

124 FERC 61,211
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.

Tennessee Gas Pipeline Company

Docket No. CP08-435-000

ORDER APPROVING ABANDONMENT

(Issued August 29, 2008)

1. On July 2, 2008, Tennessee Gas Pipeline Company (Tennessee) filed an application under section 7(b) of the Natural Gas Act (NGA) for authority to abandon any remaining capacity entitlements held by Dynegy Marketing and Trade (Dynegy) on the South Pass 77 System. For the reasons discussed below, we will grant the requested abandonment authorization.

I. Background

2. The South Pass 77 System, constructed offshore Louisiana in the early 1980s, was originally co-owned by Tennessee and Columbia Gulf Transmission Company. Both Tennessee and Columbia Gulf entered into agreements providing Dynegy's predecessor, Gulf Oil Company (Gulf Oil), a contractual entitlement to capacity for firm transportation service in consideration of Gulf Oil's financial contribution to the construction of the South Pass 77 System. Under the agreements, Gulf Oil, and now Dynegy, became responsible for paying a share of operation and maintenance and capital costs related to its capacity rights in the South Pass 77 System.

3. Because Dynegy is no longer in the gas sales business, Dynegy no longer needs capacity to transport natural gas on the South Pass 77 System. Dynegy states that it last used those entitlements in 1999.

4. In 2006, the Commission authorized Tennessee to abandon and terminate Dynegy's entitlement to firm capacity on Tennessee's portion of the South Pass 77 System. However, the Commission rejected Tennessee's request for case-specific

certificate authority under Part 157 to take assignment of Dynegey's entitlements on Columbia Gulf's portion of capacity in the South Pass 77 System.¹

5. On May 15, 2008, the Commission authorized Columbia Gulf, *inter alia*, to abandon: (1) its ownership interest in the South Pass 77 System facilities by sale to Tennessee and (2) its certificated obligations to provide services that rely on those facilities, including certain leases, exchange rate schedules, and Dynegey's historical entitlement to transportation service using a portion of Columbia Gulf's capacity in the South Pass 77 System.² Ordering Paragraph (B) of the May 15 order required Columbia Gulf to give at least 30 days' notice of the proposed effective date of the termination of Dynegey's capacity entitlements on Columbia Gulf's System. The May 15 order also authorized Tennessee to acquire Columbia Gulf's ownership interest in the South Pass 77 System.

6. On May 30, 2008, Columbia Gulf filed a compliance filing stating that, as of the closing date of the sale of its interest in the South Pass 77 System to Tennessee, Columbia Gulf's certificated obligation to provide Dynegey with firm capacity on that system would be cancelled. However, Columbia Gulf's compliance filing indicated that after the sale, Dynegey's capacity entitlements formerly derived from Columbia Gulf's capacity interests would be derived from Tennessee as the sole owner of the South Pass 77 System. The compliance filing further stated that Tennessee would file an application to abandon those entitlements. Tennessee's and Columbia Gulf's purchase and sale transaction closed effective July 1, 2008, and Tennessee filed the instant application on July 2, 2008.

II. Proposal

7. In its application for authority to abandon any remaining entitlements that Dynegey has to capacity on the South Pass 77 System, Tennessee includes an amendment, dated

¹ *Tennessee Gas Pipeline Company*, 114 FERC ¶ 61,050, *reh'g denied*, 115 FERC ¶ 61,283 (2006) (authorizing Tennessee to abandon its service obligation entitling Dynegey to firm transportation service using a portion of Tennessee's capacity on the South Pass 77 System, but rejecting Tennessee's acquisition by assignment under a case-specific certificate Dynegey's entitlements to transportation service using a portion of Columbia Gulf capacity on the South Pass 77 System); and *Columbia Gulf Transmission Company and Tennessee Gas Pipeline Company*, 118 FERC ¶ 61,165, *reh'g denied*, 120 FERC ¶ 61,251 (2007) (rejecting for the second time a proposal for case-specific certificate authority for Tennessee to acquire by assignment Dynegey's entitlements to transportation service using a portion of Columbia Gulf's capacity.)

² *Columbia Gulf Transmission Company and Tennessee Gas Pipeline Company*, 123 FERC ¶ 61,153, at P 30 (2008), *reh'g granted*, 123 FERC ¶ 61,260 (2008).

April 30, 2008, to the 2005 agreement with Dynegey³ that would have permitted Tennessee to take assignment of Dynegey's entitlements derived from Columbia Gulf's capacity in the South Pass 77 System. Under amendment paragraph 3, Tennessee agreed to file an application "to abandon and terminate Dynegey's remaining South Pass 77 System capacity interest," contingent upon Tennessee's receiving authorization to acquire Columbia Gulf's ownership interest in the South Pass 77 System. Tennessee states that the Commission's May 15 order satisfied this contractual condition by granting Columbia Gulf and Tennessee the necessary authorizations to permit Columbia Gulf's sale of its interest in the South Pass 77 System to Tennessee.

III. Notice, Interventions, Comments and Protests

8. Notice of Tennessee's application in Docket No. CP08-435-000 was published in the *Federal Register* on July 22, 2008 (73 Fed. Reg. 42,557). Timely, unopposed motions to intervene are automatically granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure.⁴ Timely motions to intervene were filed by Dynegey, National Fuel Gas Distribution Corporation, and Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., jointly.

9. Dynegey's intervention included comments asserting that, following Tennessee's acquisition of Columbia Gulf's interest in the South Pass 77 System, Dynegey continues to have an entitlement to a portion of that capacity, and that the Commission should approve Dynegey's disposition and Tennessee's acquisition of that entitlement so that the capacity can be used by Tennessee's open-access shippers. Dynegey asserts that approval of Tennessee's proposal will relieve Dynegey of further responsibility for substantial operating, maintenance, and capital expenses associated with capacity for firm transportation service that it no longer needs. Dynegey asks the Commission to approve Tennessee's application by September 2, 2008, in order to avoid Dynegey's payment of an annual insurance premium renewal of approximately \$1.9 million and operating and maintenance costs.

IV. Discussion

10. Tennessee proposes to abandon any remaining certificated service obligation to Dynegey as a consequence of Tennessee's acquiring Columbia Gulf's interest in the South

³ Agreement to Assign a Portion of South Pass 77 System Capacity Entitlement (May 2, 2005).

⁴ 18 C.F.R. § 385.214 (2008).

Pass 77 System. Therefore, Tennessee's proposal is subject to the requirements of NGA section 7(b).

11. The Commission's May 15 order approved: (1) Columbia Gulf's request to abandon its interest in the South Pass 77 System by sale to Tennessee and to abandon its certificated service obligation to Dynege arising from Dynege's historical entitlement to a portion of Columbia Gulf's firm capacity in the South Pass 77 System, and (2) Tennessee's acquisition of Columbia Gulf's ownership interest in the South Pass 77 System. Under the Commission's order, Tennessee would have acquired Columbia Gulf's capacity free of certain leases, exchange agreements, and the Dynege entitlements.

12. Columbia Gulf's abandonment of Dynege's entitlements became effective on July 1, 2008, the effective date of Columbia Gulf's abandonment of its interest in the South Pass 77 system by sale to Tennessee. However, Tennessee and Dynege assert that Tennessee acquired Columbia Gulf's interest in the South Pass 77 System subject to the obligation to continue to stand ready to provide firm service to Dynege based on Dynege's historical entitlement to firm service from Columbia Gulf, based apparently on the April 30, 2008 amendment to the assignment agreement between Tennessee and Dynege. Why Tennessee and Dynege entered into this amendment when it seems clear based on the information in the record that Dynege has no desire to transport natural gas on the South Pass 77 System and has not used the entitlement for almost ten years we do not know. However, although the abandonment authorizations granted to Columbia Gulf by the May 15 order were intended to extinguish Dynege's entitlement to any of the capacity on facilities that Columbia Gulf was authorized to sell to Tennessee, to accommodate the parties, we nevertheless will grant Tennessee its requested authority to abandon any remaining service obligation to Dynege to the extent that Tennessee may have some contractual obligation remaining to stand ready to provide firm transportation service to Dynege on the South Pass 77 System.

13. Upon Tennessee's exercise of the abandonment authority granted by this order, any capacity on the South Pass 77 System capacity that heretofore was dedicated to Dynege will clearly be available for Tennessee to offer on a firm basis to others under its Part 284 blanket transportation certificate. Accordingly, we conclude that granting Tennessee's requested abandonment authority is permitted by the public convenience and necessity.

14. The Commission, on its own motion, received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) Abandonment authority is granted to Tennessee under NGA section 7(b) to abandon any remaining entitlement that Dynegy has to capacity on the South Pass 77 System.

(B) Tennessee shall notify the Commission within 10 days of the effective date of the abandonment approved in Ordering Paragraph (A).

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.