

127 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Viking Gas Transmission Company

Docket No. CP09-69-000

ORDER DISMISSING PROTEST AS MOOT
AND AUTHORIZING CONSTRUCTION AND OPERATION AND
ABANDONMENT OF FACILITIES UNDER BLANKET CERTIFICATE

(Issued June 9, 2009)

1. On February 26, 2009, Viking Gas Transmission Company (Viking) filed a prior notice request pursuant to section 7 of the Natural Gas Act¹ and section 157.205 of the Commission's blanket certificate regulations² to undertake under its Part 157 blanket certificate an expansion of the capacity of its existing Fargo Lateral to the Fargo, North Dakota city gate by installing 9.98 miles of larger diameter pipeline.³
2. Viking's prior notice request was protested by Wisconsin Electric Power Company and Wisconsin Gas LLC (We Energies). Although We Energies has not withdrawn its protest, We Energies states that its concerns have been fully addressed by certain commitments made by Viking in a motion filed on May 28, 2009. Accordingly, for the

¹ 15 U.S.C. § 717 (2006).

² 18 C.F.R. § 157.205 (2008).

³ The Fargo Lateral is currently an 8-inch diameter pipeline. Viking proposes in its February 26, 2009 prior notice request to abandon the existing 8-inch diameter pipe under section 157.216 of the blanket certificate regulations and install a 12-inch diameter pipe under section 157.208 of the blanket certificate regulations. Viking's Part 157 certificate was granted to its predecessor, Midwestern Gas Transmission Company, in 1982. *Midwestern Gas Transmission Co.*, 20 FERC ¶ 62,411 (1982).

reasons discussed below, we will dismiss We Energies' protest as moot and authorize Viking to construct and operate facilities and abandon certain facilities under its Part 157 blanket certificate, as described in its February 26, 2009 prior notice request.

I. Proposal

3. Viking conducted an open season from March 31, 2008 until April 7, 2008 to solicit interest from potential shippers in obtaining incremental firm transportation services from the take-off of the Fargo Lateral to the Fargo city gate. As a result of the open season, Viking executed a precedent agreement with Northern States Power Company, a Minnesota corporation (NSP), the only respondent to Viking's open season.

4. In response to NSP's request for Viking to provide transportation service of up to 91,000 Dth/d on the Fargo lateral as the demand for natural gas increases in the Fargo-Moorhead metropolitan areas of North Dakota and Minnesota, Viking filed its prior notice request on February 26, 2009. In that filing, Viking proposes to expand its Fargo Lateral pipeline facilities by constructing and operating 9.98 miles of 12-inch diameter pipeline to replace 9.98 miles of 8-inch diameter pipeline to be abandoned in place, all in Clay County, Minnesota and Cass County, North Dakota. Viking also plans to install two launchers and two receivers at two locations; undertake modifications at another location in anticipation of the future installation of additional launchers and tie-over valve; and make modifications at one meter station.⁴ No compression will be installed as part of the project.

5. In addition to the 9.98 miles of existing 8-inch diameter pipeline that will be abandoned in place, Viking will also abandon short segments of aboveground pipeline that connect directly to tie-in valves which are to be replaced by the proposed new facilities. Associated taps, crossover headers, and other appurtenances will be dismantled, removed and capped. The facilities to be abandoned were installed in 1960.⁵

6. The existing Fargo Lateral facilities are capable of transporting 53,332 Dth/d. When fully operational, the proposed new pipeline facilities will be capable of transporting up to 91,000 Dth/d of natural gas from the existing Viking mainline pipeline to the existing Fargo, Dilworth, and Moorhead interconnects.

⁴ See Viking's February 26, 2009 prior notice request at p. 6.

⁵ Viking's total estimated cost of the proposed project is \$14.6 million. A summary of the project costs is included in Attachment 4 to the February 26, 2009 prior notice filing.

7. The agreement with NSP provides for a minimum firm transportation capacity of 37,688 Dth/d. Viking's ability to deliver under the firm service agreement is currently dependent upon the displacement of volumes Viking delivers at the Marshfield, Minnesota interconnect with ANR Pipeline Company (ANR). The actual contracted capacity will be based upon a formula set forth in the precedent agreement so that Viking can be assured of recovering the costs of the project. All volumes greater than the minimum transportation volume of 37,688 Dth/d will be delivered by Viking to a location other than the Fargo Lateral.

II. Notice, Interventions and other Pleadings

8. On March 12, 2009, the Commission issued a notice of Viking's prior notice request in Docket No. CP09-69-000 in accordance with section 157.205(d) of the Commission's regulations.⁶ The Commission's notice was published in the *Federal Register* on March 20, 2009.⁷ Pursuant to section 157.205(d) of the regulations, the deadline for the filing of interventions and protests in response to a prior notice filing is 60 days following the date of issuance of the notice.

9. Pursuant to section 157.205(h) of our regulations, authorization to construct and operate qualifying facilities under a blanket certificate is automatic so long as no protests to the activity are filed within 60 days of the date notice is issued by the Commission. If a protest is filed within the 60-day period and it is not withdrawn within 30 days after the 60-day notice period, the prior notice request proceeds as an application under section 7(c) of the NGA for case-specific authorization.⁸

10. Within the 60-day notice period, timely, unopposed motions to intervene were filed by We Energies, Northern States Power Company (NSP), Wisconsin Electric Power Company (Wisconsin Electric), Wisconsin Public Service Corporation (Wisconsin Public Service), and BP Canada Energy Corporation (BP Canada).⁹

⁶ 18 C.F.R. §157.205(d).

⁷ 74 Fed. Reg. 11,940 (2009).

⁸ 18 C.F.R. §157.205(f) (2008).

⁹ Timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2008).

11. The North Dakota Public Service Commission filed a timely notice of intervention.¹⁰
12. NSP and the North Dakota Public Service Commission support Viking's proposal.
13. We Energies protests Viking's proposed construction based on concern that the additional service on the Fargo Lateral could increase the incidence of the issuance of operational flow orders (OFOs) on Viking's system. Although BP Canada does not protest Viking's proposal, BP Canada states that, as a shipper on Viking's system, it shares We Energies' concern that Viking's proposed construction could increase the incidence of OFOs on Viking's system.
14. Wisconsin Public Service states that it holds firm transportation capacity on Viking's system for a forwardhaul service to Marshfield, the designated receipt point in Viking's precedent agreement with NSP. Wisconsin Public Service emphasizes that Viking concedes in its prior notice request that its current ability to provide the service for NSP depends on the displacement of gas that Viking delivers at the Marshfield interconnect with ANR. Wisconsin Public Service's concern is that Viking could rely on OFOs to insure the flow of NSP's gas. However, Wisconsin Public Service states that Viking has assured it that its non-conforming service agreement with NSP will include satisfactory language about the use of OFOs. For that reason, Wisconsin Public Service is not protesting Viking's prior notice request.
15. On May 28, 2009, Viking and NSP filed a motion for the emergency issuance of a Commission order by June 10, 2009, authorizing Viking to construct and operate the Fargo project under Viking's Part 157 blanket certificate as proposed in Viking's February 26, 2009 prior notice request.
16. On May 28, 2009, We Energies filed in support of Viking's and NSP's motion seeking the Commission's issuance of an order by June 10, 2009, to approve Viking's construction proposal.
17. Because the deadline for the filing of protests was May 11, 2009, the end of the thirty-day reconciliation period provided for under section 157.205(g) is June 10, 2009.

¹⁰ A timely notice of intervention by a state commission is automatically granted by operation of Rule 214(a) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(a) (2008).

We Energies' protest will not be withdrawn by June 10, 2009.¹¹ Under such circumstances section 157.205(f) of the regulations provides for Viking's prior notice request to be treated as an application for case-specific certificate authority.¹² However, the motion filed by Viking an NSP on May 28, 2009, purports to resolve the concerns raised by We Energies' protest. Therefore, we will describe that pleading first.

III. Viking's and NSP's May 28, 2009 Motion

18. In their joint motion filed on May 28, 2009, Viking and NSP state that they and We Energies, with the active involvement of the Commission's Dispute Resolution Service, have resolved We Energies' concerns by (1) filing, in a separate section 4 proceeding, proposed tariff revisions which clarify Viking's procedures for calling OFOs,¹³ and (2) committing to file, prior to the in-service date of the Fargo Lateral expansion facilities, a non-conforming transportation service agreement between Viking and NSP containing, in substantively the same form, the non-conforming terms and conditions reflected in the draft agreement attached to the May 28, 2009 motion as Exhibit A. Based on these commitments, further described below, Viking and NSP state that they have been authorized to represent that We Energies agrees that its concerns have been fully addressed, and that We Energies therefore supports Viking's and NSP's

¹¹ NSP's March 26, 2009 motion to intervene included a request that the Director of the Commission's Office of Energy Projects (OEP) exercise his delegated authority under section 157.205(g) to dismiss We Energies' protest on the grounds that it fails to raise a substantive issue calling into question whether Viking's proposed project is required by the public convenience and necessity. On March 30, 2009, Viking filed a motion also requesting that the Director of OEP dismiss We Energies' protest on the same grounds. On March 31, 2009, We Energies filed an answer in opposition, arguing that Viking's proposed facilities are necessary to implement a service agreement between Viking and NSP that could result in Viking's increased invocation of OFOs in order to meet its service obligations to NSP, thereby adversely affecting service to other customers. The Director of OEP did not act to dismiss We Energies' protest within 10 days after it was filed as provided for under section 157.206(g). No further motions seeking dismissal of the protest have been filed.

¹² See, e.g., *Kinder Morgan Interstate Gas Transmission LLC*, 123 FERC ¶ 61,018, at P 7 (2008).

¹³ Viking made its section 4 filing with its proposed tariff revisions on May 28, 2009 in Docket No. RP09-617-000.

request for expedited issuance of a Commission order authorizing Viking to proceed with construction of the Fargo Lateral expansion facilities.¹⁴

19. Viking and NSP explain that, although We Energies agrees that its concerns have been satisfactorily addressed and it supports immediate authorization for Viking to commence construction, We Energies desires to have matters resolved through a Commission order premised on a record reflecting Viking's and NSP's commitments in their May 28, 2009 emergency motion and as described herein, as opposed to We Energies withdrawing its protest based solely on an understanding of the parties. Viking and NSP also state that BP, the only other intervenor to suggest unresolved issues with Viking's proposal, has authorized Viking and NSP to state that BP's concerns also have been satisfactorily addressed by the commitments in Viking's and NSP's May 28, 2009 motion.¹⁵

20. Viking and NSP state that they are compelled to request expedited emergency action by the Commission in order for the Fargo Lateral expansion facilities to be in service at the beginning of the next heating season. Viking states it currently faces severe time constraints associated with pre-construction and construction activities, including a very narrow construction window imposed by the Minnesota Department of Natural Resources. Failure to comply with this construction window will cause the Fargo Lateral project to be delayed beyond the 2009/2010 winter heating season, seriously compromising the prospects of Viking being able to deliver critically needed gas service next winter. In short, Viking and NSP assert that time is of the essence. Consequently, they request that the Commission issue an order no later than June 10, 2009, to authorize

¹⁴ Consistent with Viking's and NSP's representations, We Energies filed on May 28, 2009 to state that, with the active involvement of the Commission's Dispute Resolution Service, We Energies' concerns has been successfully resolved based on the various commitments set forth in Viking's and NSP's May 28, 2009 emergency motion and that We Energies supports their request for expedited issuance of an order to permit Viking's commencement of construction of the Fargo Lateral expansion facilities.

¹⁵ As discussed above, Wisconsin Public Service states that it originally shared other parties' concerns that Viking's proposal could lead to degradation of customers' service as the result of Viking relying on OFOs to insure the flow of Viking's gas. However, in its motion to intervene, Wisconsin Public Service states that Viking has assured it that its non-conforming service agreement with NSP will include satisfactory language about the use of OFOs, and that Wisconsin Public Service therefore does not protest Viking's prior notice request.

Viking's commencement of construction under its Part 157 blanket certificate as proposed in its February 26, 2009 prior notice request.

21. Viking states that it is prepared, upon issuance of the requested order, immediately to undertake all pre-construction activities, to dedicate necessary resources, and to otherwise make all reasonable efforts to complete the project in time for the winter heating season. Viking asserts that it has obtained all necessary environmental permits and has purchased and shipped the pipe for staging. All but three easements have been obtained and all landowner consents for use of temporary work space have been secured. Final construction bids have been received and are ready to be awarded.

22. Viking states that the proposed tariff revisions it filed concurrently with its May 28, 2009 motion in this proceeding have been agreed to by the active parties in this proceeding and vetted with all of Viking's current firm shippers. The proposed revisions would clarify the procedures by which Viking will or will not use OFOs.

23. Specifically, proposed new section 8.2(c) of Viking's *General Terms and Conditions* would provide, if approved, that "an OFO shall not be issued (and backhaul nominations will not be confirmed), to maintain firm deliveries under a backhaul service agreement entered into, and approved by FERC, pursuant to section 2.3 of Rate Schedule FT-A, when sufficient displacement quantities are not available." Proposed new section 2.3, in turn, would provide, if approved, that backhaul service will be provided to a shipper under Rate Schedule FT-A "only in accordance with the terms and conditions of a non-discriminatory agreement approved by the FERC for such service." Viking states that the proposed new section 2.3 would assure We Energies, or any other party, an opportunity to review and, as necessary, object to any new backhaul transportation service agreement.¹⁶ Viking says the import of these new tariff provisions is to make clear that the NSP service will not cause incremental OFOs on the Viking system and that the NSP service and any future backhaul arrangements will be subject to Commission review, public comment, and agency approval.

¹⁶ We Energies and other parties were concerned that NSP would depend exclusively on backhaul service from Marshfield, Wisconsin (where Viking and ANR interconnect) to support the proposed Fargo Lateral deliveries. However, NSP has now agreed to change its Primary Receipt Point from Marshfield, Wisconsin to Chisago, Minnesota, and, except under limited predefined circumstances set forth in the non-conforming agreement, NSP has agreed to not change the Primary Receipt Point to Marshfield.

24. In conjunction with the proposed tariff modifications, Viking will also execute a transportation service agreement with NSP prior to commissioning of the Fargo Lateral facilities.¹⁷ Because certain terms and conditions will be included in this agreement that deviate from Viking's *pro forma* FT-A service agreement, Viking is obligated to submit the agreement for Commission review and approval under the procedures governing nonconforming agreements. Among other non-conforming provisions (e.g., to reflect the terms by which NSP will reimburse Viking for the cost of the new facilities), Viking and NSP have agreed to include certain provisions to conform to the proposed tariff modifications regarding Viking's use of OFOs. In addition, a non-conforming provision will be included regarding potential receipt point migration by NSP.

25. Viking states that We Energies has authorized Viking to state that Viking's filing of the described tariff provisions and Viking's sworn commitment to submit a non-conforming agreement with NSP in substantively the same form as the draft agreement attached to Viking's May 28, 2009 motion provide adequate protections to resolve We Energies' protest. Viking emphasizes that in the event the Commission rejects or modifies Viking's proposed tariff modifications, We Energies will be free to assert objections to the non-conforming agreement and to challenge the terms and conditions of service offered by Viking on behalf of NSP. Similarly, if Viking's non-conforming agreement substantively differs from the draft agreement attached hereto, or if the as filed non-conforming agreement contains any additional terms and conditions, We Energies will be free to challenge any such substantive differences or additional terms and conditions.

IV. Discussion

26. In view of the above discussion, we find that the public convenience and necessity require authorization for Viking's proposed Fargo Lateral expansion project. Further, although We Energies has not withdrawn its protest because it desires that the Commission issue an order premised on a record reflecting Viking's commitments in its May 28, 2009 motion, We Energies states that its concerns have been fully addressed by those commitments. We Energies requests that the Commission grant Viking's motion and issue an order within Viking's requested time frame (i.e., on or before June 10, 2009) to permit construction of the Fargo Lateral to proceed on schedule. In addition to mooting We Energies' concerns, Viking's commitments also resolve the same concerns expressed by other parties.

¹⁷ Under the Commission's regulations, such service agreement must be filed between 60 and 30 days prior to service. 18 C.F.R. § 154.207 (2008).

27. Under the circumstances, we find, as a practical matter, that Viking's proposal is no longer protested.¹⁸ For that reason, and because we are convinced that Viking needs to commence construction as soon as possible in order to ensure that the Fargo Lateral expansion facilities can be placed in service in a timely manner, we will waive the remainder of the blanket certificate regulations' reconciliation period which will end on June 10, 2009.¹⁹ For the same reason, we find good cause to waive Procedural Rule 213(d)(1) in order to authorize Viking's project prior to the end of the 15-day period for the filing of answers to Viking's and NSP's May 28, 2009 motion.²⁰

28. When the Commission ultimately finds that a protest to a prior notice request under the blanket certificate regulations should be dismissed or denied, it is Commission policy to authorize the construction and operation of the proposed facilities under the applicant's Part 157 blanket certificate, rather than grant redundant case-specific

¹⁸ Viking has made its tariff filing in Docket No. RP09-617-000 and the Commission will act on that filing, and on Viking's non-conforming service agreement with NSP when it is filed, in accordance with the Commission's normal procedures and based on the merits of those individual proceedings. As discussed herein, We Energies requests that the Commission authorize Viking's construction without further delay with the understanding that, in the event the Commission rejects or modifies Viking's proposed tariff modifications or in the event that Viking's final non-conforming agreement with NSP differs substantively from the draft agreement attached to their May 28, 2009 emergency motion, We Energies will raise any objections in those proceedings.

¹⁹ The purpose of the prior notice procedures, including the reconciliation period, is to allow interested parties to air legitimate concerns and afford all parties the opportunity to resolve their differences. Thus, the Commission has rarely found that circumstances warranted truncating the 30-day reconciliation period provided for in section 157.205(g) of the regulations. *See, e.g., CenterPoint Energy Gas Transmission Company*, 121 FERC ¶ 61,180 (2007).

²⁰ Procedural Rule 213(d)(1), 18 C.F.R. § 385.213(d)(1) (2008), provides that any answer to a motion must be made within 15 days after the motion is filed, unless otherwise ordered.

certificate authority.²¹ Therefore, we will authorize Viking to construct the proposed Fargo Lateral expansion facilities under its Part 157 blanket certificate, as it proposed.

29. Because Viking will undertake its Fargo Lateral expansion project under its Part 157 blanket certificate, Viking must comply with the environmental requirements set forth in section 157.206(b) of the regulations applicable to projects by pipelines under their Part 157 blanket certificates.²² Staff performed an environmental assessment (EA) in which it reviewed the environmental materials filed by Viking. The EA, which was placed in the record in Docket No. CP09-69-000 on June 1, 2009, confirms that the project is consistent with the requirements of section 157.206(b) of the regulations. Therefore, the Commission finds that its approval of the project in this order will not constitute a major Federal action significantly affecting the quality of the human environment.

30. The Commission, on its own motion, received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, and upon consideration of the record,

The Commission orders:

(A) Viking is authorized to construct and operate and abandon facilities as proposed in its February 28, 2009 prior notice request under its Part 157, Subpart F blanket certificate, subject to the applicable terms of and conditions in Part 284, Subpart G of the regulations.

(B) We Energies' protest is dismissed as moot.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²¹ See, e.g., *Kinder Morgan Interstate Gas Transmission LLC*, 123 FERC ¶ 61,018, at P 22 (2008) and *CenterPoint Energy Gas Transmission Company*, 121 FERC ¶ 61,180, at P 25 (2008).

²² 18 C.F.R. § 157.206(b) (2008).