

133 FERC ¶ 61,055
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Texas Eastern Transmission, LP and Texas Gas
Transmission, LLC

Docket No. CP10-490-000

ORDER APPROVING ABANDONMENT AND ISSUING CERTIFICATE

(Issued October 21, 2010)

1. On August 23, 2010, Texas Eastern Transmission, LP (Texas Eastern) and Texas Gas Transmission, LLC (Texas Gas), jointly filed an application under section 7 of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² requesting permission and approval for Texas Gas to abandon capacity leased on Texas Eastern's facilities in its East Texas Access Area Zone (Zone ETX) and certificate authority for Texas Eastern to reacquire the capacity associated with terminating the lease with Texas Gas.

2. As discussed below, we will approve Texas Gas's request to abandon its leased capacity and authorize Texas Eastern to reacquire the same capacity.

I. Background and Proposals

3. Texas Eastern owns and operates an interstate natural gas pipeline system, a portion of which, Zone ETX, is located in Texas, Louisiana, and Arkansas. On September 1, 2005, the Commission approved an application under sections 7(b) and 7(c) of the NGA granting Texas Eastern authority to abandon by lease to Texas Gas 103,500 dekatherms (Dth) per day of existing capacity located in Texas Eastern's Zone ETX between a primary receipt point near Bienville, Texas and a primary delivery point near Sharon, Texas.³ Section 1.5 of the lease agreement between Texas Eastern and Texas Gas states that after a primary term of five years that began on December 1, 2005, the

¹ 15 U.S.C. §§ 717-717z (2006).

² 18 C.F.R. Part 157 (2010).

³ *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185 (2005).

leased capacity would revert back to Texas Eastern upon termination of the lease agreement. Texas Gas held an open season and entered into a firm transportation agreement, which has the same term as the lease agreement with Texas Eastern, with Devon Gas Services, L.P. (Devon) for service on the leased capacity.

4. In anticipation of the November 30, 2010 termination date of the lease agreement, Texas Gas requests Commission NGA section 7(b) permission and approval to abandon the leased capacity and Texas Eastern requests Commission NGA section 7(c) certificate authorization to reacquire the capacity. The applicants request issuance of the necessary authorizations by October 15, 2010, to allow themselves and their shippers time to prepare for the transfer of the leased capacity back to Texas Eastern.

II. Notice and Interventions

5. The Commission issued notice of the parties' application on September 7, 2010. Timely, unopposed motions to intervene were filed by Piedmont Natural Gas Company, Inc., ProLiance Energy LLC, National Grid Delivery Companies, New Jersey Natural Gas Company, Memphis Light, Gas and Water Division, PSEG Energy Resources & Trade LLC, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., and Philadelphia Gas Works.⁴ No party filed a protest or adverse comments.

III. Discussion

6. Because the leased capacity is used to transport natural gas in interstate commerce over facilities subject to the jurisdiction of the Commission, Texas Gas's proposed abandonment and Texas Eastern's proposed reacquisition of the leased capacity are subject to the requirements of subsections (b), and (c), of NGA section 7.

7. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest in the lessor's pipeline subject to the lessor obtaining NGA section 7(b) abandonment of the capacity and the lessee receiving section 7(c) certification for its acquisition of the leased capacity.⁵ When the lease terminates, and with it, the property

⁴ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2010).

⁵ *Texas Eastern Gas Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001); *Panhandle Eastern Pipe Line Co.*, 73 FERC ¶ 61,137, at 61,390 (1995). *See also* *Trunkline Gas Co., LLC*, 132 FERC ¶ 61,069, at P 7 (2010).

interest of the lessee, the Commission requires the lessee to obtain authority to abandon the leased capacity and the lessor to obtain certificate authorization to reacquire the capacity.⁶

8. The lease agreement between Texas Eastern and Texas Gas is scheduled to terminate on November 30, 2010. The parties state that Texas Gas's transportation agreement with Devon, the only shipper using the leased capacity, also terminates when the lease agreement ends. Since there is no longer any need for Texas Gas to lease the subject capacity, we find Texas Gas's proposed abandonment is permitted by the present or future public convenience or necessity.

9. Although the expiration of the applicants' lease agreement ends Texas Gas's property interest in the leased capacity, Texas Eastern requires certificate authorization to reacquire this capacity for use for service under its own tariff. The Commission applies its Certificate Policy Statement's⁷ criteria when addressing requests by pipelines for certificate authority to lease capacity owned by other pipelines.⁸ When, as here, the lessor pipeline reacquires the capacity, the subsidization and competitive concerns addressed by the Certificate Policy Statement are generally not implicated.

10. In this case, Texas Eastern will reacquire 103,500 Dth per day of capacity without incurring any costs that would affect the rates of Texas Eastern's shippers. Allowing the lease agreement to expire also eliminates the need for Texas Gas to pay Texas Eastern for the leased capacity. Texas Gas's agreement with Devon, the sole shipper with a firm transportation agreement for the leased capacity, will terminate, as agreed, with the expiration of the lease agreement. Thus, the abandonment will not affect Texas Gas's shippers. Furthermore, Texas Eastern states that it has held an open season to allocate the 103,500 Dth per day of capacity that will become available upon its reacquisition of the capacity. Finally, no party filed a protest or adverse comments in response to the application. Thus, we find Texas Eastern will be able to reacquire capacity on its own system without relying on subsidization from its existing customers and without otherwise adversely impacting its existing shippers. Further, we find Texas Eastern's proposal will not adversely impact existing pipelines in the market and their captive

⁶ See *Islander East Pipeline Co.*, 102 FERC ¶ 61,054, at P 35 (2003).

⁷ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

⁸ See, e.g., *CenterPoint Energy Gas Transmission Co.*, 126 FERC ¶ 61,239, at P 12 and 13 (2009).

customers.⁹ Accordingly, we find Texas Eastern's reacquisition of 103,500 Dth per day of capacity is required by the public convenience and necessity.

11. At a hearing held on October 21, 2010, 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 authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) Texas Gas is granted permission and approval under NGA section 7(b) to abandon the capacity lease agreement with Texas Eastern, as more fully described in this order and the application.

(B) A certificate of public convenience and necessity is issued to Texas Eastern under NGA section 7(c) authorizing it to reacquire the leased capacity from Texas Gas, as more fully described in this order and the application.

(C) The abandonment approval and certificate authorization issued in Ordering Paragraphs (A) and (B) are conditioned on Texas Gas and Texas Eastern complying with all applicable Commission regulations under the NGA and particularly section 154 and paragraphs (a), (d), (e), and (g) of section 157.20 of the Commission's regulations.

(D) Texas Gas shall notify the Commission within ten (10) days of the date of abandonment of the described capacity.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ We also note that since the subject facilities have already been constructed and certificated, the policy statement's concerns related to disruptions of the environment, landowner rights, and the exercise of eminent domain are not implicated.