Express proceeding to provide project viability, the Commission finds the circumstances in that proceeding were unique and not relevant to Kinder Morgan's filing. In *Rockies Express*, the Commission approved a contract termination provision in an agreement with the U.S. Minerals Management Service (MMS), but only for specific circumstances where certain legislative actions or changes in state policies would require MMS to discontinue taking gas in-kind, or where MMS would no longer be authorized to hold long-term transportation contracts. In *Rockies Express*, the Commission also allowed BP Energy Company to contract for increased capacity, but it was for the sole purpose of accommodating a producer who was not creditworthy. The Commission found that there was no risk of undue discrimination in

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<sup>6</sup> 116 FERC ¶ 61,272 (2006) (*Rockies Express*).

<sup>7</sup> 97 FERC ¶ 61,252 at 62,116 (2001) (*ANR*).

those cases since there were not shippers that were similarly situated to MMS or BP Energy. Here, however, the Commission finds that there could be other shippers who are similarly situated to Atmos, and thus they should be provided the same rights.

9. Consistent with the Commission findings in *ANR*, we direct Kinder Morgan to file, within 30 days of the date this order issues, to either remove the MDQ reduction provision from its agreement with Atmos, or offer shippers the MDQ reduction right on a not unduly discriminatory basis.<sup>8</sup>

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

cc: All Parties

John H. Burnes, Jr.  
Van Ness Feldman, P.C.  
1050 Thomas Jefferson Street, N.W.  
Seventh Floor  
Washington, D.C. 20007

Emery J. Brio, III  
Assistant General Counsel  
Kinder Morgan Interstate Gas Transmission, LLC  
370 Van Gordon Street  
P.O. Box 281304  
Lakewood, Colorado 80228

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<sup>8</sup> See *Columbia Gulf Transmission Co.*, 105 FERC ¶ 61,351 (2003).

**Appendix**

Kinder Morgan Interstate Gas Transmission, LLC  
Fourth Revised Volume No. 1-A

*Tariff Sheets Conditionally Accepted Effective October 1, 2008*

Second Revised Sheet No. 4A  
Third Revised Sheet No. 4B  
Fifth Revised Sheet No. 4G.02  
Fifth Revised Sheet No. 4N  
Original Sheet No. 4O