

157 FERC ¶ 61,052
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

ONEOK WesTex Transmission, L.L.C.

Docket No. PR16-11-002

ORDER DENYING REHEARING AND GRANTING CLARIFICATION

(Issued October 25, 2016)

1. On July 22, 2016, Atmos Energy Corporation (Atmos) filed for rehearing or, in the alternative, clarification of the Commission’s June 22 Order accepting the revised Statement of Operating Conditions (SOC) filed by ONEOK WesTex Transmission, L.L.C. (ONEOK) under Natural Gas Policy Act of 1978 (NGPA) section 311.¹ For the reasons discussed below, we deny rehearing but grant clarification.

I. Background

2. On January 11, 2016, ONEOK filed a revised SOC that proposed numerous changes, including a more detailed description of how ONEOK proposed to handle a service interruption that affected firm transportation. Following informal settlement discussions with protesting shippers, ONEOK filed, on April 6, 2016, a revised SOC and rate statement that it stated resolved all issues raised in this docket so far.

3. On April 27, 2016 Atmos filed an intervention and adverse comments. Atmos disputed the proposed SOC section 11.1(a), which specified how ONEOK would implement the Commission’s “firm is firm” policy. Atmos agreed that, under our *Transok*² policy, a pipeline “should not, as a general matter, subordinate [section 311] service to its intrastate firm service.”³ Atmos argued that a conflict remains, however, for

¹ *ONEOK WesTex Transmission, L.L.C.*, 155 FERC ¶ 61,295 (2016) (June 22 Order).

² *Transok, Inc.*, 54 FERC ¶ 61,229, at 61,673 (1991) (*Transok I*), order on reh’g, 56 FERC ¶ 61,275 (1991) (*Transok II*).

³ Atmos May 27, 2016 Answer at 3.

a limited group of “preexisting firm intrastate customers whose contracts state a different curtailment priority.”⁴ Atmos quoted its intrastate contract as demonstration of such a different curtailment priority.

4. In the June 22 Order, the Commission accepted ONEOK’s proposal, on the grounds that it complied with longstanding Commission policy, and did not “interfere with any matters that are properly the exclusive jurisdiction of state regulatory or contract law.”⁵ The Commission noted that Atmos’s request for “an SOC provision allowing it to be curtailed last and not *pro rata*,” was “the same remedy [sought by] the shipper in *Transok*.”⁶ The June 22 Order ruled that under *Transok*, a pipeline’s obligation to give equal priority to all firm shippers could only be trumped by a pre-existing, non-jurisdictional contract that “expressly provided” unequal priority, but that Atmos’s proffered contract only appeared to provide for “the same rights available to all intrastate shippers” under Texas law.⁷

II. Request for Rehearing or Clarification

5. Atmos raises three points on rehearing. First, Atmos argues, the Commission erred in not requiring ONEOK to include in its SOC a narrow exception to “firm is firm” policy that would give preferential treatment to shippers who had pre-existing firm intrastate contracts with a different curtailment provision.⁸ Second, Atmos argues that the Commission exceeded its jurisdiction by interpreting the intrastate contract that Atmos filed, because such contracts should be interpreted by the Texas Railroad Commission (TRC) or Texas courts.⁹ Third, Atmos argues that it was arbitrary of the Commission to decide that the “special provision” on curtailment in Atmos’s contract did not convey any special curtailment rights under section 311.¹⁰

⁴ *Id.*

⁵ June 22 Order, 155 FERC ¶ 61,295 at P 15.

⁶ *Id.* P 16.

⁷ *Transok I*, 54 FERC at 61,676.

⁸ Atmos Request at 6-8.

⁹ *Id.* at 8-10.

¹⁰ *Id.* at 10-11.

6. In the alternative, Atmos requests “that the Commission clarify that it did not interpret Atmos’s preexisting intrastate transportation contract.”¹¹

III. Procedural Matters

7. ONEOK filed a motion requesting leave to file an answer to Atmos’s rehearing request. The Texas Railroad Commission (TRC), which has not intervened in the proceeding, also filed comments in answer to the rehearing request. Rule 713(d) of the Commission’s Rules of Practice and Procedure prohibits an answer to a request for rehearing.¹² Accordingly, we reject ONEOK’s and the TRC’s answers.

IV. Discussion

8. We deny rehearing, but grant clarification. The question Atmos raises is whether the Commission must subordinate federally-regulated section 311 service to a contract for state-regulated intrastate service. As the June 22 Order explained, the Commission has only ever done so under very narrow circumstances. Our *Transok* policy begins with the principle that “if the intrastate pipeline chooses to provide interstate service, it may not use these prior intrastate arrangements to give a higher priority to intrastate service than firm interstate service.”¹³ Atmos argues that it is enough that it has a pre-existing contract with an expressly different curtailment provision. Our established policy, however, is stricter. A shipper must show not only that its contract is different, but also that it “expressly provided a curtailment priority above other firm services.”¹⁴ As we found in the June 22 Order, Atmos’s contract “appears to give Atmos the same rights available to all intrastate shippers, by referring to general principles of TRC law.”¹⁵ Thus, while Atmos’s curtailment clause was different from that of section 311 shippers, it did not appear to place Atmos above other intrastate shippers. Nothing that Atmos states on rehearing demonstrates otherwise.

9. However, we do grant Atmos’s request for clarification. The Commission only discussed Atmos’s contract in evaluating whether ONEOK proposed SOC section 11.1(a) was fair and equitable. The Commission did not interpret the contract as a matter of law,

¹¹ *Id.* at 12.

¹² 18 C.F.R. § 385.713(d)(1) (2016).

¹³ *Transok I*, 54 FERC at 61,673.

¹⁴ *Mid Continent Market Center, Inc.*, 72 FERC ¶ 62,274, at 64,841 (1995).

¹⁵ June 22 Order, 155 FERC ¶ 61,295 at P 17.

and clarifies that the TRC or Texas courts retain their jurisdiction to do so. As we explained in one post-*Transok* case:

Clearly, the Commission's regulations do not require intrastate pipelines to enter into a section 311 agreement if to do so may breach a preexisting intrastate contract. Whether a preexisting contract is a basis for an exception to a pipeline's adherence to the nondiscriminatory access condition is a matter to be decided on a case-by-case basis.¹⁶

In that case, the Commission counselled the parties to consider the matter at the state level, and "specifically decline[d] to rule on the contract interpretation issue."¹⁷ We likewise decline to rule on the contract interpretation issue as a matter of Texas law. Even if Atmos's intrastate contract is merely memorializing a general matter of state law, Atmos may still seek relief by having the TRC "consider issues concerning the amount of firm interstate service [that ONEOK] may offer without adversely affecting intrastate service."¹⁸ Whatever remedy Atmos may pursue in other venues, however, the Commission only will subordinate federally-regulated section 311 service to a contract for state-regulated intrastate service in very narrow circumstances, which Atmos has not demonstrated in the instant case.

¹⁶ *Prairie Producing Co. v. Louisiana Intrastate Gas Corp.*, 58 FERC ¶ 61,308, at 61,988 (1992).

¹⁷ *Id.*

¹⁸ *Peoples Gas Light & Coke Co.*, 118 FERC ¶ 61,203, at 61,920 (2007).

The Commission orders:

Rehearing is denied, and clarification is granted, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.