111 FERC ¶ 61,439
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Kinder Morgan North Texas Pipeline, L.P. Docket No. CP05-87-000

ORDER ISSUING CERTIFICATE

(Issued June 20, 2005)

1. On March 2, 2005, Kinder Morgan North Texas Pipeline, L.P. (KMNTP), a Hinshaw pipeline operating in Texas, filed an application for a blanket certificate pursuant to section 284.224 of the Commission's regulations,[1] so that it may transport gas in interstate commerce on an interruptible basis. The Commission finds that KMNTP's proposed interruptible transportation service is in the public interest because it will provide additional natural gas to the interstate grid. Therefore, we will grant the requested certificate authority and approve the proposed interruptible transportation rates, subject to the conditions discussed herein.

KNNTP's Proposal

2. KMNTP is a Delaware partnership whose ultimate parent is Kinder Morgan Energy Partners, L.P. The KMNTP system consists of approximately 82 miles of 30-inch pipeline which currently transports natural gas from an interconnect with Natural Gas Pipeline Company of America (NGPL) in Lamar County, Texas, to an interconnect with FPL Energy Forney, LP (Forney) in Kaufman County, Texas.

[1] 18 C.F.R. § 284.224 (2005). Section 284.224 of Part 284, subpart G, authorizes local distribution companies (LDC) and Hinshaw pipelines to perform the same types of transactions which intrastate pipelines are authorized to perform under section 311 of the Natural Gas Policy Act (NGPA) and subpart C and D of Part 284 of the Commission's regulations.

3. KMNTP asserts that it is a Hinshaw pipeline, which is exempt from Commission jurisdiction under section 1(c) of the Natural Gas Act (NGA), and that it is subject to regulation by the Railroad Commission of Texas.

4. KMNTP became fully operational in August 2003. It currently transports gas for one firm customer, Forney, under a firm transportation agreement. After receiving gas from NGPL, KMNTP transports it by forward haul to supply two Forney power plants located on its system.

5. KMNTP expects that increased drilling activity in the Barnett Shale area of Texas will lead to the construction of additional interconnects that will allow the Barnett Shale gas to enter its system and flow via backhaul or displacement for delivery either to Forney power plants or into NGPL. KMNTP states that it plans to add a new receipt point with Energy Transfer Fuel, LP (Energy Transfer) in Hunt County, Texas, and to modify the existing NGPL interconnect to provide bidirectional flow.

6. KMNTP states that its requested certificate is in the public convenience and necessity because it will provide the regulatory authority for the Barnett Shale gas to enter the interstate pipeline grid to the benefit of both producers and consumers. Producers will have more markets for their gas while consumers will have increased access to competitively priced gas. Accordingly, KMNTP requests the Commission to grant the blanket certificate and to approve the proposed maximum interruptible transportation rate of $0.0807 per Dth, and a Fuel Lost and Unaccounted For rate of 0.20 percent as fair and equitable.

Notice, Interventions and Comments

7. Notice of KMNTP’s application was published in the *Federal Register* on March 13, 2005 (70 *Fed. Reg.* 12861). Interventions were due on March 24, 2005. Forney and Lamar Power Partners, L.P. (Forney and Lamar) filed a timely motion to intervene and motion for extension of time to file protests and comments. The Commission granted Forney and Lamar the extension of time. On April 1, 2005, Forney and Lamar filed a notice to withdraw its motion to intervene. Accordingly, no party has intervened in this proceeding.

Discussion

8. KMNTP requests the section 284.224 blanket certificate based on it status as a Hinshaw pipeline. Under section 1(c) of the NGA a person, that would otherwise be subject to NGA jurisdiction, is exempt from such jurisdiction if all the interstate gas received by such person is received within or at the boundary of a state and ultimately consumed within that state, provided the rates and services are subject to the regulation of a state commission.

9. KMNTP shows that it qualifies for Hinshaw pipeline status since it receives all its gas within the boundaries of Texas and the gas is entirely consumed within the state and KMNTP's facilities, rates and services are all subject to regulation by the Railroad Commission of Texas.

10. Section 284.224 of the Commission's regulations permits any Hinshaw pipeline to apply for a blanket certificate to sell and transport gas in interstate commerce in the same manner that intrastate pipelines are authorized to engage in such activities under section 311 of the NGPA and subparts C and D of Part 284 of the Commission's regulations. With this blanket certificate authority, a Hinshaw pipeline can transport and deliver gas to any interstate pipeline or LDC regardless of where the gas will ultimately be consumed, without jeopardizing its Hinshaw status. KMNTP's application meets the requirements of section 284.224 and, accordingly, its proposal is in the public convenience and necessity.

11. Under the section 284.224 blanket certificate authority, a Hinshaw pipeline has the option to base its rates on the methodology used to derive the rates on file with its state commission or it may submit rates for Commission approval and provide sufficient information for the Commission to determine that the proposed rates are fair and equitable.[2] KMNTP has elected to choose the latter option.

12. KMNTP proposes a maximum interruptible rate of $0.0807 per Dth and a Fuel Lost and Unaccounted For rate of 0.20 percent to recover gas used in compression and lost and unaccounted for volumes.

13. KMNTP proposes to design its rates on a system-wide basis, based on total cost of service and total throughput. KMNTP uses actual cost and volume data for the period January 1, 2004, through December 31, 2004, to justify its proposed rates.

[2] 18 C.F.R. §284.123 (2005).

14. KMNTP's cost-of-service is $10,747,387. The cost-of-service is based on an overall rate of return of 9.72 percent and a straight line depreciation rate of 2 percent.

15. The total throughput is the sum of the forward haul pipeline capacity of 325,000 MMBtu per day serving the interstate market, plus a projected throughput for the interruptible service of 40,000 MMBtu per day, for a total of 365,000 MMBtu per day.

16. KMNTP's rate base as of December 31, 2004, is $59,089,118. KMNTP states that the rate base has been adjusted to include the costs of the new interconnect with Energy Transfer and upgrades to KMNTP's existing interconnect with NGPL. KMNTP states that the modifications are necessary so that gas can flow bidirectionally at the NGPL interconnect. Further, KMNTP states that because amount and location of facilities that will be necessary to receive Barnet Shale gas is dependent on numerous factors, which cannot be foreseen with accuracy at this time, no costs are included for any new facilities for the receipt of Barnett Shale gas.

17. KMNTP states that it is 100 percent financed with no long-term debt of its own. KMNTP proposes to use the capital structure and debt cost rate of its parent, Kinder Morgan Energy Partners, L.P. (KMEP) in setting its rates. As of December 31, 2004, the capital structure of KMEP was 50.66 percent debt and 49.34 percent equity. KMNTP proposes to use KMEP's actual cost of debt of 6.54 percent on December 31, 2004, and a 13.0 percent on equity in the design of its rates. We will accept KMNTP's proposals.

18. KMNTP's rate structure reflects, among other things, a depreciation rate of 2 percent. KMNTP cites *Williston Basin Pipeline Company*, [3] as a case where the Commission has approved a depreciable life of 35 years for gas pipelines. KMNPT notes that a straight line application of a 35-year service life for KNMPT would translate to a 2.8 percent transmission depreciation rate. Nonetheless, KNMPT states that it is not proposing to change its existing book depreciation rate at this time. Accordingly, KMNTP's depreciation rate of 2 percent is accepted.

19. We will approve KMNTP's proposed maximum interruptible transportation rate of $0.0807 per Dth as fair and equitable. Consistent with Commission policy, the Commission will require KMNTP to file a cost and revenue study at the end of its first three years of operation to justify its rates. In its rate filing, KMNTP's projected units of service should be no lower than those upon which its initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the

[3] 104 FERC ¶ 61,036 (2003).

Commission's regulations. After review, we will be able to determine whether we should exercise our authority under NGA section 5 to establish just and reasonable rates. In addition, within 30 days of commencement of service, KMNTP must file a statement of operating conditions as required by 18 C.F.R. 284.123(e).

20. Finally, no environmental assessment or environmental impact statement has been prepared for this project because it qualifies for categorical exclusion from such review under Section 380.4(a)(22) of our regulations.[4]

The Commission orders:

(A) A blanket certificate is issued under section 284.224 of the Commission's regulations, authorizing KMNTP to engage in the sale and transportation of natural gas that is subject to the Commission's jurisdiction under the NGA to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activity under subparts C and D of Part 284 of the Commission's regulations.

(B) The certificate issued in paragraph (A) is conditioned upon KMNTP's compliance with all applicable Commission regulations, particularly sections 157.20(a) and (e).

(C) KMNTP is authorized to charge a maximum interruptible rate of $0.0807 per Dth and a Fuel Lost and Unaccounted For rate of 0.20 percent for service under the authorization granted herein.

(D) The authorization granted herein is subject to KMNTP filing a cost and revenue study with the Commission, within three years of the date this order issues.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

[4] 18 C.F.R. §380.4(a)(22) (2005).

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Kinder Morgan North Texas Pipeline, L.P. Docket No. CP05-87-000

(Issued June 20, 2005)

KELLY, Commissioner, *dissenting in part*:

I disagree with the Commission's decision to grant Kinder Morgan North Texas Pipeline, L.P., (KMNTP)'s unsupported proposal to utilize a return on equity (ROE) of 13 percent. I believe that the Commission should have required KMNTP to support its ROE with data and analysis pursuant to the Commission's Discounted Cash Flow (DCF) methodology.

I am troubled that there is no record evidence in the form of calculations or data to support the 13 percent proposal. Instead, KMNTP simply states that its proposed ROE is based on returns approved by the Commission in recent proceedings for pipelines of comparable capital structures. However, two of the cases cited[1] by KMNTP involve certificates for new facilities. In such situations, a higher ROE may be justified because there is a need to attract capital to fund the cost of construction. Here, however, KMNTP is not building a new pipeline, but will instead use its existing pipeline to provide interstate service. Thus, the cases cited by KMNTP involving new construction are not dispositive.

KMNTP also relies on three other cases in which it claims the Commission has approved returns similar to 13 percent. However, two of the cases[2] do not discuss the applicant's ROE or the reasons for accepting it. And while the third case[3] approves an ROE of 13.01 percent, this was done only after the Commission performed a DCF analysis and concluded that 13.01 percent was the median ROE. If the Commission had followed the same analysis in the existing case, the appropriate median ROE for KMNTP would be 10.61 percent.

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[1] *Sabine Pass LNG, L.P.*, 109 FERC ¶ 61,324 (2004); *Transwestern Pipeline Co.*, 108 FERC ¶ 61,157 (2004).

[2] *Louisiana Intrastate Gas Company, LLC*, 104 FERC ¶ 61,144 (2003); *Mojave Pipeline Company*, 97 FERC ¶ 61,332 (2001).

[3] *EPGT Texas Pipeline, L.P.*, 99 FERC ¶ 61,295 (2002).

Use of the DCF methodology to determine ROE is consistent with the Commission's precedent in other recent cases such as *Petal Gas Storage,, L.L.C.,*[4] and *High Island Offshore System, L.L.C.,*.[5] While the Commission may elect to alter its reliance on the DCF analysis, I believe that it should do so in a straight-forward manner, and only after it has selected an alternative methodology to take its place. Simply relying on what has been approved in other cases is not reasoned decisionmaking. For these reasons, I respectfully dissent.

	Suedeen G. Kelly

[4] 106 FERC ¶ 61,325 (March 30, 2004).

[5] 110 FERC ¶ 61,043 (January 24, 2005).