

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company

Docket No. CP05-418-001

ORDER DENYING REHEARING

(Issued June 1, 2006)

1. On January 20, 2006, the Commission issued an order in this proceeding.¹ The order authorized Tennessee Gas Pipeline Company (Tennessee) to abandon Dynegy Marketing and Trade's (Dynegy) capacity entitlements on Tennessee's portion of the South Pass 77 System and the related downstream Rate Schedule T-124 service. However, it denied Tennessee's request to assign Dynegy's capacity entitlements on Columbia Gulf Transmission Corporation's (Columbia Gulf) portion of the South Pass 77 System to Tennessee. Tennessee filed a timely request for rehearing of the January 20 Order. As discussed below, Tennessee's request is denied.

Background

2. Tennessee and Columbia Gulf jointly own, in equal shares, the South Pass 77 System located offshore and onshore in Louisiana. When the facilities were constructed, Tennessee and Columbia Gulf entered into several agreements with Gulf Oil Corporation (Gulf Oil), predecessor in interest to Dynegy, under which Gulf Oil contributed to the cost of the construction of the facilities in return for entitlements to transportation capacity from each of the joint owners.²

¹ *Tennessee Gas Pipeline Co.*, 114 FERC ¶ 61,050 (2006)(*Tennessee*).

² *See Tennessee*, 114 FERC ¶ 61,050 at PP 2-6 for a more detailed discussion concerning the Gulf Oil's capacity entitlements.

3. Dynegy, the current holder of the capacity entitlements on the South Pass 77 System, no longer needs that capacity. Dynegy and Tennessee entered into two agreements whereby, among other things, Dynegy would terminate its rights to receive service and assign its entitlements to capacity on both Tennessee's and Columbia Gulf's portions of the South Pass 77 System to Tennessee. Tennessee requested that the Commission approve and authorize the abandonment of Dynegy's capacity entitlements on Tennessee's portion of the South Pass 77 System and approve and authorize the assignment of Dynegy's capacity entitlements on Columbia Gulf's portion of the system to Tennessee.

4. In the January 20 Order, the Commission approved Tennessee's request to abandon Dynegy's capacity entitlements on its portion of the facilities. However, it denied Tennessee's request to assign Dynegy's capacity entitlements on Columbia Gulf's portion of the South Pass 77 System to Tennessee. The Commission determined that Tennessee, in essence, was requesting that the Commission authorize abandonment of Columbia Gulf's certificated service to Dynegy and issue a new, case-specific Part 157 certificate for Columbia Gulf to provide the service for Tennessee.

5. The Commission explained that Columbia Gulf holds a Part 157 certificate to use a portion of its capacity to provide service to Dynegy which, as Gulf Oil's successor in interest, is entitled to this capacity. Before any assignment of that capacity could be made, Columbia Gulf would need to seek abandonment authorization. Further, the Commission stated that assignment of the use of Dynegy's Columbia Gulf capacity to Tennessee under a case-specific Part 157 certificate would be inconsistent with our policies under Order No. 636.

6. On rehearing, Tennessee argues that the assignment of Dynegy's capacity entitlements on the Columbia Gulf to Tennessee is not inconsistent with Order No. 636. Tennessee further argues that the Commission erroneously concluded that Columbia Gulf needs abandonment authority in order for Tennessee to acquire the capacity entitlements to provide service under Part 284 of the Commission's regulations.

Discussion

7. Tennessee disagrees with the Commission's view that Dynegy's capacity entitlement on Columbia Gulf's portion of the South Pass 77 System needs to be abandoned by Columbia Gulf and a new certificate issued in order for Tennessee to acquire the right to use that capacity. Instead, Tennessee contends that it is requesting that the Commission approve an assignment of a unique interest and that such an assignment is permitted under the Letter Agreements that created the capacity entitlements. It claims that in reality, Columbia Gulf does not provide a service to Dynegy, nor would it provide one to Tennessee following the assignment. Tennessee

refers to a response Columbia Gulf made to a data request in which Columbia Gulf stated that it does not currently provide a service to Dynegey and its belief that Columbia Gulf does not need to abandon that service.³ Tennessee concludes that Columbia Gulf's response confirms that the capacity entitlement does not involve traditional aspects of a transportation service.

8. In each of the orders issuing the case-specific Part 157 certificates to Tennessee and Columbia Gulf for the subject facilities and capacity entitlements for Gulf Oil, the Ordering Paragraphs specifically stated that the Commission was authorizing transportation service by Tennessee and Columbia Gulf for Gulf Oil.⁴ Thus, while the existing services are atypical in that they are not provided under a traditional rate, the Commission continues to find that the existing services nevertheless are case-specific Part 157 services and implementation of Tennessee's proposal requires abandonment authority for Columbia Gulf and certificate authorization for Tennessee.

9. Tennessee states that Columbia Gulf has the right and opportunity to accept a \$579,600.18 payment from Dynegey to terminate and abandon Dynegey's Columbia Gulf capacity entitlement and make that capacity available under its tariff and Part 284 of the Commission's regulations. However, Tennessee further states that Columbia Gulf chose to waive its right to exercise this option. Therefore, Tennessee concludes that either Dynegey's capacity entitlement on Columbia Gulf will remain idle and stranded or it can be transferred to Tennessee and made available under Tennessee's tariff and Part 284 of the Commission's regulations.

10. Tennessee argues that upon assignment of Dynegey's Columbia Gulf capacity entitlements to Tennessee, Tennessee would assume the contractual responsibility for the associated ongoing system costs and expenses allocated to Dynegey's capacity on Columbia Gulf. It also contends that the capacity would be open and accessible to all shippers and indistinguishable from other generally available capacity on Tennessee's system.

³ See Columbia Gulf response to Data Request 3, filed October 31, 2005.

⁴ Specifically, in *Tennessee Gas Pipeline Co.*, 12 FERC ¶ 61,307 (1980) and 16 FERC ¶ 61,054 (1981), in Ordering Paragraphs (A) the Commission authorized Tennessee and Columbia Gulf "to provide a transportation service for Gulf [Oil]". In *Tennessee Gas Pipeline Co.*, 22 FERC ¶ 61,208 (1983), Ordering Paragraph A authorizes Tennessee and Columbia Gulf "to transport natural gas for Gulf Oil".

11. Tennessee emphasizes that current Commission policy allows a jurisdictional pipeline to hold capacity on other pipelines, without the necessity of seeking Commission approval, provided the pipeline's tariff allows it, which Tennessee's does. Tennessee also states that the Commission authorizes pipelines to enter into capacity leases where leased capacity would then be sold under the lessee's Part 284 tariff. Tennessee contends that the promotion of open-access transportation and competition maintained by that structure would not be compromised or undermined by Tennessee's proposal here. Therefore, it concludes that the Commission erroneously denied the proposed assignment of Dynege's capacity entitlements to Tennessee.

12. The Commission disagrees that approval of Tennessee's proposal is necessary to prevent Dynege's capacity from being stranded or made idle. While, the capacity dedicated to Dynege on a firm basis is not available to others on a firm basis,⁵ if it is not being used by Dynege it currently can be made available as interruptible transportation under Columbia Gulf's and possibly even under Tennessee's interruptible Part 284 blanket transportation certificates.⁶

13. Assignment of the Columbia Gulf capacity must be done in compliance with existing statutory and regulatory requirements. Under current Commission policy, a pipeline may hold Part 284, open-access capacity on other interstate pipelines.⁷ However, as stated, the firm service that Columbia Gulf is obligated to stand ready to

⁵ 18 C.F.R. 284.7(a)(3) (2005).

⁶ The Construction, Ownership, Operating and Maintenance Agreement, South Pass Project 77, dated September 13, 1996, Article 4.04(d) states as follows:

Tennessee shall have the right to utilize any of . . . Columbia Gulf's Capacity Entitlement that they are not utilizing on any day *at no cost or charge to Tennessee*. Columbia Gulf shall have the right to utilize any of Chevron's Capacity Entitlement that is not being utilized by either Chevron or Tennessee on any day and any of Tennessee's Capacity Entitlement that it is not utilizing on any day at no cost or charge to Columbia Gulf.
Emphasis added.

Thus, Tennessee already has access to unutilized Dynege's Columbia Gulf South Pass 77 capacity and unutilized Columbia Gulf South Pass 77 capacity.

⁷ *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000), *reh'g denied*, 94 FERC ¶ 61,139 (2001).

provide for Dynegy is a Part 157 service. It is not a service that is available under Part 284 to others. Moreover, while the subject capacity could be made available to Tennessee's shippers under a lease arrangement with Columbia Gulf, the Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline subject to NGA section 7(b) abandonment and section 7(c) certification.⁸ Thus, to effect a lease arrangement, Columbia Gulf will need abandonment authority and Tennessee will need certificate authority. The existence of a unique capacity entitlement on a shared pipeline does not eliminate the need to comply with the Commission's existing statutory and regulatory requirements. Accordingly, Tennessee's request for rehearing is denied.

The Commission orders:

Tennessee's request for rehearing is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁸ *Texas Eastern Gas Transmission Corp.*, 94 FERC ¶ 61,139 at 61,530 (2001).