

124 FERC ¶ 61,128  
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.

Tennessee Gas Pipeline Company  
PSI Midstream Partners, LP

Docket Nos. CP08-165-000  
CP08-183-000

ORDER APPROVING ABANDONMENT AND DETERMINING JURISDICTIONAL  
STATUS OF FACILITIES

(Issued July 31, 2008)

1. On April 21, 2008, Tennessee Gas Pipeline Company (Tennessee) filed an application under section 7(b) of the Natural Gas Act (NGA) for authority to abandon, by sale and transfer, West Cameron Block 498 Line 823X-2200 (Line 823X-2200), located in the Gulf of Mexico, to PSI Midstream Partners, LP (PSI). On April 24, 2008, PSI filed a petition for declaratory order requesting that the Commission determine that the facilities are gathering and exempt from the Commission's jurisdiction under NGA section 1 (b). As discussed below, we will authorize Tennessee to abandon the facilities and services as requested and find that upon the acquisition of the facilities by PSI, the facilities will be used to perform a gathering function exempt from the Commission's jurisdiction.

**I. Background And Proposal**

2. Tennessee, a corporation organized and existing under the laws of the State of Delaware, is a natural gas company engaged in the business of transporting and storing natural gas in interstate commerce. Tennessee's mainline transmission system extends northeast from primary sources of supply in Texas, Louisiana, and the Gulf of Mexico. PSI owns and operates various midstream assets in the Gulf Coast Region of the United States, including processing and related facilities. PSI owns no facilities that are subject to the Commission's jurisdiction.

3. On June 26, 1980, the Commission issued a certificate authorizing Tennessee to construct and operate Line 823X-2200, an off-system supply lateral in the Gulf of Mexico that extends from West Cameron Block 498 to an interconnection with a pipeline owned and operated by Texas Eastern Transmission, LP (TETCO) in East Cameron Block 227.<sup>1</sup> Line 823X-2200 consists of approximately 30 miles of 30-inch diameter pipeline, 0.4 miles of 16-inch diameter pipeline, and various receipt taps and appurtenances. The pipeline was originally placed in service on October 31, 1980, and transports gas supplies in an easterly direction to the TETCO interconnect.

4. Tennessee currently provides transportation services on Line 823X-2200 pursuant to firm and interruptible transportation agreements. At this time, only four of eleven receipt points on the line are active and none of the affected receipt points or the delivery point are designated as primary points on firm transportation agreements. Services on Line 823X-2200 are provided either under Rate Schedule IT or Rate Schedule FT-A as secondary out-of-path service. Tennessee states that the average daily usage of Line 823X-2200 during the twelve months ending March 31, 2008, was 3,332 Mcf per day or approximately 2.2 percent of the 150,000 Mcf per day maximum capacity of the pipeline. Tennessee requests authority to abandon Line 823X-2200 by sale to PSI and also requests approval to abandon transportation services it currently provides through those facilities.

5. PSI states that upon acquisition of the line it intends to operate it as a stand-alone gathering facility, receiving gas from various production platforms for delivery into TETCO's pipeline for subsequent transportation. PSI states that it will perform gathering services on an open-access basis pursuant to contracts with each of the existing shippers and with any prospective shippers. PSI requests that the Commission issue an order declaring that the facilities will function as gathering and that they will be exempt from the Commission's jurisdiction.

## **II. Notice, Interventions, and Protests**

6. Public notice of Tennessee's application was published in the *Federal Register* on May 9, 2008 (73 Fed. Reg. 26,386). PSI and Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. filed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations.<sup>2</sup>

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<sup>1</sup> *Tennessee Gas Pipeline Co.*, 11 FERC ¶ 61, 330 (1980).

<sup>2</sup> 18 C.F.R. § 385.214 (2008).

7. Public notice of PSI's petition was published in the *Federal Register* on May 9, 2008 (73 Fed. Reg. 26,391). No protests, interventions, or comments were filed.

### **III. Discussion**

8. Since the facilities and services Tennessee proposes to abandon involve the transportation of natural gas in interstate commerce, the proposal is subject to the jurisdiction of the Commission and the requirements of NGA section 7(b).

#### **A. Abandonment of Jurisdictional Facilities**

9. Tennessee has demonstrated that the facilities constitute an underutilized asset, non-contiguous and remotely located to its other system facilities. Further, Tennessee's shippers only utilize approximately 2.2 percent of the capacity of the pipeline, indicating that Tennessee no longer needs the facilities for access to gas supplies as it did when it performed a merchant function. Upon transferring the pipeline, PSI will assume any risk of underutilization and under-recovery of the costs associated with the facilities. Further, since PSI will provide gathering services to the current shippers on the line, those customers will not be impacted. No shipper has protested the application and each of the six shippers currently served through the facilities has executed a letter of consent to the proposed abandonment. Based on the facts presented, the Commission finds that Tennessee's proposed abandonment of the facilities and related services is permitted by the public convenience and necessity.

#### **B. Primary Function Test**

10. Under NGA section 1(b), the Commission's jurisdiction does not extend to facilities used for the production or gathering of natural gas or to gathering services.<sup>3</sup> Over the years the Commission has developed criteria to determine which facilities are non-jurisdictional gathering facilities.<sup>4</sup> The Commission presently relies on the modified

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<sup>3</sup> The courts have narrowly construed the NGA section 1(b) exemption to "the physical act of drawing gas from the earth and preparing it for the first stages of distribution." *See, e.g., Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board*, 474 U.S. 409, 418 (1986) (*quoting Northern Natural Gas Co. v. State Corp. Comm'n of Kansas*, 372 U.S. 84 (1963)).

<sup>4</sup> *See Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990); and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983). *See Robin Pipeline Company (Sea Robin)*, 71 FERC ¶ 61,351 (1995), *order on reh'g*, 75 FERC ¶ 61,332 (1996), *vacated and remanded, Sea Robin Pipeline Co. v. FERC*, 127 F.3d 365 (5<sup>th</sup> Cir. 1997), *order on remand*, 87 FERC

primary function test, which includes consideration of physical and geographical factors, including: (1) the length and diameter of the pipelines; (2) the extension of facilities beyond the central point-in-the-field; (3) the facilities' geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facilities; and (6) the operating pressures of pipelines. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.<sup>5</sup>

11. For instance, in *Sea Robin*, the Commission adopted a central aggregation point criterion to assist in the analysis of where gathering ends and transportation begins regarding offshore facilities. However, the Commission noted specifically "that not all OCS pipeline systems will exhibit a centralized aggregation point. For example, an OCS facility that has a straight-line or spine-and-lateral type configuration may not have such a point."<sup>6</sup> The lateral involved in this proceeding has a straight-line configuration.

12. In addition, the Commission also weighs any and all other relevant facts and circumstances of a particular case, including non-physical criteria.<sup>7</sup> The Commission also may consider the purpose, location, and operation of facilities, the general business activity of the owner of the facilities, and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978 (NGPA).<sup>8</sup> While non-physical factors may be relevant considerations for determining the demarcation point between transmission and gathering facilities, such non-physical factors are secondary to the physical factors.

13. Applying these criteria to Line 823X-2200, the Commission finds that the primary function of the facilities will become gathering when acquired by PSI.<sup>9</sup> Regarding the length and diameter of the line, the Commission has previously stated, "[w]e adhere to no

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¶ 61,384 (1999), *reh'g denied*, 92 FERC ¶ 61,072 (2000), *order denying stay*, 92 FERC ¶ 61,217 (2000), *aff'd sub nom. ExxonMobil Gas Mktg. Co. v. FERC*, 297 F.3d 1071 (D.C. Cir. 2002).

<sup>5</sup> See, e.g., *TOMCAT*, 59 FERC ¶ 61,340, at 62,239 (1992).

<sup>6</sup> *Sea Robin Pipeline Co.*, *order on remand*, 87 FERC ¶ 61,384, at 62,428 (1999).

<sup>7</sup> *Id.*; see also *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990).

<sup>8</sup> *Sea Robin Pipeline Co.*, 127 F.3d 365 at 371 (5<sup>th</sup> Cir. 2003).

<sup>9</sup> See *Northern Natural Gas Co.*, 115 FERC ¶ 61,112 (2006).

bright line test regarding size and operating pressure of offshore facilities. Facilities as large as typical transmission lines may nevertheless be found to be gathering when other primary function factors demonstrate characteristics consistent with gathering.”<sup>10</sup> In this particular case, the 30-mile length reflects the fact that long lateral pipelines are necessary to connect offshore gas wells to the nearest available interstate pipeline.<sup>11</sup> With respect to the 30-inch diameter, the size of the facilities reflect the productivity of the wells and large volumes of gas that were to be collected at the time the line was authorized for construction and operation by Tennessee as jurisdictional facilities.<sup>12</sup> Therefore, the size of the facilities is not inconsistent with a gathering function.

14. Second, while there are no wells directly connected to the line at issue, this is attributable to the nature of offshore drilling, which is to aggregate gas from numerous wells on individual platforms for delivery onshore. PSI attached to its petition for declaratory order a map (Exhibit A) showing the lateral facility to be abandoned and the location of the West Cameron production platforms currently delivering gas to the lateral. Such platforms range in location from close to the lateral’s starting point (West Cameron Block 498) to a position (West Cameron Block 461) approximately three-quarters down the lateral’s 30-mile length.<sup>13</sup>

15. Further, no compression facilities are located on the lateral, which is an indication of gathering. Finally, a maximum allowable operating pressure of 1,440 psig and operating range of 800 to 1,200 psig is consistent with the higher operating pressure of offshore gathering facilities and are a function of the wellhead pressures. The wellhead pressures act to push the gas through the facilities, as is typical of a gathering function, unlike the compression typical of a transmission function. In addition, there are no processing plants located on or connected to the facilities. The Commission has

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<sup>10</sup> *Trunkline Gas Co. and Trunkline Field Services, Inc.*, 95 FERC ¶ 62,238 (2001).

<sup>11</sup> The TETCO line to which Line 823X-2200 connects is a 30-inch diameter pipeline.

<sup>12</sup> Estimated reserves attributed to the West Cameron 498 Field at the time of construction of the line were 159,000,000 Mcf with a projected initial year daily production in excess of 150,000 Mcf. *See* 11 FERC at 61,695 (1980).

<sup>13</sup> PSI states that its gathering services will be provided to existing and prospective shippers, indicating the possibility of further interconnections with production platforms and wells along the length of the lateral.

previously discussed the impracticality of locating processing plants offshore, and concluded that in the offshore context, the absence of processing plants is of little value in assessing the primary function of facilities.<sup>14</sup>

16. The Commission has held that under the primary function test “[i]f the purpose of the facility can be categorized as being primarily the collection of gas, its principal or primary function is gathering.”<sup>15</sup> In this case, Line 823X-2200 will receive gas from various production platforms located at various points along its length. The collection of gas will continue until the line delivers gas to a single, central TETCO delivery point. The collection of multiple production streams to one or more central points is entirely consistent with the gathering function.<sup>16</sup>

17. Lastly, the Commission also considers other, non-physical factors. The purpose of Line 823X-2200 is to obtain natural gas supplies in a high density offshore production area. Additionally, PSI is a non-jurisdictional company that owns facilities such as gathering lines and processing plants. PSI does not own any jurisdictional facilities.

18. Accordingly, for the foregoing reasons, we find that gathering will be the primary function of the Line 823X-2200 upon transfer to PSI, and such facilities therefore will be exempt from Commission jurisdiction under NGA section 1(b).

#### **IV. Environmental Analysis**

19. This action qualifies as a categorical exclusion under 380.4(a) (31), since the proposal does not involve the construction of any facilities. Thus, no environmental assessment is required.

20. The Commission, on its own motion, received and made a part of the record all evidence, including the application (s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

#### **The Commission Orders:**

(A) Permission for and approval of the abandonment by Tennessee of the subject facilities and services as described above and in the application is granted.

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<sup>14</sup> See, e.g., *EP Operating v. FERC*, 876 F.2d 45, 49 (5<sup>th</sup> Cir. 1989).

<sup>15</sup> *Sea Robin Pipeline Co., order on remand*, 87 FERC ¶ 61,384, at 62,432 (1999).

<sup>16</sup> *Viosca Knoll Gathering System*, 66 FERC ¶ 61,237, at 61,579 (1994).

(B) Tennessee shall notify the Commission within ten (10) days of the date of abandonment of the facilities.

(C) Upon acquisition by PSI, Line 823X-2200, as described in the text of this order, will be gathering facilities exempt from the Commission's jurisdiction pursuant to NGA section 1(b).

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.