

151 FERC ¶ 61,193
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
and Tony Clark.

Ozark Gas Transmission, L.L.C.

Docket No. CP14-539-000

ORDER APPROVING ABANDONMENT

(Issued June 1, 2015)

1. On August 22, 2014, Ozark Gas Transmission, L.L.C. (Ozark) filed an application for authority under section 7(b) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² to abandon by sale to an affiliate approximately 159 miles of mainline transmission pipeline and appurtenant facilities in Arkansas. For the reasons discussed below, the Commission will grant the requested abandonment authorization.

I. Background and Proposal

2. Ozark, a Delaware limited liability company, is a natural gas company as defined by section 2(6) of the NGA.³ Ozark transports natural gas produced in the Arkoma Basin in eastern Oklahoma and western Arkansas, the Woodford-Caney Shale in eastern Oklahoma, and the Fayetteville Shale in central Arkansas, to delivery points in Arkansas and Missouri and to interstate pipelines in northeastern and central Arkansas.⁴

¹ 15 U.S.C. § 717f(b) (2012).

² 18 C.F.R. pt. 157, subpart A (2014).

³ 15 U.S.C. § 717a(6) (2012).

⁴ These pipelines include: Enable Mississippi River Transmission, LLC, Enable Gas Transmission, Texas Gas Transmission, LLC, Natural Gas Pipeline Company of America, and Texas Eastern Transmission, LP.

3. Ozark's system includes two mainlines, Line 1 and Line 2.⁵ Line 1 is a roughly 266-mile-long, 20-inch-diameter line. Line 2 is a 305-mile-long, 6-inch- to 16-inch-diameter line. Lines 1 and 2 generally parallel each other and the entire system extends from Latimer County, Oklahoma, to Dunlin County, Missouri. Ozark states that its system can provide up to 500,000 dekatherms (Dth) per day of transportation service and that the facilities proposed to be abandoned have the capacity to provide up to 320,000 Dth per day of transportation service.

4. Ozark proposes to abandon by sale to an affiliate approximately 159 miles of Lines 1 and 2. Specifically, Ozark proposes to abandon: (1) 127.5 miles of 20-inch-diameter Line 1 in Franklin, Johnson, Pope, Conway, Faulkner, and White Counties, Arkansas, from mile post (MP) 127.52 to MP 0.00;⁶ (2) 4.8 miles of 12-inch-diameter Line 1-A in White County, Arkansas, from MP 0.00 to MP 4.75;⁷ (3) 26.4 miles of 10-inch-diameter Line 2, in Sebastian, Franklin, and Logan Counties, Arkansas, from MP 0.00 to MP 26.37;⁸ and (4) 29 associated metering and regulating facilities and other appurtenant facilities.⁹ Once abandoned, the affiliate plans to lease the pipeline to Magellan Pipeline Company, L.P. (Magellan) for conversion to refined petroleum products transportation service.

5. Ozark states that transportation service on the facilities proposed to be abandoned has declined due to a leveling off of production in the Fayetteville area, producer diversification away from dry gas production, and a significant increase in available capacity through transportation alternatives in the area, such as the Fayetteville Express Pipeline LLC (Fayetteville Express) and Texas Gas Transmission, LLC's (Texas Gas) Fayetteville Lateral. Ozark held an open season from March 12 to April 2, 2014, to

⁵ Ozark states that Lines 1 and 2 total approximately 565 miles. Application at 3.

⁶ The Commission granted certificate authorization for Line 1 and related facilities in *Ozark Gas Transmission Sys.*, 12 FERC ¶ 63,048 (1980); 16 FERC ¶ 61,099 (1981); and 40 FERC ¶ 61,137 (1987).

⁷ Line 1-A is a lateral extension off of Line 1 in White County, Arkansas. The Commission granted certificate authority in 40 FERC ¶ 61,137.

⁸ The Commission authorized this segment of Line 2 and related facilities in *Ozark Gas Transmission Sys.*, 84 FERC ¶ 61,002, *reh'g granted in part*, 85 FERC ¶ 61,329 (1998).

⁹ The metering and regulating facilities will not be used in the refined petroleum products transportation service, but will be transferred to the affiliate. Ozark October 30, 2014 Data Request Response at 4.

evaluate long-term market demand for natural gas transportation on the pipeline facilities proposed to be abandoned. It did not receive any bids for service.

6. Ozark states that, prior to abandonment, it will have reached agreements with all of its firm shippers on the facilities proposed to be abandoned to provide them with an alternative means for continued natural gas service. Specifically, Ozark states that it will provide its firm shippers either firm service on the remaining 16-inch-diameter portion of Line 2 or an economically-viable alternative for natural gas service. Ozark also notes that the Fayetteville Express, Texas Gas' Fayetteville lateral, and Enable Gas Transmission may provide alternatives to shippers seeking incremental capacity in the region. Ozark indicates it will not seek to recover from its customers any of the costs associated with the construction of facilities to maintain gas service .

II. Notice, Interventions, Comments, Protests, and Answers

7. Notice of Ozark's application was published in the *Federal Register* on September 8, 2014.¹⁰ The interveners identified in Appendix A filed timely, unopposed motions to intervene.¹¹

8. The Conway Corporation and the Conway County Regional Water Distribution District (hereinafter Conway) filed comments in opposition to the application. Conway objects to the proposed abandonment arguing, in part, that the facilities proposed to be abandoned may leak or spill petroleum products into drinking water supplies. In addition, several landowners and state and federal agencies filed comments on Ozark's proposal. These commenters are identified in Appendix B to this order. Their comments are discussed below or in the Environmental Assessment (EA).

III. Discussion

9. Since Ozark proposes to abandon certificated facilities used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of section 7(b) of the NGA.¹²

¹⁰ 79 Fed. Reg. 53,178 (2014).

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 (2014).

¹² 15 U.S.C. § 717f(b).

A. Public Convenience or Necessity

10. Section 7(b) of the NGA allows a natural gas pipeline company to abandon jurisdictional facilities or services only if the abandonment is permitted by the “present or future public convenience or necessity.”¹³ In deciding whether a proposed abandonment is warranted, the Commission considers all relevant factors, but the criteria vary as the circumstances of the abandonment proposal vary.

11. When a pipeline proposes to abandon facilities, the continuity and stability of existing services are the primary considerations in assessing whether the public convenience or necessity permit the abandonment.¹⁴ If the Commission finds that a pipeline’s proposed abandonment will not jeopardize continuity of existing gas transportation services, it will defer to the pipeline’s business judgment.¹⁵

1. Impacts to Existing Customers

12. Ozark states that the abandonment will pose no continuity of service issues because all existing firm customers will continue to receive service on the remaining 16-inch-diameter portion of Line 2 or through another economically-viable alternative. Ozark also states that it did not receive any bids for additional long-term firm service when it held its open season.¹⁶ Ozark argues that granting its request will allow it to eliminate the need for future operation, maintenance, and integrity management expenditures on the facilities proposed to be abandoned.

13. The Commission finds that the abandonment will not adversely impact existing firm customers on Ozark’s system. Ozark’s firm customers will continue to receive service on the remaining 16-inch-diameter portion of Line 2 or through another economically-viable alternative. The open-season results and lack of firm customer protests confirm that there is no additional demand for long-term firm transportation on Ozark’s facilities. Further, upon abandonment, there will be 40,000 Dth per day of unsubscribed transportation service available on the remaining pipeline system. Moreover, eliminating costs associated with an unneeded facility will benefit existing

¹³ *Id.*

¹⁴ *See, e.g., El Paso Natural Gas Co.*, 148 FERC ¶ 61,226, at P 12 (2014) (citations omitted).

¹⁵ *See, e.g., Transwestern Pipeline Co., L.L.C.*, 140 FERC ¶ 61,147, at P13 (2012) (citing *Trunkline Gas Co.*, 94 FERC ¶ 61,381, at 62,420 (2001)).

¹⁶ Ozark Application at Exhibit Z-4 at 1.

customers in Ozark's next NGA section 4 general rate case and Ozark's system. In view of these considerations, we find that the public convenience or necessity permits Ozark's proposed abandonment.

2. Conway's and Landowners' Concerns

14. Conway urges the Commission to deny the application because the facilities Ozark proposes to abandon cross the headwaters feeding Conway's primary drinking water source, Brewer Lake, and backup source, Cadron Creek. Conway is concerned that the pipeline's age and intended use as a petroleum products pipeline may increase the risk of a spill. Several landowners also expressed this concern.

15. The Commission's jurisdiction in this matter is limited to the issue of whether the present or future public convenience or necessity permits the facilities in question to be withdrawn from use in the jurisdictional transportation of natural gas.¹⁷ Once abandoned, the new operator would be responsible for complying with all applicable state and federal safety regulations in converting and operating the facilities for use as a petroleum products pipeline.¹⁸ The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) establishes minimum pipeline safety standards for petroleum products pipelines under the Pipeline Safety Act.¹⁹ Individual states may also exercise authority over petroleum pipeline construction, potentially including selecting the routes for such pipelines. Thus, Arkansas may have the ability to impact construction and/or use of Magellan's future non-jurisdictional refined petroleum products pipeline, including use of the facilities Ozark proposes to abandon.

16. Three landowners, Mr. Jerry Stevenson, Mr. Roger Ellington, and Ms. Shirley Gilbert, pose a series of property rights questions related to the abandonment and new petroleum products transportation. Specifically, Mr. Stevenson asks whether Ozark, by

¹⁷ Commission staff did, however, discuss environmental impacts associated with the conversion of the abandoned facilities to petroleum products transportation in the cumulative impacts section of its EA. EA at 27-36.

¹⁸ *Tallgrass Interstate Gas Transmission, LLC*, 144 FERC ¶ 61,197, at P 54 (2013), *vacated in part on other grounds*, 148 FERC ¶ 61,003 (2014).

¹⁹ *See* 49 C.F.R. pt. 195 (2014). For example, PHMSA requires that refined petroleum products operators develop and implement enhanced protections for pipelines crossing major rivers and waterbodies. These operators must develop and implement an Integrity Management Program to minimize the likelihood of a spill in high consequence areas, including sole-source drinking water supplies, sensitive environmental areas, and commercially navigable waterways. 49 C.F.R. §§ 195.450, 195.452.

abandoning its certificated facilities, abandons its original easement. He also asks whether the proposed petroleum products transportation exceeds the scope of Ozark's original easement. Mr. Ellington expresses concern that his property's value will decline if the pipeline is converted to petroleum products transportation. Ms. Gilbert states that "Ozark is insisting that [she] sign a new agreement" to replace one she signed in the 1980s.²⁰

17. The Commission has no authority over easement reversions, if any, and no authority to adjudicate property rights disputes. Although the holder of a certificate under NGA section 7 may, if necessary, acquire property rights by exercising the right of eminent domain,²¹ the scope of a company's actual property rights, including any rights to continued use of the property after abandonment, are governed by the terms of easement agreement itself. Whether Ozark or others need to acquire additional rights to use the existing easements for petroleum products transportation and what additional compensation the property owners may or may not be entitled to are questions for a court of appropriate jurisdiction.

B. Accounting

18. Ozark proposes to abandon its natural gas pipeline facilities by transfer to an affiliate at the facilities' net book value where no gain or loss will result from the transaction. Ozark argues that the facilities sold in this case are not an operating unit or system because the facilities are not a complete or self-sustaining facility or group of facilities. Consequently, Ozark proposes to account for the sale of the facilities as a normal retirement which entails debiting Account 108, Accumulated Provision for Depreciation of Gas Utility Plant, and crediting Account 101, Gas Plant in Service, for the original cost of the facilities. Ozark states it will receive dividends for transferring the facilities to an affiliate by debiting Account 438, Dividends Declared, and crediting Account 108.

19. The proper accounting to record the sale is dependent on whether the disposition of the facilities is deemed to be the disposition of an operating unit or system. The term "operating unit or system" is a term of art. The principle considerations are whether customers are attached, the amount of investment, the character of property, and

²⁰ Gilbert April 14, 2015 Comments at 1.

²¹ 15 U.S.C. § 717f(h) (2012).

continuity of operation.²² It is unnecessary, however, that an operating unit or systems embrace a complete transmission or distribution system.²³

20. After considering the character of these facilities as transmission, past and future usage, and the investment in approximately 159 miles of mainline pipeline with a net book value of approximately \$43 million, we find that Ozark's proposed transaction is a sale of an operating unit or system. We will require Ozark to record the proposed transfer through Account 102, Gas Plant Purchased and Sold consistent with the instructions of Gas Plant Instruction No. 5 of the Commissions Uniform System of Accounts.²⁴ Ozark shall submit its proposed final accounting for the transfer within six months after the date the transaction is consummated. The accounting submission must provide a complete explanation of the proposed accounting along with appropriate narrative explanations describing the basis for the entries.

IV. Environmental Analysis

21. On October 30, 2014, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Ozark Abandonment Project, Request for Comments on Environmental Issues* (NOI). The NOI was mailed to interested parties including: federal, state, and local officials; agency representatives; environmental and public interest groups; tribes; local libraries; newspapers; and affected property owners.

22. In response to the NOI, Commission staff received comments from the U.S. Army Corps of Engineers, Arkansas Natural Heritage Commission, Arkansas Game and Fish Commission, Arkansas Department of Environmental Quality, Arkansas Department of Health, the Chickasaw Nation, Conway, and several landowners. The primary issues raised concerned potential environmental impacts of the future use of the pipeline after the abandonment. Specifically, their concerns included the age and safety of the abandoned pipeline for oil transportation, impacts on surface waters resulting from potential oil spills, and effects of noise and emissions from pumping stations.

23. To satisfy the requirements of the National Environmental Policy Act, staff prepared an EA for Ozark's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. The EA was issued for a 30-day comment

²² *El Paso Nat. Gas Co.*, 49 FERC ¶ 61,360, 62,297 (1989).

²³ *Id.*

²⁴ 18 C.F.R. pt. 201 (2014).

period and placed into the public record on February 27, 2015. The Commission received no comments on the EA.

24. Based on the analysis in the EA, we conclude that if abandoned in accordance with Ozark's application and supplements, and in compliance with the environmental conditions in Appendix C to this Order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

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

The Commission orders:

(A) Ozark's request to abandon facilities, as described in this order and in the application, is granted, subject to the conditions described herein and in Appendix C.

(B) Ozark shall notify the Commission within 10 days of the date of its abandonment of facilities, as authorized by this order. Ozark shall complete authorized abandonments within one year from the date of this order.

(C) Ozark shall submit its proposed final accounting for the transfer within six months after the transaction is consummated. The accounting submission shall provide all transaction-related accounting entries made to the books and records along with appropriate narrative explanations describing the basis for the entries.

(D) Ozark 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 Ozark. Ozark shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

(E) Ozark shall comply with the environmental conditions set forth in Appendix C to this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A
Interventions

Arkansas Electric Cooperative Corporation
Arkansas Public Service Commission
Atmos Energy Marketing LLC
Laclede Energy Resources, Inc.
Missouri Public Service Commission
NJR Energy Services Company
SourceGas Arkansas, Inc.
Southwestern Energy Services Company

Appendix B
Commenting Entities

Arkansas Natural Heritage Commission
Arkansas Department of Environmental Quality
Arkansas Department of Health
Chickasaw Nation
Conway Corporation and Conway County Regional Water Distribution District*
Bill Bolin
Rebecca Davis
Roger D. Ellington
Shirley J. Gilbert
Osage Nation Historic Preservation Office
Jerry Stevenson
Union Pacific Railroad Company
U.S. Department of Army, Corps of Engineers

* Comments are in opposition to the application.

Appendix C
Environmental Conditions

1. As recommended in the EA, this authorization includes the following condition(s):
2. Ozark shall follow the abandonment procedures and mitigation measures described in its application and supplements, including responses to staff data requests, and as identified in the EA, unless modified by the Order. Ozark must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the 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 the Office of Energy Projects (OEP) before using that modification.
3. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during activities associated with the abandonment. This authority shall allow:
 - a. the modification of conditions of the 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.
4. **Prior to any abandonment activities**, Ozark shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI'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.
5. The authorized facility locations shall be as shown in the EA. **As soon as they are available, and before the start of abandonment activities**, Ozark shall file with the Secretary any revised construction workspace configuration drawings at a scale not smaller than 1:6,000 with station positions for all activities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Ozark's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Ozark'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.

6. Ozark shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying any areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before abandonment activities occur in or near that area.**

This requirement does not apply to extra workspace allowed by Ozark's Erosion and Sedimentation Control Plan and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
7. **Within 60 days of the acceptance of the certificate and prior to abandonment activities,** Ozark shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Ozark will implement the mitigation measures required by the Commission Order. Ozark must file revisions to the plan as schedules change. The plan shall identify:

- a. how Ozark will implement the abandonment procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Ozark will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Ozark will give to all personnel involved with abandonment activities and restoration (initial and refresher training as the Project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Ozark's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Ozark will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of abandonment activities; and
 - (4) the start and completion of restoration.
8. Beginning with the filing of its Implementation Plan, Ozark shall file updated status reports with the Secretary on a **biweekly basis until all abandonment and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;

- e. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Commission Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Ozark from other federal, state or local permitting agencies concerning instances of noncompliance, and Ozark's response.
9. **Within 30 days after completing the abandonment**, Ozark shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been abandoned in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Ozark has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.