

131 FERC ¶ 61,127
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Tennessee Gas Pipeline Company

Docket No. CP10-9-000

ORDER GRANTING AND DENYING ABANDONMENT

(Issued May 10, 2010)

1. On October 23, 2009, Tennessee Gas Pipeline Company (Tennessee) filed an application under section 7(b) of the Natural Gas Act (NGA)¹ requesting authorization to abandon by sale to Tauber Pipeline, L.L.C. (Tauber) 34 small natural gas supply laterals attached to Tennessee's mainline in South Texas, along with related meters, receipt and delivery taps, and other associated facilities. As discussed below, the Commission will grant the requested authorizations, except for two of the supply laterals in question.

I. Background and Proposal

2. Tennessee is a natural gas company, as defined by section 2(6) of the NGA,² engaged in the business of transporting natural gas in interstate commerce under authorizations granted by and subject to the jurisdiction of the Commission. Its transmission system extends northeasterly from its primary sources of supply in Texas, Louisiana, and the Gulf of Mexico, through the states of Texas, Louisiana, Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island and Connecticut.

3. Tauber is a limited liability company formed and existing under the laws of Texas.³ Tauber owns oil and gas production and marketing subsidiaries with facilities in South Texas and the Gulf Coast of Texas, among other areas. Tauber, and its

¹ 15 U.S.C. § 717f (2006).

² 15 U.S.C. § 717(a)(6) (2006).

³ Tauber is a wholly owned subsidiary of Tauber Oil Company.

subsidiaries, develop oil and gas properties in Texas and Louisiana, purchase and market natural gas, and invest in drilling operations. Tauber does not own any facilities that are subject to the Commission's jurisdiction under the NGA. Tauber states that following the sale of the laterals by Tennessee,⁴ Tauber will operate the laterals in non-jurisdictional service.⁵

4. Tennessee proposes to abandon by sale 34 small natural gas supply laterals, that together are approximately 180.3 miles in length, attached to Tennessee's mainline in South Texas, along with 11 meters, 61 receipt taps, eight delivery taps, and associated facilities. The supply laterals range in size from two to 12 inches in diameter and they connect to more than thirty production fields along more than 660 miles of Tennessee's mainline in South Texas. The laterals were constructed between 1947 and 1981.⁶ Tennessee states that it does not own any compression associated with these laterals, and that the proposed abandonment does not include any compression facilities.

5. Tennessee and Tauber will rely upon existing metering facilities to determine the amount of gas being delivered to Tennessee. Tennessee states that following the abandonment, the custody transfer points will move from the meter(s) associated with each supply lateral to the downstream connection of the supply lateral(s) with Tennessee's mainline. Tennessee will continue to own and operate electronic gas measurement equipment, currently located on the supply laterals, to calculate the quantity of gas delivered by Tauber to Tennessee at the new custody transfer points.

6. Tennessee states that no construction, removal, or modifications of the laterals is required to complete abandonment and sale of the laterals to Tauber. Tennessee states that about one third of these laterals are not utilized at all and that the laterals are not needed to provide current or future transportation service on Tennessee's system. Tennessee contends that the laterals cost approximately \$1 million annually in

⁴ The Asset Sale Agreement between Tennessee and Tauber was executed on April 9, 2009. It is included as Exhibit U to Tennessee's application as a privileged non-public document.

⁵ Neither Tennessee nor Tauber seeks a declaration from the Commission that the laterals will perform a non-jurisdictional function (such as gathering) following abandonment. Tauber assumes any risks associated with any future allegation that these facilities might be jurisdictional to the Commission.

⁶ The laterals in question were issued certificates of public convenience and necessity under the NGA at various times by this Commission and its predecessor, the Federal Power Commission, and they are described in Exhibit Z-2 of Tennessee's application. Exhibit Z-2 also describes the meters, receipt taps, and delivery taps.

unnecessary ongoing operation and maintenance (O&M) expenditures. Further, Tennessee says that to make certain of these laterals piggyback will cost approximately \$4.2 million.

II. Notice and Interventions

7. Notice of Tennessee's application in Docket No. CP10-9-000 was published in the *Federal Register* on November 12, 2009 (74 Fed. Reg. 58,269). The following parties filed timely motions to intervene:⁷ Cabot Oil & Gas Corporation (Cabot);⁸ Southcross Energy GP, L.L.C. (Southcross); National Fuel Gas Distribution Corporation; Piedmont Natural Gas Company, Inc.; National Grid Gas Delivery Companies; Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities, Inc. (jointly); Atmos Energy Corporation; and New England Local Distribution Companies.⁹ In addition, Tauber Pipeline, Gregory Power Partners, and Sherwin Alumina Company submitted comments in support of Tennessee's application.

8. On January 15, 2010, Southcross filed a motion to supplement its intervention, which included a protest, more than seven weeks after the deadline for comments, protests, and motions to intervene. Tennessee filed an answer to Southcross' protest. Although Southcross' protest was filed late and the regulations prohibit an answer to a protest, the Commission will accept Southcross' late-filed protest and Tennessee's answer because the pleadings will assist the Commission in its decision-making process.

⁷ 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 (2009).

⁸ Cabot protested the application. On December 21, 2009, Tennessee filed an answer to Cabot's protest. On January 20, 2010, Cabot filed a notice of withdrawal of its protest. The withdrawal was unopposed and became effective on February 4, 2010, under Rule 216 of the Rules of Practice and Procedure. 18 C.F.R. § 385.216 (2009).

⁹ New England Local Distribution Companies comprise these entities: Bay State Gas Company; Berkshire Gas Company; Connecticut Natural Gas Corporation; Fitchburg Gas and Electric Light Company; City of Holyoke, Massachusetts Gas and Electric Department; Northern Utilities, Inc.; NSTAR Gas Company; Southern Connecticut Gas Company; Westfield Gas & Electric Company; and Yankee Gas Services Company.

III. Discussion

9. Because Tennessee seeks authority to abandon facilities used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of section 7(b) of the NGA.¹⁰

10. Section 7(b) provides that the abandonment of natural gas facilities or services may only be granted “after due hearing, and a finding by the Commission . . . that the present or future public convenience or necessity permit such abandonment.”¹¹ Continuity and stability of existing service are the primary considerations in assessing the public convenience and necessity of a permanent cessation of service.¹²

11. Here, there are no firm primary delivery points on the laterals to be abandoned by Tennessee. Thus, no primary firm shippers will be affected by the proposal. With respect to interruptible and secondary firm services, all shippers that have nominated on a meter affected by this proposal since January 1, 2008 have been notified of the proposed abandonment. Almost 70 percent of the shippers have provided their consent to the abandonment, and none of the remaining shippers have expressed opposition to the proposal. The shippers do not need to amend their transportation contracts, and they may continue using them for transportation service on Tennessee’s system.

12. The laterals are no longer integral to Tennessee’s system in providing interstate transportation services and have been underutilized for many years. In fact, one-third of the laterals are not used. The proposed abandonment will eliminate an estimated \$1 million of annual O&M costs and avoid approximately \$4.2 million in costs that would be necessary to make the supply laterals piggyback, while maintaining access to existing supply sources. Further, the laterals will remain connected to Tennessee’s pipeline system; consequently the production fields to which they are connected will remain accessible to Tennessee shippers. Based on the above, we find that Tennessee’s abandonment of the laterals, except as discussed below, to be in the public convenience or necessity.

¹⁰ 15 U.S.C. § 717f(b) (2006).

¹¹ *Id.*

¹² *KN Energy, Inc.*, 69 FERC ¶ 61,377, at 62,428 (1994). *See also Gulf Oil v. FERC*, 575 F.2d 67, 69-70 (3d Cir. 1978); *Farmland Industries, Inc. v. Kansas-Nebraska Natural Gas Co.*, 349 F.Supp. 670, 680-81 (D.C. Neb. 1972), *aff’d* 486 F.2d 315 (8th Cir. 1973).

Laterals 5A-100 and 5A-200

13. As noted, Southcross filed a protest to Tennessee's abandonment proposal. Southcross is engaged in the purchase and sale, transportation, gathering and processing of natural gas. It owns and operates the Gregory Gathering System and Gas Processing Plant in South Texas. Gas from the Gregory Gathering System is processed at the Gregory Plant, and a portion of the stream is then delivered into an affiliated intrastate pipeline,¹³ Southcross CCNG Transmission Ltd. (Southcross Transmission), before the gas is delivered into Tennessee's Lateral 5A-200. Lateral 5A-200 connects to Lateral 5A-100, which connects to Tennessee's mainline. Southcross states that Laterals 5A-100 and 5A-200 constitute the only connection between the Gregory Processing Plant and any interstate pipeline system and that Tennessee proposes to abandon both lines. Southcross claims that 40 producers deliver gas through 62 meters to the Gregory Plant, and that there are currently 7,000 to 9,000 MMBtu per day flowing from the Gregory Plant through the intrastate transmission line to Laterals 5A-100 and 5A-200 pursuant to Southcross Transmission's NGPA section 311 tariff.

14. Southcross states that Laterals 5A-100 and 5A-200 do not qualify for exemption from the Commission's jurisdiction pursuant to section 1(b) of the NGA as a non-jurisdictional gathering facility, since the gas flowing into Laterals 5A-100 and 5A-200 has been processed and treated by the Gregory Plant. Southcross states that there is no gathering or processing downstream of the Gregory Plant. Southcross states that it has been unable to obtain any details from Tauber regarding how it will operate Laterals 5A-100 and 5A-200 and the terms and condition of service that will be imposed on customers. Southcross contends that Tennessee's proposed abandonment of Laterals 5A-100 and 5A-200 is not in the public interest.

15. In its answer, Tennessee states that Southcross does not claim to be a shipper or a ratepayer on Laterals 5A-100 and 5A-200, and states that Southcross does not hold an interruptible transportation agreement on Tennessee's system or a firm contract at any point on the lines at issue. Tennessee states that Southcross' protest rests on a flawed implication that granting the requested abandonment could inhibit the flow of gas from the Gregory Plant, which has no processing agreement with Tennessee. Also, Tennessee contends that minimal amounts of gas have flowed through the laterals over the past few years. Tennessee states that any gas available to flow would continue to have access to Tennessee's system if abandonment is granted.

16. Tennessee states that the facts support classifying the two laterals as gathering facilities following the proposed abandonment. Tennessee contends, however, that

¹³ The intrastate line is an eight-inch diameter line operating at 740 psi.

classification of the facilities as gathering is not required to be addressed prior to approval of Tennessee's request for abandonment authority.

17. A critical factor in evaluating the merits of an abandonment proposal is the likely effect of the abandonment on jurisdictional transportation services which utilize or rely on the facilities in question. The Commission recognizes, as Tennessee stresses in its answer, that Southcross is not a shipper on the subject laterals. Further, Tennessee does not have any transportation agreements with Southcross concerning gas processed and delivered at the tailgate of the Gregory Plant. However, Southcross states that gas processed at the Gregory Plant is subsequently transported on its affiliated intrastate pipeline, Southcross Transmission, for eventual delivery into the Tennessee laterals under section 311 of the NGPA.¹⁴ The NGPA section 311 transportation is jurisdictional and the effect of Tennessee's proposed abandonment on those services is relevant to the Commission's evaluation of the abandonment. Neither Tennessee's application nor the record in this proceeding addresses or explains how the proposed abandonment would affect the NGPA section 311 services that are provided by Southcross Transmission. Absent a full analysis of these effects, the Commission cannot find that the proposed abandonment of Laterals 5A-100 and 5A-200 is in the public interest. Therefore, the Commission denies abandonment authority as to Laterals 5A-100 and 5A-200, without prejudice to Tennessee in the future providing a sufficient basis to grant the abandonment of these laterals. This denial applies only to Laterals 5A-100 and 5A-200 and it has no effect on the Commission's determination to approve the abandonment of the other laterals referenced in Tennessee's application.¹⁵

Environmental

18. Because no removal or construction of facilities is proposed in connection with the request for abandonment authority, Tennessee's abandonment of the laterals qualifies

¹⁴ In its answer, Tennessee does not acknowledge the existence of an intrastate pipeline between the Gregory Plant and its laterals. Tennessee merely states that the tailgate of the Gregory Plant appears to be of small diameter, less than four miles in length, and directly connected to Tennessee's system with no intervening transmission facilities between the plant and Tennessee.

¹⁵ Southcross claims that laterals 5A-100 and 5A-200 do not qualify as non-jurisdictional gathering facilities under section 1(b) of the NGA. Since the Commission is not approving the abandonment of these lines, that issue is moot.

under section 380.4(a)(31) of the Commission's regulations as a categorical exclusion from the need for environmental review.¹⁶

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

The Commission orders:

(A) Tennessee is granted authority under section 7(b) of the NGA to abandon the laterals and related facilities, as described in this order and more specifically in the application, with the exception of Laterals 5A-100 and 5A-200.

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

(C) Tennessee's request for authority to abandon Laterals 5A-100 and 5A-200 is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁶ 18 C.F.R. § 380.4(a)(31) (2009).