

155 FERC ¶ 61,183  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

Kinetica Deepwater Express, LLC

Docket No. CP11-544-004

ORDER ON VOLUNTARY REMAND

(Issued May 19, 2016)

1. This case is before the Commission on voluntary remand from the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit).<sup>1</sup> TC Offshore LLC (TC Offshore), now known as Kinetica Deepwater Express, LLC,<sup>2</sup> sought judicial review of the order granting TC Offshore a certificate of public convenience and necessity to acquire pipeline facilities and setting initial rates for service, and the two rehearing orders that followed.<sup>3</sup> At issue is the Commission's rejection of TC Offshore's proposed initial negative salvage rates.

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<sup>1</sup> *TC Offshore, LLC v. FERC*, No. 13-1223 (D.C. Cir. 2014).

<sup>2</sup> On April 7, 2016, Kinetica Deepwater Express, LLC submitted a motion requesting that the name in this docket be changed to reflect that TC Offshore was purchased by Kinetica Partners, LLC on March 31, 2016, and informing the Commission that TC Offshore's name has been changed to Kinetica Deepwater Express, LLC. In recognition of the purchase and name change we have updated the docket. However, throughout this order we refer to the company by its former name for clarity and consistency with the underlying orders.

<sup>3</sup> *ANR Pipeline Co.*, 139 FERC ¶ 61,238 (2012) (Certificate Order); *ANR Pipeline Co.*, 140 FERC ¶ 61,260 (2012) (First Rehearing Order); *ANR Pipeline Co.*, 143 FERC ¶ 61,225 (2013) (Second Rehearing Order).

2. On remand, the Commission affirms its finding in the underlying orders that TC Offshore failed to adequately support its requested initial negative salvage rates during the certificate proceeding. Further, after reconsidering TC Offshore's request that the Commission accept a Negative Salvage Study appended to its first rehearing request as "either a certificate amendment and/or as a supplemental filing" we find that accepting the study as a supplement or amendment is unjustified and would be contrary to the public interest.

### **Background**

3. On September 1, 2011, ANR Pipeline Company (ANR) filed an application, in Docket No. CP11-543-000, under section 7(b) of the Natural Gas Act (NGA)<sup>4</sup> for authority to abandon by sale to its wholly-owned subsidiary, TC Offshore, all of its offshore pipeline facilities in the Gulf of Mexico, as well as certain onshore pipeline facilities in Louisiana and Texas.<sup>5</sup> Also on September 1, 2011, TC Offshore filed an application, in Docket No. CP11-544-000, under section 7(c) of the NGA<sup>6</sup> for certificate authority to acquire and operate the facilities that ANR proposed to abandon. As part of its application, TC Offshore proposed initial rates reflecting use of a negative salvage rate of 3.122 percent for gathering plant<sup>7</sup> and 0.985 percent for transmission plant.<sup>8</sup>

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<sup>4</sup> 15 U.S.C. § 717f(b) (2012).

<sup>5</sup> These facilities consisted of approximately 600 miles of pipeline, seven offshore platforms, measurement, compression, separation and dehydration facilities, and appurtenant facilities. Specifically, ANR proposed to abandon by sale: (1) the Patterson System, extending upstream of the Patterson Station in St. Mary Parish, Louisiana; (2) the Grand Chenier System, extending upstream of the Grand Chenier Station in Cameron Parish, Louisiana; (3) the Central Texas Gathering System, extending upstream of an onshore terminus in Wharton County, Texas; and (4) off-system facilities in the Gulf of Mexico.

<sup>6</sup> 15 U.S.C. § 717f(c) (2012).

<sup>7</sup> Under section 1(b) of the NGA, the Commission's jurisdiction does not extend to facilities used "for the production or gathering of natural gas." The Commission has jurisdiction over TC Offshore's gathering rates because the gathering service provided is "in connection with" the transportation of natural gas subject to the jurisdiction of the Commission. *See* 15 U.S.C. 717c(a) (2012).

<sup>8</sup> Negative salvage occurs when the cost of removing an asset after it reaches the end of its useful life exceeds the revenue that would be realized if the asset were sold.

(continued ...)

4. Parties protesting TC Offshore's application claimed that TC Offshore failed to provide substantial evidence in support of its proposed negative salvage rates, which were higher than those underlying ANR's existing rates for service over the facilities being acquired by TC Offshore. The protesting parties questioned the difference between ANR's existing and TC Offshore's proposed depreciation expenses and referenced ANR's last approved negative salvage rate of 0.23 percent applicable to the offshore facilities ANR proposed to abandon,<sup>9</sup> which was approved by the Commission in 1998.<sup>10</sup>

5. On June 21, 2012, the Commission issued an order approving ANR's abandonment request, and issued a certificate of public convenience and necessity to TC Offshore to acquire and operate the facilities previously owned by ANR (Certificate Order). However, the Certificate Order required TC Offshore to use ANR's last approved negative salvage rate established for these facilities, which is 0.23 percent for both gathering and transmission plant. In rejecting TC Offshore's proposed higher negative salvage rates, the Certificate Order stated that the Commission agreed with the protesting parties that TC Offshore had not supported its proposed negative salvage figures.<sup>11</sup>

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Depreciation is the mechanism by which the original capital cost of a tangible asset is allocated and recovered over the asset's useful life. Salvage reflects a fully-depreciated asset's residual value, which offsets total depreciation. Negative salvage is the difference between the residual asset (salvage) value and its cost of retirement/ removal. *Portland Natural Gas Transmission System*, 142 FERC ¶ 61,197, at P 151 (2013). Both depreciation and negative salvage are amortized over the asset's useful life and both are treated as annual operating expenses for ratemaking purposes. *El Paso Natural Gas Co.*, 139 FERC ¶ 63,020 (2012).

<sup>9</sup> Apache Corporation (Apache) Protest at 7; Indicated Shippers Protest at 15 (Indicated Shippers includes: BP America Production Company, BP Energy Company, Marathon Oil Company, and Shell Offshore Inc.).

<sup>10</sup> When ANR filed a general rate case in 1993, in Docket No. RP94-43-000, it proposed to increase its existing 0.23 percent offshore negative salvage rate by 0.14 percent, which would have allowed it to recover a greater amount over the remaining life of the facilities to cover negative salvage costs. Subsequently however, ANR reached a settlement agreement with several entities including producers and shippers, which provided for continuation of ANR's existing 0.23 percent negative salvage rate, and the Commission approved the settlement. *ANR Pipeline Co.*, 82 FERC ¶ 61,145 (1998); *ANR Pipeline Co.*, 78 FERC ¶ 63,003, at 65,047-48 (1997).

<sup>11</sup> Certificate Order, 139 FERC ¶ 61,238 at P 134.

6. On July 23, 2012, TC Offshore sought rehearing on several issues, including the rejection of its proposed negative salvage rate, arguing first that it had adequately supported its proposed initial rates and, alternatively, that the Commission should accept a newly submitted Negative Salvage Study accompanying its rehearing request as either a late supplement to its application or as a certificate amendment. In addition, several other parties, including shippers and producers, sought rehearing on multiple issues concerning both ANR's abandonment and TC Offshore's initial rates.<sup>12</sup>

7. On August 1, 2012, in Docket No. RP12-908-000, TC Offshore proposed to commence service on October 1, 2012.

8. On September 28, 2012, the Commission issued an order on rehearing (First Rehearing Order) addressing: (1) the jurisdictional status of a portion of the pipeline facilities acquired by TC Offshore; and (2) TC Offshore's proposed negative salvage rates.<sup>13</sup> The First Rehearing Order denied rehearing on the issue of TC Offshore's proposed negative salvage rates, noting that TC Offshore had provided a mere one-sentence explanation of its proposed negative salvage rates in Exhibit P to its application.<sup>14</sup> The First Rehearing Order did not evaluate TC Offshore's Negative Salvage Study, but indicated that the denial of rehearing was without prejudice to TC Offshore requesting to change its negative salvage rates pursuant to a NGA section 4 filing after service had commenced.<sup>15</sup>

9. On November 1, 2012, TC Offshore commenced service on the facilities it acquired from ANR.

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<sup>12</sup> In addition to TC Offshore, the following parties filed timely requests for rehearing: Apache; Arena Energy, LP; Indicated Shippers; LLOG Exploration Company, LLC; and Century Exploration New Orleans, LLC, Dynamic Offshore Resources, LLC, Energy XXI (Bermuda) Ltd., Hilcorp Energy Company Inc., McMoran Oil & Gas LLC, Pisces Energy LLC, and W&T Offshore, Inc. (jointly). Additionally, a group of associations (Association Group) filed a motion to intervene out-of-time and request for rehearing.

<sup>13</sup> The First Rehearing Order also clarified the Certificate Order's descriptions of certain pipeline segments proposed to be acquired by TC Offshore and indicated that all other issues would be addressed in a separate order.

<sup>14</sup> First Rehearing Order, 140 FERC ¶ 61,260 at P 10.

<sup>15</sup> *Id.* P 11.

10. On October 31, 2012, TC Offshore again sought rehearing on the issue of its negative salvage rates, and on June 7, 2013, the Commission addressed this issue and the other requests for rehearing of the Certificate Order on which action was still pending (Second Rehearing Order). On the issue of the negative salvage rates underlying TC Offshore's initial rates for service, the Commission reiterated that once a pipeline company has commenced service, its initial rates cannot be amended in an NGA section 7 proceeding. Thus, because TC Offshore had commenced service on November 1, 2012, the Second Rehearing Order found that the request for an amendment under section 7 was moot.<sup>16</sup>

11. On August 6, 2013, TC Offshore petitioned the D.C. Circuit for review of the Commission's rejection of its proposed negative salvage rates. On January 29, 2014, the D.C. Circuit granted the Commission's unopposed motion for voluntary remand of the case.<sup>17</sup>

## **Discussion**

### **A. Lack of Support for Proposed Negative Salvage Rate in TC Offshore's Application**

12. An applicant for a certificate of public convenience and necessity is required to support the costs it proposes to recover through its rates.<sup>18</sup> Such costs may include an amount to provide for recovery of negative salvage costs, i.e., expenses that are projected to be incurred in the course of disposing of retired facilities in excess of revenues generated by the sale of any of the assets, such as compressor units and salvageable pipe. Determination of a negative salvage rate requires taking the annual negative salvage accrual (estimated salvage cost divided by the estimated average remaining life) and dividing it by the appropriate gross plant balance.

13. While initial rate proposals are evaluated under the public interest standard of NGA section 7, a standard which may be less stringent than the just and reasonable standard under NGA section 4, the Commission, nevertheless, generally applies the

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<sup>16</sup> Second Rehearing Order, 143 FERC ¶ 61,225 at P 80.

<sup>17</sup> On February 24, 2016, TC Offshore filed an application under section 7(b) of the NGA to abandon by sale a portion of the offshore facilities it had acquired from ANR. This order addresses only the issue on remand from the DC Circuit. TC Offshore's abandonment request will be addressed in a separate order.

<sup>18</sup> See 18 C.F.R. § 157.14(a)(18)(ii) (2015).

same ratemaking policies to initial rates that it would apply in an NGA section 4 rate proceeding.<sup>19</sup> As a practical and procedural matter, the difference between the approval of NGA section 7 initial rates and the setting of rates in subsequent NGA section 4 proceedings is that initial rates are based on estimates of costs and revenues, whereas in a NGA section 4 rate proceeding the rates are based on actual operating history and actual costs. Additionally, in a certificate proceeding involving expansion of an existing pipeline system, the Commission is addressing only the rates applicable to the facilities and services being authorized and does not have all of the existing systems' rates before it. Thus, its NGA section 7 review is more limited than the review that occurs under NGA section 4.<sup>20</sup>

14. The Certificate Order found that TC Offshore, which was acquiring existing facilities currently being used by ANR to provide jurisdictional service, had not supported its proposed negative salvage figures, which differed from those which had been found just and reasonable for use by ANR.<sup>21</sup> TC Offshore challenged that finding on rehearing, asserting that the description of its negative salvage proposals provided in the Explanatory Statement to Exhibit P to its application satisfied the public convenience and necessity standard under NGA section 7.<sup>22</sup> That description, in full, states:

TC Offshore proposes recovery of plant decommissioning costs through negative salvage rates, which were calculated using the same ... [Production to Reserve] factors used for depreciation.

15. The First Rehearing Order noted that protests from Indicated Shippers and Apache had called into question the justification for TC Offshore's proposed negative salvage rate, and yet TC Offshore chose to leave the record as it stood.<sup>23</sup> In response to Indicated Shippers' protest, TC Offshore stated that it anticipates significantly higher negative salvage expenses than those provided for in ANR's existing approved rates, but

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<sup>19</sup> *Cities of Fulton v. FPC*, 512 F.2d 947, 949 (D.C. Cir. 1975) (stating that "the FPC may not approve under Section 7 rates which would not pass muster under Section 4.").

<sup>20</sup> *Maritimes & Northeast Pipeline, L.L.C.*, 84 FERC ¶ 61,130, at 61,683 (1998).

<sup>21</sup> Certificate Order, 139 FERC ¶ 61,238 at P 134.

<sup>22</sup> TC Offshore July 23, 2012 Rehearing Request at 10, footnote 27.

<sup>23</sup> First Rehearing Order, 140 FERC ¶ 61,260 at P 10.

TC Offshore failed to explain or demonstrate why the proposed negative salvage expenses would be higher.<sup>24</sup> The First Rehearing Order stated that TC Offshore made numerous filings subsequent to the filing of its application to, among other things, supplement data and answer questions, yet TC Offshore chose not to provide an explanation for the proposed negative salvage rates. Thus, the Commission concluded that TC Offshore's negative salvage rate proposal was unsupported, and denied TC Offshore's request for rehearing to modify the Certificate Order.<sup>25</sup>

16. TC Offshore's mere reference to having calculated its proposed negative salvage rates using Production to Reserve factors is plainly insufficient for the Commission to find that the rates, the appropriateness of which were protested by parties to the proceeding, are in the public interest under NGA section 7. The remaining life of each group of offshore transmission, lateral, and gathering plant is referred to as the Production to Reserve factor. Exhibit P to TC Offshore's application essentially stated that TC Offshore arrived at its proposed negative salvage rates by considering the remaining life of the facilities it was acquiring. While that may be the case, that only explains the period of time over which it proposes to collect the negative salvage costs. TC Offshore failed to provide any account or explanation of its analysis of the negative salvage *costs* associated with the pipeline facilities.

17. As stated above, an applicant for a certificate of public convenience and necessity is required to support the costs it proposes to recover through its rates.<sup>26</sup> Specifically, a pipeline company requesting certificate authority to acquire and operate pipeline facilities bears the burden of proof to justify a proposed negative salvage rate in its certificate application.<sup>27</sup> Courts have "made clear that the Commission has a duty to use its [NGA section] 7 power to protect consumers."<sup>28</sup> In this light, TC Offshore's justification for its proposed negative salvage rates fails to satisfy section 7's public interest standard.

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<sup>24</sup> See Certificate Order, 139 FERC ¶ 61,238 at P 9 (citing TC Offshore's October 26, 2011 Answer at 9).

<sup>25</sup> *Id.*

<sup>26</sup> See 18 C.F.R. § 157.14(a)(18)(ii) (2015).

<sup>27</sup> See *Tennessee Gas Pipeline Co., L.L.C.*, 147 FERC ¶ 61,196, at P 33 (2014) (citing *Pacific Offshore Pipeline Co.*, 62 FERC ¶ 61,248, at 62,634 (1993)).

<sup>28</sup> *Missouri Pub. Serv. Comm'n v. FERC*, 337 F.3d 1066, 1070 (D.C. Cir. 2003).

18. Because TC Offshore had not provided support for its proposed negative salvage rates, we relied on Commission policy that would have required ANR to use the last approved figures underlying the currently effective rates if, rather than proposing to abandon facilities, it had been seeking authorization to construct or acquire new facilities that would be integrated into and operated as part of its existing system.<sup>29</sup> Although TC Offshore is a new company with no approved and effective rates, TC Offshore was acquiring facilities that were already subject to the Commission's jurisdiction and whose costs were being recovered through existing rates. Therefore, the Commission, instead of reducing negative salvage costs to zero and in the absence of any other information in the record, permitted TC Offshore to use the last approved negative salvage rate applicable to these facilities. As indicated above, these rates were established as part of a settlement agreement reached between ANR and its shippers, among others.<sup>30</sup> On remand, we affirm our finding that TC Offshore failed to adequately support its proposed negative salvage rates and conclude that the Certificate Order reasonably authorized continued use of ANR's last approved negative salvage rates.

#### **B. Reconsideration of TC Offshore's Negative Salvage Study**

19. TC Offshore included its Negative Salvage Study with its first rehearing request and asked that, as an alternative to granting rehearing, the Commission consider the study as (1) a supplement to its certificate application; and/or (2) an amendment to its certificate. While the First and Second Rehearing Orders dismissed TC Offshore's alternative requests that the Commission consider its Negative Salvage Study on grounds related to TC Offshore's desired in-service date, the Commission here addresses the merits of TC Offshore's requests.

##### **1. Consideration as a Late-filed Supplement to the Application**

20. In considering whether the Negative Salvage Study should have been reviewed as a late-filed supplement to TC Offshore's certificate application, we note that the Commission has a long-standing policy of not accepting additional evidence at the rehearing stage of a proceeding, absent a compelling showing of good cause.<sup>31</sup> Because

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<sup>29</sup> See *Tennessee Gas Pipeline Co., L.L.C.*, 147 FERC ¶ 61,196 at P 30 (citing *Gulf South Pipeline Co., LP*, 120 FERC ¶ 61,291 (2007); *Texas Eastern Transmission, LP*, 101 FERC ¶ 61,120 (2002)).

<sup>30</sup> See *supra* note 10.

<sup>31</sup> See, e.g., *Nevada Power Co.*, 111 FERC ¶ 61,111, at P 10 (2005), *Midwest Independent Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,178, at P 11 (2008).

other parties are precluded under Rule 713(d)(1)<sup>32</sup> from filing answers to requests for rehearing, allowing parties to introduce new evidence at the rehearing stage would raise concerns of fairness and due process for other parties to the proceeding.<sup>33</sup>

21. TC Offshore did not explain or justify why the Negative Salvage Study should be admitted after the issuance of a dispositive order in this proceeding. TC Offshore's rehearing request states that the study was prepared in August 2011 and revised in December 2011. TC Offshore offered no explanation as to why the study could not have been filed before the Certificate Order was issued on June 21, 2012.

22. Further, accepting such evidence at the rehearing stage would disrupt the administrative process.<sup>34</sup> The Commission has stated that "we cannot resolve issues with any efficiency or finality if parties are permitted to submit new evidence on rehearing and thus to have us chase a moving target."<sup>35</sup> As a general matter, it is inappropriate for an applicant to file a study supporting initial rates after a certificate has been issued, and even more so when the material could have been submitted earlier. This particularly holds true where the adequacy of the support for the requested negative salvage rates had so clearly been called into question by other parties to the proceeding. We will not encourage applicants to adopt a "wait-and-see" approach to providing evidence of costs in support of proposed initial rates.

23. Accordingly, we reject the efforts of TC Offshore to introduce supplemental evidence at the rehearing stage of the proceeding.

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<sup>32</sup> 18 C.F.R. § 385.713(d) (2015).

<sup>33</sup> *Tennessee Gas Pipeline Co., L.L.C.*, 142 FERC ¶ 61,025, at P 28 (2013).

<sup>34</sup> *Id.*

<sup>35</sup> *Southern California Edison Co.*, 102 FERC ¶ 61,256, at P 17 (2003); *see also*, *Avista Corp.*, 89 FERC ¶ 61,136, at 61,391 (1999) (noting that "[o]ur precedent does not permit parties to use a request for rehearing as a means of amending their original filings and providing new information."); *Philadelphia Electric Co.*, 58 FERC ¶ 61,060, at 61,133 & n.4 (1992) (explaining that "we are reluctant to chase a moving target by considering new evidence presented for the first time at the rehearing stage of Commission proceedings.").

## 2. Consideration as an Application to Amend Certificate

24. TC Offshore also asks the Commission to review its Negative Salvage Study as a section 7 certificate amendment. In support, TC Offshore cites *Columbia Gas Transmission Corp.*, which states that a pipeline “may not change the approved initial rates and services in a section 4 filing prior to commencement of service under the certificate...”<sup>36</sup> In *Columbia*, the Commission explained that if a pipeline wanted to commence service at a different rate than was approved in the section 7 certificate proceeding, then the pipeline should file to amend the certificate.

25. In further support of its approach in seeking a certificate amendment, TC Offshore cites *Tennessee Gas Pipeline Co.*,<sup>37</sup> where a pipeline submitted an NGA section 4 filing to increase rates for service under a rate schedule applicable to certain facilities that had been certificated but not yet placed into service. As an alternative, the pipeline requested that the Commission amend the initial rates that had been established in the certificate. In *Tennessee*, the Commission rejected the proposed tariff sheet submitted as a limited section 4 filing because it included costs of facilities not yet in service but stated that the proposal would be considered as part of the pipeline’s currently pending certificate amendment proceeding addressing the facilities at issue.

26. The Commission has recognized our ability to change initial rates in a section 7 proceeding by amending a certificate and indeed has often amended certificates to allow pipelines to adjust initial rates prior to newly authorized facilities being placed into service. However, we are under no obligation to do so in the absence of an adequate justification. The Commission has generally found it appropriate to exercise such discretion in instances where the initially-authorized rates are being revised to account for updated estimates and actual construction costs incurred.<sup>38</sup> For example, in the cited

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<sup>36</sup> 125 FERC ¶ 61,112, at P 24 (2008) (*Columbia*).

<sup>37</sup> 59 FERC ¶ 61,386 (1992) (*Tennessee*).

<sup>38</sup> *Ruby Pipeline L.L.C.*, 136 FERC ¶ 61,054 (2011) (amending certificate to authorize revised initial recourse rates reflecting increases in projected costs and the impact of a revised capital structure); *Cheniere Creole Trail Pipeline, L.P.*, 122 FERC ¶ 61,116 (2008) (granting requested authorization to revise the initial transportation rates to reflect increases in capital costs estimates that account for costs already incurred); *Hardy Storage Co., LLC*, 118 FERC ¶ 61,200 (2007) (amending initial rates, consistent with a settlement agreement, to account for an updated cost estimate using the actual prices from contracts executed with suppliers and contractors); *Tuscarora Gas Transmission Co.*, 73 FERC ¶ 61,231 (1995) (granting Tuscarora's request for authorization to amend its initial rates to reflect updated financing and construction

(continued ...)

*Tennessee* case, the pipeline explained that its updated cost information for facilities scheduled to go into service reflects “new cost information and is based largely on costs Tennessee has now actually incurred or has fixed by contract.”<sup>39</sup>

27. This, however, is not a case where the company is seeking to revise the previously-authorized initial rates to reflect increases in construction costs, revised capital structure, actual prices from contracts, and/or inflation. Rather, TC Offshore, having failed to support its initial negative salvage rates prior to the issuance of its certificate, and having challenged that finding on rehearing,<sup>40</sup> is seeking another venue to raise the same issue. Under these circumstances, where the company is seeking to use the certificate amendment process not to reflect some intervening change in its initial proposal (e.g., a change to the underlying facilities or cost estimates), but instead, merely as a vehicle to re-litigate a contested issue on which it had not prevailed, the Commission is justified in declining to exercise its discretion to process TC Offshore’s late-filed study as an application to amend its certificate.

28. Moreover, even in cases where a pipeline seeks appropriately to amend its certificate in order to revise initial rates to reflect updated cost estimates, the timing of such a filing can impact whether the amendment can be considered and acted upon by the Commission. In *Algonquin Gas Transmission Co.*, the Commission addressed this issue of timing, stating:

We note, however, that Algonquin filed this application to amend its certificate a mere 41 days prior to its anticipated service commencement date. If the Commission had been

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costs); *Algonquin Gas Transmission Co.*, 65 FERC ¶ 61,163 (1993) (approving an increased initial rate based on updated cost estimates accounting for actual incurred costs, final metering station design, and inflation from 1991 dollars to 1993 dollars); *Kern River Gas Transmission Co.*, 58 FERC ¶ 61,073 (1992) (approving request to increase initial rates that were based on cost estimates to reflect actual costs of constructing pipeline system); *Mojave Pipeline Co.*, 58 FERC ¶ 61,097 (1992) (approving proposal to increase initial rates to reflect updated cost estimates and changes in its capital structure and system configuration); and *Pacific Gas Transmission Co.*, 54 FERC ¶ 61,035 (1991) (approving an amendment to update initial rates based on new cost estimates).

<sup>39</sup> *Tennessee*, 59 FERC ¶ 61,386 at 62,480.

<sup>40</sup> As noted, TC Offshore’s request to amend its certificate was filed as an alternative, in the event the Commission rejected its concurrent argument that the new study should be considered by the Commission in the context of a rehearing.

unable to process its application as expeditiously as it has, Algonquin would have had to choose between delaying commencement of service until after the Commission had acted or commencing service under the previously authorized initial rates [because rates cannot be changed under NGA section 7 after the certificated service has commenced] and filing a section 4 rate proceeding to change them. We will not preclude pipelines from making filings to revise initial rates to reflect updated cost estimates; however, we put them on notice that such filings must be made in a timely manner if the pipelines want to be sure of Commission action prior to the planned commencement of service.<sup>41</sup>

29. The Commission also addressed the concern of having sufficient time to consider a section 7 amendment request to revise initial rates prior to a proposed in-service date in *Southern LNG, Inc.*<sup>42</sup> There, Southern LNG filed a compliance filing on October 24, 2001, that also contained a certificate amendment to revise its initial rates to reflect changes from the original estimates in its July 13, 1999 certificate application. Protesting parties argued that the cost increases were unjustified and asserted that Southern LNG had attempted to link approval of the cost increase to a proposed in-service date of December 1, 2001, “thereby forcing the Commission into a perfunctory review of the increased costs under NGA section 7.”<sup>43</sup> In the November 30, 2001 *Southern LNG, Inc.* order, the Commission found that there were issues that could not be resolved with the data submitted by Southern LNG prior to its request in-service date of December 1, 2001. The order went on to state that once facilities go into service and the associated initial rates go into effect, the initial rates may only change if a filing is made pursuant to section 4 of the NGA.

30. In this proceeding, TC Offshore submitted their proposed amendment on July 23, 2012. Eight days later, on August 1, 2012, in Docket No. RP12-908-000, TC Offshore informed the Commission that it proposed to commence service on October 1, 2012. As of the date of the First Rehearing Order, September 28, 2012, TC Offshore had filed nothing indicating that it intended to postpone commencement of service beyond October 1, 2012, to allow sufficient time for the Commission to consider its amendment request. The Certificate Order required TC Offshore to file actual revised tariff records

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<sup>41</sup> 65 FERC ¶ 61,163 at 61,836.

<sup>42</sup> 97 FERC ¶ 61,254, at 62,125-26 (2001).

<sup>43</sup> *Id.* at 62,125.

at least 60 days prior to the in-service date of the facilities acquired from ANR.<sup>44</sup> Further, the notice requirements in our regulations state that “[a]ll proposed changes in tariffs, contracts, or any parts thereof must be filed with the Commission and posted<sup>45</sup> not less than 30 days ... prior to the proposed effective date thereof, unless a waiver of the time periods is granted....”<sup>46</sup> As noted above, the issue of the appropriateness of TC Offshore’s proposed negative salvage rate was a contested one. Consequently, as was the case in *Southern LNG, Inc.*, there was insufficient time to develop an adequate record on TC Offshore’s newly-filed study and reach a reasoned resolution in the limited amount of time available before the date the company had stated it intended to go into service.

31. The issue of negative salvage was one of many that were pending on rehearing before the Commission. We addressed this issue on an accelerated timeframe before addressing the remaining rehearing issues in an effort to give TC Offshore and its shippers certainty regarding what negative salvage rate would be in effect prior to the desired in-service date.<sup>47</sup>

32. Finally, we find that as a proposed amendment, TC Offshore’s request was deficient on its face. To obtain approval to increase its initial rates, TC Offshore was required to file a separate and complete certificate amendment application, including exhibits, in full compliance with section 157.14 of the Commission's regulations.<sup>48</sup> The *Tennessee* order referenced above also emphasized that for Tennessee’s alternate

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<sup>44</sup> Certificate Order, 139 FERC ¶ 61,238 at Ordering Paragraph J.

<sup>45</sup> 18 C.F.R. § 154.2 (d) (2015) defines *post* as “to make a copy of a natural gas company’s tariff and contracts available during regular business hours for public inspection in a convenient form and place at the natural gas company’s offices where business is conducted with affected customers; and, to serve each affected customer and interested state Commission....”

<sup>46</sup> 18 C.F.R. § 154.207 (2015). *See Tennessee Gas Pipeline Co.*, 61 FERC ¶ 61,101, at 61,407 (1992) (denying Tennessee’s request that the Commission waive the 30-day notice rule and act on Tennessee’s amendment request prior to the proposed in-service date, stating that the Commission is not required to process the certificate amendment in a manner that differs from the procedures used to process any other amendment application).

<sup>47</sup> *See* First Rehearing Order P 2.

<sup>48</sup> *See Southern LNG, Inc.*, 97 FERC ¶ 61,254 at 62,125-26.

request for a certificate amendment to be considered, “Tennessee will be required to file all the information and data normally required to be submitted with an application for a certificate amendment pursuant to the Commission’s regulations including but not limited to revised exhibit F, G, K, and N.”<sup>49</sup> TC Offshore’s filing failed to meet these requirements.

33. We find that exercising our discretion to consider TC Offshore’s late-filed study as an amendment to its certificate application is unjustified and contrary to the public interest.

The Commission orders:

The Commission hereby responds to the issue remanded to it by the D.C. Circuit, as set forth in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>49</sup> *Tennessee*, 59 FERC ¶ 61,386 at 62,482.