

139 FERC ¶ 61,008
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, L.L.C.

Docket No. CP11-513-000

ORDER DENYING PROTEST AND AUTHORIZING INCREASE IN
MAXIMUM ALLOWABLE OPERATING PRESSURE

(Issued April 3, 2012)

1. On July 11, 2011, Tennessee Gas Pipeline Company, L.L.C.¹ (Tennessee) filed a prior notice request, pursuant to section 7 of the Natural Gas Act (NGA) and sections 157.205 and 157.208 of the Commission's regulations, for authorization under its blanket certificate,² to increase the maximum allowable operating pressure (MAOP) of its Line 21B-100 in Harris County, Texas.³
2. Several landowners filed protests to Tennessee's prior notice filing. Because the protests were not withdrawn within the time specified in section 157.205(f) of the regulations, the Commission will review Tennessee's filing as a case-specific certificate application.⁴ For the reasons discussed below, the Commission will deny the protests and authorize Tennessee to increase the MAOP of Line 21B-100 under its Part 157 blanket certificate, subject to the successful results of the hydrostatic pressure test described herein.

¹ Effective October 1, 2011, Tennessee converted its corporate structure to a limited liability company and changed its name from Tennessee Gas Pipeline Company to Tennessee Gas Pipeline Company, L.L.C.

² Tennessee was issued a Part 157 blanket certificate in *Tennessee Gas Pipeline Co., a Division of Tenneco Inc.*, 20 FERC ¶ 62,409 (1982).

³ Line 21B-100 is also known as the Tomball Lateral.

⁴ 18 C.F.R. § 157.205(f) (2011).

I. Background and Proposal

3. Tennessee is a natural gas company, as defined by section 2(6) of the NGA,⁵ engaged in the business of transporting and storing natural gas in interstate commerce. Tennessee's transmission system extends northeasterly from Texas, Louisiana, and the Gulf of Mexico through 14 states⁶ to its terminus in New Hampshire.

4. Line 21B-100 is a seven-mile long, four-inch diameter pipeline with an MAOP of 678 pounds per square inch gauge (psig) located in Harris County, Texas.⁷ The current MAOP of 678 psig was established in 1970 pursuant to the Department of Transportation's (DOT) Minimum Federal Safety Standards for the transportation of natural gas by pipeline contained in Part 192 of Title 49 of the Code of Federal Regulations.⁸ Line 21B-100 connects to Line Nos. 100-1 and 100-3, two of Tennessee's mainlines, in Harris County. The current MAOP of Line Nos. 100-1 and 100-3 is 750 psig.

5. Tennessee requests authority to increase the MAOP of Line 21B-100 from 678 to 750 psig, and to thereafter operate Line 21B-100 up to the higher MAOP. Tennessee states that its request to raise the MAOP of Line 21B-100 to equal the 750 psig MAOP of the mainlines to which it connects is designed to provide greater operational flexibility (by eliminating the existing regulators that maintain the lower MAOP of the lateral line) and to reduce operational and maintenance costs associated with operating Line 21B-100 (by eliminating the need to monitor and maintain the pressure control and over-protection equipment). The proposed increase in the MAOP of Line 21B-100 involves no construction of pipeline or compression facilities, nor does Tennessee propose any increase in capacity or horsepower.

6. To accomplish the proposed MAOP uprate of Line 21B-100, Tennessee proposes to conduct a hydrostatic pressure test of Line 21B-100 and to remove the pressure regulator and over-protection equipment. Specifically, Tennessee proposes to expose the

⁵ 15 U.S.C. § 717a(6) (2006).

⁶ These states are Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, Rhode Island, and Connecticut.

⁷ Line 21B-100 was constructed and placed in service in 1955. *Tennessee Gas Transmission Company*, 14 FPC ¶ 986 (1955).

⁸ See 49 C.F.R. § 192.1 *et seq.* (2011). See, also, 49 C.F.R. § 192.619(c) (2011) governing maximum allowable operating pressure.

valves at each end of Line 21B-100 in order to install temporary testing equipment and isolate the line from the rest of Tennessee's system. Tennessee states that: (1) activity related to the pressure test will be confined to its right-of-way and a 100-square-foot temporary workspace partially outside the easement; (2) there will be only minimal ground disturbance associated with the installation of the testing equipment at either end of the line; and (3) there will be no ground disturbance at any of the fourteen tap valve sites along Line 21B-100, which are all located above ground.⁹ Tennessee will also remove the four-inch regulator assembly and a four-inch pipeline drip located at Milepost 21B-101+0.02, and clean Line 21B-100 by filtering and slugging approximately 1,000 gallons of water through the pipeline. Tennessee contends that the water used for cleaning the line will be transported off-site and disposed of in accordance with applicable state and federal requirements. Line 21B-100 then will be pressure tested with water for eight hours so that it may be certificated at an increased MAOP of 750 psig in accordance with the DOT's minimum federal pipeline safety regulations.¹⁰

7. Tennessee asserts that it has completed a review of the design, operating and maintenance history, and previous testing of Line 21B-100, as required by section 192.557 of Title 49,¹¹ and maintains that the proposed MAOP increase is safe and consistent with the requirements of the applicable DOT regulations. Tennessee estimates the cost of the proposed uprate will be \$364,000.

II. Public Notice, Interventions, and Comments

8. Public notice of Tennessee's prior notice request was published in the *Federal Register* on July 28, 2011 (76 Fed. Reg. 45,253). The deadline for filing interventions and protests in response to a prior notice filing is 60 days following the date of issuance of the notice.

9. Piedmont Natural Gas Company and National Fuel Gas Distribution Corporation filed timely, unopposed motions to intervene within the 60-day notice period. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹²

10. Consolidated Edison Company of New York, Inc. (Consolidated Edison) and Orange and Rockland Utilities Inc. (Orange and Rockland) jointly filed a two-days out-

⁹ The project area consists of improved pasture land.

¹⁰ 49 C.F.R. § 192.1 *et seq.* (2011).

¹¹ 49 C.F.R. § 192.557 (2011).

¹² 18 C.F.R. § 385.214(c) (2011).

of-time, unopposed motion to intervene. Consolidated Edison and Orange and Rockland have demonstrated an interest in this proceeding. The untimely motion will not delay, disrupt, or unfairly prejudice any parties to the proceeding. Thus, the Commission will grant this late-filed motion to intervene.¹³

11. Landowners Gary and Patricia Doerre, Gail Doerre Hughes, and Heather Hughes Hensley filed timely protests to Tennessee's prior notice filing, while landowner Herby Ray Doerre filed comments. Line 21B-100 crosses land owned by these landowners and they raise safety objections to the MAOP uprate based on the burial depth of the line, and concerns regarding impacts to the existing agricultural activity on the land.

12. Pursuant to section 157.205 of the Commission's regulations, authorization to engage in qualifying activities under a blanket certificate is automatic as long as no protests are filed by the 60-day deadline for filing interventions and protests.¹⁴ If a protest is timely filed and is not withdrawn within 30 days after the 60-day notice period (30-day "reconciliation period"), the prior notice request proceeds as an application under section 7 of the NGA for case-specific authorization.¹⁵ None of the landowners withdrew their protests during the 30-day reconciliation period. Therefore, pursuant to section 157.205(f) of the regulations, the Commission will treat Tennessee's prior notice request as an application for case-specific authority.¹⁶

III. Discussion

13. Since the facilities herein will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the proposed increase in the MAOP of the facilities is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Protests

14. The landowners opposing the MAOP uprate contend that an increase in the MAOP of Line 21B-100 poses a serious safety issue. The landowners assert that the lateral is not buried deeply enough to safely support its current MAOP, and that an increase in pressure will only exacerbate the safety issue. They argue that the depth of the line,

¹³ 18 C.F.R. § 385.214(d) (2011).

¹⁴ 18 C.F.R. § 157.205 (2011).

¹⁵ 18 C.F.R. § 157.205(f) (2011).

¹⁶ See, e.g., *Kinder Morgan Interstate Gas Transmission LLC*, 123 FERC ¶ 61,018, at P 7 (2008).

which they state is 30 to 36 inches in certain areas, is unacceptable for the farming/ranching land on which the line is located. Mr. Herby Ray Doerre is concerned that the pipeline has not been upgraded since its original installation in the 1950s, and that the shallow depth could cause a safety issue for the general public and for residents and businesses along Stuebner Airline Road, which is adjacent to the pipeline easement. Mr. Doerre asserts that this road had minimal traffic volume when the pipeline was installed, but is now a major thoroughfare in a developing area. He argues that the depth of the pipeline is inadequate because the increased traffic volume is placing more lateral pressure on the pipeline than existed originally. Mr. Doerre recommends that Line 21B-100 be buried at least six feet below ground.

15. Mr. Doerre also expressed concern regarding the impact of the project activities on the Doerre family's agricultural land. Mr. Doerre states that precautions are required to protect the existing agricultural activity in and along the easement and restore the land back to its original condition.

1. Safety

16. The Office of Pipeline Safety within DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) has jurisdiction over pipeline safety, not the Commission. Section 3(a) of the Natural Gas Pipeline Safety Act of 1968 (NGPSA) delegated to DOT the authority to develop, prescribe, and enforce minimum federal safety standards for the transportation of gas, including natural gas.¹⁷ Through the Pipeline Safety Laws and the pipeline safety standards promulgated by PHMSA in Title 49 of the Code of Federal Regulations,¹⁸ PHMSA regulates the design, materials, operating pressure, and amount of ground cover of interstate natural gas pipelines, as well as many other elements, in order to "provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities"¹⁹ The Commission has previously stated that the safety regulations in Title 49 "are intended to ensure adequate protection for the public and to prevent natural gas facility accidents and failures."²⁰ As part of the Commission's review of applications for the construction and

¹⁷ Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, 82 Stat. 720, as amended. This law, together with subsequent legislation enacted by Congress, was recodified at 49 U.S.C. 60101 *et seq.* (2006). These statutes are known as the Pipeline Safety Laws.

¹⁸ 49 C.F.R. Part 192 (2011).

¹⁹ Pipeline Safety Laws, 49 U.S.C. 60102(a)(1) (2011).

²⁰ See *Tennessee Gas Pipeline Co.*, 136 FERC ¶ 61,173, at P 71 (2011); *Transcontinental Gas Pipe Line Corp.*, 119 FERC ¶ 61,039, at P 46 (2007).

operation of natural gas pipeline facilities, the Commission must ensure that the applicant will comply with the DOT safety regulations.

17. Tennessee contends that it has complied with all applicable DOT safety regulations. Specifically, in its November 3, 2011 response to a Commission data request, Tennessee certifies that it has complied with the regulations in Subpart K of Part 192 governing “Uprating.”²¹ Tennessee further asserts that its proposal to operate Line 21B-100 at a MAOP of 750 psig is significantly below the specified minimum yield strength and design capability of the pipeline.²² Tennessee also indicates that it conducted a leakage survey that did not detect any leaks in the pipeline and did not discover any “information, data, condition, or anomaly to suggest that the pipeline may not be operated safely at the proposed MAOP.”²³

18. Moreover, Tennessee states that the hydrostatic test it will perform on Line 21B-100 will ensure that the pipeline can tolerate the proposed increase in pressure. In its October 24, 2011 response to the Commission’s engineering data request, Tennessee explains that when a company utilizes hydrostatic testing in accordance with DOT regulations,²⁴ the regulations require the use of a test procedure that will ensure discovery of all potentially hazardous leaks and that the test pressure be maintained for at least one hour.²⁵ Tennessee states that its own testing standards, designed to meet the DOT test procedure requirements, dictate that the test pressure equal 1.5 times the proposed MAOP, which would translate into a test pressure for this lateral of 1,125 psig. However, Tennessee asserts that it intends to test Line 21B-100 at pressures from 2160 psig to 2220 psig, for a period of eight hours, which are test conditions that significantly exceed those required by the DOT regulations and Tennessee’s own testing standards.²⁶

19. Tennessee explains that if there are any anomalies in the pipeline, they will be discovered during the hydrostatic test. Tennessee further explains that the return to service and increase in pressure to the higher MAOP will be accomplished in intervals

²¹ See Tennessee’s November 3, 2011 filing at Data Response No. 1.

²² *Id.*

²³ *Id.*

²⁴ See 49 C.F.R. § 192.503(2)(b) (2011) and 49 C.F.R. § 192.504 (2011).

²⁵ See Tennessee’s October 24, 2011 filing at Engineering Data Response No. 1. Tennessee states that the testing requirements of section 192.507 apply to Line 21B-100.

²⁶ *Id.*

once the previous MAOP of 678 psig is reached, to ensure the safe operation of Line 21B-100.²⁷ In addition, Tennessee states that once the pipeline is returned to service, a gas leak survey will be completed and Tennessee will follow its Operation & Maintenance (O&M) Manual for detecting and mitigating leaks.²⁸ Tennessee will also conduct periodic patrolling and leak surveys at the intervals provided in section 301 of its O&M Manual.

20. With respect to the landowners' arguments about the burial depth of the pipeline, DOT, not this Commission, regulates what constitutes an appropriate amount of ground cover for a pipeline. Subpart G of Part 192 of the DOT's safety regulations sets forth "General Construction Requirements for Transmission Lines and Mains." Section 192.327 of Subpart G requires that transmission lines, like Line 21B-100, be installed with a minimum cover of 30 inches in normal soil.²⁹

21. However, when DOT promulgated Part 192 of its regulations in 1970, pursuant to the NGPSA, it provided that the new part 192 standards affecting the design, installation, construction, initial inspection, and initial testing were not applicable to pipeline facilities in existence on the date the standards were adopted.³⁰ Line 21B-100 was placed into service in 1955. Further, the "Operations" and "Maintenance" standards set forth in Subparts L and M, respectively, of Part 192³¹ do not contain any requirement that a pipeline operator maintain the required installation depth once the pipeline is installed.³²

²⁷ Tennessee's October 24, 2011 filing at Engineering Data Response No. 1, citing DOT's incremental pressure increase requirements under Subpart K at 49 C.F.R. §§ 192.555(c), 192.555(d)(2), and 192.557(c) (2011).

²⁸ Tennessee's October 24, 2011 filing at Engineering Data Response No. 1.

²⁹ 49 C.F.R. § 192.327 (2011). Tennessee states that Line 21B-100 is a "transmission line" as defined in Section 192.3 of the DOT regulations. 49 C.F.R. § 192.3 (2011). See Tennessee's November 3, 2011 filing at Data Response Nos. 1 and 2.

³⁰ See *Establishment of Minimum Standards*, 35 Fed. Reg. 13,248 at 13,250 (August 19, 1970). However, under section 3(b) of the NGPSA, existing pipelines would be subject to the new maintenance, repair, and operations requirements.

³¹ See 49 C.F.R. § 192.601, *et seq.* (2011) and 49 C.F.R. § 192.701, *et seq.* (2011). Tennessee's November 3, 2011 filing at Data Response No. 1.

³² Tennessee states that it is in compliance with subparts L and M of Part 192.

22. Tennessee states that when Line 21B-100 was installed in 1955, the pipeline was buried at a depth of 30 inches on the Doerre family property in accordance with Tennessee's right-of-way agreements -- one with Herbert and Louise Doerre and the other with Lawrence and Juanita Doerre.³³ In response to the concerns of the landowners in this proceeding, Tennessee investigated the current burial depth of Line 21B-100. Tennessee determined that the current burial depth varies between 27 and 46 inches below grade within the areas owned by the landowners. Tennessee concludes that the burial depth of Line 21B-100 has varied very little since its installation.³⁴

23. Tennessee has certified that the proposed MAOP uprate meets DOT safety standards and that it is complying with all applicable DOT safety requirements. Moreover, while Line 21B-100 is a pre-existing pipeline not subject to DOT's regulations promulgated in 1970 governing the minimum cover or burial depth for transmission lines, portions of the line meet or exceed the 30-inch minimum cover requirement on the protesting landowners' property. Accordingly, the Commission finds that Tennessee is in compliance with DOT's regulations regarding safety.

2. Impact on Agricultural Activity

24. Mr. Doerre expressed concern regarding the impact of the project activities on the Doerre family's agricultural land. The project area consists of upland, improved pasture land. Tennessee's ground disturbing activities are limited to minor excavations within the existing, previously disturbed pipeline easement totaling 0.05 acres on the Doerre property and the 100-square-foot temporary workspace on land owned by another landowner.³⁵ Tennessee confirms that it will conduct project activities in accordance with the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan to mitigate and restore any disturbed areas to pre-existing conditions by soil replacement, regrading, and revegetation.³⁶ Tennessee indicates it will conduct follow-up monitoring to ensure the project area is successfully restored. Based on these representations, the Commission concludes that Tennessee's activities will have minimal impact on the Doerre family's agricultural land.

³³ Tennessee's November 3, 2011 filing at Data Response No. 1.

³⁴ *Id.* and Tennessee's October 24, 2011 filing at Engineering Data Response No. 2 and attached map.

³⁵ Tennessee received written permission from this landowner for the use of the workspace.

³⁶ Tennessee's July 11, 2011 Application at 4. *See, also*, Tennessee's November 8, 2011 filing at Data Response No. 3 and Attached Resource Report 7.

25. Since Tennessee must comply with all applicable DOT safety requirements and Tennessee's activities will have minimal impact on the Doerre's land, the Commission will deny the landowners' protests.

B. Authorization

26. Tennessee proposes to increase the MAOP of Line 21B-100 to match the MAOP of the two mainlines to which it connects, eliminating the need to reduce and regulate the pipeline pressure as gas flows from either of the mainlines to the lateral. All project activities will take place within the existing Line 21B-100 easement and a 100-square-foot temporary workspace, partially outside of the easement, for the discharge of the hydrostatic test water and staging of equipment. No new rights-of-way are required for the project, and Tennessee has obtained a written agreement with the landowner for the use of the temporary workspace. In addition, the Commission is denying the landowners' protests because Tennessee must comply with all applicable DOT safety regulations and the proposed project will have only minimal impact on the Doerre's agricultural land. Thus, the Commission finds that the proposed increase in the certificated MAOP of Line 21B-100 is required by the public convenience and necessity, subject to the successful results of the hydrostatic pressure test.

27. When the Commission ultimately finds, as here, that a protest should be denied, it is Commission policy to authorize a proposed project under the applicant's Part 157 blanket certificate, rather than grant redundant case-specific certificate authority. Therefore, the Commission will authorize Tennessee to increase the MAOP of Line 21B-100, as proposed, under its Part 157 blanket certificate.³⁷

IV. Environmental Analysis

28. Since the protests filed by the landowners to Tennessee's prior notice filing were not withdrawn within the time specified in our regulations, the Commission staff prepared an environmental assessment (EA) that addresses the impact of the hydrostatic testing and removal of the regulator equipment on geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, and alternatives.³⁸ No comments were received in response to the EA. Tennessee indicates that it consulted with the U.S. Fish & Wildlife Service, the Texas Historical

³⁷ See, e.g., *Tennessee Gas Pipeline Co.*, 125 FERC ¶ 61,258 (2008); *Destin Pipeline Co.*, 83 FERC ¶ 61,308, at 62,268 (1998).

³⁸ The EA was placed into the record on December 2, 2011.

Commission, and the Railroad Commission of Texas, Oil & Gas Division (Texas Railroad Commission).

29. As described in the EA, Tennessee will hydrostatically pressure test the pipeline in accordance with the DOT safety standards in Part 192 of Title 49 to ensure its ability to withstand the uprated MAOP before the pipeline becomes operational. The hydrostatic test will require the withdrawal of approximately 30,000 gallons of water from a municipal source. The discharge of the hydrostatic test water will be controlled through a temporary filtering and dewatering structure constructed of hay bales and lined with silt fencing and supports. The test and discharge are scheduled to last up to 12 hours and the velocity of the discharge rate would not exceed 200 gallons per minute. Tennessee has stated that it will obtain the necessary discharge permit from the Texas Railroad Commission after it receives certificate authority from this Commission and prior to testing.³⁹

30. The EA determined that the activities required to increase the MAOP of Line 21B-100 will have no affect on wetlands or water bodies; mineral resources; federally-owned lands; national or state wild or scenic rivers, national trails, nature preserves, wilderness areas or registered landmarks; Native American religious sites and reservations; coastal zone management areas; federal and/or state-listed threatened and endangered species; or residential areas. Any impacts on vegetation and wildlife will be minimal since the work will be conducted in pasture land, and all disturbed areas will be restored.

31. Tennessee states that there are no public or private groundwater supply wells within 150 feet of the project work areas. Additionally, there are no U.S. Environmental Protection Agency or state-designated sole-source aquifers or wellhead protection areas within the project area. As such, the EA finds that the proposed project activities would have no effect on potable groundwater resources. In addition, the EA finds that land-disturbance activities and the operation of equipment and vehicles would have temporary, short-term impacts on air and noise quality from excavation and restoration activities and from vehicle exhaust.

32. The EA concluded that approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment if constructed and operated in accordance with Tennessee's application, supplements, and the environmental conditions included in the EA.

33. As noted above, since the Commission is denying the protests, Tennessee will undertake its MAOP uprate under its Part 157 blanket certificate. Accordingly, Tennessee must comply with the environmental requirements of section 157.206(b) of the

³⁹ Tennessee's October 24, 2011 filing at Environmental Data Request No. 1.

Commission's regulations applicable to projects undertaken by pipelines under their Part 157 blanket certificates.⁴⁰ These requirements will provide a similar degree of environmental protection to the conditions that were included in the EA.⁴¹ The Commission finds that approval of the project will not constitute a major federal action significantly affecting the quality of the human environment.

34. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁴²

35. 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, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) Tennessee is authorized to increase the MAOP of the Line 21B-100 as described herein and more fully described in Tennessee's prior notice request, subject to the successful results of the hydrostatic pressure test.

(B) Consolidated Edison's and Orange and Rockland's untimely motion to intervene is granted.

(C) The protests of the landowners are denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁰ 18 C.F.R. § 157.206(b) (2011).

⁴¹ The Commission, therefore, is not including the conditions of the EA as part of this order.

⁴² See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).