156 FERC ¶ 61,208
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. CP16-78-000

ORDER AUTHORIZING ABANDONMENT

(Issued September 22, 2016)

1. On February 24, 2016, TC Offshore, LLC (TC Offshore), now known as Kinetica Deepwater Express, LLC,[1] filed an application for authority under section 7(b) of the Natural Gas Act (NGA)[2] to abandon by sale certain facilities located in state and federal waters offshore Louisiana in the Gulf of Mexico, and onshore in the state of Louisiana.

2. TC Offshore is seeking authority to abandon the jurisdictional transmission facilities of its Grand Chenier System and associated appurtenances, which include four pipeline segments totaling 39.74 miles that extend from West Cameron (WC) Block 167 to the onshore Grand Chenier liquid handling facility. TC Offshore states that it intends to abandon the facilities by sale to Avocet LNG, LLC (Avocet) for non-jurisdictional

[1] 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 pleadings filed in this proceeding.

[2] 15 U.S.C. § 717f(b) (2012).

use.[3] For the reasons discussed below, we will authorize the proposed abandonment, subject to the conditions discussed herein.

I. Background and Proposal

3. TC Offshore, now Kinetica Deepwater Express, LLC, registered in the State of Texas, is a natural gas company, as defined by section 2(6) of the NGA,[4] engaged in the business of transporting natural gas in interstate commerce. TC Offshore provides natural gas transmission service and gathering service from production areas in state and federal waters offshore Louisiana and Texas in the Gulf of Mexico. In addition, TC Offshore provides associated liquids transportation and handling service.

4. In November 2012, pursuant to the certificate of public convenience and necessity granted by the Commission in Docket No. CP11-544-000,[5] TC Offshore acquired offshore pipeline facilities in the Gulf of Mexico and certain onshore facilities in Louisiana from ANR Pipeline Company, and began operating those facilities. The facilities included the Grand Chenier System. The Grand Chenier System comprises jurisdictional transmission and non-jurisdictional gathering facilities designed to gather and transport gas from the West Cameron Area, offshore Louisiana, in a northerly direction to the Grand Chenier Station in Cameron Parish, Louisiana.

5. TC Offshore states that since its acquisition of the Grand Chenier System, the facilities have been underutilized by the producer shippers.[6] TC Offshore explains that in the past three years the capacity utilization has averaged less than ten percent.

---

[3] Avocet plans to repurpose the facilities for use with its planned liquefied natural gas deepwater port facilities, which would fall under the jurisdiction of the U.S. Department of Transportation Maritime Administration and the U.S. Coast Guard, in accordance with the Deepwater Port Act of 1974, 33 U.S.C. 1501-1524 (2012), as amended. TC Offshore indicates that Avocet's plans for the facilities would proceed following a deepwater port project that is currently being developed by another company owned by Avocet's parent company. TC Offshore May 11, 2016 Answer at note 8. Avocet has not filed anything with the Commission indicating that it has begun the process of applying for authorization to proceed with a deepwater port project using the Grand Chenier System facilities.

[4] 15 U.S.C. § 717a(6) (2012).

[5] *ANR Pipeline Co.*, 139 FERC ¶ 61,238 (2012).

[6] TC Offshore Application at 3.

Specifically, transportation service from the West Cameron Area through the Grand Chenier System has declined from an average of 86,000 dekatherms (Dth) per day in 2013, to an average of less than 48,000 Dth per day in 2015, which represents less than seven percent of the Grand Chenier System design capacity of 748,170 Dth per day.

6. TC Offshore states that in December 2015, it executed an Asset Purchase Agreement with Avocet for the sale and purchase of its Grand Chenier System facilities consisting of four jurisdictional transmission segments, three non-jurisdictional gathering segments, an offshore platform, associated appurtenances, and an onshore hydrocarbon liquids handling facility.[7] TC Offshore is seeking authority to abandon by sale the jurisdictional transmission facilities of the Grand Chenier System and associated appurtenances. The jurisdictional transmission facilities consist of four segments of 30-inch-diameter pipeline totaling 39.74 miles that extend from the West Cameron Area offshore of Louisiana east from WC 167 to WC 171, and then northeast from WC 171 to WC 101, WC 101 to WC 33, and WC 33 to the Grand Chenier Station. The capacity and related transportation service associated with the subject facilities will also be abandoned.

7. TC offshore does not propose to construct or remove any facilities in connection with the proposed abandonment.

II. Notice & Interventions

8. Notice of TC Offshore's application was published in the *Federal Register* on March 14, 2016.[8] Eleven entities filed timely, unopposed motions to intervene in TC Offshore's application.[9] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.[10] Arena Energy, LP, Caster Offshore, Inc., Indicated Shippers,[11] M21K LLC, Walter Oil & Gas Corporation, and W&T Offshore, Inc. filed protests.

---

[7] TC Offshore Application at 5.

[8] 81 Fed. Reg. 13,354 (2016).

[9] The appendix to this order lists all intervenors.

[10] 18 C.F.R. § 385.214 (2016).

[11] Indicated Shippers includes: Apache Corporation, ExxonMobil Gas & Power Marketing Company, and Fieldwood Energy LLD. The companies are producers and shippers on the Grand Chenier System.

9. On April 13, 2016, TC Offshore filed an answer in response to the protests. On April 28, 2016, Indicated Shippers filed an answer responding to TC Offshore.[12] TC Offshore and Indicated Shippers each filed subsequent answers on May 11 and May 26, 2016, respectively. Rule 213(a)(2) of our regulations prohibits answers to protests and answers to answers unless otherwise ordered by the decisional authority.[13] The Commission finds good cause to waive Rule 213(a)(2) and admit these answers because doing so will not cause undue delay and the pleadings may assist the Commission in its decision-making process. The protests and answers are addressed below.

10. On March 29, 2016, Commission staff requested that TC Offshore provide additional information about the utilization and economic viability of the Grand Chenier System facilities. On April 8, 2016, TC Offshore filed a response to the data request.

III. Discussion

11. Since TC Offshore proposes to abandon facilities that are used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of section 7(b) of the NGA.[14]

12. Section 7(b) allows an interstate pipeline company to abandon jurisdictional facilities or services if the Commission finds the abandonment is permitted by the "present or future public convenience or necessity."[15] The Commission examines abandonment applications on a case-by-case basis. In deciding whether a proposed abandonment is warranted, the Commission considers all relevant factors, but the criteria will vary as the circumstances of the abandonment proposal vary.

13. While the section 7(b) public convenience or necessity standard does not allow the Commission to approve an abandonment that will cause the public interest to be disserved, affirmative proof of benefit to the public interest is not necessary to justify an

---

[12] Along with its April 28, 2016 Answer, Indicated Shippers filed affidavits in support of its protest that requested privileged treatment of the reserve data and production curves provided. These affidavits, the request for privileged treatment, and TC Offshore's objection to the request are discussed below. *See infra* note 44.

[13] 18 C.F.R. § 385.213(a)(2) (2016).

[14] 15 U.S.C. § 717f(b) (2012).

[15] *Id.*

abandonment.[16] The Commission's public interest consideration also does not prohibit abandonment if there is any harm to any narrow interest. Rather, the Commission takes a broad view in abandonment proceedings and evaluates abandonment proposals against the benefits to the market as a whole.[17]

A. Continuity of Service

14. The protesters ask the Commission to deny the proposed abandonment on the basis of a lack of continuity of service post-abandonment.[18] Indicated Shippers states that some shippers affected by the proposed abandonment have production that is not directly connected to an alternative which, they contend, renders those shippers captive to the Grand Chenier System.

15. TC Offshore emphasizes that all of the shippers currently utilizing the subject facilities are doing so pursuant to interruptible transportation agreements, and as such they are classified as interruptible shippers. TC Offshore states that it has offered firm transportation service under its FTS-1 Rate Schedule, but that none of the shippers have elected to contract for firm service.[19] In addition to providing all service on an interruptible basis, TC Offshore states that it provides all service under contract terms that are month-to-month, with 30-day termination rights by either party. As such,

---

[16] *Pennsylvania Public Utility Commission v. FERC*, 881 F.2d 1123, 1127 (D.C. Cir. 1989) (observing that "affirmative proof of benefit to the public interest is not necessary to justify an abandonment").

[17] *See Southern Natural Gas Co.*, 50 FERC ¶ 61,081, at 61,222 (1990). *See also Consolidated Edison Co. v. FERC*, 823 F.2d 630, 643-44 (D.C. Cir. 1987) ("We agree with [the Commission] that the 'public convenience and necessity' language of the NGA's abandonment provision [cite omitted] envisions agency policy-making to fit the regulatory climate.").

[18] Indicated Shippers Protest at 7-11; Arena Energy, LP (Arena) Protest at 4-7. Arena, Caster Offshore, Inc., M21K, LLC, Walter Oil & Gas Corporation, and W&T Offshore, Inc., all shippers on the Grand Chenier System, raised identical issues in their protests. When we refer to Arena's protest in this order, we incorporate the protests of these other shippers.

[19] TC Offshore April 13, 2016 Answer at 7.

TC Offshore contends that it has no continuity of service obligation to its interruptible shippers.[20]

16. Further, TC Offshore contends that transportation alternatives are currently available or can be made available to the affected interruptible shippers. TC Offshore describes the following transportation alternatives for the four receipt points through which gas currently flows into the Grand Chenier System:

> West Cameron 167: Approximately 85 percent of gas currently transported on the Grand Chenier System (averaging 36,499 Dth per day) enters the system from High Island Offshore System, L.L.C., (HIOS) facilities at a HIOS-owned platform (the WC-167 Platform) in WC Block 167. TC Offshore states that at that platform, HIOS delivers into both TC Offshore's Grand Chenier system and the facilities of Kinetica Energy Express, LLC, a Commission-jurisdictional pipeline, which then provide transportation downstream from that location. TC Offshore states that although the protestors point out that HIOS has proposed to abandon and repurpose this platform and other facilities, the HIOS abandonment proposal includes modifications to the WC-167 Platform to enable a continued interconnection with Kinetica Energy Express, LLC.[21]

> West Cameron 100: Fieldwood Energy LLC (Fieldwood) delivers approximately 4,300 Dth per day into the Grand Chenier System at WC Block 100. TC Offshore states that the construction of approximately five miles of 4-inch-diameter pipeline to Transcontinental Gas Pipe Line Corporation's (Transco) 16-inch-diameter pipeline in WC Block 98 would enable these volumes to be delivered into Transco's offshore system for transportation to onshore.[22]

---

[20] TC Offshore Application at 9 (citing *Natural Gas Pipeline Co. of America LLC*, 151 FERC ¶ 61,232, at PP 33-34 (2015) (*Natural*); *Trunkline Gas Co., LLC*, 147 FERC ¶ 61,041, at P 24 (2014)).

[21] TC Offshore April 13, 2016 Answer at 12 (citing Docket No. CP16-20-000, Abbreviated Application of High Island Offshore System, L.L.C. for Order Authorizing Abandonment, at 13 (filed Nov. 19, 2015)).

[22] TC Offshore April 13, 2016 Answer at 12.

> West Cameron 165: Fieldwood also delivers approximately 2,100 Dth per day into the Grand Chenier System at WC Block 165. TC Offshore states that following the abandonment, the construction of approximately six miles of 2-inch-diameter pipeline would enable the volumes to be delivered to Kinetica Energy Express at the WC-167 Platform for subsequent transportation.[23]

> West Cameron 149: M21K Offshore, Inc. delivers approximately 200 Dth per day into the Grand Chenier System from WC Block 149 at the WC-167 Platform. TC Offshore states that construction of a few hundred feet of pipeline would enable M21K Offshore to connect its 8-inch tie-in to Kinetica Energy Express.

17. Indicated Shippers faults TC Offshore for not quantifying the costs captive shippers would incur to connect and take service on the alternatives it describes. Indicated Shippers points to *Northern Natural Gas Co.* (*MOPS*),[24] where the Commission denied abandonment based, in part, on the applicant's failure to demonstrate that sufficient alternatives existed for all affected shippers. Indicated Shippers also points to *Natural Gas Pipeline Co. of America LLC (Natural)*, where, in a footnote, the Commission stated that it will grant substantial weight to an interruptible shipper's request for continued service and deny abandonment authorization under certain circumstances.[25]

18. TC Offshore argues that the circumstances in this proceeding can be distinguished from those presented in the *Natural* footnote referenced by Indicated Shippers.[26] TC Offshore stresses that the protestors' interest does not equate to the public interest.[27]

---

[23] *Id.*

[24] Indicated Shippers Protest at 11 (citing *Northern Natural Gas Co.,* 135 FERC ¶ 61,048, at P 38 (2011) (*MOPS*).

[25] Indicated Shippers Protest at 8 (citing *Natural*, 151 FERC ¶ 61,232 at n.47).

[26] TC Offshore April 13, 2016 Answer at 7.

[27] *Id.* at 5.

Commission Response

19. Indicated Shipper's reliance on *Natural*, which contained a footnote explaining that the Commission has found occasion to take interruptible shippers' concerns about continuity of service into account when denying an abandonment request is misplaced.

The order cited three cases denying abandonment authority: *MOPS* and two cases involving Transco.[28]

20. In *MOPS*, the applicants sought authorization to abandon the Matagorda Offshore Pipeline facilities. As is the case in the current proceeding, the shippers protesting the facilities to be abandoned in *MOPS* were also interruptible shippers. In the *MOPS* proceeding, the Commission found that there were no readily-accessible transportation alternatives available to MOPS shippers. *MOPS* explained that:

> There are currently no direct alternative interconnections with other pipelines. While it appears that [two of the shippers] … could possibly construct pipeline facilities to access alternative transportation for the production currently transported by MOPS … there is no suggestion that there would be any alternative transportation for approximately 30 to 40 percent of the volumes currently flowing on the MOPS facilities.[29]

21. Unlike in *MOPS*, where the applicant failed to describe any transportation alternatives for 30 to 40 percent of the volume currently flowing on its facilities, TC Offshore has described transportation alternatives for all of the shippers and explained that 85 percent of current daily flows enter the Grand Chenier System at the HIOS-owned WC-167 Platform where shippers could connect with Kinetica Energy Express, LLC.

22. In the two Transco cases cited by the protestors, the facilities at issue were only available for interruptible service; that is, the shippers did not have the option of taking firm service on the facilities, and the costs of the facilities were largely recovered through interruptible rates.[30]

---

[28] *Transcontinental Gas Pipe Line Corp.*, 110 FERC ¶ 61,337 (2005); *Transcontinental Gas Pipe Line Corp.*, 129 FERC ¶ 61,255 (2009).

[29] *MOPS*, 135 FERC ¶ 61,048 at P 38.

[30] *Transcontinental Gas Pipe Line Corp.*, 110 FERC ¶ 61,337 at P 33; *Transcontinental Gas Pipe Line Corp.*, 129 FERC ¶ 61,255 at PP 5, 12.

23. While the Commission has not foreclosed the possibility of relying, in part, on continuity of service concerns raised by interruptible shippers when denying an abandonment request, the facts of this proceeding do not warrant assigning significant weight to such concerns. The protestors had the opportunity to contract for firm service under TC Offshore's FTS-1 Rate Schedule at any time and chose not to do so.

24. Further, there is an existing alternative at the same platform for 85 percent of the current level of transportation service being provided by TC Offshore. We will not require TC Offshore to maintain and operate, at a financial loss, as described in more detail below, an offshore pipeline system with a design capacity of 748,170 Dth per day to ensure continuity of the remaining 6,800 Dth per day, on average, of service currently flowing on an interruptible basis.

B. Facility Utilization and Economic Justification for Abandonment

25. TC Offshore states that since its acquisition of the Grand Chenier System from ANR in 2012, the facilities have been markedly underutilized by the producer shippers.[31] TC Offshore states that the Grand Chenier System throughput has declined by an average of 30 percent year-to-year from 2012-2015, to a point where less than seven percent of the design capacity of the facilities was utilized in 2015.[32] TC Offshore further states that the sustained decrease in throughput substantially impacts the economic viability of the Grand Chenier System facilities and the services that it currently provides. TC Offshore explains that, since all of the transportation services provided by the facilities are under interruptible contracts, the shippers only pay for the movement of the gas; there are no supplementary firm reservation revenues recovering the fixed costs related to the system.

26. TC Offshore emphasizes that the revenues obtained from the volumes transported on the Grand Chenier System facilities have been insufficient to cover the costs of operating and maintaining those facilities.[33] TC Offshore provided volume, revenue, and

[31] TC Offshore Application at 8.

[32] TC Offshore April 8, 2016 Data Response.

[33] TC Offshore April 13, 2016 Answer at 6, referencing TC Offshore's April 8, 2016 Data Response showing that in 2015 and for the first two months of 2016, the direct and allocated costs for the Grand Chenier System facilities have exceeded the revenues received from the volumes transported on those facilities.

cost data for 2014, 2015, and January and February 2016, which demonstrates that the facilities have been operating at a loss.[34]

27. Indicated Shippers contends that TC Offshore has failed to justify its abandonment request because it has not shown that production in the offshore areas served by the Grand Chenier System is depleted to the extent that the proposed abandonment is justified. Similarly, Arena notes that unlike abandonment approvals where the applicants established that the facilities to be abandoned were in need of repair or obsolete, the Grand Chenier System is not in need of repair nor obsolete.[35]

28. Indicated Shippers further contends that the economic justification provided by TC Offshore is merely a statement of the truism that if TC Offshore stops operating the Grand Chenier System, it will no longer incur the costs of operating the system.[36] Likewise, Arena contends that TC Offshore is proposing the abandonment not because service is uneconomic but because it decided to pursue a better business opportunity.[37]

29. TC Offshore acknowledges that in *MOPS*, the Commission determined that the applicants had not supported their contention that the available supply of natural gas had depleted to the extent that continuance of service over the MOPS facilities was no longer warranted.[38] Nevertheless, TC offshore contends that its abandonment request is justified, stating that throughput on the Grand Chenier System facilities has declined steeply since peaking in 2003. TC Offshore emphasizes that while both *MOPS* and this abandonment proposal are predicated on a decline in throughput levels, in *MOPS*, the evidence showed that the applicant's revenues exceeded operating and maintenance expenses.[39]

---

[34] TC Offshore April 8, 2016 Data Response.

[35] Arena Protest at 7-9.

[36] Indicated Shippers Protest at 13.

[37] Arena Protest at 3.

[38] TC Offshore April 13, 2016 Answer at 8 (citing *MOPS*, 135 FERC ¶ 61,048 at P 26 which acknowledged that throughput had declined on the MOPS facilities, but noted that producers were continuing to develop wells in the area and that there were estimates of substantial reserves remaining to be produced).

[39] TC Offshore April 13, 2016 Answer at 10 (citing *MOPS*, 135 FERC ¶ 61,048 at P 40).

30. Arena states that the fact that shippers only contract for transportation service on the Grand Chenier System on an interruptible basis does not support a conclusion that the lack of demand for firm service means that continued operation of the system is uneconomic.[40] TC Offshore states that while choosing interruptible service may reflect a rational economic decision for protesting shippers, there is no reason for TC Offshore to continue to subsidize that choice.

31. Finally, Indicated Shippers contends that production volumes and a corresponding increase in demand for service using the Grand Chenier System could materialize if the shippers move forward with purported recompletion plans.[41] In support, the shippers filed affidavits attesting to estimates of net reserves and production life in the area currently served by the Grand Chenier System.[42]

Commission Response

32. TC Offshore's conclusion that the underutilization of its capacity is indicative of that capacity not being highly valued by the market is supported by the lack of customer interest in securing firm capacity on the system under existing available rates. The protesting shippers had the option of taking firm service under Rate Schedule FTS-1 and thus bearing a greater share of the costs of the facilities that they claim they need by paying reservation charges, but they chose, instead, to rely upon cheaper interruptible service and argue that the Commission should require TC Offshore to continue to subsidize their choice.

33. Unlike in *MOPS*, TC Offshore is not contending that the available supply of natural gas has depleted to the extent that continuance of service is no longer warranted. Rather, TC Offshore has demonstrated that its facilities are underutilized, serving only interruptible shippers who have declined to contract for firm service and further, that the maintenance and operating costs for the facilities exceed the revenues generated from providing service.

34. In *MOPS*, a review of the data underlying Northern's economic claims revealed that revenue exceeded its operation and maintenance costs in each year except for two. The order stated that the costs from those two years were related to newly-constructed

---

[40] Arena Protest at 4.

[41] Recompletion is the modification of an existing well for the purpose of producing natural gas from a different producing formation.

[42] TC Offshore Answer at 7.

pipeline facilities and their subsequent repair, and concluded that those were not the sort of costs expected to be incurred on an ongoing basis. *MOPS* explained that the removal of these outlier costs from the analysis resulted in a cash flow in excess of operation and maintenance costs.[43]

35. With respect to the protestors' claims that demand for the Grand Chenier System facilities could increase in the future, we find that general estimates of gas reserves and maximum production life are insufficient justification to support denying abandonment.[44] The Commission has recognized that pipeline rates do not cover costs associated with maintaining capacity for future use.[45] We will not obligate TC Offshore to continue to operate capacity that is not needed to meet existing firm service obligations and for which there is no demonstration of market demand. The unwillingness of TC Offshore's customers to sign contracts for firm service at non-discounted rates provides a reasonable basis under the circumstances of this case for forecasting a lack of future demand for increased service. Speculative demand is not a sufficient basis to require a pipeline to maintain service.

36. TC Offshore's April 8, 2016 data response establishes that TC Offshore's costs associated with operating and maintaining the Grand Chenier System facilities exceed its revenue and are likely to continue to do so in the future. As such, requiring TC Offshore to continue to operate the facilities it proposes to abandon would raise the specter of enforcing a confiscatory revenue shortfall. Given these considerations, we find that the public convenience or necessity permits the proposed abandonment.

C. Environmental Analysis

37. TC Offshore does not propose any earth disturbance or any material construction or removal to proceed with the abandonment. Commission staff's environmental review of this proposal under section 380.4 of our regulations concludes that the proposed sale qualifies as a categorical exclusion under section 380.4(a)(31).

---

[43] *MOPS*, 135 FERC ¶ 61,048 at P 40.

[44] We find that the issues before us have been sufficiently addressed, such that the specific information provided in the redacted portion of Indicated Shippers' affidavits with respect to estimates of net reserves, anticipated production life of the reserves, and potential plans for future recompletion are not needed to assist in our decision making. Accordingly, TC Offshore's objection to Indicated Shippers' proposed protective order for certain material in the affidavits is moot.

[45] *Trunkline Gas Co., LLC*, 145 FERC ¶ 61,108, at P 66 (2013).

38. At a hearing held on September 22, 2016, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, and all comments submitted, and upon consideration of the record,

The Commission orders:

(A) TC Offshore is granted permission and approval under section 7(b) of the NGA to abandon the facilities described in this order and as more fully described in TC Offshore's application.

(B) TC Offshore shall notify the Commission of the abandonment of the facilities within 10 days following such abandonment.

(C) TC Offshore must submit its final accounting to clear Account 102, Gas Plant Purchased or Sold, of the Uniform System of Accounts with the Commission within six months of the date the sale is consummated, and the accounting submission must provide all the accounting entries related to the sale along with narrative explanations describing the basis for the entries.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Intervenors

Apache Corporation

Anadarko Energy Services Company

Arena Energy, L.P.

Castex Offshore, Inc.

Chevron U.S.A. Inc.

ExxonMobil Gas & Power Marketing Company

Fieldwood Energy LLC

Kinetica Partners, LLC

M21K LLC

Walter Oil & Gas Corporation

W&T Offshore, Inc.