

124 FERC ¶ 61,162
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.

Tennessee Gas Pipeline Company

Docket No. CP08-27-000

ORDER ISSUING CERTIFICATE AND GRANTING ABANDONMENT

(Issued August 14, 2008)

1. On November 14, 2007, Tennessee Gas Pipeline Company (Tennessee) filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's regulations seeking authorization to construct its Carthage Expansion Project (project). As detailed below, the project involves the construction of a new 7,700 horsepower (hp) compressor station in DeSoto Parish, Louisiana, the abandonment of three 1,100 hp units and the installation of a 10,310 hp gas turbine unit to upgrade and replace compression at Tennessee's existing Compressor Station 47 in Ouachita Parish, Louisiana; and the construction of 1.1 miles of twelve-inch diameter pipe and meter facilities also in Ouachita Parish, Louisiana.

2. The Commission finds that the proposal serves the public convenience and necessity and grants the requested authorizations.

I. Background and Proposal

3. Tennessee is a natural gas transmission company engaged in the business of transporting natural gas in interstate commerce under authorizations granted by and subject to the jurisdiction of the Commission. 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 the States of Texas, Louisiana, Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island, and Connecticut.

4. Entergy owns and operates a power plant near Perryville, Ouachita Parish, Louisiana, and receives interruptible transportation service from Enbridge Pipeline, L.L.C. and Texas Gas Transmission, LLC to deliver gas to the power plant. Tennessee and Entergy have entered into a precedent agreement whereby Tennessee will provide 100,000 Dth/d of incremental firm transportation capacity to a new interconnect with Entergy's power plant.

5. Tennessee states that the project has two components. The primary component is an expansion of capacity to facilitate firm natural gas service to Entergy, and the secondary component is the replacement of old compressor units at Station 47. Tennessee states that the two components are included in this application because both require installation of compression at Station 47. Tennessee plans to install a single compressor unit to facilitate the capacity expansion and the replacement objectives.

6. Specifically, Tennessee proposes to construct a new 7,700 hp compressor station in DeSoto Parish, Louisiana, on its Line 700-1; install a 10,310 hp gas turbine unit to upgrade its Station 47 on its Line 100 located in Ouachita Parish, Louisiana; and construct a pipeline beginning at milepost (M.P.) 47-3D +13.09 on its Line 100-3 to the power plant. In order to establish the interconnect with Entergy's power plant, Tennessee will install two twelve-inch hot taps on its lines 100-1 and 100-3 at M.P. 47-1D +13.10 and M.P. 47-3D+13.09, respectively; construct a 1.1-mile, twelve-inch diameter pipeline designated as Line 47E-100; and construct a meter station consisting of one two-inch turbine meter, one four-inch ultrasonic meter, and one ten-inch ultrasonic meter. These facilities will allow Tennessee to provide capacity from the Carthage production area in east Texas to the power plant.

7. Tennessee also plans to replace three 1,100 hp reciprocating gas engine units at its Station 47 which were installed in 1948. Tennessee plans to install a 10,310 hp turbine unit, of which approximately 3,600 hp is required for the project, and the balance will be utilized as the replacement of the old units.

8. The cost of the project is approximately \$38.5 million -- \$26.9 million for the expansion component and \$11.6 million for the replacement component. The anticipated in-service date is May 2009.

II. Proposed Rates

9. Tennessee proposes to roll in the costs of the project facilities in its next section 4 rate case and to use the applicable maximum recourse rates under Rate Schedule FT-A as its initial rates for service on the facilities.¹

¹ Rates on file for this service are a maximum reservation rate of \$6.45 per Dth and a maximum commodity rate of \$0.0688 per Dth.

10. Tennessee projects a rate base of \$26,627,000 for the project.² This does not include the Station 47 replacement costs of \$11,578,909. Tennessee has estimated an annual cost of service of \$6,192,000 using a depreciation rate of 1.62 percent and a pre-tax return at 15.3 percent.

11. Tennessee states that, in order to attach this additional market to its system, it was necessary to discount its rate to Entergy for firm transportation service on the project facilities. The discounted rate is the lesser of (a) Tennessee's applicable maximum reservation and commodity rates, or (b) a monthly reservation rate of \$6.40 per Dth and a daily commodity rate of \$0.02 per Dth. In addition, Tennessee has agreed to further discounts if the service commencement date is delayed and occurs later than 30 months after the date Tennessee accepts its authorizations granted herein.³

12. In its cost revenue study in Exhibit N of its application, Tennessee applied its proposed discounted demand rate of \$6.40 and discounted commodity rate of \$0.0200 per Dth to the new project capacity and annualized the result to achieve annual project revenues totaling \$8,410,000. Tennessee requests rolled-in rate treatment as the estimated revenues exceed the cost of service for the project.

13. Tennessee submitted a precedent agreement for the proposed project which included an unexecuted gas transportation agreement and a letter agreement. Tennessee states that there are several differences between its pro forma FT-A transportation agreement and the transportation agreement. The transportation agreement filed with its application contains "whereas" clauses, stating that Tennessee will make a filing with the Commission relating to the project and requesting authorization to render firm transportation and construct the necessary facilities to provide such service. Article II of the transportation agreement provides that service will not commence until Tennessee has received the requisite authorizations to provide such service and has constructed the project facilities. Sections 2.1, 2.2, 6.1, 9.1, 11.1, and 12.1 have been modified to reflect the commencement date and/or need for acceptable authorizations. Section 15.5 states that the transportation agreement supersedes and cancels the precedent agreement except as specified in the precedent agreement. Finally, Tennessee included a letter agreement

² Rate base consists of \$26.9 million for plant less reserve for depreciation, working capital, and accumulated deferred taxes.

³ The cumulative discount will not exceed \$1,500,000 and will be applied as a reduction to demand charges.

which details the discount applicable to the service to be provided. Tennessee states that these changes do not constitute material deviations from Tennessee's pro forma FT-A agreement.

III. Interventions

14. Notice of Tennessee's application was published in the *Federal Register* on December 4, 2007 (72 Fed. Reg. 68,137). Atmos Energy Corporation; Calpine Energy Services, LP; Consolidated Edison Company of New York, Inc.; National Grid Gas Delivery Companies; and, PSEG Energy Resources and Trade, LLC filed timely, unopposed motions to intervene.⁴ National Fuel Gas Distribution Corporation filed a late motion to intervene. The Commission finds that granting the motion to intervene out of time will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, we will grant the motion.⁵

IV. Discussion

15. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA. Since the facilities Tennessee seeks to abandon are facilities certificated to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, Tennessee's proposed abandonment requires Commission authorization under NGA section 7(b).

A. The Certificate Policy Statement

16. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.⁶ The Certificate Policy Statement

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 (2008).

⁵ 18 C.F.R. § 385.214(d) (2008).

⁶ *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128, *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new storage and pipeline construction.

17. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

1. Subsidization

18. The threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. As discussed below, Tennessee proposes to roll the cost of the facilities into its system-wide rates. The estimated revenue will exceed the incremental cost of service for the project and existing customers will benefit from lower rates. We find that the project satisfies the Commission's threshold requirement under the Certificate Policy Statement that there be no subsidy from existing shippers.

2. Adverse Effects

19. Tennessee's application demonstrates that there will be no adverse operational impact on service provided to Tennessee's existing customers as a result of the construction of the project. Tennessee will use the capacity created by the project to serve the incremental requirements of Entergy. Entergy currently receives service at the power plant on an interruptible basis from Enbridge and Texas Gas. Entergy does not

hold any firm contracts with these companies for its service. No existing pipelines or their customers will be adversely affected because Tennessee will not be replacing firm transportation service provided by other existing pipelines.

20. The project primarily involves compression, which will be installed on Tennessee's property. The construction of the pipeline will occur on property owned by one landowner. The three older 1,100 hp units at Station 47 will be replaced with a new unit constructed using technology designed to reduce air and noise emissions. No landowners or customers filed negative comments or protests. Accordingly, we find that Tennessee has designed the project to minimize the economic impact on effected landowners and that any adverse impacts on landowners and communities along the pipeline route will be minimal.

21. For all of these reasons, we find, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of Tennessee's proposal. As is the Commission's practice, the certificate issued herein is conditioned on Tennessee's having executed contracts for the level of service and the terms of service represented in the precedent agreements before commencing construction of the project. Further, we approve of the proposal to provide the necessary compression by replacing the three sixty-year old units at Station 47 with one modern unit designed to reduce air and noise emissions. Accordingly, the Commission determines that the proposed abandonment is in the public interest and Tennessee is granted permission and approval to abandon the three 1,100 hp reciprocating gas engine units.

B. Proposed Rates

22. Based upon our review, we will accept Tennessee's proposed maximum recourse rate of \$6.45 per Dth as a reservation rate and \$0.0688 per Dth as the commodity rate as the initial rate for the project. The initial rates include all surcharges including the stated fuel charges associated with the service. Under the discounted rate agreement, Tennessee will charge the lesser of the maximum recourse or the stated discounted demand rate of \$6.40 per Dth and discounted commodity rate of \$0.0200 per Dth plus all applicable fuel and loss charges and surcharges.⁷

⁷ Tennessee's discounting policy is found in its FERC Gas Tariff, Fifth Revised Vol. No.1, Ninth Revised Sheet No. 406.

23. The Commission's regulations require a pipeline to file any contract which materially deviates from the pipeline's form of service agreement.⁸ The Commission defines a material deviation as any provision of a service agreement that goes beyond the filling-in of the spaces in the form of service agreement with the appropriate information provided for in the tariff and that affects the substantive rights of the parties.⁹ Since there would appear to be no reason for the parties to use language different from that in the form of service agreement other than to affect the substantive right of the parties, this effectively means that all language that is different from the form of service agreement should be filed with the Commission.¹⁰ The Commission will only accept rate agreements with such material deviations from the pipeline's form of service agreement if such deviations do not change the conditions under which service is provided and do not present a risk of undue discrimination.¹¹

24. Here, the differences between the pro forma service agreement and the discount agreement do constitute material deviations from the pro forma agreement. However, the filed service agreement provides for FT-A service in a manner that is consistent with the FT-A service described in Tennessee's tariff and does not create a risk of undue discrimination against other shippers. Thus, the deviations contained in the non-conforming service agreement are permissible. The Commission will accept the proposed service agreement subject to Tennessee's making the requisite tariff filings after the service agreement is executed and prior to commencement of service.

25. We note that the Commission is not approving the proposed discounted rates in this order; rather it is approving the recourse rates as the initial FT-A rates for the proposed service. The Commission is directing Tennessee to file not less than 30 days nor more than 60 days prior to the commencement of service on the expansion facilities, its discounted rate contract with Entergy which contains the material deviations from the pro forma agreement found in Tennessee's tariff.

⁸ 18 C.F.R. § 154.1(d) (2008).

⁹ *Natural Gas Pipeline Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134, at P 27 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006), *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006) (*Modified Negotiated Rate Policy*).

¹⁰ *Id.* P 32.

¹¹ *Id.* P 27.

C. Environmental Assessment

26. On January 2, 2008, we issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Carthage Expansion Project and Request for Comments on Environmental Issues* (NOI). We received one response to the NOI from the U.S. Fish and Wildlife Service (FWS) recommending that potential impacts on the red-cockaded woodpecker, bald eagle, wading birds, and wetlands be addressed in the environmental assessment. Subsequent conversations between our staff, Tennessee, and the FWS revealed that this comment resulted from a misunderstanding. On October 31, 2007, the FWS sent a letter to Tennessee, agreeing that the proposed project is not likely to adversely affect any resources under FWS' jurisdiction.

27. Our staff prepared an environmental assessment (EA) for Tennessee's proposal. The EA was placed in the record in CP08-27-000 on April 24, 2008. The EA addresses water resources, vegetation and wildlife, threatened and endangered species, cultural resources, soils, land use and visual impact, air and noise, reliability and safety, polychlorinated biphenyls, cumulative impacts, and alternatives. We received one comment on the EA from Tennessee suggesting a change in the allowable noise limit at Compressor Station 47 from "the current noise levels" to "55 dBA." The comment is rejected.

28. Based on the discussion in the EA, we conclude that if constructed in accordance with Tennessee's application and supplements, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

29. 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, replacement, or operation of facilities approved by this Commission.¹²

¹² 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.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

30. The Commission on its own motion, received and made a part of the record all evidence, including the application (s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Tennessee authorizing it to construct and operate its proposed project as described more fully in this order and in Tennessee's application, as modified and conditioned herein. The request for abandonment authority is also granted, subject to the conditions described herein.

(B) The certificate issued in Ordering Paragraph (A) is conditioned on Tennessee's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.

(C) Tennessee shall notify the Commission within 10 days of the date of abandonment of the facilities.

(D) Tennessee's proposed maximum recourse rates for firm transportation services are approved. Tennessee may roll the project costs into the system rates in its next NGA section 4 rate proceeding, absent significantly changed circumstances.

(E) Tennessee is directed to file not less than 30 days nor more than 60 days prior to the commencement of service on the expansion facilities, its discounted rate contract which contains the material deviations from the pro forma agreement found in Tennessee's tariff.

(F) The certificate issued in Ordering Paragraph (A) is conditioned upon Tennessee's compliance with the environmental conditions set forth in the appendix to this order.

(G) Tennessee's facilities shall be made available for service within 3 years of the date of the order in this proceeding as required by section 157.20(b) of the Commission's regulations.

(H) Tennessee shall notify the Commission's environmental staff by telephone, e-mail and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Tennessee. Tennessee shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(I) Tennessee must execute firm contracts equal to the level of service and terms of service represented in the precedent agreements prior to commencing construction.

(J) The motion to intervene out of time of National Fuel Gas Distribution Corporation is granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

As recommended in the EA, this authorization includes the following condition(s):

1. Tennessee shall follow the construction procedures and mitigation measures described in their application and supplements (including responses to the staff data request) and as identified in the EA, unless modified by this Order. Tennessee must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Tennessee shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of

environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Tennessee's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Tennessee's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Tennessee shall file a noise survey with the Secretary **no later than 60 days** after placing Compressor Station 703A in service. If the noise attributable to the operation of the station at full load exceeds a day-night sound level (Ldn) of 55 decibels on the A-weighted scale (dBA) at any nearby noise-sensitive area (NSA), Tennessee shall install additional noise controls to meet that level **within 1 year** of the in-service date. Tennessee shall confirm compliance with the Ldn of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs any necessary additional noise controls.

6. Tennessee shall file a noise survey with the Secretary **no later than 60 days** after placing the modified facilities at Compressor Station 47 in service. If the noise attributable to the operation of the station at full load exceeds the current noise levels at any nearby NSA, Tennessee shall install additional noise controls to meet that level **within 1 year** of the in-service date. Tennessee shall confirm compliance with the predicted noise level by filing a second noise survey with the Secretary **no later than 60 days** after it installs any necessary additional noise controls.