

120 FERC ¶ 61,251
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gulf Transmission Company
and Tennessee Gas Pipeline Company

Docket No. CP06-413-001

ORDER DENYING REHEARING

(Issued September 19, 2007)

1. On March 1, 2007, the Commission issued an order denying Columbia Gulf Transmission Company's (Columbia Gulf) and Tennessee Gas Pipeline Company's (Tennessee) joint application under section 7 of the Natural Gas Act (NGA) to implement an assignment of capacity rights on their jointly-owned South Pass 77 System (March 1 Order).¹ Specifically, the March 1 Order: (1) denied Columbia Gulf's request to abandon by assignment under NGA section 7(b) 81,201 Mcf/d of entitlements that Dynegy Marketing and Trade (Dynegy) holds on Columbia Gulf's capacity on the South Pass 77 System; and (2) denied Tennessee's request to acquire by assignment under NGA section 7(c) Dynegy's capacity entitlements on Columbia Gulf. Columbia Gulf, Dynegy, and Tennessee filed requests for rehearing essentially asserting that the requested abandonment and acquisition of Part 157 capacity by assignment are permitted or required by the public convenience and necessity. For the reasons discussed herein, the Commission denies rehearing.

I. Background and the March 1 Order

2. The background is recited in the March 1 Order and will only be repeated to the extent necessary to understand new arguments made on rehearing. The March 1 Order rejected the Columbia Gulf and Tennessee proposal for assignment because they essentially requested the Commission to authorize the abandonment of Columbia Gulf's certificated case-specific service to Dynegy and to issue Columbia Gulf a new case-specific certificate to provide service to a different customer, Tennessee.² The

¹ *Columbia Gulf Transmission Co. and Tennessee Gas Pipeline Co.*, 118 FERC ¶ 61,165 (2007).

² March 1 Order at P 20.

Commission stated that the proposal to provide service under Part 157 case-specific authority to Tennessee was inconsistent with our open-access policy, as set forth in Order No. 636,³ to provide service to all customers on a non-discriminatory basis and to avoid new Part 157 certificates. The Commission also stated that Columbia Gulf and Tennessee had failed to make a 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 firm service for another customer.⁴

3. The Commission also observed that Tennessee was unable to identify any customers requiring service on the capacity, that only about four percent of Tennessee's total throughput on the South Pass 77 System was under firm transportation contracts,⁵ and that Tennessee already had the contractual right to use Dynegey's unused Columbia Gulf capacity on an interruptible basis at no charge pursuant to Tennessee's Part 284 blanket certificate.⁶ The March 1 Order stated that because of that contractual right, the proposed assignment is not needed to prevent Dynegey's Columbia Gulf capacity from being stranded or removed from the interstate pipeline grid.⁷

4. The March 1 Order concluded that the parties failed to show why the public convenience and necessity required approval of Tennessee's acquisition of capacity by assignment and suggested that Columbia Gulf, following a straight abandonment of the Dynegey entitlements, could propose, subject to Commission approval, a lease of capacity to Tennessee or could execute a Part 284 service agreement with Tennessee to make the capacity available on a firm, open-access basis.⁸

³ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636-A, FERC Stats & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *reh'g denied*, 62 FERC ¶ 61,007 (1993), *remanded in part, United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir 1996), *cert. denied*, 117 S.Ct. 1723 (1997), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997), *order on reh'g*, Order No. 636-D, 83 FERC ¶ 61,210 (1998).

⁴ March 1 Order at P 21-22.

⁵ March 1 Order at P 22.

⁶ March 1 Order at P 23-24.

⁷ March 1 Order P 23-25.

⁸ March 1 Order at P 20.

II. Requests for Rehearing

5. Dynegey argues that the March 1 Order is arbitrary and capricious because it fails to acknowledge: (1) that the assignment /acquisition proposal satisfies the broad public interest standard of NGA sections 7(b) and 7(c) to consider all relevant factors and achieves a result fairer to Dynegey than the current Part 157 certificate; (2) that Tennessee would use the acquired capacity to promote the Commission's open-access objectives through the conversion of Part 157 transportation to Part 284 transportation as discussed in *Dominion Transmission, Inc.*⁹ and *NGO Transmission, Inc.*;¹⁰ (3) that no party protested the proposal which is essentially an uncontested settlement; and (4) and that its proposal would benefit Dynegey by shifting Dynegey's 25 percent share of operation and maintenance (O&M) and capital costs to Tennessee with a minor rate effect on Tennessee customers¹¹ and no adverse financial effects on Columbia Gulf and its customers. Dynegey asserts that the Commission failed to engage in reasoned decision-making because it did not balance its open-access policy against the harm its decision would have on Dynegey, which is not entitled to release its Part 157 firm capacity under the Commission's capacity release regulations.

6. Columbia Gulf alleges that the Commission erroneously concluded that Columbia Gulf's and Tennessee's proposals did not satisfy the public convenience and necessity. Specifically, Columbia Gulf argues that the Commission failed to acknowledge that its proposal is consistent with Commission policy of promoting a conversion of case-specific Part 157 authorizations to open-access services and that Columbia Gulf and Dynegey will avoid costs associated with the Dynegey capacity which benefits Tennessee's shippers.

⁹ 111 FERC ¶ 61,135 at P 78-81 (2005) (Commission accepted a tariff that implemented regulations at 18 C.F.R. § 217 encouraging pipelines to permit a shipper to convert from Part 157 service to Part 284 service). Under 18 C.F.R. § 157.217, a pipeline is authorized, upon a customer's request, to abandon Part 157 transportation service and to convert Part 157 transportation service to Part 284 service.

¹⁰ 105 FERC ¶ 61,138 at P 15 (2003) (pipeline's request for a case-specific certificate to provide transportation service to affiliated companies is denied).

¹¹ Dynegey made its observation when comparing Tennessee's initial estimate of Dynegey-related costs of \$143,250 per year to total company O&M expenses and the fact that Dynegey's transfer payment to Tennessee of \$579,600 would reduce Tennessee's costs. However, Dynegey continues, its actual costs in the recent past include \$1.4 million representing its 25 percent share of O&M and capital costs, an annual insurance premium of \$1.3 million, and \$5 million for hurricane-related pipeline repairs billed by Tennessee. *See* Dynegey's request for rehearing, Appendix A (Affidavit) at 10, 13-14.

7. Tennessee argues that the same public convenience and necessity considerations that the Commission found to justify Tennessee's taking back Dynegey's Tennessee-derived capacity entitlement logically should apply to Tennessee's taking Dynegey's Columbia Gulf capacity entitlement. Tennessee asserts that the assignment proposal is the only practical and reasonable approach to achieve the Commission's open-access policies and to enable Dynegey to shed unneeded capacity and associated costs.

III. Discussion

8. The basic question raised on rehearing is whether the applications to assign Dynegey's Columbia Gulf capacity to Tennessee are permitted or required by the public convenience and necessity. A finding that a proposal is permitted by the public convenience and necessity requires some demonstrable benefit. The applicants fail to demonstrate public benefit or the avoidance of public detriment.

A. Dynegey's Capacity on Columbia Gulf is Now Accessible

9. As noted in the March 1 Order,¹² we continue to believe that the proposals are not required or permitted by the public convenience and necessity because the unneeded Dynegey-related capacity entitlements on Columbia Gulf are currently contractually available to Tennessee under Tennessee's or Columbia Gulf's Part 284 blanket certificate as interruptible transportation for pooling service on a no-cost basis.¹³ The record indicates that over the last three years, the most throughput Tennessee's share of the South Pass 77 System had in a single month resulted in a pipeline approximately three-quarters full, mainly with interruptible volumes. As noted in the March 1 Order, only about four percent of Tennessee's throughput on the South Pass 77 system is under firm transportation contracts.¹⁴ While the applications would permit the Dynegey-related capacity to be marketed as firm, the record does not indicate that there is a current or prospective market for additional firm capacity in the South Pass 77 area. Further, Columbia Gulf is not interested in taking the capacity back from Dynegey and marketing it as firm. The public convenience and necessity is not served by transferring unneeded capacity to an interstate pipeline customer (Tennessee) with principally interruptible needs and with current access to that capacity on a no-cost interruptible basis.

¹² March 1 Order P 23-24.

¹³ See Article 4.04(d) of the Construction, Ownership, Operating and Maintenance Agreement (1996 Agreement). The agreement was executed on September 13, 1996, and in Article 8.01 provides for a primary term of 15 years, with automatic year-to-year extensions, until terminated by notice from Columbia Gulf or Tennessee.

¹⁴ March 1 Order P 22.

B. Benefit to Dynege Is Not a Sufficient Rationale

10. The parties filed the applications to shift to Tennessee: (1) capacity related to Dynege's entitlement on Columbia Gulf that Dynege no longer needs; and (2) Dynege's obligation stated in the 1996 Agreement for a 25 percent portion of South Pass 77 System operation and maintenance costs. Tennessee is willing to accept the capacity and to pay Dynege's 25 percent portion in exchange for Dynege's lump-sum assignment payment. Under that arrangement, Columbia Gulf would continue to be responsible for 37.5 percent of South Pass 77 System costs as stated in the 1996 Agreement.

11. The proposals of regulated entities to transfer capacity in facilities used in interstate commerce are subject to our regulatory requirements, which if not satisfied, warrant our rejection. The Columbia Gulf and Tennessee proposals are mainly intended to shelter Dynege from its contractually-required capacity costs. Financial benefit to Dynege, however, without indications of broader public benefit, such as improving service, does not alone satisfy the public interest requirement of the public convenience and necessity. The assignment of capacity to Tennessee would not increase access to transportation capacity, and holds the potential of increasing Tennessee's costs of providing service. Simply because the applicants have an agreement does not mean that the proposals meet our regulatory requirements. The applicants have not made a sufficient case of need to pass muster under NGA section 7.

12. The March 1 Order stated that applicants had failed to provide a compelling justification for Columbia Gulf's proposal to reassign this capacity. Dynege asserts that the magnitude of its costs is a financial hardship that should equate to a compelling justification to permit assignment of its capacity to Tennessee. Dynege states that Tennessee's estimate of assumed Dynege costs of \$143,250 per year has increased to several million dollars, including hurricane damage and capital repairs.

13. We must balance our concern for Dynege's contractual dilemma against the public convenience and necessity that would be adversely affected by Tennessee's acquisition of unneeded Dynege capacity and related costs. As noted, Tennessee currently has free access to the Dynege capacity on Columbia Gulf. Tennessee's willingness to assume unlimited Columbia Gulf-derived Dynege costs may ultimately have an adverse effect on Tennessee, its customers, and the public convenience and necessity. While Tennessee is willing to assume Dynege's financial obligation, no party has identified why the public convenience and necessity is served by Tennessee or, potentially, its customers paying for Dynege's share of unlimited South Pass 77 System costs. We affirm our earlier conclusion that Tennessee's acquisition is not required by the public convenience and necessity.

14. Dynege asserts that since the application is unopposed the Commission should consider it as an uncontested settlement among Dynege, Columbia Gulf, and Tennessee that the Commission should approve without modification.¹⁵ Neither Columbia Gulf nor Tennessee, however, proposed their application for abandonment/acquisition as an uncontested settlement of a dispute among the parties.¹⁶ The Commission observes that Tennessee's customers would have a stake in such a settlement, in particular as to the future rate treatment of Tennessee's assumption of Dynege-related costs. The parties do not address the issue of future rate treatment except to say that the issue can be addressed in Tennessee's next NGA section 4 rate general rate proceeding. Section 4 proceedings are for the purpose of recovering costs already found to be required by the public convenience and necessity. Even viewing the unopposed application as an uncontested settlement, the application fails to satisfy the public convenience and necessity under NGA section 7.

C. Dynege's Former Tennessee Capacity

15. The rehearing applicants assert that the Commission's order approving Tennessee's abandonment, termination, and reversion to Tennessee of Dynege-related capacity entitlements on Tennessee's capacity on South Pass 77¹⁷ requires the Commission to approve Columbia Gulf's proposed abandonment by assignment to Tennessee of Dynege's Columbia Gulf's capacity. We disagree.

16. Tennessee abandoned and, upon receipt of Dynege's termination payment, terminated Dynege-related entitlements on Tennessee's capacity and made that capacity, which reverted back to it, available to others under its Part 284 blanket certificate. Thus, our order authorizing abandonment and termination of Tennessee-related Dynege entitlements did not grant a new customer a new Part 157 certificate. Columbia Gulf's assignment proposal requires the abandonment of its current Part 157 certificate for Dynege and the issuance to Columbia Gulf of a new Part 157 certificate for Tennessee. Columbia Gulf is not proposing to terminate the Dynege entitlements under a straight abandonment and to reacquire the Dynege-related capacity.

¹⁵ Application's Appendix A (affidavit at 19).

¹⁶ Uncontested settlements may be approved upon a finding that the settlement appears to be fair and reasonable and in the public interest. 18 C.F.R. § 385. 602(g)(3) (2007).

¹⁷ *Tennessee Gas Pipeline Co.*, 114 FERC ¶ 61,050, *reh'g denied*, 115 FERC ¶ 61,283 (2006).

D. Commission Policy Against New Part 157 Certificates

17. Columbia Gulf asserts that the Commission misunderstands its proposal because Columbia Gulf does not intend to provide service to Tennessee on the South Pass 77 System that would require a new case-specific Part 157 certificate. Columbia Gulf, however, would have us ignore the current Commission Part 157 authorizations that govern our analysis of the effect of Columbia Gulf's proposals. Columbia Gulf currently has a Part 157 certificate obligation to stand ready to provide firm service to Dynegey and interruptible service to Tennessee. Columbia Gulf proposed to assign its Dynegey-related capacity to Tennessee. In order to effectuate that assignment, Columbia Gulf would need to abandon the existing certificate and, although not expressly requested, to obtain a new Part 157 certificate to provide firm transportation service on the acquired capacity to Tennessee.

18. The March 1 Order denied a new Part 157 certificate relying, in part, on our policy not to issue new case-specific Part 157 certificates in an open-access environment because a new certificate would frustrate open-access transportation.¹⁸ The rehearing applicants assert that the March 1 Order erroneously applied the Commission's policy against new case-specific Part 157 certificates because, in this proceeding, Tennessee intends to make the capacity assigned to it available under its Part 284 blanket certificate on an open-access basis. We acknowledge that Tennessee intends to offer any assigned capacity under its Part 284 certificate. Thus, our concern that issuing a new case-specific Part 157 certificate would frustrate open-access is ameliorated. However, it is nonetheless pointless to grant Columbia Gulf a new case-specific Part 157 certificate where none of the three parties in this proceeding needs the Dynegey capacity for firm transportation service.

¹⁸ See *United Distribution Companies v. FERC*, 88 F.3d 1105, 1123-25, n. 9 (D.C. Cir. 1996), citing *Blue Lake Gas Storage Co.*, 59 FERC ¶ 61,118, *reh'g denied* 61 FERC ¶ 61,284 (1992) (new case-specific certificate denied after Order No. 636). See also *Paiute Pipeline Co.*, 109 FERC ¶ 61,333 at P 33-34 (2004) (parties' agreement to a case-specific certificate not binding on the Commission), *NGO Transmission, Inc.*, 105 FERC ¶ 61,138 at P 15 (2003) (denied Part 157 certificate to provide new service to three affiliated companies which transported to other customers); *Algonquin LNG, Inc. and Algonquin Gas Transmission Co.*, 60 FERC ¶ 61,127, *order on reh'g*, 61 FERC ¶ 61,292 (1992) (extensions of existing case-specific certificates denied). See also, e.g., *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,309 (2002) (abandonment granted, but assignment denied) and *Penn-York Energy Corp.*, 68 FERC ¶ 61,217 (1994) (assignment of case-specific authority denied). Cf. *Southwest Gas Transmission Co.*, 91 FERC ¶ 61,007 (2000) (Non-Part 284 transporter's assignment authorized).

19. Tennessee repeats its contention that *Southwest Gas Transmission Co.*,¹⁹ in which the Commission issued a case-specific Part 157 certificate and approved an assignment relieving El Paso Natural Gas Co. of a monthly fixed demand charge, supports its assignment proposal in this proceeding. In *Southwest Gas Transmission Co.*, however, the Commission issued a case-specific Part 157 certificate for firm transportation service to a non-open-access pipeline that is exempt from Commission jurisdiction under NGA section 1(c). The certificate permitted that very small pipeline to replace El Paso Natural Gas Co., its only customer, with Southwest Gas' single, affiliated local gas distribution company, holding all of Southwest Gas' capacity, which, with a new upstream interconnection with Transwestern Pipeline Co., provided benefits that satisfied the public convenience and necessity. *Southwest Gas Transmission Co.* presented sufficient public benefits without countervailing factors present in the current proceeding. The detriment to Tennessee and its customers from the assignment outweighs the benefits to Dynege. *Southwest Gas Transmission Co.* does not require us to issue Columbia Gulf a new case-specific certificate for Tennessee.

E. Lease/Sale/Part 284 Service Agreement Options

20. The March 1 order suggested that, instead of an assignment, Columbia Gulf could abandon the Dynege entitlements, take back the capacity, and lease, sell or contract the capacity to Tennessee on an open-access basis.²⁰ The rehearing applicants oppose these options. Columbia Gulf contends that a lease is not a necessary, practical, or desirable mechanism for achieving open-access transportation and thus is not the product of reasoned decision-making. Tennessee and Dynege emphasize that by failing to exercise its right of first refusal as to the Dynege capacity, Columbia Gulf has indicated that it is not interested in the Commission's suggested options. Dynege observes that the Commission would need to approve a lease and implies that a lease would not resolve its financial drain from Dynege capacity.

21. The Commission's suggestion of a lease was an effort to provide guidance to the parties without requiring a particular contractual approach. The parties reject this guidance as irrelevant because Columbia Gulf is unwilling to reacquire the capacity from Dynege and to become a lessor or vendor of the capacity. The parties' lack of interest in Commission-suggested contractual approaches, such as a lease, does not mean that the Commission is required to accept (or erred in rejecting) their favored approach of an abandonment/assignment of capacity. The assignment proposal fails our review because there is no public benefit from an assignment of unneeded capacity and the potential financial harm to Tennessee and its customers outweighs the benefit to Dynege.

¹⁹ 91 FERC ¶ 61,007 (2000).

²⁰ March 1 Order at P 19.

The Commission orders:

The requests for rehearing are denied and the March 1 Order is clarified as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.