

123 FERC ¶ 61,198  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Texas Gas Transmission, LLC

Docket No. CP07-405-001

ORDER DENYING REHEARING AND GRANTING CLARIFICATION

(Issued May 23, 2008)

1. On March 31, 2008, Memphis Light, Gas and Water Division, City of Memphis, Tennessee; the Jackson Energy Authority, City of Jackson, Tennessee; the Western Tennessee Municipal Group; and the Kentucky Cities (collectively, Cities) filed a joint request for rehearing of the Commission order issued in this docket on February 29, 2008 (February 29, 2008 Order).<sup>1</sup> Also on March 31, 2008, Texas Gas Transmission, LLC (Texas Gas) filed a request for clarification or, in the alternative, rehearing of the February 29, 2008 Order. The February 29, 2008 Order authorized Texas Gas to abandon certain facilities and expand in two phases its facilities at Midland Gas Storage Field in Muhlenberg County, Kentucky (Midland Field). The order also authorized, subject to conditions, Texas Gas to provide storage service through the expanded facilities at market-based rates under section 4(f) of the NGA.
2. Cities object to Texas Gas reclassifying cushion gas as working gas and retaining any gains on the sale of this gas.
3. Texas Gas asks the Commission to clarify that 52.2 MMcf/d is the “peak day contractual deliverability” of the Midland Field, not the “maximum daily withdrawal rate.” Texas Gas also requests that the Commission clarify that Texas Gas intends to abandon “by removal” its two existing 2,000 HP Delaval reciprocating compressors, not “retire in place.”
4. As discussed below, this order denies Cities’ request for rehearing and grants Texas Gas’ requests for clarification.

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<sup>1</sup> *Texas Gas Transmission Corp.*, 122 FERC ¶ 61,190 (2008).

## **Background**

5. Texas Gas is engaged in the transportation of natural gas from various sources in Texas and Louisiana to various markets throughout its interstate pipeline system. Texas Gas' market area storage complex consists of nine storage fields located in Indiana and Kentucky. Texas Gas received its initial authorization to construct and operate the Midland Field in 1969.<sup>2</sup> Since then, the Commission has authorized numerous expansions for additional storage wells and field lines, making the Midland Field the largest storage field on Texas Gas' system. The Midland Field's certificated capacity of 135.1 Bcf includes 55.7 Bcf of working gas and 79.4 Bcf of base gas.<sup>3</sup> Authorizations in 2005 and 2006 permitted Texas Gas to convert base gas to top gas, increasing working gas capacity from 38.18 Bcf to 55.7 Bcf and peak day deliverability from 678.6 MMcf/d to 860 MMcf/d. The February 29, 2008 Order authorized Texas Gas to further expand its facilities at the Midland Field in two phases to provide up to an additional 8.25 Bcf of new firm storage capacity and 92.2 MMcf/d of increased firm deliverability.

## **Rehearing regarding cushion gas**

6. In the February 29, 2008 Order, the Commission found that Texas Gas records the cost of the cushion gas as a capital asset and therefore is permitted to retain any gain associated with the sale of such gas when converted to working gas.<sup>4</sup> The Commission stated that it has a well-established policy to permit regulated companies to realize the gains, or absorb any losses, when selling a capital asset.<sup>5</sup> The Commission stated that this finding is consistent with the ruling in *Natural* which found that since Natural's customers did not bear the cost of the cushion gas, they could not realize the gain or

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<sup>2</sup> *Texas Gas Transmission Corp.*, 41 FPC 826 (1969).

<sup>3</sup> *Texas Gas Transmission Corp.*, 117 FERC ¶ 61,261 (2006); 110 FERC ¶ 61,132 (2005); 92 FERC ¶ 62,061 (2000); 51 FERC ¶ 61,360 (1990); 51 FPC 1265 (1974); and 50 FPC 363 (1973).

<sup>4</sup> *Texas Gas Transmission Corp.*, 122 FERC ¶ 61,190 at P 48.

<sup>5</sup> *Id.*, citing *Natural Gas Pipeline Co. of America*, 101 FERC ¶ 61,125, at P 43 (2002) (*Natural*); *Trunkline Gas Co.*, 90 FERC ¶ 61,017, at 61,097-98 (2000); *Williams Gas Processing-Gulf Coast Gathering Co.*, 87 FERC ¶ 61,144, at 61,594 (1999); *East Tennessee Natural Gas Co.*, 75 FERC ¶ 61,110, at 61,369 (1996); *El Paso Natural Gas Co.*, 46 FERC ¶ 61,358, at 62,098 (1989); *Florida Gas Transmission Co.*, 20 FERC ¶ 61,298, at 61,581 (1982).

absorb any losses on the sale.<sup>6</sup> Further, the Commission noted that this is the third expansion of the Midland Field in which Texas Gas is converting cushion gas to working gas and in the prior two cases<sup>7</sup> we permitted Texas Gas to convert cushion gas that it paid for to working gas, realizing the gain or absorbing any losses on the sale.<sup>8</sup>

7. On rehearing, Cities argues that approving Texas Gas' plan to fully retain the gain on the sale of converted cushion gas contravenes court precedent<sup>9</sup> and *Transco*.<sup>10</sup> Cities asserts that customers of Texas Gas are at risk for lost and unaccounted for gas on the Texas Gas system and, since the customers bear this risk, they should receive the benefit from the sale of the converted gas. Cities notes that in *Transco* the Commission set for hearing the issue of who bore the risk of capital loss in a proposed sale of excess top gas. Cities maintains that, unlike its action in *Transco*, the Commission summarily concluded that Texas Gas is entitled to any gain associated with the sale of cushion gas without any further development of the record.

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<sup>6</sup> *Natural*, 101 FERC ¶ 61,125 at P 43 (2002). The Commission found that Natural's storage customers did not bear the costs of purchasing the cushion gas; Natural owned the cushion gas; Natural included the historic cost of the cushion gas into its rate base for cost of service purposes and properly recorded it as a fixed asset in Account No. 117.1.

<sup>7</sup> *Texas Gas Transmission, LLC*, 110 FERC ¶ 61,132 (2005) and 117 FERC ¶ 61,261 (2006).

<sup>8</sup> *Texas Gas Transmission Corp.*, 122 FERC ¶ 61,190 at P 48.

<sup>9</sup> *Citing, Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission*, 485 F.2d 786 at 806 (D.C. Cir. 1973) (*Democratic Central Committee*). Cities cites the court's explanation that a utility's investors:

are not automatically entitled to gains in value of operating utility properties simply as an incident of the ownership conferred by their investments...an investor can hardly muster any equitable support for a claim to appreciation in asset value where he has been shielded against the risk of loss on his investment, or has already been rewarded for taking on that risk.

<sup>10</sup> *Transcontinental Gas Pipe Line Corp.*, 119 FERC ¶ 61,105 (2007) (*Transco*).

**Response**

8. The Commission's findings in the February 29, 2008 Order regarding the disposition of profits from the sale of converted cushion gas are consistent with prior Commission practice and the precedent cited by Cities. The Commission concurs with the court dicta in *Democratic Central Committee*:

[w]e think two accepted principles which have served comparably to effect satisfactory adjustments in other aspects of ratemaking can do equal service here. One is the principle that the right to capital gains on utility assets is tied to the risk of capital losses. The other is the principle that he who bears the financial burden of particular utility activity should also reap the benefit resulting therefrom...The proposition that capital gain rightly inures to the benefit of him who bore the risk of capital loss has been accepted in ratemaking law.<sup>11</sup>

9. Cities claims that, because Texas Gas includes cushion gas in its rate base and recovers lost and unaccounted for gas associated with storage operations, customers have assumed some of the financial risk associated with this asset. We disagree. Texas Gas paid for the 8.5 Bcf of base/cushion gas that will be converted to top/working gas and has not recovered the cost from its customers through depreciation expense.<sup>12</sup> Nor was the gas included in any Purchased Gas Adjustment (PGA) mechanism or recorded in a fuel use account.<sup>13</sup> The cushion gas to be converted to working gas is now reflected in Account 117.1 (Gas stored-base gas) as a capital asset. When reclassified as working gas, it will be transferred to Account 117.2 (System balancing gas) and removed from rate base when Texas Gas files its next general rate case.<sup>14</sup>

10. Further, Texas Gas' fuel retention percentages track fuel used and gas that is lost in conjunction with system operations. Cushion gas is not reflected in any fuel-use account. In addition, system losses or gains do not affect the amount of cushion gas owned by Texas Gas.<sup>15</sup>

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<sup>11</sup> *Democratic Central Committee*, 485 F.2d 786 at 806.

<sup>12</sup> Texas Gas August 31, 2007 Data Response at Response No. 3.

<sup>13</sup> Texas Gas October 3, 2007 Answer.

<sup>14</sup> Texas Gas August 31, 2007 Data Response at Response No. 3

<sup>15</sup> *Id.*

11. Since all of the risk associated with the converted cushion gas has been born by Texas Gas, any profit made from the sale may be retained by Texas Gas. Accordingly, the request for rehearing is denied.

12. Finally, in *Transco*, the Commission set for further hearing Transco's plans to retain any gain on the disposition of storage top gas inventory because the Commission lacked a sufficient record to determine whether Transco's proposal was just and reasonable.<sup>16</sup> In this case, the relevant facts and parties' arguments are in the record and were considered by the Commission in the February 29, 2008 Order and in this order.<sup>17</sup> Since no issue of material fact remained as to who has borne the burden and risks associated with the cushion gas, there was no need to set the issue for an evidentiary hearing as Cities implies.

**Clarification regarding "peak day contractual deliverability"**

13. In the February 29, 2008 Order, the Commission stated that its engineering analysis of the proposed project found that:

the compression proposed for the expansion is properly designed to achieve the proposed maximum deliverability; Texas Gas' proposal will effectively increase the working gas capacity of the Midland storage field; the proposed project will result in a working gas capacity of 63.95 Bcf and a cushion gas capacity of 71.15 [Bcf]; and, the maximum daily withdrawal rate for the Midland storage field will increase to 952.2MMcf per day.<sup>18</sup>

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<sup>16</sup> *Transco*, 119 FERC ¶ 61,105 at P 14.

Determinations of who bore the financial burdens of the Eminence storage gas and who had the risk of capital loss, as well as which customers, if any, are entitled to any benefits of the sale of the excess Eminence gas, and how these benefits would be provided, require the further development of the record provided by an evidentiary hearing.

<sup>17</sup> Cities July 24, 2007 Motion to Intervene and Comments; Texas Gas August 8, 2007 Reply Comments; Texas Gas August 31, 2007 Data Response; Cities September 18, 2007 Response; and Texas Gas October 3, 2007 Answer.

<sup>18</sup> *Texas Gas Transmission Corp.*, 122 FERC ¶ 61,190 at P 58.

14. Texas Gas requests that the Commission clarify that 952.2 MMcf per day is the “peak day contractual deliverability” of the Midland Field, not the “maximum daily withdrawal rate.”

15. Additional information provided by Texas Gas in its rehearing request demonstrates that the proposed facilities are capable of providing a maximum daily withdrawal rate of 1,735 MMcf per day from the field. Consequently, the request for clarification is granted and Ordering Paragraph (E) of the February 29, 2008 Order is amended accordingly.

**Clarification regarding “abandon by removal”**

16. In its June 25, 2007 application in this docket, Texas Gas requested authorization to “retire in place” certain certificated facilities, including compressors and auxiliary equipment (Delaval units). In its supplement submitted on August 29, 2007, Texas Gas clarified that it intends to “abandon by removal” the Delaval units. However, in its December 4, 2007 supplement, Texas Gas again stated that it intends to abandon the Delaval units “in place.” In the description of the proposed construction, the February 29, 2008 Order states that Texas Gas intends to “retire in place two existing 2,000 HP Delaval reciprocating compressor units, including certain auxiliary facilities” at the Midland 3 Compressor Station.<sup>19</sup>

17. Texas Gas requests that the Commission clarify the February 29, 2008 Order to reflect Texas Gas’ intention to abandon the Delaval compressor units by removal. Texas Gas states that it always intended to physically remove the two 2000-HP Delaval reciprocating engine gas compressor units that were installed in 1973 and 1975, including ancillary equipment. However, Texas Gas will not retire the existing building and foundation, as it will contain another engine. Texas Gas argues that no additional environmental data or review is required, as the Commission has already conducted an environmental analysis of the Midland 3 Compressor Station, including the unit and associated facilities that will replace the Delaval units. Further, Texas Gas states that all activity to remove the Delaval units will take place within the fenced yard of the Midland Compressor Station.

18. Commission staff prepared an environmental assessment (EA) for Texas Gas’ proposal after Texas Gas’ August 29, 2007 supplement was submitted. Consequently, the EA analysis supposed the removal of the Delaval units. Based on the discussion in the EA, the February 29, 2008 Order concluded that, “if constructed and operated in

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<sup>19</sup> *Texas Gas Transmission Corp.*, 122 FERC ¶ 61,190 at P 6.

accordance with Texas Gas' application filed June 25, 2007, as supplemented on December 4, 2007, supplemental data responses, and staff's recommendations, approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment."<sup>20</sup> Thus, the fact that the Delaval units will be removed rather than remain in place will not affect any findings in the February 29, 2008 Order. In any event, there is no environmental impact. Texas Gas will remove two compressor units from inside a building and the building will remain. No ground disturbance will occur. No emissions will change. No visual impacts will occur as a result of this change. Accordingly, the request for clarification is granted.<sup>21</sup>

The Commission orders:

- (A) The request for rehearing filed by Cities is denied.
- (B) Clarifications of the February 29, 2008 Order are granted as discussed in the body of this order.
- (C) Ordering Paragraph (E) of the February 29, 2008 Order is modified as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>20</sup> *Texas Gas Transmission Corp.*, 122 FERC ¶ 61,190 at P 68.

<sup>21</sup> The associated alternative request for rehearing is moot.