

131 FERC ¶ 61,119
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Florida Gas Transmission Company, LLC

Docket No. CP09-461-001

ORDER DENYING REHEARING

Issued May 6, 2010

1. On November 19, 2009, the Commission issued an order authorizing Florida Gas Transmission Company, LLC (Florida Gas) to abandon its obligation to provide transportation service using its partial ownership interest in the Matagorda Offshore Pipeline System (MOPS) facilities.¹ On December 18, 2009, the MOPS Shippers² filed a request for rehearing of the November 19 Order. As discussed below, we will deny their request.

I. Background

2. The MOPS facilities are located offshore Texas and extend onshore to Refugio County, Texas. The facilities are jointly owned by a number of pipelines and were constructed in three phases. Florida Gas, which is neither the operator nor the majority owner of the MOPS, owns 13.44 percent of MOPS Phases I and II and 6.06 percent of the MOPS Phase III.³ In its application requesting authority to abandon its service obligation on the MOPS facilities, Florida Gas stated that it has had no customers receiving service through the facilities since April 2007. The MOPS Shippers, who do not receive service

¹ *Florida Gas Transmission Co., LLC*, 129 FERC ¶ 61,135 (2009) (November 19 Order).

² The MOPS Shippers include Anglo Suisse Texas Offshore Partners, LLC, Apache Corporation, and Medco Energi US LLC.

³ The other joint owners of MOPS Phases I and II are Southern Natural Gas Company (Southern) (18.56 percent) and Northern Natural Gas Company (Northern) (68 percent). The other joint owners of MOPS Phase III are Transcontinental Gas Pipe Line, LLC (Transco) (37.8787 percent), Enterprise Field Services (Enterprise) (10.6061 percent), and Northern (45.4546 percent).

from Florida Gas on the MOPS facilities, filed a protest to Florida Gas's application stating that two of the other MOPS joint owners, Northern Natural Gas Company (Northern) and Southern Natural Gas Company (Southern), had announced plans to abandon the MOPS facilities and services in the fourth quarter of 2009. The MOPS Shippers stated that they are captive to, and dependent on, the MOPS system to transport their natural gas to shore and that the abandonment of the MOPS facilities would result in their gas being shut-in.⁴ They argued that the Commission should not consider Florida Gas's abandonment proposal until Northern and Southern filed their applications for abandonment.

II. The November 19 Order

3. The November 19 Order found that Florida Gas's abandonment of service on its capacity in the MOPS facilities is in the public convenience and necessity and denied the MOPS Shippers' protest. The order stated that the most pertinent issues in determining whether Florida Gas's proposed service abandonment is in the public convenience and necessity are the impact of the abandonment of service on Florida Gas's MOPS customers, those customers' current utilization rate of Florida Gas's MOPS facilities, and the existence of any continuation of service issues for the current shippers using Florida Gas's capacity on the MOPS facilities.⁵ The order found that since there were no customers using Florida Gas's MOPS capacity, the utilization rate was zero, there were no continuity of service issues, and the proposed abandonment of service would have no impact on Florida Gas's customers. Accordingly, the Commission authorized the abandonment of service.

4. The November 19 Order determined that Florida Gas's abandonment of service would have no adverse effect on the ability of the MOPS Shippers to obtain capacity to transport their gas to market or on the amount of capacity available to the MOPS Shippers, or any other potential shipper through Northern and Southern's capacity in the MOPS facilities.⁶

⁴ November 19 Order at P 13.

⁵ *Citing Southern Natural Gas Co.*, 126 FERC ¶ 61,246, at P 30 (2009).

⁶ November 19 Order at P 16.

III. Request for Rehearing

Docket No. CP10-82-000

5. The MOPS Shippers' major concern involves the potential negative effect abandonment of all the MOPS facilities and services. They have not shown that the abandonment of Florida Gas's service alone, as contemplated in the instant proceeding, would have an impact on the service they currently receive. The November 19 Order stated that should Northern and Southern file applications to abandon their MOPS services, the Commission would consider the effect of those proposals on shippers using the MOPS, such as the MOPS Shippers, and other appropriate criteria at that time.⁷ On March 5, 2010, in Docket No. CP10-82-000, Northern, on behalf of itself and the other joint owners of the MOPS (Florida Gas, Southern, Transcontinental Gas Pipe Line Company, LLC, and Enterprise Field Services), filed an application requesting authority to abandon all the MOPS facilities and services, effective December 31, 2010. The MOPS Shippers filed timely motions to intervene and a joint protest in that proceeding. That is the proper forum in which to consider their concerns.

Economic Effects of Florida Gas's Abandonment on MOPS Shippers

6. Nevertheless, on rehearing of our order in Florida Gas, the MOPS Shippers argue that the Commission did not address what they consider to be the fundamental question in determining whether Florida Gas's proposed abandonment "of its partial interest" is in the public interest: what are the financial ramifications of the abandonment for the MOPS facilities and for the MOPS Shippers in light of public announcements that all owners are planning to do the same. The MOPS Shippers contend that in order to perform a proper public interest analysis of Florida Gas's proposal, the Commission needs to address the following criteria: (i) the needs of the MOPS gas system and the public markets they serve, (ii) the economic effect on the MOPS and its customers, (iii) the presumption in favor of continued service on MOPS, and (iv) the claimed benefits of the abandonment of a partial ownership interest against any detriments. The MOPS shippers cite the Commission's order in *Northern Natural Gas Company (Northern Natural)* in support of this argument.

7. The MOPS Shippers also quote *Transcontinental Gas Pipe Line Corporation (Transco)*⁸ to support their arguments:

⁷ November 19 Order at P 16.

⁸ *Transcontinental Gas Pipe Line Corp.*, 124 FERC ¶ 61,040 (2008).

[i]t is not uncommon for there to be several owners sharing capacity on offshore facilities. In determining the primary function of facilities, the Commission looks to the physical characteristics of the facilities or system. The fact that Transco owns only a one-sixth interest in this segment of pipeline does not dilute the relevance of the segment's physical attributes and those of the larger facility of which it is a part.⁹

8. The MOPS Shippers claim that this rationale also applies to evaluation of a request to abandon service on a portion of jointly-owned facilities. The MOPS Shippers argue that the Commission is required to view the jointly-owned MOPS facilities as one pipeline system when reviewing Florida Gas's proposed abandonment of its partial interest and to take into account the effects on the MOPS Shippers in determining whether to grant abandonment authority to Florida Gas.

Commission Response

9. The Commission will consider all relevant factors in determining whether a proposed abandonment is in the public convenience and necessity. However, those criteria will vary as the circumstances of the abandonment proposal vary. For example, the criteria that the MOPS Shippers maintain should have been addressed in the November 19 Order are among the criteria the Commission stated in *Northern Natural* were historically considered in reviewing a pipeline's proposed abandonment of facilities by sale to another pipeline. However, for purposes of its decision in *Northern Natural*, the Commission stated "the pertinent issues are the economic impact on Northern's present customers and whether arrangements have been made for continuation of service."¹⁰

10. Unlike the situation in *Northern Natural*, Florida Gas is seeking to abandon its obligation to provide services for which it has no customers. However, similar to our statements in *Northern Natural*, we stated in the November 19 Order that the most pertinent issues in determining whether Florida Gas's proposed service abandonment are permitted by the "future or present public convenience or necessity"¹¹ are the impact of the abandonment of service on Florida Gas's customers, those customers' current utilization rate of Florida Gas's capacity on the MOPS facilities, and any continuation of service issues for the current shippers using Florida Gas's capacity on the MOPS

⁹ *Id.* P 27.

¹⁰ 117 FERC ¶ 61,117 at P 21.

¹¹ NGA § 7(b), 15 U.S.C. § 717f.

facilities.¹² Since there had been no customers using Florida Gas's MOPS services or capacity since April 2007, we found there were no relevant negative impacts and the Commission granted Florida Gas the requested abandonment authority.

11. The MOPS Shippers' attempt to analogize the way the Commission may look at a jointly-owned facility when determining its primary function, as it was doing in the cited *Transco* case, and the effect of joint ownership on a determination of whether to approve a proposed abandonment of service on jointly-owned facilities is unpersuasive. In *Transco*, the Commission was determining the jurisdictional status of the relevant segment of pipeline, specifically, whether its primary function was jurisdictional transmission or nonjurisdictional gathering. As we stated in *Transco*, such a determination requires consideration of the physical characteristics of the facility, such as the length and diameter of the line.¹³ The Commission rejected Transco's argument that, instead of looking at the actual diameter of the pipeline segment in question, the Commission should consider only the capacity represented by Transco's relatively small ownership interest in the line in determining whether there was a marked change of function at the beginning of the segment. As the Commission pointed out, a pipeline's physical attributes, and thus, its primary function, do not change regardless of the number of owners.

12. In contrast, here we are seeking to determine whether Florida Gas's proposal to abandon its services provided on the undisputedly jurisdictional MOPS is permitted by the public convenience or necessity. As stated above, the factors we consider for an abandonment of services under the circumstances of this case relate to the customers of the pipeline requesting abandonment authority. The proposed abandonment of Florida Gas's unused services on the MOPS system does not, without more, give rise to any concern that any MOPS customer or potential MOPS customer would be affected.

13. The Commission understands the MOPS Shippers' concern that they are captive customers on the MOPS and their assertion that their gas would be shut-in if all service on the MOPS system were to be abandoned. However, the MOPS Shippers failed to present any fact or rationale to support the claim that they would be negatively affected

¹² See also, *Southern Natural Gas Co.*, 126 FERC ¶ 61,246, at P 30 (2009).

¹³ The remaining factors that are part of the Commission's primary function test include the extension of the facility beyond the central point-in-the-field; the facility's geographical configuration; the location of compressors and processing plants; the location of the wells along all or part of the facility; and the operating pressure of the pipeline(s). The Commission applies this multi-factor test to the unique facts and circumstances of each case without any one factor deemed as outcome determinative. *EP Operating Co. v. FERC*, 876 F.2d 46, 48 (5th Cir. 1989).

by our approval of Florida Gas's abandonment of its service on the MOPS. The Commission concluded that the abandonment of Florida Gas's service obligation will have no adverse effect on the ability of the MOPS Shippers to obtain capacity to transport their gas to market or on the amount of capacity available to the MOPS Shippers, or any other potential shipper through Northern and Southern's capacity in the MOPS facilities.¹⁴ On rehearing, the MOPS Shippers present no new argument that would raise concern of a negative impact on MOPS system customers caused by Florida Gas's abandonment of its service. As previously noted, on March 5, 2010, Northern filed an application on behalf of all of the MOPS joint owners requesting abandonment authority for the MOPS facilities and services. The MOPS Shippers' have intervened in that proceeding and their concerns are more appropriately addressed there.

Deficient Application

14. The MOPS Shippers claim that the Commission erred by failing to address arguments raised by the MOPS Shippers in their protest that Florida Gas's application in this proceeding failed to comply with Commission regulations. The MOPS Shippers argued that the application did not comply with the requirements of the Commission's abandonment regulations under section 157.7 concerning abbreviated applications and section 157.18 concerning exhibits in applications to abandon facilities or services.

15. On rehearing, the MOPS Shippers argue that Florida Gas's application should have included: a full explanation of the proposed abandonment, including its effect on those who are being served; copies of all agreements which are dependent upon the approval of the proposed abandonment; the cost impacts of Florida Gas's proposed abandonment on the MOPS Shippers and the rest of the MOPS; copies of all relevant MOPS construction and operating agreements which govern the mutual obligations of the joint owners, including the ability to abandon joint ownership interests; whether Florida Gas's share of the costs would be shifted to the remaining owners and their customers and what the cost-shifting impact would be on the remaining owners.

Commission Response

16. Florida Gas's abbreviated application contained all of the information and supporting data required in an application for the abandonment of services and fully complied with the Commission's regulations concerning such applications. The additional information that the MOPS Shippers requested may have been relevant had they been customers of Florida Gas or if Florida Gas were also requesting abandonment of its ownership interests in the MOPS. That not being the case, the information was irrelevant to our determination in this proceeding.

¹⁴ November 19 Order at P 16.

17. For all of the reasons stated above, we will deny the MOPS Shippers' request for rehearing.

The Commission orders:

The MOPS Shippers' request for rehearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.