125 FERC ¶ 61,258
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.

Tennessee Gas Pipeline Company — Docket No. CP08-400-000

ORDER DENYING PROTEST AND AUTHORIZING CONSTRUCTION

(Issued December 2, 2008)

1. On May 19, 2008, Tennessee Gas Pipeline Company (Tennessee Gas) filed a prior notice request pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations[1] seeking blanket certificate authorization to construct, own, and operate an interconnection with Kinder Morgan Louisiana Pipeline, LLC (Kinder Morgan), to transport re-vaporized liquefied natural gas (LNG). The prior notice filing was jointly protested by the Tennessee Customer Group[2] and FPL Energy, LLC[3] (collectively, the Tennessee Customers). For the reasons discussed below, we deny the

[1] 18 C.F.R. §§ 157.205, 157.208(c), and 157.212 (2008).

[2] The Tennessee Customer Group consists of CenterPoint Energy Mississippi Gas; City of Clarksville Gas and Water Department, City of Clarksville; City of Corinth Public Utilities Commission; Delta Natural Gas Company, Inc.; Greater Dickson Gas Authority; Hardeman Fayette Utility District; Henderson Utility Department; Holly Springs Utility Department; Humphreys County Utility District; Town of Linden; Morehead Utility Plant Board; Portland Natural Gas System, City of Portland; Savannah Utilities; Springfield Gas System, City of Springfield; City of Waynesboro; and West Tennessee Public Utility District.

[3] Rhode Island State Energy Partners, L.P., is an operating subsidiary of FPL Energy, LLC, and currently a natural gas transportation customer on Tennessee Gas' system.

protest and authorize Tennessee Gas to construct, own, and operate the proposed interconnection under its Part 157 blanket certificate.[4]

I. Background and Proposal

2. Tennessee Gas is a natural gas transmission company engaged in the business of transporting and storing natural gas in interstate commerce. Tennessee Gas requests authority to establish a new interconnection with Kinder Morgan on Tennessee Gas' pipeline designated Line 507C-100 located in Jefferson Davis Parish, Louisiana. Tennessee Gas states that it will install a 20-inch hot tap, an electronic gas measurement device, an uninterruptible power supply system, a flow control override, an overpressure protection valve, a monitor valve, communications equipment, and a communications tower. Tennessee Gas estimates the cost of the interconnection facilities will be $392,000, for which Tennessee Gas will be reimbursed by Kinder Morgan. Tennessee Gas states that Kinder Morgan will install a related tap and metering facilities pursuant to its certificate of public convenience and necessity previously granted by the Commission.[5] Tennessee Gas expects the proposed interconnection will allow it to receive up to 500 million cubic feet per day (MMcf/d) of gas from Kinder Morgan.

3. Tennessee Gas states that the proposed facilities will have minimal environmental impact and will facilitate installation of an interconnection already found to be in the public interest in the Kinder Morgan certificate proceeding.[6] Tennessee Gas asserts that the proposed activities are not prohibited by its existing tariff and the proposed interconnection will provide its customers with a new source of gas supply.

II. Notices, Interventions, and Comments

4. Notice of Tennessee Gas' prior notice request was published in the *Federal Register* on May 29, 2008[7] with comments, protests, and interventions due by July 21, 2008. Timely motions to intervene[8] were filed by the Tennessee Customers; PSEG Energy Resources & Trade, LLC; National Fuel Gas Distribution Corporation (National

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[4] *Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.*, 20 FERC ¶ 62,409 (1982).

[5] *Natural Gas Pipeline Co. of America*, 119 FERC ¶ 61,309 (2007).

[6] *Id*. P 15.

[7] 73 Fed. Reg. 30,916-30,917 (2008).

[8] 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 (2008).

Fuel); East Ohio Gas Co. d/b/a Dominion East Ohio; The Peoples Natural Gas Company d/b/a Dominion Peoples; Consolidated Edison Company of New York, Inc.; Orange and Rockland Utilities, Inc.; and, the National Grid Gas Delivery Companies.[9] In addition to intervening, the Tennessee Customers protested Tennessee Gas' prior notice interconnection proposal.

5. Superior Natural Gas Corporation (Superior) filed an untimely motion to intervene on August 1, 2008. Superior has demonstrated an interest in this proceeding and has shown good cause for intervening out of time. Superior's untimely motion will not delay, disrupt, or otherwise prejudice this proceeding and is therefore granted.[10]

6. On August 4, 2008, Tennessee Gas filed an answer to the Tennessee Customers' protest. Although the Commission's Rules of Practice and Procedure do not permit answers to protests, the Commission finds good cause to waive Rule 213(a) to consider Tennessee Gas' answer because it includes information that assists in the decision-making process.[11] On August 20, 2008, Tennessee Gas filed its response to Commission staff's data request.

III. Discussion

7. Since the facilities to be constructed will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the interconnection facilities are subject to the requirements of NGA section 7(c). Although Tennessee Gas filed its application pursuant to the prior notice procedures in the Commission's Part 157, Subpart F, blanket certificate regulations, the 30-day reconciliation period in the regulations has expired, and the Tennessee Customers have not withdrawn their protest.[12] Therefore, Tennessee Gas' prior notice request will be treated as though it were an application for case-specific authorization for a certificate of public convenience and necessity under NGA section 7(c).[13]

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[9] The National Grid Gas Delivery Companies are a collection of subsidiaries of National Grid USA: Brooklyn Union Gas Company; KeySpan Gas East Corporation; Boston Gas Company; Colonial Gas Company; Essex Gas Company; EnergyNorth Natural Gas Inc.; Niagara Mohawk Power Corporation; and, the Narragansett Electric Company.

[10] 18 C.F.R. § 385.214(d) (2008).

[11] *Id.* § 385.213(a)(2).

[12] *Id.* § 157.205(g).

[13] *Id.* § 157.205(f).

A. Certificate Policy Statement

8. To determine whether a proposed project is required by the public convenience and necessity, we consider whether the proposal meets the criteria set forth in our Certificate Policy Statement addressing new facilities.[14] The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. In deciding whether to authorize the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions to the environment, and avoidance of the unnecessary exercise of eminent domain.

9. Under the Certificate Policy Statement, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

10. Tennessee Gas' proposed interconnect with Kinder Morgan will cost $392,000, which will be reimbursed by Kinder Morgan. This meets the threshold requirement that existing shippers not subsidize the expansion facilities. The proposed facilities have been designed to transport a new source of gas. Therefore, Tennessee Gas' proposal will not replace any firm transportation service on any other existing pipeline and will not adversely impact other pipelines or their customers. Further, the proposed facilities have been designed in a manner to minimize the impact on landowners and the environment. No landowners have protested or filed comments on the interconnection proposal. However, the Tennessee Customers' protest argues that the interconnection will adversely affect existing customers. We consider this issue separately below.

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

B. The Tennessee Customers' Protest – Harm to Existing Customers

11. In their protest, the Tennessee Customers state that the proposed interconnection will allow new volumes of re-vaporized LNG into Tennessee Gas' pipeline system, which will impact the quality of gas received at the Tennessee Customers' delivery points. The Tennessee Customers state that Tennessee Gas' tariff does not presently set forth gas quality standards or limits for LNG, thereby providing the Tennessee Customers no protection. The Tennessee Customers ask that the Commission require the development of tariff standards to be applicable to the proposed interconnection because the Tennessee Customers are particularly concerned that Tennessee Gas' future LNG standards will be attenuated if the Commission does not require LNG-specific standards before the interconnection with Kinder Morgan. In support, the Tennessee Customers cite *Ocean Express*[15] for the proposition that the Commission has previously found that the development of interchangeability standards is important at an early time, and the Commission has required such development in the context of determining the propriety of an interconnection agreement.[16] Therefore, the Tennessee Customers believe that the current proceeding is an appropriate forum to determine the gas quality standards for LNG entering Tennessee Gas' system.

12. In the alternative, if the Commission does not require Tennessee Gas to revise its tariff, the Tennessee Customers ask that the Commission make clear that: (1) Kinder Morgan will be subject to the tariff standards that Tennessee Gas is currently developing regarding LNG; and (2) these standards will not be affected by the authorization of Tennessee Gas' interconnection with Kinder Morgan or any other prior interconnection with an LNG importer.[17]

C. Tennessee Gas' Answer

13. In response to the Tennessee Customers' protest, Tennessee Gas states that as an open-access pipeline, it received an acceptable request from Kinder Morgan for an interconnection, and accordingly filed a prior notice request for authorization to construct

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[15] *AES Ocean Express, LLC v. Florida Gas Transmission Co., LLC*, 107 FERC ¶ 61,276 (2004) (*Ocean Express*).

[16] Tennessee Customers, July 18, 2008, Protest at 3.

[17] While not protesting Tennessee Gas' prior notice request, National Fuel requested that Tennessee Gas address interchangeability issues associated with LNG gas supplies in conjunction with the commencement of incremental LNG projects such as the one proposed in this proceeding.

the interconnection.[18] In addition to the current request, Tennessee Gas notes that numerous similar interconnection applications have been approved to facilitate the movement of re-vaporized LNG from LNG plants under development in the Gulf Coast without a requirement to address gas interchangeability tariff standards.[19] Tennessee Gas argues that to delay this interconnection because of gas quality issues while other similar interconnections proceed would be inequitable, particularly when the interconnection at issue here would take place on a pipeline system that has already initiated interchangeability negotiations with its shippers. Tennessee Gas states that it has initiated discussions on revising its interchangeability standards but had suspended discussions, with the agreement of its major shippers, until such time as pending gas quality and interchangeability proceedings involving Algonquin Gas Transmission Company (Algonquin) and Iroquois Gas Transmission System, L.P., (Iroquois) in Docket No. RP07-443, conclude.[20] On September 4, 2008, Iroquois filed revised tariff sheets to comply with the stipulation agreement in Docket No. RP07-443-004, which were accepted by the Commission on October 3, 2008.[21]

14. Tennessee Gas asserts that the gas received at the proposed interconnection will be required to meet the existing gas quality standards contained in Article II of the General Terms and Conditions of its tariff, which have been developed to protect the integrity of the gas stream and Tennessee Gas' facilities. Tennessee Gas also clarifies that it has historically received LNG from several LNG import terminals including Distrigas of

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[18] *Panhandle Eastern Pipeline Co.*, 91 FERC ¶ 61,037 (2000) (*Panhandle*). In *Panhandle*, the Commission established a policy to ensure that open-access pipelines do not impose artificial restrictions on those who seek access to a pipeline system. Under the policy, a pipeline may not deny a request for interconnection if five conditions are met: (1) the party seeking the interconnection must bear the costs of construction; (2) the interconnection must not adversely affect the pipeline's operations; (3) the interconnection and resulting transportation must not diminish service to the pipeline's existing customers; (4) the interconnection must not cause the pipeline to be in violation of any applicable environmental or safety laws or regulations; and (5) the interconnection must not cause the pipeline to be in violation of its right-of-way agreements.

[19] Interconnections have been authorized for Transcontinental Gas Pipe Line Corp. (Transco) in Docket No. CP07-385-000, effective August 6, 2007, and Docket No. CP08-343-000, effective June 30, 2008; and, Tennessee Gas in Docket No. CP08-67-000, effective April 7, 2008.

[20] Tennessee Gas and Algonquin own pipelines that interconnect with the Iroquois pipeline system.

[21] 73 Fed. Reg. 52,344 (2008).

Massachusetts LLC's terminal in Everett, Massachusetts – in Tennessee Gas' market area – and the Excelerate Gulf Gateway and Southern Union Lake Charles terminals – in Tennessee Gas' supply area – without operational problems associated with gas quality. Tennessee Gas notes that it has recently received LNG from the Cheniere Sabine Pass LNG terminal, which is the source of the LNG to be received at the proposed Kinder Morgan interconnection.[22] Tennessee Gas asserts that until interchangeability standards are developed, its current gas quality standards will adequately address gas received from Kinder Morgan.

15. Finally, Tennessee Gas argues that the Tennessee Customers' reliance on *Ocean Express* is distinguishable and inapplicable to the current interconnection request because the focus in the *Ocean Express* proceeding was on whether Florida Gas Transmission Co., LLC (Florida Gas) was properly processing Ocean Express' interconnection request under the *Panhandle* policy. In contrast, in the current request for interconnection Tennessee Gas and Kinder Morgan agree on all aspects of the interconnection terms.

D. Tennessee Gas' Response to Commission Staff's Data Request

16. In its response to staff's data request, Tennessee Gas provided a detailed map showing the location of the new interconnection with Kinder Morgan and the delivery points of the Tennessee Customers. The proposed interconnection with Kinder Morgan in Jefferson Davis Parish, Louisiana, is located within Tennessee Gas' traditional supply area, while the Tennessee Customers' delivery points are located hundreds of miles downstream. The Tennessee Customers' delivery points are located in Tennessee, Mississippi, Kentucky, and Rhode Island. Tennessee Gas asserts that the location of the Kinder Morgan interconnection and its distance from the Tennessee Customers' delivery points provide sufficient opportunity for blending such that no member of the Tennessee Customers will receive undiluted volumes of LNG. Tennessee Gas analyzed several blending scenarios assuming worst-case blending conditions, and determined that gas quality would meet its gas requirements at the Tennessee Customers' delivery points.

E. Commission Response

17. As demonstrated by Tennessee Gas in its response to staff's data request, there will be ample opportunity for the gas received from the Kinder Morgan interconnection to blend with existing supplies before reaching any of the Tennessee Customers' delivery points. Therefore, we find that the Tennessee Customers will not be adversely affected

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[22] This LNG was received by Tennessee Gas through the interconnection established by Transco in Docket No. CP07-385-000 with Cheniere Creole Trail Pipeline through pipeline facilities integrated with the jointly owned southwest Louisiana lateral facilities of Transco and Tennessee Gas.

by the interconnection and we deny the Tennessee Customers' request that Tennessee develop gas quality standards for LNG entering Tennessee Gas' system in this proceeding. Further, Tennessee Gas and its customers, including the Tennessee Customers, are in the process of developing new gas interchangeability standards. Any future gas standards developed by Tennessee Gas will be applicable to the entire Tennessee Gas system, and therefore will be applicable to all existing interconnections, including the Kinder Morgan interconnection that we are authorizing in this proceeding.

18. The Tennessee Customers' reliance on *Ocean Express* as applicable to any LNG interconnection is misplaced. In *Ocean Express,* Ocean Express filed a complaint against Florida Gas under sections 5 and 7 of the NGA arguing that Florida Gas had imposed unreasonable and onerous conditions in a proposed interconnection agreement that were not justified by Florida Gas' FERC Gas Tariff or pipeline operational considerations. Florida Gas responded that the conditions in the interconnection agreement were necessary because of the physical location of the proposed interconnection relative to Florida Gas' market, and the differences in the physical properties between LNG and domestically-sourced gas. Florida Gas' specifications in its tariff had been developed with traditional onshore and Gulf of Mexico gas sources in mind. Florida Gas believed that the conditions in the interconnection agreement were required until such time as it revised its tariff to accommodate LNG receipts because there would be no opportunity for mixing before delivery to market. Florida Power and Light Company, a large electric generation customer with facilities located in Florida Gas' market area, also filed an answer to Ocean Express' complaint that described potential impacts on its operations which might occur if the quality of the LNG supply was not consistent with the existing supplies. Exercising its authority under NGA section 5, the Commission directed Florida Gas to make a tariff filing revising its gas quality provisions. The Commission explained that because Florida Gas was expecting up to four interconnections with LNG-related facilities in its market area, "there is now a compelling need to address the appropriate natural gas quality and interchangeability standards that will be in place" on Florida Gas' system.[23]

19. The circumstances of Tennessee Gas' currently-proposed interconnection are unlike those presented in *Ocean Express*. The currently proposed interconnection is in Tennessee Gas' supply area, which is hundreds of miles upstream from the Tennessee Customers' delivery points in the market area. Unlike Ocean Express, Tennessee Gas will have sufficient opportunity to blend LNG such that even in the worst-case blending scenario, Tennessee Gas' gas quality will remain within its tariff limits. Overall, there will be only a small variation in the quality of gas currently flowing on Tennessee Gas' system. Further, we expect Tennessee Gas will reinitiate gas interchangeability

[23] *Ocean Express*, 107 FERC ¶ 61,276 at P 26.

discussions with its customers since Iroquois' tariff sheets have been filed and accepted by the Commission. Therefore, there is no reason for the Commission to institute a proceeding to compel Tennessee Gas to address interchangeability standards because Tennessee Gas has initiated such discussions itself, and Tennessee Gas has shown that the gas flowing on its system will fall within its tariff limits at the Tennessee Customers' delivery points.

20. Because the protest in this proceeding was not withdrawn, we considered Tennessee Gas' prior notice request as an application for case-specific NGA section 7(c) authorization to construct new facilities. Nevertheless, when the Commission ultimately finds that the protest should be denied and the new facilities satisfy the requirements of the Certificate Policy Statement, it is Commission policy to authorize the construction and operation of the delivery facilities under the applicant's Part 157 blanket certificate, rather than grant redundant case-specific certificate authority.[24] Therefore, we will authorize Tennessee Gas to construct its proposed interconnection under its Part 157 blanket certificate.

IV. Environmental Analysis

21. Given that we are denying the Tennessee Customers' protest and authorizing Tennessee Gas' proposal under its Part 157 blanket certificate, the interconnection is subject to the environmental requirements of section 157.206(b) of the Commission's regulations applicable to projects undertaken by pipelines under their Part 157 blanket certificates.[25] Environmental review of this proposal has determined that Tennessee Gas' application is consistent with the requirements of section 157.206(b) of the Commission's regulations. The U.S. Fish and Wildlife Service Lafayette, Louisiana, Field Office issued Tennessee Gas a blanket-type environmental clearance indicating that the project would have no adverse affect on threatened and/or endangered species. The Louisiana Historic Preservation Officer entered into a Memorandum of Understanding with Tennessee Gas indicating that the project would have no affect on properties included in or eligible for inclusion in the National Register of Historic Places. Based on the above environmental analysis, staff has determined that the approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

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[24] *Destin Pipeline Co.*, 83 FERC ¶ 61,308, at 62,268 (1998).

[25] 18 C.F.R. § 157.206(b) (2008).

V. <u>Conclusion</u>

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

<u>The Commission orders</u>:

(A) Tennessee Gas is authorized to construct, own, and operate the interconnection with Kinder Morgan in accordance with its Part 157, Subpart F, blanket certificate.

(B) The Tennessee Customers’ protest is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.