

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.

Maritimes & Northeast Pipeline, L.L.C. and
Portland Natural Gas Transmission System

Docket Nos. CP07-57-000
CP97-238-012
RP04-360-009

ORDER APPROVING, IN PART, SETTLEMENT AGREEMENT

(Issued March 12, 2007)

1. On December 18, 2006, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) and Portland Natural Gas Transmission System (PNGTS) filed a motion asking the Commission to approve an uncontested settlement to modify certain provisions of their Definitive Agreements relating to their jointly-owned interstate pipeline facilities.¹ The settlement also requests pregranted abandonment authority under section 7(b) of the Natural Gas Act (NGA) for certain mainline capacity that may be constructed and transferred in the future. As discussed below, except for provisions requesting pregranted abandonment authority, we approve the uncontested settlement agreement as fair and reasonable and in the public interest.²

¹ The Commission issued several orders addressing the construction and operation of the facilities owned jointly by Maritimes and PNGTS. *See, e.g., Maritimes and PNGTS*, 80 FERC ¶ 61,134 (1997) (preliminary determination); *Maritimes and PNGTS*, 80 FERC ¶ 61,136 (1997) (authorizing the construction and Maritimes' operation of the Phase I joint facilities), *reh'g denied and agreements approved*, 81 FERC ¶ 61,166 (1997); *Maritimes and PNGTS*, 80 FERC ¶ 61,345 (1997) (authorizing PNGTS' operation of the Phase I joint facilities and Maritimes and PNGTS to construct and operate the Phase II joint facilities). The Definitive Agreements include an Ownership Agreement, Engineering and Construction Management Agreement, and an Operating Agreement, which collectively define in detail the rights and responsibilities of each party.

² *See* Rule 602(g)(3) of the Commission's Rules of Practice and Procedure. 18 CFR § 385.602(g)(3) (2006).

I. Background

2. In its July 31, 1996 Order making a preliminary determination regarding Maritimes' application to construct and operate Phase I of its new pipeline system, the Commission urged Maritimes and PNGTS to study the feasibility of constructing a single pipeline where possible because each owner's proposed project followed similar routes.³ Subsequently, Maritimes and PNGTS jointly proposed to construct and operate 101 miles of 30-inch diameter pipeline extending from an interconnection with Tennessee near Dracut, Massachusetts to interconnections with each of their wholly-owned mainline facilities in Westbrook, Maine (joint facilities). On July 31, 1997, the Commission issued an order authorizing the construction and operation of Phase I of the joint facilities, conditioned upon Maritimes' and PNGTS' filing of the Definitive Agreements setting out the terms and conditions of the relationship between them with regard to the construction and operation of the joint facilities for Commission approval prior to the commencement of construction.⁴

3. Maritimes and PNGTS executed the Definitive Agreements, which include an Ownership Agreement, an Engineering and Construction Management Agreement, and an Operating Agreement, on October 8, 1997. On November 4, 1997, the Commission issued an order in Docket No. CP97-238-001 approving these agreements.⁵ The Commission issued an order accepting an uncontested settlement and approving an amendment of the Operating Agreement on December 23, 2002.⁶ Maritimes and PNGTS propose additional modifications to the Definitive Agreements in this proceeding.

³ *Maritimes and Northeast Pipeline, L.L.C. (Northeast Pipeline)*, 76 FERC ¶ 61,124 at 61,674 (1996). Maritimes' Phase I proposal involved the construction of approximately 64 miles of 24-inch diameter pipeline extending from a proposed interconnection with the facilities of Tennessee Gas Pipeline Company (Tennessee) near Dracut, Massachusetts to a proposed interconnection with the facilities of Granite State Gas Transmission, Inc. near Wells, Maine. PNGTS was proposing a 242-mile, 20-inch diameter pipeline extending from the United State/Canadian border to an interconnection with Tennessee near Haverhill, Massachusetts. The Maritimes proposal (Phases I and II) and PNGTS would follow essentially the same route for 83 miles between Haverhill, Massachusetts and Portland, Maine.

⁴ *Maritimes and Northeast Pipeline, L.L.C.*, 80 FERC ¶ 61,136 at 61,477 (1997).

⁵ *Maritimes and PNGTS and Northeast Pipeline*, 81 FERC ¶ 61,166 (1997).

⁶ *Maritimes and Northeast Pipeline*, 101 FERC ¶ 61,348 (2002).

II. The Settlement

4. The proposed settlement resolves a variety of issues between Maritimes and PNGTS. Specifically,

- Section 13 requires PNGTS not to pursue further requests for rehearing or appeals involving the Commission's order in Maritimes' rate case Docket No. RP04-360-000;⁷
- Section 6(B) makes effective immediately PNGTS' withdrawal of its protest to Maritimes' Phase IV joint facilities expansion pending before the Commission in Docket No. CP06-335-000;⁸
- Section 8 provides that following an expansion, neither joint owner will have a right to a post-expansion reallocation payment and, with respect to each future expansion of the joint facilities, the owners agree to adopt Maritimes' position on the issue as stated in Docket No. CP06-32-000;⁹
- Section 3 provides a process for further expansions of the joint facilities mainline, for an aggregate expansion of 750,000 Dth/d (Initial Expansibility);
- Section 5 sets forth the joint owners' agreement on the design for any expansion of the joint facilities using Initial Expansibility; and,
- Section 3(I) obligates the joint owners to seek pregranted abandonment authorization as part of the settlement to enable the constructing party to abandon by transfer certain mainline capacity in accordance with the settlement and without disrupting service to its firm shippers.

⁷ *Maritimes and Northeast Pipeline*, 115 FERC ¶ 61,176, *reh'g denied* 117 FERC ¶ 61,143 (2006).

⁸ On February 21, 2007, the Commission issued an order issuing a certificate for Phase IV joint facilities' expansion in Docket No. CP06-335-000. *Maritimes and Northeast Pipeline*, 118 FERC ¶ 61,137 (2007).

⁹ *See Maritimes and Northeast Pipeline*, 115 FERC ¶ 61,069 (2006).

III. Notice and Intervention

5. On January 12, 2007, public notice of the joint motion for approval of the settlement was published in the *Federal Register*.¹⁰ Interventions and comments were due on or before January 16, 2007. Repsol Energy North America Corporation filed a timely, unopposed motion to intervene.¹¹ No comments on the settlement were filed.

IV. Discussion

6. We find the settlement provides benefits to the shippers of both Maritimes and PNGTS because it removes uncertainty regarding various cost and ownership issues related to the joint facilities. The settlement provides an agreed-upon roadmap for future expansions of the system. The withdrawal of PNGTS' opposition to the joint facilities expansion proposed in Docket No. CP06-335-000 enabled the Commission to more expeditiously process that application. The settlement also resolves issues raised by PNGTS in Maritimes' general rate proceeding in Docket No. RP04-360-000. Accordingly, we find that the settlement is in the public interest, and, therefore, it will be approved except as noted below.

7. The settlement requests pregranted abandonment authority with respect to certain expansion capacity. Specifically, section 3 of the settlement provides that if one owner constructs "Excess Initial Expansibility", that is, expansion capacity in excess of that owner's share of the aggregate 750,000 Dth/d of initial expansibility (500,000 Dth/d for Maritimes and 250,000 Dth/d for PNGTS), the other owner has five years from the in-service date of such "excess initial expansibility" to notify the constructing owner that it intends to acquire the capacity. Upon such notice, the constructing owner will transfer the capacity to the other owner. Maritimes and PNGTS acknowledge in settlement section 3(F)(2) that the acquiring owner will need to seek and obtain Commission authorization prior to the acquisition of the capacity, but they seek herein pregranted authorization for the abandonment of the same capacity by the transferring owner.

8. Just as it would be premature for the Commission to rule at this time on a speculative future acquisition of capacity by one owner, the Commission cannot find at this time that it will be in the public interest for the other owner to abandon that same unknown increment of capacity at some unknown time in the future. Given that Maritimes and PNGTS acknowledge that one side of such a transaction (acquisition) will need Commission authorization at the time the transfer is proposed, the Commission does

¹⁰ 72 FR 1501.

¹¹ 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 (2006).

not believe it will create an unreasonable level of uncertainty to require the parties to obtain authorization for both sides of the transaction at the same time. The Commission notes that in settlement section 3(I) the parties agree to cooperate to file applications for abandonment and certificate authority necessary to implement the acquiring party's capacity rights should the Commission deny the requested pregranted abandonment of capacity. Accordingly, the request for pregranted abandonment is denied.

The Commission orders:

(A) The Maritimes and PNGTS settlement agreement is approved, and the parties' Definitive Agreements are amended consistent with the settlement.

(B) Maritimes and PNGTS request for pregranted abandonment authority is denied.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

Commissioner Wellinghoff dissenting in part with a separate statement attached.

(S E A L)

Philis J. Posey,
Acting Secretary.

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KELLY, Commissioner, *dissenting in part*:

The parties in this proceeding have requested that the Commission apply the *Mobile-Sierra* “public interest” standard of review to any future changes to the settlement agreement that may be proposed by a party, a non-party or the Commission acting *sua sponte*. As I explained in my separate statement in *Transcontinental Gas Pipe Line Corporation*,¹ in the absence of an affirmative showing by the parties and reasoned analysis by the Commission regarding the appropriateness of approving the “public interest” standard of review to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, I do not believe the Commission should approve such a provision.

Accordingly, I must respectfully dissent in part from this order.

Suede G. Kelly

¹ *Transcontinental Gas Pipe Line Corp.*, 117 FERC ¶ 61,232 (2006).

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WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers future changes to the instant settlement that may be sought by any of the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,¹ I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*.

For this reason, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).