

140 FERC ¶ 61,260
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

ANR Pipeline Company
TC Offshore LLC

Docket Nos. CP11-543-001
CP11-544-001

ORDER GRANTING AND DENYING REHEARING IN PART, AND GRANTING
CLARIFICATION

(Issued September 28, 2012)

1. On June 21, 2012, the Commission issued an order granting ANR Pipeline Company's (ANR) request under section 7(b) of the Natural Gas Act (NGA)¹ to abandon by sale to its wholly owned subsidiary, TC Offshore LLC (TC Offshore), all of its offshore pipeline facilities in the Gulf of Mexico, as well as certain onshore pipeline facilities in Louisiana and Texas.² In the June 21 Order, the Commission also issued TC Offshore a certificate of public convenience and necessity under section 7(c) of the NGA³ to acquire and operate the facilities proposed to be abandoned by ANR that the Commission determined primarily function as jurisdictional transmission facilities.
2. Several parties filed timely requests for rehearing of the June 21 Order.⁴ This order addresses: (1) the functionalization determination for a portion of the pipeline

¹ 15 U.S.C. § 717f(b) (2006).

² *ANR Pipeline Co.*, 139 FERC ¶ 61,238 (2012) (June 21 Order).

³ 15 U.S.C. § 717f(c) (2006).

⁴ The following parties filed timely requests for rehearing: Apache Corporation; Arena Energy, LP; Indicated Shippers (Indicated Shippers consists of BP America Production Company, BP Energy Company, Marathon Oil Company, and Shell Offshore Inc.); LLOG Exploration Company, LLC; the Producer Coalition (the Producer Coalition consists of Century Exploration New Orleans, LLC, Dynamic Offshore Resources, LLC, Energy XXI (Bermuda) Ltd., Hilcorp Energy Company Inc., McMoRan Oil & Gas LLC, Pisces Energy LLC, and W&T Offshore, Inc.); and TC Offshore. Additionally, a group
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facilities acquired by TC Offshore; and (2) the treatment of TC Offshore's proposed negative salvage rates. We will also clarify certain descriptions of the pipeline segments contained in the June 21 Order. This order will address only these discrete issues, and all other issues raised on rehearing will be addressed in a separate order.

Discussion

A. Primary Function Determination

3. ANR proposed to abandon by sale to TC Offshore all of its offshore facilities in the Gulf of Mexico and certain onshore facilities in Louisiana and Texas. Specifically, ANR proposed to abandon by sale: (1) the Patterson System, extending upstream of the Patterson Station in St. Mary Parish, Louisiana; (2) the Grand Chenier System, extending upstream of the Grand Chenier Station in Cameron Parish, Louisiana; (3) the Central Texas Gathering System, extending upstream of an onshore terminus in Wharton County, Texas; and (4) off-system facilities in the Gulf of Mexico. The June 21 Order authorized ANR's abandonment proposals.

4. In addressing TC Offshore's proposal to acquire the facilities proposed to be abandoned by ANR, the Commission found it appropriate to analyze the jurisdictional status of the Patterson, Grand Chenier, and Central Texas Gathering Systems, as well as the off-system facilities, under the primary function test to ensure that the certificate of public convenience and necessity issued to TC Offshore only encompassed facilities and services over which the Commission has jurisdiction under the NGA.⁵ For the purposes of analyzing the primary function of the Patterson System, the June 21 Order divided the Patterson System into two parts – the Patterson-West and Patterson-East facilities. The Patterson-West pipeline facilities extend from South Marsh Island (SMI) Block 58 (Line 2310), SMI Block 61 (Line 10760), and SMI Block 76 (Line 12280), through Eugene Island Area (EIA) Block 199, continuing through EIA Block 34 to the onshore

of associations (Association Group) filed a motion to intervene out-of-time and request for rehearing. The Association Group's motion to intervene out-of-time will be addressed in a separate order. Stingray Pipeline Company, L.L.C., (Stingray) filed a motion for leave to answer and answer to TC Offshore's request for rehearing.

⁵ June 21 Order, 139 FERC ¶ 61,238 at P 85. The order explained that prior to the Commission's open-access policies requiring unbundling of pipeline services, there was no need, as a practical matter, to review applications by pipelines for certificate authority to ascertain whether any of the proposed new facilities may have actually functioned as gathering facilities. Thus, in many instances, gathering facilities were constructed under certificate authority and the costs associated with those facilities were part of the rate base of the pipeline's sales rates.

Patterson Station in St. Mary Parish, Louisiana. Based on physical and geographical characteristics that are consistent with an offshore gathering function under the primary function test, the June 21 Order concluded that the Patterson-West System facilities upstream of EIA Block 34 performed a gathering function exempt from the Commission's jurisdiction.⁶ Thus, in the June 21 Order the Commission did not issue a certificate of public convenience and necessity to TC Offshore for the portion of the Patterson-West System facilities upstream of EIA Block 34.

5. TC Offshore seeks rehearing of our determination functionalizing the Patterson-West facilities upstream of EIA Block 34 as nonjurisdictional gathering facilities. On rehearing, TC Offshore states, for the first time, that the 16-inch diameter Line No. 12280 interconnects with the jurisdictional Garden Banks Gas Pipeline, LLC (Garden Banks) system⁷ at SMI Block 76.⁸ As stated in the June 21 Order, all pipeline facilities located upstream of gathering facilities must function as gathering or production facilities, because interstate transmission service cannot feed into a gathering system.⁹ As TC Offshore points out, functionalizing the Patterson-West facilities downstream of the Garden Banks pipeline interconnection as gathering would result in an interstate

⁶ June 21 Order, 139 FERC ¶ 61,238 at P 106. The June 21 Order noted that the review of the facilities involved in the proceedings was based on the functions the facilities are currently performing, and that the findings were based on information provided in the applications and responses to data requests. June 21 Order, 139 FERC ¶ 61,238 at P 94.

⁷ The Garden Banks pipeline is a 30-inch diameter, 50-mile long natural gas pipeline with appurtenant facilities extending from Garden Banks Block 128, offshore Louisiana, to SMI Block 76, offshore Louisiana. See Garden Banks Gas Pipeline, LLC, FERC NGA Gas Tariff, First Revised Volume No. 1, Sheet No. 5, System Map, 0.1.0 (effective August 15, 2010).

⁸ In the November 8, 2011 data request, item No. 29(b)(ii), and in the January 24, 2012 data request, by reference to the November 8, 2011 data request, Commission staff asked ANR to list all upstream interconnections and downstream termini, and any connecting pipelines or facilities, including identification of ownership, functionalization, and throughput of each segment at those termini. ANR's November 31, December 1, December 9, December 16, and December 22, 2011, and January 31, February 1, February 2, February 7, and March 12, 2010 responses did not identify a connection between the Patterson-West facilities and the Garden Banks pipeline. Indicated Shippers and Stingray also note the interconnect with the Garden Banks pipeline at SMI Block 76.

⁹ June 21 Order, 139 FERC ¶ 61,238 at P 98, citing *Transcontinental Gas Pipe Line Corp.*, 121 FERC ¶ 61,157, at P 8 (2007).

transmission facility feeding directly into a gathering system, contrary to the Commission's policy.¹⁰

6. Accordingly, we will grant rehearing of the functionalization determination in the June 21 Order for the Patterson-West facilities and hold that all facilities downstream of the interconnection with the Garden Banks pipeline at SMI Block 76 are transmission facilities subject to Commission jurisdiction. Thus, we will grant certificate authority for TC Offshore to acquire and operate those facilities. We note that Line 10760 and the portion of Line 2310 upstream of the SMI Block 61 interconnection with Line 12280 are upstream of the Garden Banks interconnection and will therefore remain functionalized as gathering.

B. Negative Salvage

7. The June 21 Order required TC Offshore to use the last approved negative salvage rates established for these facilities for ANR in an NGA section 4 rate case, which is 0.23 percent for both gathering and transmission plant.¹¹ The June 21 Order rejected

¹⁰ Indicated Shippers also questions our functionalization determination on the Patterson-East System. Indicated Shippers Request for Rehearing at 11. Specifically, Indicated Shippers states that it appears that ANR's system connects to a system owned by Manta Ray Offshore Gathering System, LLC (Manta Ray) and possibly other third-party gathering and/or pipeline systems and questions our conclusion that lines upstream of EIA Block 188 rely solely on well head pressure. ANR and TC Offshore did not identify any specific pipeline segments connecting to Line 2315, which transports gas from the Ship Shoal (SS) Block 207 A platform to EIA Block 188. The Department of Interior's Bureau of Safety and Environmental Enforcement lists several pipeline segments feeding into SS Block 207 A from nearby locations, including a Manta Ray oil pipeline. Our conclusion, given the lack of comment by ANR and TC Offshore in the application, supplements, data responses, and rehearing request concerning these feeders is that they are all local (to SS Block 207) gathering lines providing non-jurisdictional gas for transportation to EIA Block 188 and farther to the Patterson Plant. In addition, there was no indication of any compression facilities in the area.

¹¹A pipeline is allowed to include in its rates an amount to provide for recovery of negative salvage costs, i.e., expenses that are projected to be incurred in the course of disposing of retired facilities in excess of revenues generated by the sale of any of the assets, such as compressor units and salvageable pipe. Determination of negative salvage rate requires taking the annual negative salvage accrual (estimated salvage cost divided by the estimated average remaining life) and dividing it by the appropriate gross plant balance. When ANR filed a general rate case in 1993, in Docket No. RP94-43-000, it proposed to increase its existing 0.23 percent offshore negative salvage rate by

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TC Offshore's proposed higher negative salvage rates of 3.122 percent for gathering plant and 0.986 percent for transmission plant, stating that TC Offshore had not supported its proposed negative salvage figures which, if approved, would have allowed TC Offshore to recover a greater amount for projected net expenses to retire these facilities.¹²

8. TC Offshore contends that the Commission erred in rejecting its proposed higher negative salvage rates by applying NGA section 4's more rigorous just and reasonable standard instead of the public convenience and necessity standard applicable in NGA section 7 certificate proceedings. TC Offshore requests that the Commission grant rehearing of the June 21 Order to accept its proposed negative salvage rates on the basis of the existing record. In the event that the Commission rejects TC Offshore's rehearing request, TC Offshore asks the Commission to approve its proposed negative salvage rates based on a newly submitted negative salvage study.

9. TC Offshore states that the description of its negative salvage proposals provided in the Explanatory Statement to Exhibit P to the application satisfies the public convenience and necessity standard. That description, in full, states:

TC Offshore proposes recovery of plant decommissioning costs through negative salvage rates, which were calculated using the same ... [Production to Reserve] factors used for depreciation.

In addition, in the main text of its application, TC Offshore identified the composite negative salvage rate as 1.42 percent,¹³ which it later amended to 1.56 percent.¹⁴ The proposed offshore gathering and transmission negative salvage rates were identified in Exhibit O of the application. In its protest to the application, Indicated Shippers cited the last approved negative salvage rate applicable to the offshore facilities ANR proposed to abandon and questioned the difference between ANR's and TC Offshore's depreciation

0.14 percent, which would have allowed it to recover a greater amount over the remaining life of the facilities to cover negative salvage costs. *ANR Pipeline Co.*, 78 FERC ¶ 63,003, at 65,047-48 (1997). However, the parties reached a settlement agreement, which provided for continuation of ANR's existing 0.23 percent negative salvage rate, and the Commission approved the settlement. *ANR Pipeline Co.*, 82 FERC ¶ 61,145 (1998).

¹² June 21 Order, 139 FERC ¶ 61,238 at P 134.

¹³ TC Offshore's Application at 9.

¹⁴ December 22, 2011 Supplement, Explanatory Statement of Revisions at 2.

expenses.¹⁵ Further, in its protest, Apache Corporation claimed that TC Offshore did not provide sufficient information in support of its proposed negative salvage rates.¹⁶ TC Offshore responded to the Indicated Shippers' protest stating, in relevant part, that the negative salvage expense that it can reasonably anticipate is significantly higher than the negative salvage expense provided for in ANR's approved rates. However, TC Offshore did not explain why the proposed negative salvage expenses will be higher and therefore why the negative salvage rates needed to be higher.¹⁷ TC Offshore, while stating it was responding to Apache's protest, did not address Apache's claim that TC Offshore's proposed negative salvage rates were unsupported.¹⁸

10. In its application, TC Offshore proposed to change the negative salvage rates (and thus the negative salvage expenses allowed to be recovered) that were last approved for the same offshore facilities for ANR in a section 4 rate case. TC Offshore, however, did not provide a reason for the change. Indicated Shippers and Apache Corporation questioned the amount of the negative salvage expense and therefore the basis of the proposed change in the negative salvage rate, but TC Offshore chose to leave the record as it stood. On rehearing, TC Offshore claims that its statement, quoted in its entirety above, was adequate. We disagree. An applicant for a certificate of public convenience and necessity is required to support its proposed costs.¹⁹ TC Offshore made numerous filings subsequent to filing its application to, among other things, supplement data and answer questions, yet TC Offshore chose not to provide an explanation for the proposed change to the existing negative salvage rates. Thus, since TC Offshore's negative salvage rate proposal was unsupported, we will deny TC Offshore's request for rehearing to modify the June 21 Order.

11. In the event that the Commission rejects TC Offshore's argument on rehearing that it provided adequate justification for its proposed negative salvage rates, TC Offshore provides a negative salvage study with its July 23, 2012 rehearing request, requesting that the Commission accept the study and approve its proposed negative salvage rates based on the study. However, in an August 1, 2012 filing in Docket No. RP12-908-000, TC Offshore proposes to go into service on October 1, 2012. Once TC Offshore has commenced service, its initial rates cannot be amended in a section 7 proceeding.

¹⁵ Indicated Shippers Protest at 15.

¹⁶ Apache Protest at 7.

¹⁷ TC Offshore's October 26, 2011 Answer at 9.

¹⁸ *Id.* at 2.

¹⁹ *See* 18 C.F.R. § 157.14(a)(18)(ii) (2012).

However, our findings rejecting TC Offshore's request for rehearing and its alternative request to supplement the record with a negative salvage study are without prejudice to TC Offshore's filing a general NGA section 4 rate case to change its initial rates.

C. Clarifications

12. The June 21 Order inadvertently omitted a reference to pipeline segment No. 9676. We clarify that pipeline segment No. 9676 should have been included in Table 3 of the June 21 Order as a gathering line.

13. Based on the information provided in the applications and subsequent responses to staff data requests, the June 21 Order stated that the Patterson-West facilities did not interconnect with any of the Patterson-East facilities. On rehearing, TC Offshore indicates, for the first time, that there are physical deck and subsea piping connections at EIA Block 63, as well as a 12-inch interconnection approximately one mile upstream of EIA Block 63 that connect the Patterson-West and Patterson-East facilities. This clarification and correction to the record by TC Offshore does not have an impact on the primary function determinations concerning the Patterson-East facilities made in the June 21 Order.

14. Contrary to the statement in the June 21 Order that there is a subsea interconnection between two segments of the Patterson-West facilities at EIA Block 34 (Line Nos. 3552 and 30002), TC Offshore states that the pipeline is continuous but identified by separate line numbers upstream and downstream of EIA Block 34 because that is the jurisdictional boundary between federal and state waters. TC Offshore also states that the same is true for Line Nos. 4246 and 30001. Because pipelines in state waters do not have assigned numbers from the Department of Interior's Bureau of Safety and Environmental Enforcement, TC Offshore designated lines in state waters with a 30000 series number for identification purposes. We clarify that Line Nos. 3552 and 30002 and Line Nos. 4246 and 30001 are continuous at EIA Block 34.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to TC Offshore under section 7 of the NGA to acquire and operate the Paterson-West facilities determined herein to be jurisdictional transmission facilities under the NGA. This certificate is subject to the same conditions as provided for in the June 21 Order.

(B) TC Offshore's request for rehearing and alternative request to supplement the record on the issue of negative salvage is rejected.

(C) The Commission clarifies the June 21 Order as discussed above.

(D) TC Offshore must file actual revised tariff records incorporating revised initial incremental firm and interruptible transportation and gathering rates reflecting the refunctionalization of the Patterson-West facilities within 30 days of the date of this order.

(1) TC Offshore must submit work sheets showing the adjustments to the initial rates in the format and detail required by the June 21 Order.

(2) TC Offshore must make this compliance filing in its existing compliance proceeding in Docket No. RP12-908.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.