

125 FERC ¶ 61,198
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Portland Natural Gas Transmission System

Docket No. CP08-70-001

ORDER DENYING REHEARING

(Issued November 18, 2008)

1. This order denies the PNGTS Shippers' Group's (Shippers' Group)¹ request for rehearing of the Commission's June 19, 2008 order granting Portland Natural Gas Transmission System's (PNGTS) petition for declaratory order.² The June 19 Order found that the certificated capacity across the PNGTS system from Pittsburg, New Hampshire to Dracut, Massachusetts will be 168,000 Mcf per day (Mcf/d) on a firm year-round basis once the Maritimes and Northeast Pipeline, LLC's (Maritimes) Phase IV Expansion facilities are placed in service.³ The June 19 Order also found that any rate issues associated with this decision, including the appropriate determinants to use to design PNGTS' rates, are more appropriately determined in PNGTS' next rate proceeding.

¹ The members of the Shippers' Group are Bay State Gas Company, Northern Utilities, Inc.; DTE Energy Trading, Inc., H.Q. Energy Services (U.S.) Inc., New Page Corporation, and Wausau Papers of New Hampshire, Inc.

² *Portland Natural Gas Transmission System*, 123 FERC ¶ 61,275 (2008) (June 19 Order).

³ *See Maritimes & Northeast Pipeline, L.L.C.*, 118 FERC ¶ 61,137 (2007). The Phase IV Expansion facilities are proposed to be placed in service on November 1, 2008.

Background

2. As detailed in the June 19 Order, the Commission issued a series of orders in 1996 and 1997 authorizing PNGTS and Maritimes to construct pipeline facilities in the Northeastern United States. As relevant here, PNGTS was authorized to construct and operate an individually-owned pipeline that would extend approximately 142 miles from the United States-Canada border near Pittsburg, New Hampshire to Westbrook, Maine, and to construct a jointly-owned pipeline with Maritimes consisting of a 101-mile long pipeline extending from Westbrook, Maine, to Dracut, Massachusetts, as well as various laterals (joint facilities).⁴ At the Canadian border, PNGTS' facilities would interconnect with facilities of TransQuebec & Maritimes Pipeline, Inc. (TQM).

3. The Commission conditioned the authority issued to PNGTS and Maritimes to construct the joint facilities on the filing of Definitive Agreements between the parties setting forth the terms under which the pipelines would construct, own, and operate the joint facilities.⁵ On December 18, 2006, PNGTS and Maritimes filed a settlement proposing modifications to the Definitive Agreements in order to resolve a variety of issues between the two parties involving the joint facilities (December 18 Settlement). Among other things, the December 18 Settlement provided for PNGTS to withdraw its protest to Maritimes' Phase IV Expansion project. By order issued on March 12, 2007, the Commission approved, in part, the December 18 Settlement.⁶

4. In its petition, PNGTS maintained that the Commission orders authorizing its stand-alone facilities and its share of the joint facilities did not establish a certificated firm level of service.⁷ While acknowledging that it has been able to transport volumes in excess of 168,000 Mcf/d, PNGTS maintained that as of November 1, 2008, when the

⁴ *Portland Natural Gas Transmission System*, 80 FERC ¶ 61,134 (1997) (order issuing preliminary determination) (July 31, 1997 Order); *Portland Natural Gas Transmission System*, 80 FERC ¶ 61,345 (1997) (order issuing certificates) (September 24, 1997 Order).

⁵ *Maritimes & Northeast Pipeline, L.L.C.*, 80 FERC ¶ 61,136, at 61,477 (1997).

⁶ *Maritimes & Northeast Pipeline, L.L.C.*, 118 FERC ¶ 61,193 (2007).

⁷ PNGTS relied on the Commission's September 24, 1997 Order which it contends deferred the issue of the capacity of the PNGTS system to PNGTS's section 4 rate filing. PNGTS stated that during 2001-2002, the pipeline filed and settled a section 4 rate case without resolving the issue of PNGTS' certificated capacity.

Maritimes Phase IV Expansion is placed in service, the level of capacity previously available on PNGTS will diminish. PNGTS requested that the Commission determine that its system-wide firm year-round operationally available capacity from Pittsburg, New Hampshire to Dracut, Massachusetts as of November 1, 2008, will be 168,000 Mcf/d and that PNGTS will not be in violation of the NGA or other legal obligations by denying firm service requests that, in combination with existing contracts requiring service after October 31, 2008, would obligate PNGTS to transport in excess of 168,000 Mcf/d on a firm year-round basis from Pittsburg to Dracut. PNGTS represented that it would have more than sufficient capacity to meet all of its contractual obligations for service after October 31, 2008, and that it was not aware of any interest in additional firm service that would exceed the 168,000 Mcf/d capacity level.⁸

5. The June 19 Order granted PNGTS' petition. First, the Commission found that PNGTS' request for declaratory order was an appropriate vehicle to resolve the matters raised therein and it was not necessary for PNGTS to file an abandonment application in order to obtain the relief requested. This was based upon our finding that the Commission's orders authorizing the PNGTS facilities ultimately did not establish a system-wide certificated capacity level after the first year of service.⁹

6. Based on the record before us, we also concluded that it was appropriate to find that PNGTS' year-round annual certificated system-wide capacity from Pittsburg to Dracut on the in-service date of the Maritime's Phase IV Expansion project will be 168,000 Mcf/d.¹⁰ This finding was based upon our review of PNGTS' engineering information and our finding that firm natural gas service will not be jeopardized by such ruling. The Commission's finding was limited to determining the certificated capacity of the PNGTS system on the date Maritimes' Phase IV Expansion is placed in service. The June 19 Order stated that any rate issues associated with our decision including the appropriate determinants to use to design PNGTS' rates, are more appropriately determined in PNGTS' next rate proceeding.

⁸ In its petition, PNGTS stated that firm transportation agreements with Androscoggin Energy LLC (Androscoggin) and Rumford Power Associates L.P. (Rumford) were terminated pursuant to bankruptcy proceedings and abandoned pursuant to the pregranted abandonment authority under section 284.221(d) of the Commission's regulations.

⁹ June 19 Order at P 27.

¹⁰ *Id.* P 28-29.

Request for Rehearing, Answer, and Motion to Strike

7. The Shippers' Group is the only party filing for rehearing of the June 19 Order. PNGTS filed a motion for leave to file answer and answer to the Shipper's Group's rehearing request. The Shippers' Group filed a motion to strike PNGTS' answer and PNGTS filed a response. Answers to requests for rehearing are prohibited under Rule 713(d)(1) of the Commission's Rules of Practice and Procedure¹¹ and PNGTS has not established any need for an exception to this rule. Accordingly, we reject PNGTS' answer to the Shippers' Group's request for rehearing. The Shippers' Group's and PNGTS' subsequent pleadings are dismissed as moot.

The Shippers' Group's Request for Rehearing

8. The Shippers' Group asserts that the June 19 Order grants PNGTS an abandonment of certificated capacity without requiring compliance with statutory and regulatory abandonment standards. It asserts that the Commission's decision will be detrimental to PNGTS' existing shippers which executed long-term firm service agreements in reliance on the Commission's assurances that PNGTS would not be permitted to shift costs of unutilized system capacity to them. Accordingly, the Shippers' Group requests that the Commission grant rehearing by denying PNGTS' petition or by providing shippers the assurance that future PNGTS' capacity determined by the June 19 Order cannot be relied upon to establish the billing determinants used to design PNGTS' rates and thereby effectuate cost shifts to PNGTS' long-term shippers.

9. The Shippers' Group maintains that the June 19 Order errs in finding that a system-wide certificated capacity level was not established for PNGTS following its first year of service. According to the Shippers' Group, PNGTS was expressly authorized under NGA section 7(c) to construct, operate, and maintain capacity of at least 210,000 Mcf/d and, based on the capacity, to provide service at that level whenever it was achieved.¹² Based on that authorization, the Shippers' Group states PNGTS entered into service agreements to provide firm transportation service totaling 212,000 Mcf/d for 20-year terms beginning during its second year of operation.¹³ It claims that the

¹¹ 18 C.F.R. § 385.713(d)(1) (2008).

¹² *Citing Portland Natural Gas Transmission System*, 80 FERC ¶ 61,134, at 61,446-47 (1997); *Portland Natural Gas Transmission System*, 80 FERC ¶ 61,345, at 62,158.

¹³ *Citing PNGTS Index of Customers Report (FERC Form 549B) dated October 1, 2000.*

Commission confuses the grant of certificate authority permitting the construction and operation of the PNGTS system with its deferral of the precise level of the "at risk" condition to be imposed on PNGTS in the pipeline's second and subsequent years of service. For these reasons, the Shippers' Group claims that the June 19 Order's approval of a reduction in PNGTS' capacity to 168,000 Mcf/d constitutes an abandonment of certificated capacity and service for which compliance with section 7(b) of the NGA is required.

10. By not acknowledging that PNGTS' proposed capacity reduction constitutes abandonment, the Shippers' Group asserts that the Commission failed to take into consideration all factors relevant to a determination of whether the abandonment is warranted by the public convenience and necessity under NGA section 7(b) and the Commission regulations in section 157.18.¹⁴ Specifically, the Shippers' Group maintains that the Commission failed to consider the potential economic effect of PNGTS' abandonment of capacity on existing shippers receiving service under PNGTS' Rate Schedule FT, an effect required to be addressed in the context of an abandonment application. Further, it asserts that by finding that the rate impacts of the abandonment are more appropriately determined in an NGA section 4 rate proceeding, the June 19 Order gave no consideration to the potential economic consequences of the abandonment on PNGTS' existing long-term firm shippers before it granted the abandonment. While acknowledging that the determination and calculation of the precise impact of the abandonment on PNGTS' rates may be more appropriate for determination in a rate case, the Shippers' Group states that completely ignoring whether that impact will be positive or adverse to existing shippers is not consistent with Commission policy¹⁵ nor the Commission's statutory obligation to consider all relevant factors in weighing whether Commission action is in the public convenience and necessity.

11. The Shippers' Group also claims that the June 19 Order erred in granting PNGTS' proposed capacity abandonment without considering the potential impact of that reduction on the at-risk condition imposed as a condition precedent to the Commission's grant of authorization certificating the construction and operation of the PNGTS system. According to the Shippers' Group, the at-risk condition was imposed to protect PNGTS shippers from the economic consequences of potential cost shifts resulting from unsubscribed capacity on the system and the condition provided that protection by

¹⁴ 18 C.F.R. § 157.18 (2008).

¹⁵ *Citing Northern Natural Gas Co*, 119 FERC ¶ 61,035, at P 15 and 16 (2007) (reversing prior denial of abandonment based on new evidence showing the abandonment would produce lower rates).

requiring that billing determinants be based on annualized system capacity. By modifying the capacity of the PNGTS system, it asserts that the June 19 Order created a circumstance under which PNGTS' long-term firm shippers could be stripped of the protection on which decisions to enter into 20-year service agreements with PNGTS were based, without any consideration or justification.

12. Additionally, the Shippers' Group faults the Commission for granting PNGTS a capacity reduction that is the result of PNGTS' own voluntary actions, without considering whether such actions warrant a grant of abandonment authority. By amending its Interconnection Agreement with its affiliate, TQM, to contractually allow TQM to reduce its upstream compression obligations, and by entering into the December 18 Settlement acceding to Maritimes' increase of pressure requirements at the Westbrook, Massachusetts interconnection of PNGTS' Northern system with the PNGTS/Maritimes joint facilities, the Shippers' Group claims that PNGTS created the circumstance on which it now relies to support its proposed capacity abandonment. It asserts that the June 19 Order provides no explanation for why PNGTS should be allowed to manipulate system capacity to reduce its future system service obligations to the potential economic detriment of its existing shippers and does not satisfy the Commission's obligation to consider all relevant circumstances.

13. The Shippers' Group claims that the Commission erred by granting the proposed capacity abandonment without determining whether upstream facilities exist that could provide compression sufficient to maintain PNGTS' capacity at levels of 210,000 Mcf/d or more from and after the in-service date of Maritimes' Phase IV Expansion. While PNGTS claimed that it has no contractual basis for obligating TQM to construct more compression and that TQM could not justify the construction of new facilities, the Shippers' Group asserts that PNGTS did not represent that there are not facilities installed and available upstream of its system that could be operated by its affiliates, TQM or TransCanada Pipelines Ltd., to maintain PNGTS' throughput and capacity at levels of at least 210,000 Mcf/d following Maritimes' Phase IV Expansion. According to the Shippers' Group, if upstream compression already exists (or if it could be installed at modest costs), the June 19 Order's finding that PNGTS will be incapable of transporting volumes in excess of 168,000 Mcf/d is in error or based on an erroneous assumption that installation of additional compression necessary to maintain current capacity levels is an impractical alternative to a significant PNGTS' capacity reduction.

14. Finally, the Shippers' Group takes issue with the June 19 Order's finding that natural gas service will not be jeopardized by reducing PNGTS' capacity to 168,000 Mcf/d. It asserts that this finding is based entirely on PNGTS' representations that after October 31, 2008, 168,000 Mcf/d of capacity will be sufficient to satisfy its remaining long-term firm service obligations and, further, that it is unaware of any interest for additional firm service. The Shippers' Group notes that as recently as January 1, 2008,

PNGTS' Index of Customers Reports reported firm service obligations of 261,405 Dth/d and, as of March 4, firm service obligations of 217,405 Dth/d. Although present or prospective shippers may not currently be able or willing to execute additional firm service agreements at PNGTS' maximum rate levels (particularly potential shippers owning/operating facilities that have recently emerged from bankruptcy), the Shippers' Group asserts that the markets on the PNGTS system consuming those gas deliveries have not disappeared. They maintain that the June 19 Order inappropriately disregards short-term and interruptible system usage, which amounted to approximately 20 percent of PNGTS' throughput during 2007 (not including short-term FT deliveries). According to the Shippers' Group, the Commission's action could result in PNGTS curtailing short-term firm and interruptible deliveries to the New England electric generation facilities formerly owned and operated by Androscoggin and Rumford, which remain operational and wholly dependent on PNGTS for natural gas fuel.¹⁶

Discussion

15. We will deny rehearing. The Shippers' Group has raised no arguments that were not fully considered in our June 19 Order.

16. We disagree with the Shippers' Group contention that the June 19 Order authorized PNGTS to abandon service without complying with the Commission's regulations in section 157.18. As we explained in the June 19 Order, in certifying pipeline projects, the Commission's general practice is to establish a design capacity for the project which represents a pipeline's firm service obligation. The design capacity reflects the Commission's findings as to what the pipeline can reliably deliver on a daily basis, year round.¹⁷ A pipeline is required to maintain its facilities to meet the Commission-determined design capacity.¹⁸ In addition, we typically establish initial rates based on the design capacity of the project in order to place the pipeline at risk for unutilized capacity. While the Shippers' Group is correct that the Commission originally

¹⁶ The Shippers' Group states that this is the type of operational impact which section 157.5 of the Commission's regulations requires an applicant for abandonment authority to address.

¹⁷ Additional capacity may be available on the system during parts of the year due to changing operating conditions. PNGTS is required to post on its website all available capacity. 18 C.F.R. § 284.13(d) (2008).

¹⁸ See generally *Columbia Gas Transmission Corp.*, 64 FERC ¶ 61,365, at 63,589-8- 63,589-9 (1993).

determined that after year one¹⁹ PNGTS' mainline capacity will increase to 210,000 Mcf/d and required PNGTS to revise its initial rates for the subsequent years to reflect billing determinants based on 210,000 Mcf per day,²⁰ the Commission reversed that ruling. Because of the uncertainty involving the timing and impact of additional compression to be installed by TQM in order to accommodate additional Maritimes' supplies, the Commission's September 24, 1997 Order authorizing the PNGTS facilities ultimately did not establish a system-wide certificated capacity level after the first year of service. Specifically, the September 24, 1997 Order found that it is "premature to require PNGTS to revise its rates or to be placed at risk for higher capacity after its first year of operation. It is not certain at this time when the additional compression will go into service or the actual amount of increased compression and its effect on the capacity of the PNGTS system. We will instead review this matter when PNGTS makes its section 4 filing."²¹ Contrary to the claims of the Shippers' Group, the September 24, 1997 order not only deferred requiring PNGTS to design its initial rates based on this higher capacity, it did not establish a certificated capacity for the PNGTS system of at least 210,000 Mcf/d. Instead, the September 24, 1997 Order deferred these issues to PNGTS' rate case. That rate case was resolved by an uncontested settlement that did not establish a certificated capacity for the PNGTS system.²²

17. While the June 19 Order did not require PNGTS to file an abandonment application, we evaluated PNGTS' petition under similar requirements set forth in section 7(c) of the NGA. The June 19 Order considered all relevant factors in determining whether PNGTS' petition was consistent with the public convenience and necessity under that provision of the statute. As discussed in the June 19 Order, the capacity of the PNGTS system is dependent upon both the receipt pressure from TQM at Pittsburg²³ and the minimum delivery pressure from PNGTS at the interconnection of its solely-owned

¹⁹ The July 31, 1997 Order found that PNGTS will have a capacity of 178,000 Mcf/d on its stand-alone pipeline in the first year of service and required PNGTS to design its rates to reflect billing determinants based on 178,000 Mcf/d for the first year. July 31, 1997 order at 61,448.

²⁰ July 31, 1997 Order at 61,448.

²¹ September 24, 1997 Order at 62,146.

²² *Portland Natural Transmission System*, 102 FERC ¶ 61,026 (2003).

²³ TQM is currently contractually obligated to maintain a receipt pressure of 1,255 psig to PNGTS at Pittsburg.

system and the joint facilities at Westbrook. When Maritimes' Phase IV Expansion is placed in service, the minimum delivery pressure from PNGTS to the joint facilities at Westbrook will be higher than the current design pressure. We found that the result of these changes will prevent PNGTS from transporting volumes in excess of 168,000 Mcf/d from Pittsburg through Westbrook to Dracut on a firm year-round basis. We next determined the impact on existing services of adopting 168,000 Mcf/d as the certificated capacity level for the PNGTS system. We found that there is no basis to conclude that requiring PNGTS to operate its system at a capacity level greater than 168,000 Mcf/d is needed to continue to serve current or anticipated firm customers.

18. Notably, in its rehearing request the Shippers' Group does not challenge the Commission's finding that PNGTS will be incapable of transporting gas volumes in excess of 168,000 Mcf/d on a firm year-round basis from Pittsburg to Dracut after Maritimes' Phase IV Expansion facilities are placed in service. The Shippers' Group, however, faults the Commission for not determining whether the reduction in capacity to 168,000 Mcf/d is due to the voluntary actions of PNGTS for entering into the amended interconnection agreement with TQM and the December 18 Settlement with Maritimes. However, as we found in the June 19 Order, it is not necessary to rule on this issue in this proceeding. Regardless of whether the capacity reduction was due to PNGTS' voluntary actions or not, the record here does not support requiring PNGTS to maintain its system design capacity at a level higher than 168,000 Mcf/d. Rather this issue is more appropriately raised in PNGTS' next general rate proceeding.²⁴ Similarly, there is no reason to inquire whether PNGTS could contract for additional existing compression from its affiliates or whether cheap compression can be built when we have found there are no pending requests for additional firm service.

19. Contrary to the claims of the Shippers' Group, the June 19 Order fully considered the impact to existing services and found that the firm natural gas service will not be jeopardized. Significantly, the Shippers' Group does not claim that a capacity level greater than 168,000 Mcf/d is needed for PNGTS to serve current or anticipated firm shippers.²⁵ Rather, the Shippers' Group claims that we erred because we ignored the

²⁴ PNGTS has a pending NGA section 4 general rate case that has been set for hearing. However, the test period for that rate case ends on September 30, 2008, prior to the proposed in-service date of the Maritimes Phase IV Expansion of November 1, 2008. See *Portland Natural Transmission System*, 123 FERC ¶ 61,108 (2008).

²⁵ PNGTS' Index of Customers Report dated July 1, 2008, shows that the 168,000 Mcf/d capacity level will be sufficient to serve PNGTS' existing long-term and short-term firm contracts that extend beyond October 31, 2008.

impact on interruptible services. We disagree. Interruptible shippers have no guarantee that capacity will continue to be available.²⁶ Moreover, requiring PNGTS to incur additional costs to increase its capacity to support interruptible service is not in the public convenience and necessity. Interruptible shippers do not pay demand charges so any increased costs would be at risk for recovery. Placing either PNGTS and/or its existing firm shippers at risk for the recovery of costs incurred for interruptible customers in these circumstances is not warranted.

20. Finally, the Shippers' Group's assertion that we completely ignored the rate impact on shippers is unfounded. The June 19 Order specifically limited our ruling to the certificated capacity of the PNGTS system on the date Maritimes' Phase IV Expansion is placed in service. We found that our ruling did not prejudge the impact of our decision on PNGTS' rates and any rate issues, including the appropriate determinants to use to design PNGTS' rates, should be addressed in PNGTS' next rate proceeding. Similarly, the June 19 Order did not address or change the at-risk condition imposed on PNGTS by the Commission's certificate orders. The at-risk condition relates to the design of PNGTS' rates and is more appropriately addressed in PNGTS' next rate case.

The Commission orders:

(A) The Shippers' Group's request for rehearing is denied.

(B) PNGTS' answer to the rehearing request, the Shippers' Group's motion to strike, and PNGTS' answer to the motion are dismissed.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁶ See *Texas Eastern Transmission Corp.*, 41 FERC ¶ 61,015, at 61,027 (1987).