

157 FERC ¶ 61,078
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

UGI Storage Company
UGI Central Penn Gas, Inc.

Docket No. CP16-503-000

ORDER APPROVING ABANDONMENT AND ISSUING CERTIFICATE

(Issued November 1, 2016)

1. On September 22, 2016, UGI Storage Company (UGI Storage) and UGI Central Penn Gas, Inc. (Central Penn) filed a joint application under section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting NGA section 7(b) permission and approval for Central Penn to abandon leased capacity on UGI Storage's system in Pennsylvania. As discussed below, we will grant Central Penn permission and approval to abandon its lease capacity and we will grant UGI Storage NGA section 7(c) certificate authorization to reacquire the leased capacity.

Background

2. On February 29, 2012, UGI Storage requested authorization to acquire from Central Penn the TL-96 Line and to operate it in interstate commerce as an integrated part of its storage system in Tioga County, Pennsylvania. In addition, UGI Storage sought authority to lease 8,362 Dth/day of capacity (or approximately 12 percent of the total capacity) on the TL-96 Line back to Central Penn, in order for Central Penn to continue to provide retail service to its Mansfield, Pennsylvania distribution system under the jurisdiction of the Pennsylvania Public Utility Commission using these facilities. The lease permitted Central Penn's retail distribution customers to continue to receive utility service from the TL-96 Line on an uninterrupted basis for a transitional period, with an expiration date of March 31, 2017.

3. Because Central Penn expected the availability of Marcellus shale gas production and other supplies in its service territory to increase to the point where Central Penn might no longer require the TL-96 capacity to meet the gas supply needs of its Mansfield service territory, the lease permits Central Penn to terminate the lease early,

upon thirty days prior written notice to UGI Storage. The Commission approved the lease arrangement in an order issued on February 28, 2013 in Docket No. CP12-78-000.¹ While the Certificate Order approved Central Penn's acquisition of the lease capacity it denied the parties request for pre-granted abandonment authority to automatically allow the capacity to revert back to UGI Storage at the end of the lease and required the parties to apply to the Commission for such authorization.

Requested Abandonment and Certificate Authorization

4. As was anticipated at the time it entered into the lease, Central Penn now has additional options for local supply and no longer requires the lease capacity on the TL-96 Line. Central Penn has requested the lease be terminated effective November 1, 2016. Applicants request Commission approval for Central Penn to abandon the authorizations provided by the Commission's February 28, 2013 Order² and for UGI Storage to reacquire 8,362 Dth/day of leased capacity on its system.

Notice and Interventions

5. Notice of the parties' application was issued on September 22, 2016. NJR Energy Services Company submitted a timely, unopposed motion to intervene.³ No party filed a protest or adverse comments.

Discussion

6. Because the leased capacity is used to transport natural gas in interstate commerce over facilities subject to the jurisdiction of the Commission, Central Penn's proposed abandonment and UGI Storage's proposed reacquisition of the leased capacity are subject to the requirements of subsections (b), (c), and (e) of NGA section 7.

Abandonment Approval

7. The capacity lease agreement between UGI Storage and Central Penn will terminate effective November 1, 2016. We find there is no longer any need for Central Penn to lease the subject capacity pursuant to the parties' capacity lease agreement; thus, we find Central Penn's proposed abandonment is permitted by the present or future public convenience or necessity.

¹ *UGI Storage Co.*, 142 FERC ¶ 62,170 (2013) (Certificate Order).

² *Id.*

³ 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 (2016).

Reacquisition of Capacity and Certificate Authorization

8. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest in the lessor's pipeline subject to NGA section 7(b) abandonment and section 7(c) certification.⁴ Consequently, the lessee is required to obtain certificate authorization to acquire the leased capacity. When the lease terminates, and with it, the property interest of the lessee, the lessor is required to obtain certificate authorization to reacquire the capacity.⁵ The termination of the applicants' capacity lease agreement ends Central Penn's property interest in the leased capacity, thus UGI Storage requires certificate authorization to reacquire this capacity for use for service under its own tariff.

9. In considering the public interest in a proposal by an interstate pipeline to lease capacity on facilities that have already been constructed and certificated, generally, there is no cause to consider issues related to disruptions of the environment, landowner rights, and the exercise of eminent domain. We do consider whether the pipeline seeking to lease capacity is prepared to financially support its proposal without relying on subsidization from its existing customers. We also consider whether the applicant has made efforts to eliminate or minimize any adverse effects the proposed lease might have on its own existing customers, and on existing pipelines in the market and their captive customers. These are significant criteria described in the Commission's statement of policy on new facilities.⁶ Thus, the Commission has found it appropriate to apply its Certificate Policy Statement's criteria to the extent applicable when addressing requests by pipelines for certificate authority to lease capacity owned by other pipelines.⁷ On the other hand, while a lessor pipeline's reacquisition of leased capacity at the end of a capacity lease agreement also is an acquisition of a property interest for which certificate authorization is necessary, such a reacquisition does not raise the types of subsidization and competitive concerns intended to be addressed by the Certificate Policy Statement. Therefore, the Commission does not apply the Certificate Policy Statement *per se* in

⁴ *Texas Eastern Gas Transmission Corporation*, 94 FERC ¶ 61,139, at 61,530 (2001); *Panhandle Eastern Pipe Line Company*, 73 FERC ¶ 61,137, at 61,390 (1995). See also *Tennessee Gas Pipeline Company*, 115 FERC ¶ 61,283, at P 4 (2006).

⁵ See *Islander East Pipeline Company*, 102 FERC ¶ 61,054, at P 35 (2003).

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

⁷ See, e.g., *CenterPoint Energy Gas Transmission Company*, 126 FERC ¶ 61,239, at P 12 - 13 (2009).

determining whether the public convenience and necessity require granting certificate authorization for the lessor pipeline to once again make the capacity available for service under its own tariff.⁸

10. Because UGI Storage provides its storage and wheeling services at market-based rates, the change in status of the 8,362 Dth/d of capacity from leased capacity to system capacity would not affect the rates of any of its customers. Thus, we find UGI Storage will be able to reacquire capacity on its own system without relying on subsidization from its existing customers and without otherwise adversely impacting its existing shippers. Further, we find UGI Storage's proposal will not adversely impact existing pipelines in the market and their captive customers. Accordingly, we find the public benefits of UGI Storage's reacquiring its leased capacity outweigh any potential adverse consequences;⁹ we therefore find UGI Storage's reacquisition of 8,362 Dth/d of capacity is required by the public convenience and necessity.

11. 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) Central Penn is granted permission and approval under NGA section 7(b) to abandon the lease capacity with UGI Storage, as more fully described in this order and the application.

(B) A certificate of public convenience and necessity is issued to UGI Storage under NGA section 7(c) authorizing it to reacquire the leased capacity from Central Penn, as more fully described in this order and the application.

(C) The abandonment approval and certificate authorization issued in Ordering Paragraphs (A) and (B) are conditioned on UGI Storage and Central Penn complying with all applicable Commission regulations under the Natural Gas Act and particularly section 154 and paragraphs (a), (d), (e), and (g) of section 157.20 of the Commission's regulations.

⁸ See e.g., *Trunkline Gas Company, LLC*, 132 FERC 61,069, at P 9 (2010).

⁹ Given that the capacity at issue is on a jurisdictional interstate pipeline and does not involve any construction activities, a change in a party holding a property interest in capacity on the pipeline has no effect on the pipeline's environmental impact.

(D) Central Penn shall notify the Commission within ten (10) days of the date of abandonment of the described capacity.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.