

134 FERC ¶ 61,120
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.

Tennessee Gas Pipeline Company

Docket No. CP10-485-000

ORDER AUTHORIZING SERVICE ABANDONMENT

(Issued February 17, 2011)

1. On August 12, 2010, in Docket No. CP10-485-000, Tennessee Gas Pipeline Company (Tennessee) filed an application under section 7(b) of the Natural Gas Act (NGA)¹ for authorization to abandon ownership interests and dedicated capacity in certain Texas onshore and offshore supply facilities in the Central Texas Gathering System extending from Transcontinental Gas Pipe Line Corporation's (Transco) mainline in Wharton County, Texas, to offshore production fields in the Gulf of Mexico. On December 6, 2010, in response to a Commission staff data request, Tennessee revised its request, proposing only that it be permitted to abandon its obligation to provide service through its capacity in these facilities. We grant Tennessee's service abandonment request, as discussed below.

I. Background and Proposal

2. Tennessee is a natural gas transmission company primarily engaged in transporting natural gas in interstate commerce under authorizations granted by and subject to the Commission's jurisdiction. Tennessee's mainline transmission system extends in a northeasterly direction from its primary sources of supply in Texas, Louisiana and the Gulf of Mexico through six southeastern and nine other states east of the Mississippi River.² Tennessee is a corporation organized and existing under the laws of the State of Delaware. Tennessee is a party to two joint venture agreements with

¹ 15 U.S.C. § 717f(b) (2006).

² Texas, Louisiana, Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island and Connecticut.

Transco and other pipelines relating to ownership and operation of the onshore and offshore facilities referenced in its application.

Description of Facilities

3. Tennessee states that the pipeline and other facilities through which its services would be abandoned include:

- a) Tennessee's 50 percent interest in the Project Galveston 391/393³ (Project Galveston) offshore facilities consisting of:
 - 20.3 miles of 20-inch diameter pipeline from Brazos Block A-1 to Galveston Block 393;
 - 6.0 miles of 16-inch diameter pipeline from Galveston Block 393 to Galveston Block 391;
 - 1.1 miles of 12-inch diameter pipeline from Galveston Block 393 to Galveston Block 393; and,
 - 1.1 miles of 12-inch diameter pipeline from Galveston Block 392 to Galveston Block 392, and
- b) Tennessee's 27.0667 percent interest in the Project Central Texas Loop (PCTL)⁴ consisting of:
 - 55.5 miles of 36-inch diameter pipeline from the Markham Plant to Brazos Block 538;
 - 30.15 miles of 30-inch diameter pipeline from Brazos Block 538 to Brazos Block A76; and,
 - Metering and Regulation Equipment in the Markham Plant, Matagorda County, Texas.

4. Tennessee states that the requested abandonment would facilitate economic and operational efficiencies for its mainline transmission system by eliminating nearly \$912,000 in annual operation and maintenance expenses. Additionally, as discussed below, Tennessee provided information showing that its capacity in the relevant facilities has had limited usage over the past four plus years. While Tennessee's dedicated

³ See *Transcontinental Gas Pipe Line Corp.*, 20 FERC ¶ 61,032 (1982). Transco is the only other joint venture pipeline partner.

⁴ See *Transcontinental Gas Pipe Line Corp.*, 31 FERC ¶ 61,186 (1985). Transco, ANR Pipeline Company, Northern Natural Gas Company, Columbia Gulf Transmission Company, and Southern Natural Gas Company are joint venture pipeline partners.

capacity is approximately 200 MMcf per day, Tennessee states that the average usage from January 2006 through May 2010 has been less than 22 MMcf/d.

5. Tennessee states that the majority of the gas that it did flow was pursuant to a fee-free pooling scheduling service under which gas is aggregated for sale.⁵ Tennessee states that there are no firm transportation agreements associated with its capacity in these facilities and that natural gas has not been transported through Tennessee's capacity pursuant to either a firm transportation agreement or an interruptible transportation agreement for more than twelve months.⁶ Tennessee also states that the proposed abandonments will not have an adverse effect on any of its current shippers.

6. Tennessee states that certain of the facilities for which abandonment approval is sought have been declared in other Commission proceedings to be non-jurisdictional gathering facilities,⁷ and thus it asserts that the proposed abandonment "resolves the possible conflict between Tennessee's focus as provider of interstate transmission services and the gathering functionalization of the majority of these facilities."⁸

7. No construction, removal, or modification of any facility is required to effect the abandonments. Consequently, Tennessee requests an environmental categorical exclusion declaration by the Commission, since no adverse environmental effects will result from the proposed abandonment.

II. Interventions and Protests

8. Tennessee's application for abandonment authorization was published in the *Federal Register* on August 31, 2010 (75 FR 53,281). Timely, unopposed motions to intervene were filed by Consolidated Edison Company of New York, Inc. & Orange and Rockland Utilities, Inc., Helix Oil & Gas Co., L.L.C. & Tecpetrol Operating LLC, National Fuel Gas Distribution Corp., National Grid Gas Delivery Companies, Piedmont Natural Gas Co., Inc., Tennessee Customer Group,⁹ and Transcontinental Gas Pipe Line

⁵ Rate Schedule SA, Supply Aggregation Service.

⁶ Application at 8.

⁷ Citing *Transcontinental Gas Pipe Line Corporation*, 96 FERC ¶ 61,115 (2001).

⁸ Application at 8.

⁹ Centerpoint Energy Mississippi Gas; City of Clarksville Gas Water Department, City of Clarksville; City of Corinth Public Utilities Commission; Delta Natural Gas Company, Inc.; Greater Dickson Gas Authority; Hardeman Fayette Utility District; Henderson Utility Department; Holly Springs Utility Department; Humphreys County

Company, LLC (Transco).¹⁰ Transco also filed a motion to protest out-of-time, if the Commission considers one to be necessary. We find that such motion is unnecessary in the circumstances discussed below.

9. Helis Oil & Gas Company, LLC and Tecpetrol Operation LLC (Helis and Tecpetrol) included with their motion to intervene a protest and a request for emergency relief to allow them to continue effecting transfers at receipt points previously used until a Commission order granting the requested abandonment is issued.¹¹ In their protest, Helis and Tecpetrol contend that Tennessee's abandonment application contains factual errors and misstatements regarding the manner in which producers, such as Helis and Tecpetrol, would be impacted by Tennessee's proposal. In particular they raise issue with Tennessee's assertion that no shipper currently uses the facilities in question for firm or interruptible transportation services. They further contend that Tennessee impermissibly terminated service on the Project Central Texas Loop (PCTL) system prior to receiving abandonment authorization from the Commission, in violation of section 7(b) of the NGA. Helis and Tecpetrol request the Commission issue orders 1) requiring Tennessee to immediately begin accepting wellhead nominations again on the subject facilities and 2) summarily denying Tennessee's proposed abandonment of its service obligations on the PCTL facilities.

10. Transco's timely motion to intervene requested clarifications of Tennessee's requests. Tennessee responded to Transco's request for clarification and answered Helis and Tecpetrol's protest on September 16, 2010. Transco thereafter filed a protest on September 27, 2010, stating that it did not oppose Tennessee's request to abandon transportation service but protested Tennessee's request to abandon its ownership interest in the facilities and contractual liabilities at this time. Transco's concern is that a Commission order purporting to terminate Tennessee's ownership interests in the relevant facilities may be used to shield Tennessee from its share of the costs of ultimate physical abandonment of the facilities, as provided by contract between these two parties, should such abandonment ever occur. Tennessee's October 4, 2010 answer stated that it was not asking the Commission to modify its contractual obligations, including

Utility District; Town of Linden; Morehead Utility Plant Board; Portland Natural Gas System, City of Portland; Savannah Utilities; Springfield Gas System, City of Springfield; City of Waynesboro; and West Tennessee Public Utility District.

¹⁰ 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).

¹¹ On October 21, 2010, and February 2, 2011, Helis and Tecpetrol repeated their request for Commission issuance of an emergency relief order.

contractual liabilities for facility abandonment costs.¹² We address the substance of the protests and responsive pleadings below.

III. Discussion

11. Since Tennessee proposes to abandon services involving and relating to transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposed abandonment is subject to the requirements of NGA section 7(b).¹³

12. As clarified in Tennessee's response to the Commission's data request, Tennessee is not asking for Commission authorization to modify ownership or operation agreements in any way or to avoid its liability under those agreements.¹⁴ Both Tennessee and Transco cite as precedent the Letter Order issued in *Columbia Gulf Transmission Company*, Docket No. CP09-443-000, where authority was granted to Columbia Gulf to abandon its obligation to provide certain transmission service through various facilities comprising the Project Central Texas Loop (PCTL) system.¹⁵ No discussion was included in the order of Columbia Gulf's ownership rights in those facilities. Tennessee agrees with Transco that Tennessee would remain liable for its appropriate proportionate

¹² The Commission has found that good cause may justify acceptance of answers to protests despite the general rule provided in Rule 213(a)(2) precluding such answers. 18 C.F.R. § 385.213(a)(2). *See, e.g., Florida Gas Transmission Co.*, 129 FERC ¶ 61,135 at P 9 (2009). We find such good cause here since the answers filed by the various parties have provided information assisting the Commission's resolution of the issues presented.

¹³ 15 U.S.C. § 717f (b) (2006). Tennessee states that certain of the facilities identified in the application were found to be gathering facilities, citing *Transcontinental Gas Pipe Line Corp.*, 96 FERC ¶ 61,115 (2001). We note that the Commission found therein that "upon acquisition by [Williams Gas Processing-Gulf Coast Company, L.P., an affiliate of Transco's]" the facilities to be abandoned "will be deemed gathering facilities." 96 FERC at 61,442 (2001). Transco has informed the Commission that "Transco's ownership interests" in these facilities have not been transferred to that affiliate. *See* Transco's September 14, 2010 Motion to Intervene and Request for Clarification, at 4, n. 1. We thus act here on the supposition and belief that the facilities in question are currently jurisdictional transportation facilities.

¹⁴ December 6, 2010 Response to November 8, 2010 Data Request No. 2.

¹⁵ *See Columbia Gulf Transmission Co.*, Docket No. CP09-443-000 (August 18, 2009) (unpublished delegated letter order).

share of abandonment costs, if any, under the agreements.¹⁶ As a result, Transco's protest is moot.

13. As noted above, Tennessee alleges that its approximately 200 MMcf/d of capacity in the subject facilities is severely underutilized. In response to a staff data request, Tennessee provided five years of facility usage data.¹⁷ For the January 2006 through May 2010 period, the operational data showed that the facilities' average usage declined to 16,274.5 Mcf/d, or 8.1 percent of Tennessee's 200,000 Mcf/d capacity rights. That data also showed a continuous facility usage (monthly peak) decline for the four-year period from January 2005 through December 2008. Tennessee notes that "the majority of that gas flow has been pursuant to fee free pooling."¹⁸ While Helis and Tecpetrol contest the accuracy of specific information submitted by Tennessee with respect to the volumes and timing of deliveries of gas into its system by Helis and Tecpetrol and the meters into which that gas was delivered, their filings do not call into question Tennessee's assertions regarding the relative usage of the capacity it seeks to abandon. Moreover, it appears from the data submitted by Helis and Tecpetrol that during the thirty-one-month period from November 2007 to May 2010, no gas at all flowed in twelve of those months, including a nine-month consecutive period in 2008-2009. In addition, the protestors do not contest Tennessee's estimate that its proposed abandonment would save approximately \$912,000 in annual operation and maintenance expenses. Rather, they caution against allowing an "Outer Continental Shelf pipeline" to "economic out" of its obligation to provide service "despite the clear need for a continuation of such service." They also note that Tennessee is not alleging that it is not currently recovering the costs associated with such service through its existing mainline transportation rates.

14. We find that Tennessee has established that the capacity over which it seeks to abandon service is significantly underutilized. In addition, we find that Tennessee has accurately represented that "[n]o shipper currently uses the PCTL facilities or the Project Galveston 391/393 facilities for firm or interruptible transportation services,"¹⁹ in that as of September 2010, no volumes have flowed under firm (FT) or interruptible (IT) service agreements in over twelve months through Tennessee's portion of the facilities.²⁰

¹⁶ December 6, 2010 Response to November 8, 2010 Data Request No. 2.

¹⁷ See December 6, 2010 Response to November 8, 2010 Data Response No. 7(a).

¹⁸ Application at 8.

¹⁹ Application at 7.

²⁰ See September 16, 2010 Motion of Tennessee for Leave and Answer at 2.

However, a small amount of pooling service, offered by Tennessee to aggregators under Rate Schedule SA as an adjunct to its open-access transportation service, has been provided over the subject capacity. Rate Schedule SA service is available to a qualified aggregator who has executed a supply aggregation service agreement with Tennessee.²¹ Aggregators may aggregate supply from any and all receipt points within Tennessee's Pooling Areas and assume the responsibility of balancing, by Pooling Area, scheduled receipts of gas "into the applicable supply aggregation service agreement with scheduled quantities delivered out of the supply aggregation service agreement."²² However, it is relevant here to note that Helis and Tecpetrol do not have SA service agreements with Tennessee. Rather, Helis and Tecpetrol sell their natural gas supplies at meters located on the PCTL facilities to Superior Natural Gas Corporation (Superior), which does have a supply aggregation service agreement with Tennessee. That contract will remain in effect and Superior may continue to aggregate supplies elsewhere on Tennessee's system.

15. The Commission described the nature of the service provided under Rate Schedule SA in the NGA section 4 proceeding in which Tennessee first proposed the service.²³ Rate Schedule SA "does not reserve, use, or create transportation capacity. This Rate Schedule encompasses a scheduling service that overlays individual transportation customer receipt points for delivery to designated paper pooling delivery points. . . . No gas is actually transported under this transportation Rate Schedule."

16. Further, the SA Service Agreement provides that the contractual relationship between Tennessee and an aggregator "shall remain in force and effect on a month to month basis" and the "contract may be terminated by either Transporter of (sic) Aggregator upon 30 days prior written notice to the other."²⁴ Nonetheless, Tennessee has

²¹ Helis and Tecpetrol cite *Transcontinental Gas Pipe Line Corp.*, 127 FERC ¶ 61,206 (2009) to indicate that the "purpose of pooling is to permit producers or shippers to aggregate gas supplies at a single point so that the total package of gas can be sold to customers at the pooling point." Tennessee notes that Superior Natural Gas Corporation, Helis and Tecpetrol's aggregator, "does not transport [on Tennessee] under a firm or interruptible rate schedule." Motion of Tennessee for Leave and Answer (September 16, 2010) at 3.

²² Rate Schedule SA, Section 2.1.

²³ See *Tennessee Gas Pipeline Co.*, 71 FERC ¶ 61,102, *order on clarification and reh'g*, 73 FERC ¶ 61,278, at 61,765 (1995).

²⁴ See section 6.1 of the SA Service Agreement. Tennessee Gas Pipeline Company, FERC Gas Tariff, Original Sheet No. 791. Also see *Transwestern Pipeline Co.*, 109 FERC ¶ 61,062 at 61,247 (2004) (while removal of receipt points may affect

not terminated Superior's agreement and Superior may continue to aggregate supply from other receipt points on Tennessee's system. Further, under section 3.3 of Rate Schedule SA, Tennessee may "adjust by Pooling Area(s) scheduled receipts into, or deliveries out of, Aggregator's supply aggregation service agreement." Under section 3.4, Tennessee may, in the event of a "reduction in the supplies or markets, or in the event that pipeline operating conditions require [Tennessee] to adjust scheduled receipts or deliveries as described in section 3.3 above, [Tennessee] may restrict scheduled quantities based on the Aggregator's pre-determined ranking."

17. Contrary to the assertion of Helis and Tecpetrol in their protest that there is "a clear need" for the continuation of the service Tennessee seeks to abandon, we find instead that it is clear from the record that there is minimal utilization of the subject capacity. There are no customers with current rights to any of the capacity under either firm or interruptible service agreements with Tennessee.²⁵ No customers with SA service agreements have protested the proposed abandonment.²⁶ Further, it is not contested that the proposed abandonment should enable Tennessee (and ultimately its existing shippers) to avoid an estimated \$912,000 in annual operation and maintenance expenses. Accordingly, we find that the public convenience or necessity permit Tennessee's abandonment of service as proposed.

18. Moreover, notwithstanding the fact that Tennessee is abandoning service through its share of capacity in the subject facilities, the facilities themselves, including the meters currently being used in conjunction with Tennessee's services, will remain in place and continue to be operated by Transco.²⁷ There is no indication in the record that

pooling services, "shippers who contract for this type of transportation service assume the risk that this type of service may be interrupted.") (2004).

²⁵ See, *Southern Star Central Gas Pipeline, Inc.*, 115 FERC ¶ 61,057 at P 34 (Commission will presume there are no continuity of service issues present in a proceeding if there are no protests by shippers with contracts for firm transportation service on the facilities that the interstate pipeline seeks to abandon.)

²⁶ In *Tennessee Gas Pipeline Co.*, 81 FERC ¶ 61,352 (1997), *reh'g denied*, 93 FERC ¶ 61,080 (2000), the Commission noted that producers who able to pool supplies under Rate Schedule SA, but with no contracts for transportation service, "are not currently considered shippers" on the facilities to be abandoned. 81 FERC at 62,650 (1998). In that proceeding the Commission approved the abandonment of certain certificated transportation facilities over the objections of such producers.

²⁷ December 6, 2010 Response to November 8, 2010 Data Request No. 7(f).

Helis, Tecpetrol, or any purchaser of their gas, including Superior, their current aggregator, would be unable to obtain service on Transco's (or ANR's) share of capacity²⁸ to access Tennessee's pooling point or another point of delivery into the interstate mainline grid.²⁹ The availability of such capacity would be posted by those pipelines.³⁰

19. In conjunction with their request for emergency relief, Helis and Tecpetrol argue that Tennessee has abandoned a jurisdictional service without NGA authority, by ceasing the pooling scheduling service on its capacity in the relevant facilities as of June 1, 2010, while not formally filing its request for abandonment authority until August 12, 2010. As described above, the contract for Supply Aggregation Service between Tennessee and its customer, Superior, provides substantial rights to Tennessee to alter the terms of such service. As indicated in the exhibits to Helis's and Tecpetrol's initial protest, Tennessee began as early as February 5, 2010, to notify Superior of its intent to amend its Rate Schedule service agreement to remove the availability of certain meters. There is no evidence in the record that Superior protested this move as being contrary to the terms of their agreement. While Helis and Tecpetrol did complain to Tennessee that its actions were contrary to the terms and conditions of Superior's service agreement, as we noted previously, Helis and Tecpetrol are not in contractual privity with Tennessee. The term "abandonment" denotes a permanent cessation of service. We do not find that Tennessee's actions here, i.e., revising its service agreement with a non-protesting customer in anticipation of making an abandonment filing (which it indeed made within three months of the effective date of the service change), constituted abandonment of service under NGA section 7(b). Accordingly, an emergency order requiring Tennessee

²⁸ Tennessee and Transco have stated that pursuant to their construction and ownership agreements, upon Tennessee's discontinuance of its use of capacity in the subject facilities, rights to that capacity will be distributed proportionately to the remaining owners who have not discontinued use of the facilities. See Transco's Motion to Intervene and Request for Clarification, filed September 14, 2010, at 6, and Tennessee's December 6, 2010 Response to November 8, 2010 Data Request No. 7(f).

²⁹ For example, Transco provides supply aggregation services under its existing tariff. See Transco - FERC Gas Tariff Part III - Rate Schedules Section 8.2 - Rate Schedule POOLING.

³⁰ We note that the protestors do not contest Tennessee's repeated assertions (see, e.g., Exhibit C to Helis's and Tecpetrol's September 9, 2010 filing) that "[a]ccess to capacity on [PCTL] is still available through Transco and ANR." Of course, it may or may not cost more to duplicate the current service arrangements on another pipeline. However, in the absence of any firm transportation agreements, that fact alone is not sufficient to affect our finding that the proposed abandonment is permissible.

to continue to provide aggregation service utilizing the subject capacity pending full review of this application was unnecessary and would have been inappropriate. Further, upon such full review of Tennessee's application, it is clear that the record evidence supports our finding here that the requested abandonment is permitted by the public convenience or necessity.

IV. Environment

20. Environmental review of this proposal under section 380.4 of the Commission's regulations confirms that the abandonment of service qualifies as a categorical exclusion under section 380.4(a)(29).³¹

V. Conclusion

21. At a hearing held on February 17, 2011, the Commission on its own motion received and made a part of the record in these proceedings all evidence submitted, including the application and exhibits supporting the sought authorizations, and after consideration of the record,

The Commission orders:

(A) Tennessee is granted permission and approval under NGA section 7(b) to abandon its obligation to provide transmission service through the subject facilities, as described in this order, and as more fully described in Tennessee's application.

(B) Tennessee shall notify the Commission within 10 days of the date the service abandonment is effective.

(C) The joint protest of Helis and Tecpetrol is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³¹ 18 C.F.R. § 380.4(a)(29) (2010).