

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Suedeem G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Columbia Gulf Transmission Company  
and Tennessee Gas Pipeline Company

Docket No. CP06-413-000

ORDER DENYING ABANDONMENT

(Issued March 1, 2007)

1. On July 3, 2006, Columbia Gulf Transmission Company (Columbia Gulf) and Tennessee Gas Pipeline Company (Tennessee) filed a joint application under section 7 of the Natural Gas Act (NGA) to effect an assignment of capacity entitlements that Dynegy Marketing and Trade (Dynegy) holds to a portion of Columbia Gulf's capacity in the South Pass 77 System. The South Pass 77 System is co-owned by Columbia Gulf and Tennessee. Columbia Gulf seeks authority pursuant to NGA section 7(b) to abandon by assignment to Tennessee its certificated obligations entitling Dynegy to this capacity. Tennessee seeks authorization under NGA section 7(c) to acquire these capacity entitlements by assignment.

2. For the reasons discussed herein, the Commission will deny the requested abandonment and acquisition of capacity.

**I. Background**

3. In 1980, the Commission authorized Tennessee and Columbia Gulf to construct and operate pipeline facilities extending from South Pass Block 77 offshore Louisiana to Tennessee's system in Plaquemines Parish, Louisiana (South Pass 77 System).<sup>1</sup> In 1981 and 1983, Tennessee and Columbia Gulf constructed additional facilities to expand the

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<sup>1</sup>*Tennessee Gas Pipeline Co.*, 12 FERC ¶ 61,307 (1980).

South Pass 77 System.<sup>2</sup> Tennessee and Columbia Gulf entered into several agreements with Gulf Oil Corporation (Gulf Oil), predecessor in interest to Dynegy, under which Gulf Oil contributed to the costs to construct the initial facilities and the expansion facilities. In return, Gulf Oil was entitled to have its gas reserves transported by Tennessee and Columbia Gulf using a percentage of the capacity on the South Pass 77 System. The Commission granted Tennessee and Columbia Gulf case-specific certificates authorizing them to implement the agreements entitling Gulf Oil to transportation using portions of Tennessee's and Columbia Gulf's capacity in the South Pass 77 System.

4. Specifically, Gulf Oil contributed 25 percent of the cost of construction of the initial facilities in exchange for transportation utilizing 25 percent of the facilities' capacity. Gulf Oil's entitlements to transportation on the initial facilities were derived 50 percent from Tennessee's ownership interest and 50 percent from Columbia Gulf's ownership interest. Gulf Oil contributed 16.67 percent of the cost of constructing the 1981 expansion facilities in exchange for transportation utilizing 16.67 percent of the expansion capacity. Seventy percent of Gulf Oil's resulting capacity entitlement in the 1981 expansion project was derived from Tennessee's ownership interest, and 30 percent was derived from Columbia Gulf's. Gulf Oil contributed 43.5 percent of the cost of constructing the 1983 expansion facilities and received the right to transportation utilizing an equivalent amount of capacity, 50 percent from Tennessee's ownership interest and 50 percent from Columbia Gulf's.

5. Gulf Oil's rights to transportation service on the South Pass 77 System were determined under five Letter Agreements among Tennessee, Columbia Gulf, and Gulf Oil. Each Letter Agreement stated that Tennessee and Columbia Gulf agreed to provide for Gulf Oil "the right to have certain volumes of its gas handled in the proposed facilities pursuant to a Transportation Agreement." Each Letter Agreement also provided that monthly operation and maintenance costs and capital replacement costs are to be shared by Tennessee, Columbia Gulf, and Gulf Oil on the basis of each party's use of the facilities during the month.

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<sup>2</sup>*Tennessee Gas Pipeline Co.*, 16 FERC ¶ 61,054 (1981) and *Tennessee Gas Pipeline Co.*, 22 FERC ¶ 61,208 (1983). Tennessee and Columbia Gulf are each 50 percent owners of the facilities certificated in 1980 and 1981. Tennessee and Columbia Gulf are each 40 percent owners of the facilities certificated in 1983. The remaining 20 percent of the 1983 facilities was certificated to United Gas Pipe Line Company. Tennessee is the operator of the South Pass 77 System.

6. On July 1, 1985, Gulf Oil merged with Chevron U.S.A., Inc., which assigned the South Pass 77 System capacity entitlements to Dynege Holdings, Inc. effective March 1, 1997. That same day, Dynege Holdings, Inc. assigned these rights to Dynege. As Gulf Oil's successor in interest, Dynege was entitled to 87,866 Mcf/day of Tennessee's South Pass 77 System capacity and 81,201 Mcf/d of Columbia Gulf's South Pass 77 System capacity. Dynege also succeeded to Gulf Oil's right to transportation of 141,860 Dth/d on Tennessee's downstream pipeline facilities under Rate Schedule T-124.<sup>3</sup> Dynege no longer needs any of this capacity. Therefore, on May 2, 2005, Dynege and Tennessee entered into two agreements whereby Dynege: (1) would terminate all of its rights to receive service using portions of Tennessee's and Columbia Gulf's capacity in the South Pass 77 System and (2) would assign to Tennessee its entitlements to service using Columbia Gulf's capacity.

7. On September 15, 2005, Tennessee filed an application in Docket No. CP05-418-000 requesting authorization: (1) to terminate Dynege's entitlement to capacity on Tennessee's portion of the South Pass System, (2) to abandon Tennessee's service to Dynege on Tennessee's downstream pipeline, and (3) to assign Dynege's right to service utilizing capacity on Columbia Gulf to Tennessee. Under Paragraph 3 of the 2005 assignment agreement, upon Dynege's payment of \$579,600.18 to Tennessee, Tennessee will assume transfer and assignment of all Dynege's right, title and interest in the Columbia Gulf capacity, together with the related cost responsibility.

8. On January 20, 2006, the Commission issued an order that approved Tennessee's request to abandon its certificated obligations which entitled Dynege to receive transportation service utilizing a portion of Tennessee's South Pass 77 System capacity and downstream transportation service on Tennessee's system.<sup>4</sup> In reaching its determination that the public convenience and necessity permitted Tennessee's abandonment of these services, which had been certificated on a case-specific basis for Dynege's predecessor, the Commission took into account that the abandonment would make this capacity available to others under Tennessee's Part 284 blanket certificate. The abandonment became effective on February 10, 2006.

9. However, the January 20, 2006 Order denied Tennessee's request to acquire by assignment Dynege's entitlements to utilize a portion of Columbia Gulf's capacity on the South Pass 77 System. The Commission stated that Columbia Gulf had not requested authority to abandon its certificated service obligation to Dynege or the corresponding

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<sup>3</sup> *Tennessee Gas Pipeline Co.*, 17 FERC ¶ 62,196 (1981).

<sup>4</sup> *Tennessee Gas Pipeline Co.*, 114 FERC ¶ 61,050 (2006).

ownership interest in the facilities. The order further explained that assignment of the use of Dynegy's Columbia Gulf capacity to Tennessee under a case-specific Part 157 certificate would be inconsistent with the Commission's open-access policies and regulations implemented by Order No. 636. The order stated that if it wished to do so, Columbia Gulf could file to "abandon its service obligations to Dynegy with an appropriate NGA section 7(b) filing. The proposed service can then be provided under Part 284 of the Commission's regulations."<sup>5</sup>

10. Tennessee filed a request for rehearing of the January 20, 2006 Order, which the Commission denied in an order issued June 1, 2006.<sup>6</sup> The Commission rejected the argument that it was necessary to permit Tennessee to take assignment of Dynegy's Columbia Gulf capacity in order to prevent that capacity from being stranded or made idle. The Commission acknowledged that such capacity cannot be offered to others on a firm basis since it is dedicated to Dynegy on a firm basis. However, the Commission reasoned that capacity not being used by Dynegy can be offered to others by Columbia Gulf for interruptible service under its Part 284 blanket certificate or, if Columbia Gulf can't find an interruptible shipper to use the capacity, by Tennessee for interruptible service under its Part 284 blanket certificate.<sup>7</sup> Specifically, as explained in the June 1 rehearing order, Tennessee's and Columbia Gulf's September 13, 1996 "Construction, Ownership, Operating and Maintenance Agreement" provides, in Article 4.04(d), that "Tennessee shall have the right to utilize any of . . . Columbia Gulf's Capacity Entitlement that they [*i.e.*, Dynegy and Columbia Gulf] are not utilizing on any day at no cost or charge to Tennessee."<sup>8</sup>

## **II. Proposal**

11. In the instant application, Columbia Gulf requests authorization to abandon its obligations under a case-specific Part 157 certificate to provide service to Dynegy utilizing Dynegy's entitlements to capacity on Columbia Gulf's portion of the South Pass 77 System by assigning the rights to obtain such service to Tennessee. Tennessee requests certificate authority to accept the assignment of the right to utilize that capacity. The applicants state that Dynegy no longer requires its Columbia Gulf capacity on South

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<sup>5</sup> *Id.* at P 16.

<sup>6</sup> *Tennessee Gas Pipeline Co.*, 115 FERC ¶ 61,283 (2006).

<sup>7</sup> *Id.* at P 12.

<sup>8</sup> *Id.* at n. 6.

Pass 77 System. The applicants state that Dynege has not used any of this capacity since 1999. The applicants propose that, following assignment of Dynege's rights to transportation utilizing a portion of Columbia Gulf's capacity to Tennessee, the capacity will be available for open-access service under Tennessee's FERC Gas Tariff.

12. On August 17, 2006, Tennessee filed responses to Commission staff's data requests. Tennessee maintains that the current proposal is the only option for Dynege to shed its remaining Columbia Gulf capacity-obligations on the South Pass 77 System because Columbia Gulf did not exercise its contractual right of first refusal to take back the right to utilize this capacity to serve customers other than Dynege.

13. As noted, pursuant to the assignment agreement between Tennessee and Dynege, if the proposed assignment is approved by the Commission, Tennessee will receive a transfer payment of \$579,600.18 from Dynege, and Tennessee will assume Dynege's share of South Pass 77 System costs. Tennessee estimates that these costs will be somewhat less than \$143,250 per year. Tennessee states that it has not estimated the revenues which will become available to it from the acquisition of Dynege's right to utilize capacity on Columbia Gulf, but states it proposes to market the capacity mainly as capacity for nominations from a pool. Tennessee argues that if the Commission rejects the requested authorizations, Tennessee will have the contractual right to use the Columbia Gulf capacity to which Dynege is entitled only for interruptible transportation.

14. Tennessee asserts that its current joint application with Columbia Gulf sets forth a proposal similar to the one approved by the Commission in its January 20 Order allowing Tennessee to abandon its obligation to provide service to Dynege utilizing a portion of its South Pass 77 System capacity. Tennessee argues that, just as the Commission's approval of Tennessee's abandonment of service to Dynege resulted in Tennessee's being able to offer that increment of capacity to others for firm service under its Part 284 blanket certificate, the Commission's authorization of the assignment of Dynege's capacity on Columbia Gulf to Tennessee will allow Tennessee to offer firm service utilizing that capacity to others under its Part 284 blanket certificate. Tennessee asserts that this arrangement will better serve the interstate market and permit more efficient use of South Pass 77 System capacity and Tennessee's downstream pipeline capacity.

15. Tennessee states that, as the Commission's January 20 Order found with respect to Tennessee's abandonment of service to Dynege utilizing Dynege's entitlements to a portion of Tennessee's South Pass 77 System capacity, any issues related to Tennessee's costs associated with acquiring Dynege's entitlement to service utilizing Columbia Gulf's capacity on the South Pass 77 System can be addressed in Tennessee's next NGA section 4 rate proceeding.

### III. Interventions

16. Notice of Tennessee's and Columbia Gulf's joint application in Docket No. CP05-413-000 was published in the *Federal Register* on July 14, 2006 (71 Fed. Reg. 40084). Timely, unopposed motions to intervene were filed by Consolidated Edison Company of New York jointly with Orange and Rockland Utilities, Inc.; Chattanooga Gas Company jointly with Pivotal Utility Holdings, Inc., d/b/a Elizabethtown Gas; East Ohio Gas Co., d/b/a Dominion East Ohio; Peoples Natural Gas Co., d/b/a Dominion Peoples; and ProLiance Energy, LLC.

17. Dynegy filed an intervention in support of Tennessee's and Columbia Gulf's application. Dynegy states that since it has exited the gas merchant business, it needs to shed all of its capacity on the South Pass 77 System and to terminate its financial obligations associated with that capacity.

### IV. Discussion

18. Citing language from our June 1, 2006 rehearing order that "implementation of Tennessee's proposal requires abandonment authority for Columbia Gulf and certificate authorization for Tennessee,"<sup>9</sup> the applicants state that Columbia Gulf has joined with Tennessee to "comply with the Commission's existing statutory and regulatory requirements and obtain the necessary abandonment authority for Columbia Gulf and certificate authority for Tennessee, as directed by the June 1 Order."<sup>10</sup> However, in stating that "[a]ssignment of the Columbia Gulf capacity must be done in compliance with existing statutory and regulatory requirements,"<sup>11</sup> we did not mean to suggest that we would look favorably on a proposal that would result in Tennessee's stepping into Dynegy's shoes and receiving a Part 157, case-specific service from Columbia Gulf.

19. Rather, we were responding to Tennessee's argument on rehearing that the transfer by assignment of the right to utilize the capacity held on Columbia Gulf on Dynegy could be accomplished pursuant to "the 1980s vintage Letter Agreements" among the parties, without the need for specific abandonment and certificate authority from the

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<sup>9</sup> *Tennessee Gas Pipeline Co.*, 115 FERC ¶ 61,283 at P 8 (2006).

<sup>10</sup> Application at 2.

<sup>11</sup> *Tennessee Gas Pipeline Co.*, 115 FERC ¶ 61,283 (2006) at P 13.

Commission.<sup>12</sup> We had already specifically rejected assignment as a mode of capacity transfer in our January 20, 2006 Order, stating

Tennessee, in essence, is requesting that the Commission authorize abandonment of Columbia Gulf's certificated service for Dynegy and issue Columbia a new case-specific certificate to provide the service for Tennessee. We reject the proposal to provide service under Part 157 case-specific authority as inconsistent with our policy, as set forth in Order No. 636.<sup>13</sup>

20. If the parties chose to proceed, we contemplated that Columbia Gulf would propose, as Tennessee did, a straight-forward abandonment of its service obligations to Dynegy and either rely on its Part 284, open-access blanket certificate to execute a new firm service agreement with Tennessee or propose to lease (or perhaps sell out-right) the capacity to Tennessee. However, in renewing the previously rejected proposal for abandonment by assignment, the instant application reflects the same infirmities.

21. The firm service that Columbia Gulf presently is obligated to stand ready to provide to Dynegy is a service that was authorized for a particular customer on a case-specific basis under Part 157 of the Commission's regulations prior to promulgation of the Commission's open-access policies and regulations. Columbia Gulf is not offering to make equivalent service available on an open-access basis to other customers. Therefore, the applicants would have to provide compelling justification for a departure from the Commission's open-access requirements in order to reassign this service so that it could continue as a case-specific Part 157 service for another customer.<sup>14</sup> The applicants have failed to provide compelling justification.

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<sup>12</sup> Request for Rehearing of Tennessee Gas Pipeline Company at 6.

<sup>13</sup> 114 FERC ¶ 61,050 at P16 (2006).

<sup>14</sup> See *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,309 (2002) (abandonment granted, but assignment denied) (*Transco*); *Penn-York Energy Corp.*, 68 FERC ¶ 61,217 (1994) (assignment of case-specific authority denied); *Algonquin LNG, Inc. and Algonquin Gas Transmission Co.*, 60 FERC ¶ 61,127 (1992), *order on reh'g*, 61 FERC ¶ 61,292 (1992) (extensions of existing case-specific certificates denied); *Blue Lake Gas Storage, et al.*, 59 FERC ¶ 61,118 (1992) (new case specific transportation certificate denied after Order No. 636). In limited circumstances, we have permitted an assignment of case-specific certificates to non-jurisdictional customers. See *Southwest Gas Transmission Co.*, 91 FERC ¶ 61,007 (2000) (*Southwest*) distinguished below.

22. While it appears there would be no adverse affect on Columbia Gulf or its other customers from the proposed abandonment by assignment, the parties have failed to show why the public convenience and necessity require approval of Tennessee's acquisition of the capacity by assignment. Tennessee is unable to identify any customers requiring service that would justify its acquisition of additional South Pass 77 System capacity. Indeed, Tennessee already has approximately 15,000,000 Mcf of the South Pass 77 System's capacity and acknowledges that over the last three years the most throughput it had in any single month was approximately 11,000,000 Dth.<sup>15</sup> Further, only about four percent of Tennessee's throughput on the South Pass 77 System is under firm transportation contracts.<sup>16</sup>

23. The applicants contend that Dynege's Columbia Gulf capacity will be unused if the Commission refuses to approve the current proposal. However, Tennessee already has the contractual right to use Dynege's Columbia Gulf capacity, as well as Columbia Gulf's other capacity, on an interruptible basis, at no charge, when it is not being used by Dynege or Columbia Gulf. Tennessee can exercise this contractual right in the event demand for service over the South Pass 77 System increases so significantly that Tennessee is able to market all of its own existing capacity and can use more.

24. If the Commission were to approve Tennessee's acquisition of Dynege's Columbia Gulf capacity on the South Pass 77 System by assignment, Tennessee states that the most likely additional market for such capacity for would be for customers needing its pooling service. However, since Tennessee's pooling service is an interruptible service, Tennessee can already provide pooling service using Dynege's idle Columbia Gulf capacity.

25. In view of the above considerations, the Commission does not agree with the applicants' argument that approval of their proposed assignment of Columbia Gulf's case-specific Part 157 service for Dynege is necessary to prevent Dynege's Columbia Gulf capacity from being stranded or removed for practical purposes from the South Pass 77 System and interstate pipeline grid.

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<sup>15</sup> Dynege's August 17, 2006 response to Commission staff's data request. Tennessee's existing 15,000,000 Mcf of South Pass 77 System capacity includes the capacity relinquished by Dynege pursuant to the abandonment authority granted to Tennessee by the Commission's January 20 Order.

<sup>16</sup> *Id.*

26. Tennessee asserts that precedent for approval of the current request was established by *Transcontinental Gas Pipe Line Corporation (Transco)*<sup>17</sup> and *Southwest Gas Transmission Co. (Southwest)*.<sup>18</sup> It is true that in the cited *Southwest* proceeding the Commission approved Southwest's proposal to abandon a certificated transportation service for El Paso Natural Gas Transmission Company (El Paso) and relieve El Paso of its contractual obligations by assigning the service to Southwest's affiliated local distribution company, Southwest Gas Corporation (Southwest LDC). However, in that proceeding El Paso held all the capacity on Southwest's system, the case-specific transportation service being, in effect, a capacity lease which allowed El Paso to use Southwest's capacity to transport gas for Southwest LDC. Thus, the Commission's approval of the proposal enabled Southwest to resume operating its own facilities and continue the service for Southwest LDC. Moreover, the Commission noted that Southwest was a very small pipeline planned to serve a single affiliated customer and "likely, even if conversion to a blanket certificate becomes necessary, to serve few, if any, other shippers, and those would probably be on an interruptible basis as all of SGTC's [Southwest's] firm capacity is committed to Southwest [LDC] under a cost of service contract."<sup>19</sup> The Commission further found that "given the physical configuration of the current and proposed facilities and Southwest's [LDC's] gate-keeper rights, it is reasonable for Southwest [LDC] to have complete capacity hold rights on SGTC [Southwest]."<sup>20</sup> No similar factors are present here.

27. In the cited *Transco* proceeding, the Commission granted Transco's request to abandon the sales service being provided to Eastern Shore Natural Gas Company (Eastern Shore) under a case-specific certificate, but denied its request to assign a portion of that service to two of Eastern Shore's customers. The Commission specifically stated that its denial of the proposed assignment of the case-specific sales authority was without prejudice to Transco's filing to provide the service under an open-access Part 284 blanket sales for resale rate schedule. Tennessee states that if it were allowed to acquire Dynegy's Columbia Gulf capacity on the South Pass 77 System by assignment in this proceeding, Tennessee could offer that capacity under its Part 284 blanket transportation certificate. However, the ruling in *Transco* suggests that Columbia Gulf should seek a

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<sup>17</sup> 100 FERC ¶ 61,309 (2002).

<sup>18</sup> 91 FERC ¶ 61,007 (2000).

<sup>19</sup> *Id.* at 61,035.

<sup>20</sup> *Id.*

clean abandonment of its case-specific obligations to Dynegy and make the capacity available to Tennessee under Columbia Gulf's Part 284 certificate.

28. The Commission recognizes Dynegy's dilemma in having to continue paying for capacity that it no longer needs, given that Columbia Gulf has apparently chosen not to reacquire rights to the capacity under the same terms and conditions accepted by Tennessee. However, the applicants have shown no reason why the public interest requires the extraordinary relief of the Commission's approving the assignment of that capacity to Tennessee pursuant to a case-specific certificate.

29. For the reasons discussed herein, the Commission is denying the applicants' requested authorizations.

The Commission orders:

Columbia Gulf's and Tennessee's requests for abandonment authority and certificate authority, respectively, in Docket No. CP06-413-000 are denied.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.