

117 FERC ¶ 61, 025
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Enterprise Texas Pipeline L.P.

Docket No. PR00-9-005

ORDER GRANTING RECONSIDERATION

(Issued October 6, 2006)

I. Introduction

1. On July 12, 2006, Enterprise Texas Pipeline, L.P. (Enterprise Texas), successor to GulfTerra Texas Pipeline L.P. (GulfTerra), submitted a request for reconsideration of the June 11, 2002 Order on Staff Panel,¹ and the February 25, 2004 Order on Rehearing and Denying Late Intervention² to the extent they directed Enterprise Texas to unbundle its rates to reflect separately-stated gathering and transmission rates (collectively, the “Unbundling Orders”). We grant reconsideration and set aside the requirement that Enterprise Texas must unbundle the rates it charges for interstate transportation services on its system. Further, consistent with our grant of reconsideration, we restore the effectiveness of Enterprise Texas’s bundled rates.

II. Background

2. Enterprise Texas owns and operates a 6,200-mile pipeline within the State of Texas. Enterprise Texas states that its primary business is the transportation of natural gas within the state of Texas which is regulated by the Railroad Commission of Texas (“RRC”). Enterprise Texas further states that the RRC does not require the unbundling

¹ *EPGT Texas Pipeline, LP*, 99 FERC ¶ 61,295, at 62,247 (2002), *reh’g denied*, 106 FERC ¶ 61,184 (2004).

² *GulfTerra Texas Pipeline, LP*, 106 FERC ¶ 61,184, at 61,647-50 (2004) (formerly *EPGT Texas Pipeline, LP*)(*GulfTerra*).

of transportation rates, *i.e.*, one set of rates for transmission line transportation service and another set of rates for gathering line transportation service. Enterprise Texas states that it provides interstate transportation services authorized by Section 311(a)(2) of the NGPA and Part 284 of the Commission's regulations.

3. The June 11, 2002 Order required EPGT Texas Pipeline (EPGT), the predecessor of GulfTerra, to file to alter its rate design prior to its next rate petition filing to develop separate gathering rates based on a gathering cost of service, *i.e.*, unbundle gathering line rates from transmission line rates using EPGT's then gathering line plant and transmission line plant as functionalized on its accounting books. The February 25, 2004 Order denied GulfTerra's rehearing request, and directed GulfTerra to file a new application for rate approval pursuant to Section 284.123(b)(2) of the Commission's regulations within three years of the date of issuance of the February 25, 2004 Order. Pursuant to the Unbundling Orders, GulfTerra made a compliance filing on July 12, 2004 to establish revised bundled rates to be superseded by separately-stated unbundled gathering and transmission rates to be effective once it completed implementation of unbundling. On March 23, 2005, the Commission accepted the compliance filing as modified by GulfTerra's February 22, 2005 post-technical conference comments. According to Enterprise Texas in the instant petition, it began charging separately-stated unbundled gathering and transmission rates effective July 1, 2005, based on a functionalization derived from a pre-existing list of meters.

III. Notice and Interventions

4. Public notice of Enterprise Texas's filing was issued on August 1, 2006. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure.³ Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214. Calpine Energy Services, L.P. filed a timely motion to intervene. No protests or adverse comments were filed.

IV. Details of the Filing

5. Enterprise Texas states that the Unbundling Orders required it to file a new application for rate approval by February 24, 2007, with its entire plant refunctionalized using the *Farmland*⁴ test. To meet this deadline, Enterprise Texas states that it must

³ 18 C.F.R. §385.214 (2006).

⁴ *Farmland Industries, Inc.*, 23 FERC ¶ 61,063, at 61,143 (1983) (*Farmland*).

expend significant time and resources on its refunctionalization effort. Enterprise Texas states that relief from this burden would enable it to discontinue its expenditures of these resources. In addition, Enterprise Texas states that shippers continue to be burdened with additional obligations stemming from the unbundling requirement such as nominating separately under the gathering and transmission agreements and managing two separate imbalances. It asserts that some shippers do not have accounting systems that will accommodate unbundling which requires them to make manual adjustments to reconcile gathering and transmission volumes.

6. Enterprise Texas states that it has begun unbundling its rates applying the *Farmland* criteria in compliance with the Commission directive but submits that the unbundling has been unpopular with its shippers, has provided no meaningful benefits, and has resulted in shippers' confusion and dissatisfaction. Enterprise Texas states that approximately ten percent of its shippers have refused to execute the gathering agreements. In short, it states, the Unbundling Orders have not realized the fundamental predicate of the Commission's unbundling requirement, *i.e.*, that shippers should be able to reduce their costs by paying for only the services they need. Enterprise Texas includes a letter it sent to shippers inquiring whether they support or oppose rebundling. It states that, at the time of its filing, no shipper had denoted "oppose." Further, Enterprise Texas states that unbundling and the requirement of completing an entire plant refunctionalization prior to the next rate petition filing is overly burdensome and causes competitive inequities and burdens which set it apart from other intrastate pipeline systems with which it directly competes. Enterprise Texas asserts that these facts constitute changed circumstances that warrant a different conclusion on the issue of unbundling than that reached in the Unbundling Orders.

V. Commission Determination

7. A request for reconsideration must show "new information or evidence of changed circumstances that would warrant reconsideration" by the Commission.⁵ We find that Enterprise Texas has met the burden to show changed circumstances and has supported its request for reconsideration.

8. The Commission's decision requiring GulfTerra to unbundle its rates was based on its concern that the inclusion of gathering rates in transmission costs unfairly disadvantaged customers and deterred development of market centers.⁶ With costs

⁵ See Order No. 2001-B, 100 FERC ¶ 61,342, at 62,556 (2002).

⁶ 99 FERC ¶ 61,295, at 62,253.

unbundled, transportation-only customers would not have to pay for gathering they did not use and likewise, gathering-only customers would not have to pay for transportation costs, thereby providing greater opportunity to obtain supplies attached to other systems or make sales to customers on other systems.

9. Enterprise Texas's request shows that, given current circumstances on its system, unbundling does not significantly contribute to these goals. Enterprise Texas states that it has no gathering-only customers. It states that prior to unbundling, virtually every shipper receiving NGPA Section 311 transportation service, *i.e.*, bundled transportation over facilities later deemed as either gathering or transmission, was already paying discounted rates that were at levels significantly lower than the currently-effective, separately-stated maximum bundled transportation rate of \$0.2621 per Dth. It further states that subsequent to unbundling, all firm services provided on those facilities deemed transmission were determined to be already still discounted below the maximum unbundled transmission rate of \$0.2346 per Dth. According to Enterprise Texas, in all but three instances involving interruptible service, the discount was so significant that these shippers did not realize a rate reduction as a result of the unbundling.⁷ Further, Enterprise Texas states that it allocated these discounts to the unbundled rates in a manner that left the shippers economically indifferent to the unbundling. Thus, Enterprise Texas asserts unbundling in this instance does not contribute to a more competitive market or to reduced costs. It states that, to the contrary, unbundling increases the transaction costs for those customers who use both gathering and transmission. Further, it states, those customers must now schedule two separate services and manage two contracts where they had previously had only one. Enterprise Texas asserts these circumstances contribute to confusion and frustration among shippers.

10. On the basis of these assertions, we agree with Enterprise Texas that unbundling in this instance is not furthering the goals on which the decision was predicated. We find further support in the fact that no customer opposes the petition for reconsideration, including the customer who originally requested the unbundling. In addition, no

⁷ Enterprise Texas states that in the case of these already discounted shippers, there were three month-to-month interruptible service shippers whose rates were between the previously-effective \$0.2621 per Dth bundled rate and the transmission-only rate of \$0.2346 per Dth (specifically, \$0.25, \$0.25 and \$0.2350 per Dth, respectively). Enterprise Texas adds that in 2005, these shippers represented less than 1.5% of the throughput on the Enterprise Texas system. It further states that if the Commission authorizes the re-bundling requested herein, Enterprise Texas will maintain those interruptible shippers at the \$0.2346 per Dth rate.

competing pipeline has stated that it is adversely affected by acceptance of this reconsideration request. We also note that if new customers request service from Enterprise Texas, it must treat them in a not unduly discriminatory manner.

11. In addition, we agree with Enterprise Texas that applying the *Farmland* analysis to its next rate filing due in February of 2007, as required by the Unbundling Orders, will be unduly time consuming for Enterprise Texas, the other parties, and the Commission, since there are a vast number of facilities to be analyzed and, according to Enterprise Texas, no centralized compilation of data available. Refunctionalization requires details (location, diameter, length, pressure, proximity to processing plant, and other information) for each segment of the pipeline. Enterprise Texas explains that its system was formed through numerous mergers and acquisitions over the past several years and Enterprise Texas's predecessors, who were under Texas regulation, were not required to base rates on plant functionalization. Enterprise Texas states that, consequently, the information needed for the analysis is not centrally located and in some cases, has either been lost or was never maintained by its predecessors. Enterprise Texas further states that the absence of linkage between accounting records and plant records necessitates manual review and the categorization of pipeline as either gathering or transmission required by the analysis is not clear cut. Thus, it asserts, not only are substantial additional costs anticipated, but results of the analysis will be affected by estimation necessary to apply the *Farmland* criteria.

12. Given these circumstances set forth in Enterprise Texas's request, the Commission finds that the costs of implementing unbundling for all concerned outweigh any benefits to be obtained. But if in the future any customer believes that the current circumstances have changed such that unbundling would be beneficial, it can raise that issue in Enterprise Texas's next succeeding rate proceeding, which we have required to be filed every three years. For good cause shown, we also restore Enterprise Texas's bundled rates effective as of the date of this order.⁸

⁸ The bundled rates accepted by the Commission in its March 23, 2005 Order are as follows: Firm Daily Demand fee: \$ 0.1306 per MMBtu, Firm Commodity fee: \$0.1315 per MMBtu, and Interruptible fee: \$ 0.2621 per MMBtu.

The Commission orders:

(A) Enterprise Texas's Request for Reconsideration is granted, and the requirement to unbundle its transmission rates is set aside, as discussed in the body of this order.

(B) Effective as of the date of this order, Enterprise Texas's rates are restored to the bundled rates it had in effect prior to its implementation of unbundling on July 1, 2005. Such bundled rates shall remain in effect until superceded by Enterprise Texas's next petition for rate approval, which is due on February 24, 2007.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.