

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

High Island Offshore System, L.L.C.

Docket Nos. RP03-221-000  
RP03-221-001  
RP03-221-002  
RP03-221-003  
RP03-221-004

ORDER ON MOTION FOR STAY AND EXTENSION OF TIME

(Issued July 22, 2005)

1. On July 13, 2005, High Island Offshore System, LLC (HIOS) filed a motion for stay of the Commission's July 7, 2005 Order<sup>1</sup> in this general Natural Gas Act (NGA) section 4 rate case, or in the alternative, an extension of time to make compliance filings and refunds. The July 7, 2005 Order denied rehearing of the Commission's January 24, 2005 Order in this proceeding,<sup>2</sup> ordered refunds, and directed the filing of certain tariff sheets. For the reasons stated below, we deny the motion for stay and grant a limited extension of time to make refunds for the period January 24, 2005 through July 31, 2005.

**I. Background**

2. HIOS provides the following transportation services to shippers: (1) firm, long haul service under Rate Schedule FT-2; (2) an interruptible long haul service under Rate Schedule IT; and (3) an interruptible short haul service also under Rate Schedule IT. On December 31, 2002, HIOS filed revised tariff sheets proposing to increase its rates pursuant to NGA section 4.<sup>3</sup> Before this rate case filing, HIOS' long-haul volumetric

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<sup>1</sup> *High Island Offshore System, LLC*, 112 FERC ¶ 61,050 (2005).

<sup>2</sup> *High Island Offshore System, LLC*, 110 FERC ¶ 61,043 (2005).

<sup>3</sup> *High Island Offshore System, LLC*, 102 FERC ¶ 61,088 (2003).

rate under Rate Schedule FT-2, as well as its Rate Schedule IT rate, was 12.44 cents per Dth. The short haul volumetric rate was 4.99 cents per Dth. In this rate case, HIOS proposed to increase the Rate Schedule FT-2 long haul volumetric rate to 16.16 cents per Dth and the IT long haul rate to 17.59 cents per Dth.

3. On January 30, 2003, the Commission accepted and suspended the tariff sheets to be effective July 1, 2003, subject to refund and the outcome of the hearing. Following the hearing, the Administrative Law Judge (ALJ) issued an initial decision on April 22, 2004.<sup>4</sup> The ALJ's decision would have resulted in long haul volumetric rates of 8.56 cents per Dth. HIOS, Indicated Shippers and ExxonMobil filed exceptions.

4. On January 24, 2005, the Commission adopted the ALJ's decision on all rate issues except for an increase in the allowed management fee and a change in the computation of the federal income tax allowance. The Commission stated that its decision would result in just and reasonable rates for HIOS substantially below its pre-existing rates, but the Commission did not calculate those rates. Pursuant to section 5 of the NGA, the Commission also required HIOS to revise its tariff to include an annual fuel and lost and unaccounted for gas (LAUF) tracker with a true-up mechanism. The Commission stated it was adopting the "just and reasonable rates effective on the date of this order."<sup>5</sup> The Commission required HIOS to file tariff sheets to comply with the within 21 days, and to refund to shippers all excess charges collected in excess of charges approved in this proceeding, pursuant to the Commission's regulations, within 30 days of the date of the issuance of the order.

5. On February 14, 2004, HIOS submitted a compliance filing. The compliance filing included a tariff sheet reducing its long haul transportation rates to the pre-existing level of 12.44 cents per Dth, effective on July 1, 2003, the date its proposed rate increases had gone into effect. The compliance filing also included a *pro forma* tariff sheet further lowering HIOS' long haul transportation rate to 9.18 cents per Dth,<sup>6</sup> and HIOS requested an effective date of the first day of the month following Commission acceptance of the compliance filing for that tariff sheet. HIOS also filed *pro forma* tariff sheets to establish an annual fuel adjustment and true-up mechanism, and proposed to collect an initial true-up component of 1.30 percent, which reflected its calculation of the prior

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<sup>4</sup> *High Island Offshore System, LLC*, 107 FERC ¶ 63,019 (2004).

<sup>5</sup> *High Island Offshore System, LLC*, 110 FERC ¶ 61,043 (2005) at P 1.

<sup>6</sup> *See* HIOS' compliance filing of February 14, 2005 at 2.

undercollections of fuel, and a carrying charge associated with those volumes, under its existing fuel charge mechanism.

6. The Commission's July 7, 2005 Order accepted, effective July 1, 2003, the tariff sheet setting the long haul rate at 12.44 cents per Dth. With respect to the *pro forma* tariff sheet reflecting the new just and reasonable rates resulting from the required changes in the cost of service, the Commission directed HIOS to file, within 15 days, an actual tariff sheet, to become effective on January 24, 2005, the date of the order setting just and reasonable rates. The order also rejected HIOS' proposal, as part of the new fuel and LAUF tracker, to recover its asserted prior undercollection of fuel under its existing tariff provision. The Commission directed HIOS to file, within 15 days, revised tariff sheets in place of the remaining *pro forma* tariff sheets, reflecting the Commission's findings regarding the fuel issues and fuel charges, to become effective on the first day of the month after the order issues, *i.e.*, August 1, 2005. Finally, the Commission directed HIOS, within 30 days, to refund to its shippers all revenues collected in excess of the charges approved in this proceeding.

## II. Motion For Stay

7. HIOS states that it intends to seek rehearing of the July 7, 2005 Order and seeks stay of its obligation to comply with the rulings in the July 7, 2005 Order. First, it argues that while it reduced its long haul rate effective January 1, 2003 to 12.44 cents per Dth, the Commission's order requiring a 9.18 cent per Dth long haul rate to be effective on January 24, 2005 would constitute retroactive ratemaking as the order did not specify a rate to be observed from that date, but awaited submission of a compliance filing and approval of that filing before a reduced rate could become effective. HIOS argues that an order approving its compliance filing did not occur until July 7, 2005. HIOS agrees that effective August 1, 2005, it will charge the 9.18 cent per Dth rate for long haul transportation but that making that rate effective in January 24, 2005 would require it to refund to interruptible shippers amounts it may not be able to obtain repayment from or surcharge if the Commission were to change its order after HIOS submits its request for rehearing of this matter. HIOS states it intends to refund to its shippers the amounts of the increased rates collected subject to refund from July 1, 2003 through December 31, 2004.

8. Second, HIOS argues it should not be required to file its fuel tracker tariff until after the Commission considers its request for rehearing of our ruling that it could not carry over its asserted undercollection in fuel costs from its existing fuel mechanism.<sup>7</sup>

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<sup>7</sup> The initial true-up factor of 1.30 percent proposed by HIOS is estimated to recover \$16.3 million in equivalent costs to shippers. 112 FERC ¶ 61,050 at P 138.

The reason stated for its request for a stay is the possibility that after rehearing the Commission may change the tracker to allow collection of its past undercollection within the new tracker mechanism, and thus it might not be able to collect the refunds or surcharge all of its customers, and thus would not earn its authorized rates. HIOS also argues that if it is not allowed to recover its previous undercollections, it may develop and suggest other alternative fuel and LAUF mechanisms, and thus a stay of the requirement that it file a tracker with a true-up mechanism is needed.

9. HIOS argues that these circumstances constitute serious and irreparable harm and accordingly, it should be granted a stay of the order, or in the alternative, an extension of time to 45 days after the Commission issues an order on rehearing of HIOS' forthcoming request for rehearing as to the refund for the period prior to July 7, 2005 and the fuel and LAUF tariff provisions. HIOS states that it is required to make its compliance filing on July 22, 2005 and thus it requests expedited consideration of its motion on or before that date.

### **III. Answer to Motion**

10. ExxonMobil filed an answer on July 18, 2005 generally opposing HIOS' motion. ExxonMobil argues that the Commission properly found that the inclusion of a true-up factor in the fuel and LAUF charge for past undercollections would constitute unlawful retroactive ratemaking, and no stay should be granted for further attempts to avoid compliance with well established rate principles established by the orders. ExxonMobil also argues that the Commission properly required HIOS to reduce its transportation rates as of January 24, 2005 and that the Commission should reject any argument by HIOS against reducing its rates in accordance with the January 24, 2005 Order because no specific rate was referenced. ExxonMobil states that HIOS' compliance filing of February 14, 2005 was readily able to compute the rates required under the January 24, 2005 Order and thus it was on notice that it would be potentially subject to substantial rate reductions. Because section 5 of the NGA offers prospective-only remedial relief to ratepayers, ExxonMobil argues that the Commission has an obligation to implement rate reductions as promptly as possible, although ExxonMobil suggests it would not oppose a brief postponement of the payment of refunds while the Commission considers HIOS' arguments on rehearing. ExxonMobil argues that the alternative request for extension of time is no different from HIOS' requested stay and should be denied for the same reasons.

### **IV. Discussion**

11. Under section 705 of the Administrative Procedure Act (APA), the standard for granting a stay by an administrative agency is whether "justice so requires." Applying the standard set out in the Administrative Procedure Act, the Commission must balance

the interests of the party seeking the stay with the overall public interest and determine whether the requesting party will sustain irreparable harm in the absence of a stay.<sup>8</sup> The Commission's general policy is to refrain from granting stays in order to assure definitiveness and finality in Commission proceedings. Additionally, the Commission follows a general policy of denying stays of refund obligations pending further review because there is a remedy to recover refunded amounts in the event the Commission's decision is reversed or revised. We are unable to concur that HIOS will suffer irreparable damage.

12. The existing fuel and LAUF rates charged shippers have been found to be unjust and unreasonable and we have specified the appropriate fuel charge. HIOS has not shown that filing the revised tariff sheets concerning its mechanism for recovering fuel and LAUF costs required by the July 7, 2005 Order will cause it irreparable harm. The Commission has held that irreparable injury must be more than unfavorable economic circumstances.<sup>9</sup> Should the Commission grant relief on the fuel tracker issue in a future order, a remedy may be sought to recover lost revenue. For the same reasons, HIOS has not shown that a stay of the requirements of the July 7, 2005 Order concerning the reduction of its transportation rates is required by the interests of justice. Accordingly, the Commission denies HIOS' motion for a stay of the effectiveness of the July 7, 2005 Order.

13. However, the Commission will grant a limited extension of time for HIOS to make refunds of its transportation rates collected in excess of the just and reasonable rates for the period January 24, 2005 through July 31, 2005. ExxonMobil states that it would not oppose a brief postponement of the payment of such refunds while the Commission considers HIOS' arguments on rehearing concerning the effective date of the rate reduction. Accordingly, the deadline for those refunds is extended until further action by the Commission on rehearing of the July 7, 2005 Order. However, the Commission denies any extension of time for HIOS to comply with Ordering Paragraphs (B) and (C) of the July 7, 2005 Order requiring HIOS to file the required revised tariff sheets with the specified effective dates.

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<sup>8</sup> See *United Gas Pipe Line Co.*, 42 FERC ¶ 61,388 at 62,140 (1988); see also *Nevada Power Co.*, 98 FERC ¶ 61,183 (2002); *Olympic Pipe Line Co.*, 102 FERC ¶ 61,055 (2003).

<sup>9</sup> *Olympic Pipe Line Co.*, 102 FERC ¶ 61,055 at P 17.

The Commission orders:

(A) HIOS' request for stay of the requirements of the July 7, 2005 Order is denied.

(B) The deadline for HIOS to make refunds with respect to the period January 24, 2005 through July 31, 2005 is extended until further action by the Commission on rehearing of the July 7, 2005 Order. The requests for extension of time to comply with Ordering Paragraphs (B) and (C) of the July 7, 2005 Order are denied.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.