

138 FERC ¶ 61,082
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Tennessee Gas Pipeline Company

Docket Nos. CP11-44-000

ORDER ON CLARIFICATION
AND DISMISSING REQUEST FOR STAY AS MOOT

(Issued February 2, 2012)

1. On November 3, 2011, the Commission issued an order¹ acting on applications in the Docket Nos. CP11-44-000, RP11-1597-000, and CP11-47-000. In the November 3 Order, the Commission, among other things, applied the primary function test to certain facilities owned and operated by Tennessee Gas Pipeline Company (Tennessee) and determined that some of Tennessee's facilities perform a gathering function exempt from the Commission's jurisdiction under Natural Gas Act (NGA) section 1(b) and that the other facilities at issue, as currently operated by Tennessee, perform a primary function of jurisdictional transmission.
2. On December 5, 2011, Tennessee filed a request for stay of the November 3 Order's requirement that Tennessee refunctionalize for accounting purposes, from transmission to gathering, the facilities found to be gathering facilities, effective the date of the order.² On December 5, 2011, Tennessee also filed a request for rehearing of that refunctionalization requirement and other findings in the November 3 Order.
3. As discussed below, this order clarifies the requirements of the November 3 Order with respect to the refunctionalization for accounting purposes of those facilities found in the order to be gathering, while deferring consideration of the remaining issues raised on rehearing by Tennessee.³

¹ *Tennessee Gas Pipeline Co.*, 137 FERC ¶ 61,105 (2011) (November 3, Order).

² *Id.* P 107.

³ The clarification provided by this order has the same effect that would result from granting Tennessee's separate request for a stay of the refunctionalization

(continued...)

Background

4. In Docket No. CP11-44-000, Tennessee filed an application under section 7(b) of the NGA for authority to abandon, by sale to Kinetica Partners, LLC (Kinetica), certain onshore and offshore facilities located in the Gulf of Mexico and Louisiana, including approximately 800 miles of pipeline, three separation and dehydration facilities, and six offshore platforms. In the same filing, in Docket No. RP11-1597-000, Tennessee requested that the Commission approve a settlement agreement Tennessee had negotiated with certain of its shippers regarding accounting and rate treatment to take into account Tennessee's sale of the facilities.⁴ In Docket No. CP11-47-000, Kinetica filed a petition requesting that the Commission determine that the facilities it sought to acquire from Tennessee would perform a gathering function exempt from the Commission's jurisdiction if acquired and operated by Kinetica.

5. As described in the November 3 Order, upon analysis of the facilities proposed by Tennessee to be abandoned by sale to Kinetica, the Commission determined that while over half of the facilities as currently operated by Tennessee primarily perform a jurisdictional transmission function, the remaining facilities primarily perform non-jurisdictional gathering functions. The order granted Tennessee authority to abandon the facilities determined to be performing a gathering function, but denied abandonment authorization with respect to the transmission facilities because Kinetica had not applied for certificate authority to acquire and operate those facilities as jurisdictional facilities.

6. Further, since Tennessee's application indicated that the offer of settlement was contingent on Tennessee receiving a final non-appealable order approving its proposed abandonment of all the facilities at issue, the November 3 Order dismissed Tennessee's offer of settlement as moot. Finally, with respect to the facilities found to be gathering facilities, the November 3 Order required Tennessee to "refunctionalize the original cost

requirement pending Commission action on its broader rehearing request. Therefore, we will dismiss Tennessee's stay request as moot and need not decide whether a stay of the refunctionalization requirement would be warranted under the Commission's standard for granting a stay.

⁴ Under the terms of the settlement agreement, which the Commission dismissed in the November 3 Order as moot, Tennessee would make a limited filing under section 4 of the NGA to reduce its currently effective Part 284 transportation rates to reflect the removal of plant-related costs associated with the facilities to be sold, plus \$5 million of annual operating-cost savings. The settlement agreement also provided for Tennessee to amortize and recover over 20 years a regulatory asset account amount equal to the difference between the net book values and the sales proceeds from the subject facilities.

of those facilities from transmission accounts to gathering accounts, effective the date of th[e] order.”⁵

7. Tennessee seeks rehearing of the November 3 Order’s finding that certain of the facilities proposed for abandonment currently perform a gathering function and thus, independent of a future sale to Kinetica, must be changed from transmission to gathering for Tennessee’s accounting and ratemaking purposes, effective the date of the order, i.e., November 3. Tennessee claims that it only applied for approval under section 7(b) of the NGA to abandon its facilities by sale to Kinetica and for approval under section 4 of the NGA of its offer of settlement. Tennessee asserts that because it did not apply for a determination of the status of its facilities as it currently owns and operates them, the Commission should have only determined the primary function of the facilities as they would be operated upon acquisition by Kinetica.

8. Tennessee’s request for rehearing also asks the Commission to reverse the November 3 Order’s dismissal of the settlement agreement regarding Tennessee’s accounting and rate treatment of its sale of the facilities at issue. Tennessee claims that the Commission was mistaken in interpreting the agreement as being contingent on a final order approving the entirety of Tennessee’s abandonment application. Tennessee claims that it has the discretion under the terms of the settlement to partially implement the agreement to the extent it decides to exercise the abandonment authorization that was granted in the November 3 Order. Thus, Tennessee asserts the Commission should not have dismissed the settlement as moot.

Discussion

9. All of Tennessee’s facilities at issue in this proceeding, including those found by the November 3 Order to be currently functioning as gathering facilities, are certificated facilities and their associated costs currently are treated by Tennessee as transmission costs for rate and accounting purposes. As discussed above, the November 3 Order found that many of the facilities at issue primarily perform gathering functions as currently operated. Thus, Ordering Paragraph (C) of the November 3 Order provides that, “[i]n its next section 4 rate case, Tennessee shall refunctionalize, from transmission to gathering, any facilities found herein to be gathering facilities if it has not yet abandoned the facilities.” In anticipation of rate adjustment in a future rate case to reflect the refunctionalization of any gathering facilities still retained by Tennessee at that time, the November 3 Order also required Tennessee to “refunctionalize the original cost of those facilities from transmission accounts to gathering accounts, effective the date of this order.”⁶

⁵ November 3 Order, 137 FERC ¶ 61,105 at P 107.

⁶ *Id.*

10. The Commission clarifies that its requirement that Tennessee refunctionalize costs “effective the date of th[e] order”⁷ did not mean that Tennessee was required to actually implement the accounting change *on* the date of the order. We recognize the potential inefficiencies inherent in a requirement that Tennessee immediately implement the type of accounting changes involved in this proceeding while the appropriateness of those changes are pending before the Commission on rehearing. The Commission’s concerns can be adequately protected by those changes being implemented, if ultimately required, at a later date, with the effectiveness of the changes being retroactive to the date of our initial order.

11. As noted above, the relief granted by this order has the same effect that would result from granting Tennessee’s request for a stay. Therefore, we will dismiss as moot Tennessee’s motion for a stay as necessary to prevent substantial and irreparable harm to Tennessee.

The Commission orders:

(A) The Commission’s November 3 Order is clarified as discussed in the body of this order.

(B) Tennessee’s request for temporary stay of the refunctionalization requirement is dismissed as moot.

(C) The other issues raised by Tennessee on rehearing will be addressed in a subsequent order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷ *Id.*