102 FERC ¶ 61, 088
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

High Island Offshore System, L.L.C. Docket No. RP03-221-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS
SUBJECT TO REFUND AND ESTABLISHING HEARING PROCEDURES

(Issued January 30, 2003)

1. On December 31, 2002, High Island Offshore System, L.L.C. (HIOS) filed revised tariff sheets[1] pursuant to Section 4 of the Natural Gas Act proposing a general increase in its transportation rates. HIOS proposes an effective date of February 1, 2003. In addition, HIOS proposes to remove or modify outdated provisions in its tariff.

2. The Commission accepts and suspends the proposed tariff sheets to be effective July 1, 2003, subject to refund and the outcome of a hearing. This order serves the public interest because it allows the Commission to determine whether the proposed rates are just and reasonable.

Background

3. HIOS is an interstate pipeline company that owns and operates three pipelines delivering gas from High Island and West Cameron production areas in offshore Texas and Louisiana to a point where the three pipelines converge at High Island Block A-264. From this point of convergence, HIOS operates a 42-inch mainline which extends northward for 66 miles where it interconnects with three interstate pipelines.

4. HIOS has made this filing to comply with Article V of the Stipulation and Agreement (1995 Settlement Agreement) filed with the Commission in Docket No. RP94-162-003 on July 7, 1995 and approved by Commission order dated September 18, 1995 (Settlement Order). HIOS' currently effective rates were authorized in its

[1]See Appendix.

Settlement Order and became effective September 1, 1994. Article V of the Settlement Agreement required HIOS to file a general rate proceeding three years from the date the Commission issued its order approving the Settlement. This date was extended to January 1, 2003 by Notice of Extension of Time issued October 8, 1998.

Details of the Filing

5. The rates proposed by HIOS are designed to recover its overall cost-of-service of $35.6 million and reflect actual experience for the twelve-months ending September 30, 2002 (base period), as adjusted for known and measurable changes through June 30, 2003 (adjustment period).[2] HIOS projects a decline in firm contracts and interruptible throughput on its system.

6. HIOS states that the proposed rates reflect: 1) a reduced rate of recovery for the HIOS transmission system plant investment; 2) an increased rate of recovery for the negative salvage provision; 3) an increased cost of capital which results in an overall rate of return of 12.45 percent; 4) a management fee of $9.6 million to cover the cost of operating the HIOS system and to provide an incentive for efficient operation; and 5) declining levels of transportation volumes. Although it seeks a rate increase of 35 percent, HIOS states that the proposed rates will result in a decreased total system revenue of approximately $500,000 annually below the currently effective rates.

7. HIOS' proposed overall cost-of-service of $35,558,928 reflects a decrease of $4,191,072 when compared to the $39,750,000 reflected in the 1995 Settlement Agreement. HIOS proposes to change its current 1.0 percent transmission depreciation rate to 0.28 percent, based on an estimated ten year remaining depreciable life of those assets. HIOS also seeks to change its current 0.20 percent negative salvage allowance to 0.38 percent based on abandonment costs of $27,504,881 of its offshore equipment amortized over a ten year period. All other depreciation rates remain the same as reflected in the 1995 Settlement Agreement. In addition to the $9.6 million management fee, HIOS includes $5.2 million for Federal taxes, which it states are entirely related to the management fee.

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[2]Under Rate Schedule FT, the maximum reservation charge would be $5.1077 per Dth, the commodity charge would be $0.0021 per Dth and the maximum authorized overrun charge would be $0.1759 per Dth. The maximum reservation charge under Rate Schedule FT-2 would be $4.8523 per Dth, the commodity charge would be $0.0021 per Dth and the maximum authorized overrun charge would be $0.1616 per Dth. The maximum rate under Rate Schedule IT would be $0.1759.

8. HIOS projects a negative rate base at the end of the test period, resulting in a rate of return of zero. At the end of the test period, HIOS' long-term capital structure will consist entirely of equity with no debt. To calculate an overall rate of return of 12.45 percent, HIOS used a hypothetical weighted average cost of debt of 8.25 percent and an allowance of 15.25 percent on equity as applied to a hypothetical capital structure of 40 percent debt and 60 percent equity.

9. Regarding throughput, HIOS projects a 22.4 percent reduction in annual throughput, from 348,493,599 Dth in 2001 to 270,585,344 Dth for 2002. Projected annual usage volumes are lower than historical volumes because of claimed downward adjustments to reflect volumes associated with expiring contracts and a reduced level of interruptible transportation volumes. Commodity quantity for billing purposes for the year ending September, 2002 is 207,837,948 Dth, adjusted from 288,248,792 Dth.

10. HIOS has proposed changes to the way it designs its rates for services provided under Rate Schedules FT-2 and Rate Schedule IT. Rate Schedule FT-2 is applicable to shippers who agree to dedicate a gas supply of at least 40 Bcf for the life of the reserves. FT-2 shippers are billed a volumetric rate equivalent to the 100 percent load factor of the reservation charge, as long as delivered volumes remain at a level between 80 percent and 100 percent of the Maximum Daily Quantity (MDQ) for a rolling three month period. Under the current rate structure, the FT-2 reservation charge is equal to the FT rate. Because FT-2 service requires a dedication of long term supply that is beneficial to the system, HIOS proposes to decrease the FT-2 rate in relation to the FT rate by setting it at a level equal to 95 percent of the FT rate.

11. Currently, the rate charged for services provided under Rate Schedule IT is set at the 100 percent load factor equivalent of the FT rate. HIOS proposes in this proceeding to revise the design of the IT rate so that it is set at a 96.5 percent load factor equivalent of the FT rate. HIOS argues that, because of the excess capacity on its system, interruptible service is the equivalent of firm. HIOS proposes to increase the IT rate in relation to the FT rate to provide incentives for shippers to contract for firm capacity.

12. HIOS also proposes to remove and modify a number of tariff provisions which it asserts are no longer needed. HIOS proposes to modify tariff provisions relating to transportation agreements, mainline capacity, lateral line capacity, posting of capacity, and interruptible overrun service.

Public Notice, Interventions and Protests

13. Public notice of HIOS' filing was issued on January 8, 2003. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214), any timely filed motion to intervene is granted unless an answer in opposition is filed within 15 days of the date such motion is filed. Any motions to intervene out-of-time filed before the date of this order are granted pursuant to 18 C.F.R. § 214(d), since the Commission finds that granting intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. ExxonMobil Gas and Power Marketing Company filed a timely motion to intervene and request for hearing. Anadarko Energy Services Company filed out-of-time to intervene.

Discussion

14. In its review of this filing, the Commission finds that a number of issues concerning HIOS' proposed rate changes require further investigation at a hearing before an Administrative Law Judge. This proceeding is HIOS' first rate filing since 1994. The significant projected decrease in both reservation and usage volumes for the existing system from historical levels requires additional review. Several other matters require further review: 1) HIOS' proposal for an overall rate of return of 12.45 percent and return on equity of 15.25 percent, especially as this rate of return is premised on a hypothetical capital structure of 40 percent debt and 60 percent equity, while HIOS states that its own capital structure is 100 percent equity; 2) HIOS' proposed change in the negative salvage allowance and depreciation rate; 3) the $9.6 million management fee and associated taxes; 4) adjustments to the billing determinants and 5) the proposed changes in rate design. Accordingly, the Commission will accept HIOS' filing and suspend the rates to be effective July 1, 2003, subject to refund and to the outcome of the hearing to be established in this proceeding.

15. HIOS' proposed tariff changes, other than the proposed changes in rates set out on Sheet No. 10, require additional support, explanation and justification, as required by the regulations, 18 C.F.R. § 154.7(a)(6) (2002). Accordingly, those proposed changes will be suspended, subject to HIOS filing with the Commission the required support and explanation of the reasons for these proposals. After HIOS files the required information, the Commission will issue a further order concerning the proposed tariff changes.

Suspension

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

17. The Commission's policy regarding suspensions is that tariff 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 that it may be inconsistent with other statutory standards.[3] It is recognized, however, that shorter suspensions may be warranted under circumstances in which suspension for the maximum period may lead to harsh and inequitable results.[4] Such circumstances do not exist here. Accordingly, the Commission will suspend the tariff sheets listed in the Appendix for five months and permit them to take effect on July 1, 2003, subject to refund and the outcome of the hearing established in this proceeding, set by subsequent Commission order.

The Commission orders:

(A) The tariff sheets listed in the Appendix are accepted and suspended, to be effective July 1, 2003, subject to refund, and to the outcome of the hearing ordered herein. Tariff sheets listed in the Appendix, other than Sheet No. 10, will be acted upon in a further order of the Commission, upon review of necessary support to be provided by HIOS.

(B) Pursuant to the authority of the NGA, particularly sections 4, 5 and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held in Docket No. RP03-221-000, concerning the lawfulness of HIOS' rate filing.

(C) A Presiding Administrative Law Judge (ALJ), to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R § 375.304, shall convene a prehearing conference in this proceeding to be held within 20 days after the date of issuance of this order, in a hearing or conference room of the Federal Energy

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[3] See Great Lakes Transmission Co., 12 FERC ¶ 61,293 (1980).

[4] See Valley Gas Transmission, Inc., 12 FERC ¶ 61,197 (1980).

Regulatory Commission in Washington, D. C. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and establishment by the ALJ of any procedural dates, necessary for the hearing. The ALJ is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

(D) HIOS is directed to file support for its proposed changes in its tariff provisions within 20 days of the date of this order, as described above. A further order of the Commission will act on those proposed changes.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

High Island Offshore System
Docket No. RP03-221-000

FERC Gas Tariff, Third Revised Volume No. 1:

(ACCEPTED AND SUSPENDED, TO BE EFFECTIVE JULY 1, 2003, SUBJECT TO REFUND)

Second Revised Sheet No.1
First Revised Sheet No.3
Second Revised Sheet No.4
Second Revised Sheet No.5
Second Revised Sheet No.6
Second Revised Sheet No.7
First Revised Sheet No. 10
First Revised Sheet No. 10A
First Revised Sheet No. 11
First Revised Sheet No. 12
Second Revised Sheet No. 13
Second Revised Sheet No. 15
Third Revised Sheet No. 16
Second Revised Sheet No. 28
Second Revised Sheet No. 30
Third Revised Sheet No. 31
Third Revised Sheet No. 32
First Revised Sheet No. 53
Second Revised Sheet No. 54
Third Revised Sheet No. 55
Second Revised Sheet No. 88
First Revised First Revised Sheet No. 99
Second Revised Sheet No. 114
Third Revised Sheet No. 116
Second Revised Sheet No. 123A
Third Revised Sheet No. 126
Third Revised Sheet No. 134
First Revised Sheet No. 150
Second Revised Sheet No. 151
First Revised Sheet No. 152
First Revised Sheet No. 153
First Revised Sheet No. 154
First Revised Sheet No. 155
First Revised Sheet No. 156
Third Revised Sheet No. 174