

133 FERC ¶ 61,106  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Enbridge Offshore Pipelines (UTOS) LLC

Docket No. RP10-1393-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS  
SUBJECT TO REFUND AND ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 29, 2010)

1. On September 30, 2010, Enbridge Offshore Pipelines (UTOS) LLC (UTOS) filed tariff records<sup>1</sup> pursuant to section 4 of the Natural Gas Act (NGA) to increase its maximum tariff rates, propose an event surcharge mechanism, a transportation quantity adjustment mechanism, a free water charge, and to make other miscellaneous tariff changes. UTOS proposes a November 1, 2010 effective date for the proposed changes. For the reasons discussed below, the Commission accepts the proposed tariff records listed in the Appendix and suspends them to be effective April 1, 2011, subject to refund and the outcome of hearing and settlement judge procedures established herein.

**Background**

2. UTOS operates a pipeline that stretches 30 miles from its origin at the interconnection with High Island Offshore System (HIOS) in West Cameron Block 167 to the terminus onshore at UTOS' Cameron Meadows separation and dehydration facilities in Cameron Parish, Louisiana. UTOS currently has 5 directly connected platforms. Although UTOS has always offered firm service under its firm transportation Rate Schedule FT, since 1996 all of the services provided by UTOS have been interruptible services under its interruptible transportation Rate Schedule IT. UTOS'

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<sup>1</sup> See Appendix.

current rates were established through a settlement approved in Docket No. RP07-101-000,<sup>2</sup> which extended the rates approved in a settlement in Docket No. RP03-335-000.<sup>3</sup>

### **Details of the Filing**

3. UTOS proposes to increase its maximum recourse Rate Schedule FT reservation rate from \$.5170 per MMBtu of maximum daily quantity per month to \$62.2948 per Dth of maximum daily quantity per month and to increase its maximum recourse Rate Schedule FT Overrun, Rate Schedule IT and Rate Schedule IT Overrun rates from \$.0170 per MMBtu transported to \$2.0480 per Dth transported.<sup>4</sup>

4. UTOS argues that the proposed increases are necessary due to drastic and continuing declines in throughput of over 80 percent since the last rate increase, significant cost increases not within UTOS' control, the need to recover large negative salvage costs, and recognition of a more realistic remaining useful life for UTOS in light of existing circumstances. UTOS asserts that it has operated at a loss for the last three years and, absent a significant increase in its rates, it will not generate sufficient revenue to fully recover its operating expenses. UTOS states that it has no incentive to continue operating its system under these circumstances.

5. UTOS calculates its proposed rates using test period throughput of 19,195,140 Dth, which it states is a reduction of 2,372,099 Dth from the 21,567,239 Dth base period throughput. UTOS asserts that this reduced level of volumes does not reflect the fact that, once the proposed maximum recourse rate becomes effective, any volumes that are not currently solely connected to UTOS are not expected to remain on UTOS without a significantly discounted rate because competitor pipelines such as ANR Pipeline Company and Tennessee Gas Pipeline Company (both free to the pool) and Transcontinental Gas Pipe Line Corporation (with a posted recourse rate of \$.08 per Dth) will become more attractive to shippers than UTOS. Further, UTOS maintains that from an operational standpoint, it is critical for UTOS to maintain some volumes flowing from

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<sup>2</sup> *Enbridge Offshore Pipelines (UTOS) LLC*, 118 FERC ¶ 61,142 (2007).

<sup>3</sup> *Enbridge Offshore Pipelines (UTOS) LLC*, 104 FERC ¶ 61,116 (2003). The filing in Docket No. RP03-335-000 was tendered to comply with the settlement in Docket No. RP94-161-004, which required UTOS to file a general rate proceeding three years from the date of the order approving the settlement. The settlement in Docket No. RP94-161-004 was approved by the Commission in an unpublished letter order dated September 18, 1995, which established a September 1, 1994 effective date for the rates.

<sup>4</sup> UTOS is not proposing any change to its current \$0.00 minimum rates.

HIOS. According to UTOS, this fact will necessitate heavy discounting of the proposed recourse rate down to levels that approximate the current UTOS rates, which is about \$0.02, to retain the present small volumes that move on UTOS today from the HIOS interconnect. UTOS states that the impact of these discounts in the design of the service rates results in reservation design determinants of 139,872 Dth (or 11,656 Dth per day of MDQ). UTOS is not proposing any changes in cost classification, allocation and rate design. According to UTOS, all of its facilities are currently functionalized as transmission and all of its costs were classified as fixed, pursuant to the straight fixed-variable method.

6. UTOS bases its rates on a total test period cost of service of \$8,713,299.<sup>5</sup> UTOS states that its cost of service includes \$4,955,754 of operating and maintenance expenses, \$560,866 of depreciation expenses, \$2,233,524 of negative salvage expenses, a return on rate base of \$140,150, a \$494,984 supplemental management fee, \$254,405 of federal income taxes, \$11,616 of state income taxes, and \$62,000 of other taxes.

7. UTOS states that its test period cost of plant includes two adjustments to its base period cost of plant: (1) an increase of \$348,240 to Account 367 (transmission mains expenses) to reflect replacement of facilities; and (2) a \$30,544 adjustment to Account 107 to transfer work orders expected to be completed by the end of the test period from construction work in progress to gas plant in service.

8. UTOS states that its total operation and maintenance expense increased from \$1,772,619 for the base period to \$4,955,754 for the test period. According to UTOS, approximately one-half of the \$3,183,135 difference between these amounts is the result of normalizing adjustments and one-half is the result of uncontrollable increases in charges from third party service providers.

9. UTOS proposes a depreciation rate of .63 percent for its transmission plant and a rate of 3.50 percent for negative salvage. In addition, UTOS proposes to continue the use of its existing rate of 1.0 percent for intangible plant, and proposes a 20.0 percent rate for computer software. UTOS states that general plant is fully depreciated and there is no calculation of expense for this plant category. UTOS states that both the proposed depreciation rate for transmission plant and the rate for negative salvage are calculated using a depreciable life for UTOS of five years. UTOS projects a net depreciable transmission plant balance of \$2,002,419 by April 30, 2011. Based upon a remaining life

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<sup>5</sup> The instant filing uses “base period” data taken from UTOS’ books and records for the 12 months of actual experience ending July 31, 2010, as adjusted for changes that are known and measurable, and which will become effective by the end of a test period ending April 30, 2011.

of five years, UTOS explains that the annual depreciation expense equals \$402,034. According to UTOS, dividing the annual depreciation expense by the total transmission plant results in a new depreciation rate of 0.63 percent.

10. UTOS' negative salvage study concludes that the total negative salvage cost for the offshore pipeline assets is \$1,747,000 and the total negative salvage cost for the onshore pipeline assets is \$11,118,363, resulting in the \$12,865,363 total negative net salvage cost. UTOS states that the net negative salvage cost of \$11,176,695 for the UTOS facilities was calculated by subtracting the \$1,688,668 of negative salvage already collected from shippers from the total negative salvage of \$12,865,363. UTOS explains that it used a five year remaining useful life, which results in a negative salvage rate of 3.50 percent applied to UTOS' total transmission depreciable plant balance. UTOS determined that a decrease in throughput below 3,000 Dth per day would preclude it from operating its system reliably and efficiently. UTOS also determined that volumes would fall below the critical level of 3,000 Dth per day approximately 9 years after the end of the test period. However, UTOS asserts that its economic life study, which considered the rates and levels of throughput required by UTOS to recover its cost of service, as well as transportation alternatives available to UTOS shippers, concluded that, because of necessary cumulative incremental increases, by sometime in year 5 it will be cheaper for UTOS shippers to construct new facilities to connect to another pipeline than to continue to receive transportation service on UTOS.

11. UTOS proposes a rate of return on equity of 13.38 percent. After factoring in UTOS' proposed 40 percent long term debt and 60 percent common equity capital structure and its cost of long-term debt of 6.92 percent and common equity of 13.38 percent, UTOS proposes an overall rate of return of 10.79 percent. UTOS argues this rate of return is consistent with the fact that UTOS has high commercial, operational and financial risks as compared to the risks of the proxy group used to calculate the cost of capital input values. UTOS determined the weighted cost of capital by selecting a proxy group of ten companies, performing a discounted cash flow analysis to estimate an appropriate rate of return on equity, calculating a hypothetical cost of debt for UTOS using the debt cost data from the proxy companies and calculating a hypothetical capital structure for UTOS based on the capital structures data of the proxy companies.

12. UTOS proposes to include a supplemental management fee of \$494,984 in its cost of service. UTOS first calculates a gross management fee of \$635,134 and then adjusts the management fee for its return on rate base of \$140,150 to derive the net management fee of \$494,984. UTOS asserts that a management fee is appropriate because its plant is depreciated beyond the point where there can be any meaningful return on plant and, for rate base purposes, is essentially equivalent to fully depreciated plant. UTOS states that the minimal level of return calculated on its rate base does not by itself provide an adequate cushion of dollars to absorb variations in either operating expenses or revenues.

UTOS further argues that the absence of an adequate allowance for return would eliminate the primary incentive for UTOS to continue operating its system.

13. UTOS states that its income is subject to a 35 percent federal tax rate and a 2.3995 percent state income tax rate. According to UTOS, the 35 percent rate applied to the UTOS tax base of \$472,466 yields a federal income tax allowance of \$254,405. UTOS states that multiplying the tax base by the effective state income tax rate of 2.3995 percent results in a state income tax allowance of \$11,616.

14. UTOS states that taxes, other than income taxes, which are included in the cost of service, reflect UTOS' base period level of ad valorem taxes and other taxes assessed by the state of Louisiana. According to UTOS, the total amount of UTOS' base period taxes other than income taxes is \$60,739. UTOS asserts that the base period amount, plus an adjustment of \$1,261, to reflect the most recent estimate of test period tax expenses based on information supplied by the taxing authorities, results in a total test period expense of \$62,000.

15. UTOS also proposes to add an event surcharge to its tariff to recover actual costs incurred in connection with preventing, preparing for and repairing damage caused by major storms and other significant natural disasters that affect its system, as well as significant and irregularly recurring costs associated with environmental, safety and security measures. UTOS explains that the event surcharge will apply to gas transportation service provided by UTOS pursuant to its Rate Schedules FT and IT, the latter being the only service UTOS currently provides. UTOS states that it may discount the event surcharge on a not unduly discriminatory basis, but otherwise a discount rate granted by UTOS will not be considered to discount the surcharge. UTOS states that the event surcharge is intended to recover only actual costs incurred and to provide UTOS with the revenue certainty it needs to manage these expenditures and the associated cost volatility. UTOS submits such a surcharge is a necessary mechanism to permit UTOS to continue viable operations in light of the grave challenges it faces in managing such costs given its thin and unreliable revenues.

16. UTOS states that its proposed event surcharge is generally consistent with Commission precedent. UTOS asserts that the Commission has allowed other offshore pipelines to implement surcharges designed to reimburse the pipeline for hurricane-related costs.<sup>6</sup> UTOS asserts that the Commission has also approved numerous other

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<sup>6</sup> See UTOS Appendix A at A-14, note 9 (citing *Sea Robin Pipeline Co., LLC*, 128 FERC ¶ 61,286, at P 38 (2009), *reh'g denied*, 130 FERC ¶ 61,191 (2010) (*Sea Robin*) (finding that Sea Robin could recover hurricane-related costs through surcharge with a tracker mechanism); *Stingray Pipeline Co., L.L.C.*, 127 FERC ¶ 61,308 (2009) ("Stingray will establish an event surcharge tariff mechanism to track and recover from

(continued...)

commodity surcharges for the reimbursement of costs incurred by pipelines to enhance the reliability and security of their system operations.<sup>7</sup>

17. UTOS asserts that irregularly recurring, but significant, costs associated with environmental, safety and security compliance measures create significant cost volatility that is difficult to manage for UTOS, with its low and unreliable revenue streams. UTOS further asserts that the traditional cost of service rate methodology, under which UTOS would file for permission to increase its rates to recover cost increases associated with such events, does not work well because significant litigation risks and costs are associated with a traditional section 4 rate case filing, and the filing may not be resolved for an extended period. UTOS argues that, in years during which no events impact UTOS, the costs to be recovered through a surcharge will be relatively small, and the surcharge can be reduced relatively easily to flow the benefits of reduced costs through to UTOS' shippers. UTOS states that, if a serious natural disaster or other significant compliance event heavily impacts UTOS, the flexibility of the surcharge mechanism would permit a more timely recovery of the increased costs.

18. In addition, UTOS proposes to include a transportation quantity adjustment mechanism in its tariff. UTOS states that this will help to manage rapid throughput changes more efficiently, while still protecting shippers in case additional quantities of

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all of its shippers, through means of a surcharge, Stingray's capital and related operation and maintenance expenditures actually incurred as a result of hurricanes or other storms); *Discovery Gas Transmission LLC*, 122 FERC ¶ 61,099, at P 5 (2008) (allowing "a hurricane maintenance and reliability enhancement (HMRE) surcharge to recover from all of its shippers the capital and related operations and maintenance expenditures . . . in connection with efforts to mitigate the cost of damage to facilities caused by hurricanes (or other natural disasters), to maintain system reliability during and immediately after hurricanes (or other natural disasters), to repair and remediate facilities damaged by hurricanes (or other natural disasters), and to enhance overall system reliability"); *Chandeleur Pipe Line Co.*, Unpublished Letter Orders, Docket No. RP07-35-000 (Nov. 30, 2006) and Docket No. RP08-72-000 (Dec. 19, 2007) (allowing a commodity surcharge to recover \$3.9 million of costs associated with Hurricane Katrina, which surcharge was later extended an additional year)).

<sup>7</sup> See UTOS Appendix A at A-14, note 10 (citing *Gas Transmission Northwest Corp.*, 122 FERC ¶ 61,012, at P 10 (2008); *El Paso Natural Gas Co.*, 120 FERC ¶ 61,208, Appendix, Article 2.2 (2007); *Equitrans, L.P.*, 115 FERC ¶ 61,007, at P 19 (2006); *Southern Natural Gas Co.*, Unpublished Commission Letter Order, at P 11, Docket No. RP04-523-000 and -001 (July 13, 2005); *Florida Gas Transmission Co.*, 109 FERC ¶ 61,320, at P 18-22 (2004)).

gas are unexpectedly connected and delivered to the pipeline. UTOS explains that the transportation adjustment mechanism annually adjusts the UTOS tariff rates if its annual throughput, converted to full rate equivalent quantities,<sup>8</sup> varies up or down by more than 10 percent of the annual quantities used in this proceeding to design UTOS' tariff rates. UTOS asserts that this tariff mechanism, including an annual true-up adjustment, will ensure that UTOS' tariff rates reflect the actual quantities transported by UTOS in each year and, given the uncertainty of those quantities, will ensure both that UTOS is compensated for its costs if its annual throughput continues to decline; and that UTOS does not over-recover revenue if its annual throughput increases for some unexpected reason. UTOS further asserts that it will also eliminate the administrative burdens on all parties and the Commission of rapidly pancaked cases that will otherwise be necessary if UTOS is to remain economically viable.

19. UTOS also proposes to add a free water charge to its tariff. According to UTOS, this is a per barrel charge associated with free water introduced into the UTOS system contrary to the requirements of its tariff. UTOS explains that free water is essentially sea water that becomes part of the gas stream in the well bore. UTOS states that the free water is removed by the producer on the offshore platform to prevent it from being injected into the downstream pipelines. UTOS states that some producers re-inject the free water back into the gas stream delivered to UTOS and, therefore, UTOS must then remove the free water. UTOS explains that, in addition to the cost to remove the free water, UTOS must take other actions to prevent the corrosive effects caused by the free water in its system. To prevent the delivery of free water to UTOS' system, UTOS proposes a charge of \$10 per barrel of free water. UTOS states that free water will be attributed to a shipper based on an analysis of the gas delivered to UTOS at its receipt points and monitoring of seals placed downstream of the gas meter at those points.

### **Notice, Interventions and Protests**

20. Public notice of the filing was issued on October 4, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>9</sup> Pursuant to Rule 214,<sup>10</sup> all timely filed motions to intervene and any motions to intervene

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<sup>8</sup> UTOS explains that "full rate equivalent quantities" means the conversion of any quantities transported by UTOS at a discount rate below the maximum tariff rate to a lower quantity amount that generates the same amount of revenue at the tariff rate, e.g., for 500,000 Dths of gas transported at a discount rate equal to one-half of the tariff rate, the full rate equivalent quantities will equal 250,000 Dths.

<sup>9</sup> 18 C.F.R. § 154.210 (2010).

<sup>10</sup> 18 C.F.R. § 385.214 (2010).

out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Protests were filed by Apache Corporation (Apache), Hunt Oil Company (Hunt), and Tana Exploration Company, LLC (Tana). On October 20, 2010, UTOS filed an answer to Apache's protest.<sup>11</sup>

21. The protestors object to, what they describe as, UTOS' extraordinary and unprecedented rate increase and significant revisions to its GT&C. Hunt and Tana object to various aspects of UTOS' proposal that they assert have not been shown to be just and reasonable. They contend there are many elements of UTOS' proposed rate increase that must be examined by the Commission including, but not limited to, UTOS' (a) proposed operating and maintenance expenses (in particular, the significant increase reflected in the test period due, in part, to payments by UTOS to affiliate service providers); (b) calculation of its depreciation rates based upon a truncated useful life estimate of five years; (c) proposed based and test period throughput calculations; (d) proposed capital structure, rate of return on equity, and cost of long-term debt underlying its proposed overall rate-of-return of 10.79 percent; and (e) proposed supplemental management fee.

22. In addition, Hunt and Tana argue that UTOS' proposed event surcharge and transportation quantity adjustment mechanism must be reviewed by the Commission. They believe the proposed event surcharge, which is designed to recover costs incurred as a result of major storms, is premature since UTOS has not incurred any such storm costs and the surcharge is not being proposed in the context of a settlement proposed by UTOS' customers. The protestors also strongly oppose the proposed transportation quantity adjustment mechanism because they believe such a mechanism would impose unilateral rate increases on UTOS' shippers without their right to review and oppose such increases prior to their implementation. If UTOS believes that future circumstances on its system merit changes to its rates, Hunt and Tana argue that the proper due process vehicle to propose such changes is through a general section 4 rate filing.

23. Hunt and Tana argue that UTOS failed to seek any type of rate increase in 16 years, despite the fact that throughput has been consistently declining, and that captive shippers should not be expected to absorb and pay the proposed rate increases without the Commission's close scrutiny. Hunt and Tana object to, what they argue is, an extraordinary rate increase and the associated tariff records. They, therefore, request the

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<sup>11</sup> We will accept the answer as it aids in the disposition of the issues raised by the protests.

Commission to suspend the proposed rates for no less than the full five-month suspension period,<sup>12</sup> subject to refund and a hearing.

24. Apache requests that the Commission summarily reject the filing and take action under section 5 of the NGA, which has prospective implementation. Apache contends that summary rejection is appropriate if there are no facts in dispute and the filing is in patent violation of an applicable statute, regulation or Commission policy.<sup>13</sup> Apache argues that the Commission must not permit this substantial rate increase to take effect, even subject to refund, because small producers do not have the cash flow on an ongoing basis sufficient to operate their wells at today's gas prices if such an unreasonable transportation rate is charged, even if refunds are granted in the future. Apache asserts that this filing will likely result in significant quantities of shut-in natural gas and premature abandonment of production. Apache also argues that allowing a rate increase of this magnitude to take effect in five months, subject to refund, gives UTOS significant negotiating leverage in extracting agreements to what would be higher than otherwise just and reasonable rates. Apache submits that the public interest requires summary rejection of UTOS' proposed rate increase because UTOS should not be permitted to take advantage of the suspension procedures to force a rate increase.

25. Apache contends that the proposed increase in rates can be attributed to more than an alleged decline in throughput of over 80 percent, as UTOS argues. Apache contends there are numerous factors, which unjustly impact the increase including, but not limited to: (a) the use of adjusted throughput, including "projected" declines, as contrasted with base period data; (b) a five-year depreciable life, in contrast to the nine-year reserve life set forth in UTOS' testimony (which Apache does not necessarily accept); (c) the hypothetical capital structure of 40 percent debt/60 percent equity; (d) the proposed rate of return on equity ("ROE") of 13.38 percent, based upon an unrepresentative proxy group, and unauthorized deviations from the Commission's discounted cash flow ("DCF") methodology; (e) an increase in the negative salvage rate; (f) an unsupported Federal income tax allowance; (g) a proposed supplemental management fee; and (h) a proposed free water charge of \$10/barrel.

26. In addition, Apache requests that the Commission reject UTOS' two new proposed tariff surcharges. Apache argues that the event surcharge should be rejected because it is

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<sup>12</sup> Hunt and Tana Protests at 4 (citing *Black Marlin Pipeline Co.*, 117 FERC ¶ 61,253 (2006) (extraordinary proposed rate increase warranted five-month suspension)).

<sup>13</sup> Apache Protest at 4 (citing *Northern Border Pipeline Co.*, 60 FERC ¶ 61,176, at 61,644 (1992); *El Paso Natural Gas Co.*, 112 FERC ¶ 61,150 (2005)).

designed to recover speculative future costs and, therefore, is premature.<sup>14</sup> Apache argues that the transportation quantity adjustment mechanism should also be rejected because it is also speculative and premature. Apache contends, among other things, that UTOS is free to file a new rate case if throughput declines in the future.

27. Apache states that it is willing to work with UTOS in good faith in an effort to resolve its alleged cost under-recovery. But, according to Apache, to increase a rate from approximately two cents to two dollars and permit that two dollar rate to take effect in five months, even subject to refund, is unconscionable. Apache, therefore, requests that the Commission reject UTOS' filing, implement an NGA section 5 rate case proceeding, and set the case for settlement procedures.

28. In its answer, UTOS asserts that summary rejection of its filing is not warranted as summary rejection is proper only when a filing is patently deficient or otherwise clearly contravenes Commission regulations or policy, none of which apply to its filing. Regarding Apache's claim that the filing should be rejected, because the proposed increase is too large, UTOS states that neither section 4 of the NGA nor the Commission's regulations prescribe limits on the amount or timing of proposed rate increases. Moreover, it asserts, the instant filing was largely driven by relatively recent and substantial changes in circumstances and an acceleration of the rate of decline in throughput. In particular, it notes that High Island Offshore System (HIOS) is terminating Rate Schedule X-1 under which HIOS had paid UTOS revenues covering 89 percent of its total operating and maintenance costs, and HIOS had decided not to replace certain compression facilities that were destroyed. Thus, UTOS argues that Apache would have UTOS operate at a loss. Regarding Apache's protest to UTOS's proposed event surcharge and throughput quantity adjustment mechanism, UTOS responds, *inter alia*, by arguing that these are not trackers as characterized by Apache because they do not track the variance between a cost component of the rates and the actual costs realized; rather, their implementation is triggered by an unplanned event, e.g., a natural disaster or a significant change in throughput. UTOS also asserts that the event surcharge costs are not speculative, as Apache asserts, as such events will occur and will precipitate substantial costs for repair and recovery, noting that the Commission has allowed such mechanisms to go into effect pending a hearing.<sup>15</sup> UTOS also argues that future declines in throughput are not speculative, as supported in its evidence. Furthermore, it observes, its proposed throughput quantity adjustment mechanism

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<sup>14</sup> Apache Protest citing *Southern Natural Gas Co.*, 127 FERC ¶ 61,003, at P 29 (2009) (rejecting greenhouse gas cost recovery mechanism that was included in Southern Natural Gas Company's general section 4 rate case because it was premature)).

<sup>15</sup> UTOS Answer at 10 (citing *Sea Robin*, *supra*, note 6).

requires that throughput must rise or fall by more than 10 percent before UTOS is permitted to adjust its rates and, therefore, strikes a fair balance by sharing the future risk of both throughput increases and declines. Finally, it asserts that the mechanism minimizes the need for future rate proceedings.

### **Discussion**

29. The rates and surcharges proposed by UTOS' instant filing have not been shown to be just and reasonable. The Commission finds that the instant filing raises issues that need to be investigated further. Accordingly, the Commission will establish a hearing concerning whether UTOS' proposed rates and surcharges are just and reasonable. Issues that may be explored at the hearing include, but are not limited to, the following: (1) the proposed cost of service; (2) the level of UTOS' rates, billing determinants and revenue requirement; (3) the appropriateness of the proposed 13.38 percent return on equity, capital structure and overall rate of return; (4) the negative salvage value; (5) the proposed depreciation rates; (6) the proposed event surcharge, transportation quantity adjustment mechanism and free water charge; and (7) the proposed supplemental management fee.

30. We reject Apache's assertion that the filing should be summarily rejected simply because of the size of the increase. UTOS has made a *prima facie* showing that the proposed rate increase may be supported in its unique situation, including its evidence showing the effects of the loss of HIOS revenues that UTOS claims formerly covered almost 89 percent of its operating and maintenance expense. We also reject Apache's assertion that the event and throughput surcharge proposals should be summarily rejected because they are designed to recover speculative future costs and, therefore, are premature and against Commission policy. With regard to UTOS' event surcharge proposal, the Commission has found that such types of surcharges for hurricanes and storms are generally permissible for offshore pipelines because these are events that, although, generally unpredictable as to when they will occur, do occur with enough regularity to permit a surcharge mechanism.<sup>16</sup> Accordingly, it is appropriate to set the proposed event surcharge for hearing and settlement judge procedures. Further, regarding the transportation quantity adjustment mechanism, UTOS has made a *prima facie* case that declines in throughput are to be expected on its system. Thus, while the Commission's general policy is not to permit a mechanism of this sort because a pipeline's general system rates should be changed in a general section 4 rate case where

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<sup>16</sup> See *Sea Robin*, 130 FERC ¶ 61,191, at P 21 (hurricane-related costs can be recovered through a surcharge with a tracker mechanism because hurricanes repeatedly occur in the Gulf of Mexico and pipelines operating there will suffer hurricane damage at recurring, if irregular, intervals).

all rate factors will be reviewed, UTOS has made a threshold showing that it is in a unique situation that its proposal is specifically designed to address. Accordingly, while UTOS has a high burden to justify its proposed departure from Commission policy, we will not summarily reject this mechanism at this time and will set it for hearing and settlement judge procedures.<sup>17</sup>

31. While the Commission is setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose. The settlement judge shall report to the Chief Judge and the Commission, within 30 days of the date of the settlement judge's appointment, concerning the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

### **Suspension**

32. Based upon review of the filing, the Commission finds that the proposed tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission will accept and suspend the effectiveness of the proposed tariff records for the period set forth below, subject to the conditions set forth in this order.

33. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.<sup>18</sup> It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum

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<sup>17</sup> See *Canyon Creek Compression Co.*, 99 FERC ¶ 61,351, at P 14-16 (2002), in which the Commission refused to summarily reject a cost-of-service tracker because the pipeline "may have raised valid reasons" for an exception from Commission policy because of its "dependence on the rapidly declining production of the Whitney Canyon Field."

<sup>18</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

period may lead to harsh and inequitable results.<sup>19</sup> Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff records listed in the Appendix, to be effective April 1, 2011, subject to refund and the outcome of the hearing established herein.<sup>20</sup>

The Commission orders:

(A) The tariff records listed in the Appendix are accepted and suspended, to be effective April 1, 2011, upon motion by UTOS, subject to refund and the outcome of the hearing established herein.

(B) Apache's request to summarily reject the filing is denied.

(C) Pursuant to the Commission's authority under the Natural Gas Act, particularly sections 4, 5, 8, and 15, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP10-1393-000 concerning UTOS' filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in the Ordering Paragraphs below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If

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<sup>19</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

<sup>20</sup> UTOS is on notice that it will be at risk for any lost revenues due to a reduction in rates pursuant to its proposed transportation quantity adjustment mechanism.

settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

**Appendix**

Enbridge Offshore Pipelines (UTOS) LLC  
Tariff Records Accepted and Suspended to be Effective April 1, 2011, Subject to Refund

FERC NGA Gas Tariff  
Sixth Revised Volume No. 1

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