

UNITED STATES OF AMERICA 107 FERC ¶ 61, 121
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Tennessee Gas Pipeline Company

v.

Columbia Gulf Transmission Company

Docket No. RP04-215-000

ORDER ESTABLISHING HEARING PROCEDURES

(Issued May 6, 2004)

1. On March 12, 2004, Tennessee Gas Pipeline Company (Tennessee) filed a complaint against Columbia Gulf Transmission Company (Columbia Gulf), alleging that Columbia Gulf has operated its portion of the Blue Water Project (BWP) in an unlawfully discriminatory and anti-competitive manner. Tennessee claims that Columbia Gulf has denied Tennessee's request for a new interconnection with the BWP at Egan, Louisiana, in violation of Commission policy. Columbia Gulf filed an answer on April 5, 2004. The Commission will establish a hearing for resolution of this matter, which will be held in abeyance to provide for settlement discussions conducted by a settlement judge. This order is in the public interest because it allows for voluntary resolution through settlement of the issues raised prior to administrative litigation.

Background

2. On August 31, 1971, the Federal Power Commission issued a certificate of public convenience and necessity to parties including Tennessee and Columbia Gulf authorizing the construction and operation of Phase II of the BWP (offshore facilities "for the transportation and sale for resale of natural gas and associated liquids from gas fields in the Vermillion Block 272 Field.")¹ Thereafter, Tennessee and Columbia Gulf entered

¹ Tennessee Gas Pipeline Co., 46 FPC 605 at 605 (1971). Construction of Phase I (onshore facilities) had been authorized in 1969. See Columbia Offshore Pipeline Company, 41 FPC 231 (1969).

into an Operating Agreement that allows the sharing of capacity and requires the coordinated operation of the BWP. Generally, Columbia Gulf maintains and operates the Western Shore Line, including delivery points at Egan, Louisiana. Tennessee maintains and operates the Offshore Header and Eastern Shore line, including a delivery point at Cocodrie, Louisiana.

Complaint

3. Public notice of the complaint was issued by the Secretary on March 15, 2004. Parties listed in Appendix A filed timely interventions granted by operation of Rule 214.² Tennessee states that the requested interconnection would allow both Tennessee and Columbia Gulf to balance the BWP, operate their own systems more efficiently, and save modification expenses on the BWP's Western Shore Line, operated by Columbia Gulf. Tennessee also states that the new interconnect would allow Tennessee to maximize use of its share of capacity in the BWP by shifting volumes off its more constrained 800 Line on the western side of the BWP to its 500 Line on the eastern side of the BWP.

4. Tennessee states that deliveries of Western Shore Line volumes at Egan, Louisiana, have been accomplished by displacement over Tennessee's Muskrat Line between the South Pass 77 System and Egan, pursuant to a Reciprocal Lease agreement approved by the Commission.³ Such deliveries have declined to such an extent, states Tennessee, that a direct interconnect with the Muskrat Line is necessary. Tennessee states that there has been a decrease in gas supplies flowing on its 500 Line, which flows northward generally from the area of the eastern portion of the BWP. Tennessee seeks to shift volumes from its 100 and 800 Lines, located on the western side of the BWP, to the 500 Line on the eastern side of the BWP.⁴

²Notice of the complaint was published in the Federal Register on April 28, 2004, 69 Fed. Reg. 23,180. Any additional timely interventions filed in this proceeding consistent with the Federal Register notice will be granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.

³Tennessee Gas Pipeline Co. & Columbia Gulf Transmission Co., 78 FERC ¶ 61,182 (1997). Tennessee's Muskrat Line is not part of the BWP. It is a wholly onshore facility operated by Tennessee. See Answer at 10, P 19. The South Pass 77 System, located in the Gulf of Mexico east of the BWP, is not part of the BWP, and is jointly owned and operated by Tennessee and Columbia Gulf. See Answer at 11, P 22.

⁴Tennessee states that it seeks to "complete" the interconnection at Egan in order to deliver gas "from Tennessee's system into the BWP at Egan." Complaint at 8, P 6.

5. Tennessee states that its formal request to interconnect with Columbia Gulf was denied by Columbia Gulf's letter dated November 11, 2003, because such an interconnect would be "detrimental to the efficient operation of the Western Shore line of the Blue Water Project."⁵ Columbia Gulf's letter of December 9, 2003, in response to continued solicitations from Tennessee, stated further that the requested interconnection would result in insufficient volumes flowing to the Blue Water Processing Plant to allow its continued operation, potentially shutting in production off the western portion of the BWP, and would also cause operational problems regarding liquids build up. Tennessee characterizes Columbia Gulf's arguments as without merit.

6. Tennessee states that the facts presented in this case show that the Commission's policy guidance, regarding when a requested interconnection must be granted, is applicable. Tennessee states that, pursuant to the Panhandle policy, the Commission should direct Columbia Gulf to allow the installation of the requested interconnection.⁶

Answer

7. Columbia Gulf states that the complaint should be dismissed for several reasons. First, an interconnection already exists at Egan, allowing delivery of offshore gas as contemplated by the contract signed by both Tennessee and Columbia Gulf and governing the joint operation of the BWP.⁷ Secondly, to establish the type of interconnection Tennessee seeks, a receipt point allowing non-offshore gas to be received

⁵Complaint at 9, P 6.

⁶See Panhandle Eastern Pipe Line Co., 91 FERC ¶ 61,037 (2000). The policy identifies five conditions to be met for a requested interconnection to be granted. The conditions require that 1) costs must be borne by the requesting party, 2) the interconnection may not cause adverse effect on the operations of the pipeline granting the interconnection, 3) no services to the pipeline's existing customers are diminished, 4) the interconnection must not cause the pipeline to be in violation of any applicable environmental or safety laws or regulations with respect to the facilities required, and 5) the interconnection must not cause the pipeline to be in violation of contractual obligations with respect to the interconnection facilities.

⁷Tennessee states that an interconnection should be "completed," while Columbia Gulf responds that Tennessee offers a misleading suggestion that no interconnect currently exists. Such an interconnection does exist, states Columbia Gulf. It simply does not allow receipt of gas.

at Egan and thereafter moved from the western part of the BWP to the eastern part, is inconsistent with the contractual agreement under which the BWP is operated. Further, such an interconnection would cause serious operational problems. Such problems include a significant reduction in the volumes transported on the Western Shore Line operated by Columbia Gulf, the shifting of volumes to the Eastern Shore Line operated by Tennessee, the closure of the Blue Water Processing Plant located on the Western Shore Line,⁸ the creation of a liquids build-up problem on the Western Shore Line, and the shut-in of gas supplies connected to the Western Shore Line. Finally, implementation of Tennessee's proposal would require modifications to the BWP and Vermillion 245 facilities and agreements.

8. Columbia Gulf notes that the Egan Complex is part of the BWP and consists of four points of interconnection between the BWP and four interstate pipelines.⁹ All four of these interconnections operate in a single direction, *i.e.*, offshore gas is delivered from the BWP to the four pipelines for delivery to downstream markets. None of the four interconnection points can receive gas from the four pipelines into the BWP.¹⁰

9. Columbia Gulf states that Tennessee's proposal is simply a mechanism to permit Tennessee to transfer gas from the western to the eastern part of its system, to transfer its liquids problem on the Eastern Shore Line to the Western Shore Line, and to increase the revenues associated with processing gas at the Yscloskey Processing Plant, located off the Eastern Shore Line on Tennessee's 500 Line. Unlike the pro-competitive concerns that underlie the Commission's policy on interconnections, Tennessee's proposal has anti-competitive effects, such as a reduction in transportation and processing options for BWP offshore gas.

⁸ExxonMobil Gas & Power Marketing Company, A Division of Exxon Mobil Corporation filed an intervention and protest, stating that Exxon Mobil Corporation has an ownership interest in the Blue Water Plant, and arguing that the Commission should either dismiss the complaint or set it for hearing.

⁹Egan A connects the Western Shore Line to Columbia Gulf's West Lateral facilities; Egan B connects with Tennessee's Muskrat Line; Egan C interconnects with Transcontinental Gas Pipe Line Corporation; and Egan D with Texas Gas Transmission.

¹⁰Answer at 9, P 16.

Discussion

10. Tennessee bases its complaint upon the Commission's policy requiring interconnections between pipelines when five conditions are met.¹¹ Substantial disagreement exists between Tennessee and Columbia Gulf as to whether those conditions have been met. Whether or not the Operating Agreement between the parties would be violated by the requested interconnection is a matter of particular concern.

11. Tennessee's October 28, 2003 request for an interconnection relied upon paragraph 15 of the BWP Operating Agreement as authority for its argument that Tennessee is contractually entitled to have the point of receipt established at Egan.¹² Columbia Gulf construes paragraph 15 as not permitting addition of a receipt point into the BWP. Further Columbia Gulf states that paragraph 3 of the Operating Agreement provides that "the BWP is to be used to transport gas produced off-shore to on-shore locations."¹³ Columbia Gulf thus argues that Tennessee's request disregards the intended use and operations of the BWP.

12. The Commission seeks to resolve this proceeding in a manner assuring the most efficient use of the BWP by its operators in response to the markets they serve. It is currently not clear that a ruling on the merits of the specific remedy sought by Tennessee would achieve that goal. Much has changed in the natural gas pipeline industry since the issuance of the certificate authority and execution of the Operating Agreement under which the BWP provides service. However, the Operating Agreement has apparently been amended as necessary to allow service to be rendered in accordance with the needs of the partners, the market opportunities of the partners, and the Commission's evolving regulatory policies over the past three decades. We are aware of no complaints filed against the partners by third parties regarding such service. No intervening party in this proceeding claims that their interests have been disregarded by the joint operation of the BWP.

13. Further, resolution of the specific concerns raised by both partners apparently may be possible in a number of different ways, only one of which involves a re-design of the

¹¹The Panhandle policy was established to apply to "onshore open access natural gas pipelines." 91 FERC at 61,143 (2000).

¹²Answer at 12, P 25.

¹³Answer at 12, P 26.

existing Egan interconnection. For instance, Tennessee notes the existence of four existing non-BWP points of interconnection between Tennessee's and Columbia Gulf's facilities at which Tennessee would, if possible, tender exchange/makeup gas to Columbia Gulf's system.¹⁴ Tennessee and Columbia Gulf have also used separate contractual agreements, including exchange agreements, with indirect impacts upon the operation of the BWP. Other unspecified agreements may be (indeed seem likely to be) possible. Amending the Operating Agreement to reflect more specifically the imperatives of the post-pipeline restructuring regulatory regime may be an option.

14. Nonetheless, the BWP has been successfully operated jointly by the parties for more than 30 years. This would not have been possible unless the parties were able to work together efficiently and show appropriate regard for each other's interests. In light of this history, the public interest requires measured and complete efforts at settlement of a serious and complex intra-partnership controversy now before us. We are not persuaded that such efforts have been made.

15. For these reasons, the Commission believes that referring this matter to a settlement judge is particularly appropriate. The Commission will establish a hearing to examine the issues raised in the complaint. However, to explore the possibility of a settlement, the Commission will hold the hearing in abeyance and direct the Chief Administrative Law Judge to appoint, within 10 days of the issuance of this order, a settlement judge pursuant to Rule 603 of the Commission's Rules of Practice and Procedure. Within 45 days of the issuance of this order, the settlement judge will report to the Commission and the Chief Administrative Law Judge on the status of the negotiations. If a settlement is likely, as concurred in by both Tennessee and Columbia Gulf, further negotiations may be approved by the Chief Administrative Law Judge for a period of 30 days. If settlement discussions fail, the Chief Administrative Law Judge shall assure expeditious litigation of the matters raised in the complaint. The Chief Administrative Law Judge shall select a Presiding Administrative Law Judge who shall convene a pre-hearing conference within approximately 15 days of the settlement judge's final report, in a hearing room of the Federal Energy Regulatory Commission.

¹⁴See complaint at 11-12, P 14. Tennessee's language suggests the possibility that the complaint would not have been filed had access to these four points been made possible.

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The Commission orders:

(A) A public hearing is to be held in this proceeding concerning Tennessee's complaint. Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, the Chief Administrative Law Judge is directed to appoint, within 10 days of the issuance of this order, a settlement judge. The settlement judge shall convene an initial settlement conference as soon as practicable.

(B) Within 45 days of the issuance of this order, the settlement judge shall report to the Commission and to the Chief Administrative Law Judge on the status of negotiations. If settlement is likely, as concurred in by both Tennessee and Columbia Gulf, further negotiations may be approved for a period of 30 days by the Chief Administrative Law Judge. The settlement judge shall report to the Commission and to the Chief Administrative Law Judge as soon as possible upon conclusion of such further 30 day period.

(C) If settlement discussions fail, a Presiding Administrative Law Judge shall be selected by the Chief Administrative Law Judge. A pre-hearing conference shall be convened by the Presiding Administrative Law Judge in this proceeding within approximately 15 days of the date of the settlement judge's final report.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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Appendix A

National Fuel Gas Distribution Company
Baltimore Gas & Electric Company
Discovery Gas Transmission LLC
Nashville Gas Company
Atmos Energy Corporation
PSEG Resources & Trade LLC
El Paso Natural Gas Company
Process Gas Consumers Group
BP American Company
Consolidated Edison Company of New York, Inc.
Rhode Island State Energy Partners, L.P.
Key Span Delivery Companies
CFS Louisiana Midstream Company
Exxonmobil Gas & Power Marketing Company,
A Division of Exxon Mobil Corp.
El Paso Corp.