

170 FERC ¶ 61,141
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP19-7-000

ORDER GRANTING PARTIAL WAIVER OF CONDITION

(Issued February 21, 2020)

1. On December 19, 2019, the Commission issued an order authorizing Tennessee Gas Pipeline Company, L.L.C. (Tennessee) to construct and operate a new 2.1-mile-long, 12-inch-diameter pipeline loop and replace two compressor units at Compressor Station 261 (CS 261) in Hampden County, Massachusetts (261 Upgrade Project).¹ The 261 Upgrade Project will enable Tennessee to provide an additional 72,400 dekatherms per day (Dth/day) of firm transportation service on its pipeline system. The Certificate Order included a condition in Ordering Paragraph (C) requiring Tennessee to file a written statement affirming that it has executed firm contracts for the capacity levels and terms of service represented in the precedent agreements supporting the application before Tennessee can begin construction of the project.² On January 21, 2020, Tennessee filed a request for partial waiver of the condition. For the reasons set forth below, we grant the request for partial waiver.

I. Background

2. The Certificate Order authorized Tennessee to: (1) construct an approximately 2.1-mile-long 12-inch-diameter pipeline loop located adjacent to Tennessee's existing 8-inch-diameter 261BP-100 pipeline and 10-inch-diameter 261B-100 pipeline in Hampden County, Massachusetts; (2) remove a previously abandoned 6-inch-diameter pipeline where the pipeline loop will be installed adjacent to the 261B-100 pipeline

¹ *Tenn. Gas Pipeline Co., L.L.C.*, 169 FERC ¶ 61,230 (2019) (Certificate Order). Concurrent with this order, we are issuing an order denying rehearing of the Certificate Order. *Tenn. Gas Pipeline Co., L.L.C.*, 170 FERC ¶ 61,142 (2020).

² Certificate Order, 169 FERC ¶ 61,230 at ordering para. (C).

(approximately 1.1 miles of the total pipeline loop length);³ and (3) abandon two compressor units, one 5,490 horsepower (hp) unit and one 1,199 hp unit, at CS 261 in Hampden County, Massachusetts, and replace those units with a single new 11,107 hp natural gas-fired turbine compressor unit.⁴ The 261 Upgrade Project was designed to provide long-term firm transportation service to the project's shippers and to help alleviate capacity-strain in the New England gas markets.

3. Tennessee entered into a 20-year binding precedent agreement for firm transportation service with Bay State Gas Company d/b/a Columbia Gas of Massachusetts (CMA) for 96,400 Dth/day, of which 40,400 Dth/day will be served by capacity created by the 261 Upgrade Project.⁵ Tennessee also entered into a 20-year binding precedent agreement for firm transportation service with Holyoke Gas and Electric Department (Holyoke) for 5,000 Dth/day.

4. The Certificate Order authorized the 261 Upgrade Project, finding that Tennessee's proposal was consistent with the Certificate Policy Statement.⁶ Specifically, the Certificate Order found that: (1) Tennessee will not rely on subsidies from existing customers; (2) the project will provide enhanced reliability and flexibility to existing customers; and (3) there should be no adverse impact on existing pipelines or their captive customers, and little, if any, impact on landowners and surrounding communities.⁷ Consistent with our standard practice, the Certificate Order conditioned the certificate authorization so that construction of the project could not commence until after Tennessee executed contracts which reflect the levels and terms of service represented in its precedent agreements.⁸

³ *Id.* The 6-inch-diameter pipeline was abandoned in 1958. *Tenn. Gas Transmission Co.*, 20 FPC 441 (1958).

⁴ Certificate Order, 169 FERC ¶ 61,230 at P 5.

⁵ *See id.* P 7 n.7.

⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

⁷ Certificate Order, 169 FERC ¶ 61,230 at PP 14-29.

⁸ *Id.* at ordering para. (C).

II. Tennessee's Request for Waiver and Pipe Line Awareness Network for the Northeast's Comment

5. On January 21, 2020, Tennessee filed a letter with the Commission requesting a partial waiver of Ordering Paragraph (C) of the Certificate Order. Tennessee explains that the precedent agreement with Holyoke provided Holyoke the option to terminate the agreement if certain conditions were not satisfied.⁹ Tennessee states that Holyoke notified Tennessee on January 2, 2020, that it was exercising its option to terminate the precedent agreement. Tennessee notes that although Holyoke's termination would allow an approximately 0.3-mile reduction to the length of the pipeline loop, such a reduction would result in additional impacts to wetlands due to the change in the terminus of the pipeline loop and would only have *de minimis* cost savings.¹⁰ Tennessee states that it will therefore proceed with the 261 Upgrade Project as approved by the Certificate Order rather than revise the scope of the project.¹¹

6. Tennessee also asserts that termination of Holyoke's precedent agreement does not impact the precedent agreement with CMA or diminish the Commission's finding of need for the project.¹² Holyoke's termination will add 5,000 Dth/day of unsubscribed capacity to Tennessee's system, which Tennessee states will be made available to its shippers pursuant to Tennessee's gas tariff.¹³

7. Tennessee requests a partial waiver of Ordering Paragraph (C) as it pertains to the Holyoke precedent agreement so that it may be authorized to commence construction of the 261 Upgrade Project once it submits a written statement affirming that it has executed firm contracts for the capacity levels and terms of service reflected in the precedent agreement with CMA.¹⁴

⁹ The Certificate Order found this provision to be a permissible non-conforming provision. Certificate Order, 169 FERC ¶ 61,230 at PP 44-46.

¹⁰ Tennessee January 21, 2020 Request for Partial Waiver of Ordering Paragraph (C) at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 2 n.7.

¹⁴ Tennessee will also be required to meet any other construction preconditions such as filing an Implementation Plan, receiving all applicable federal permits (or waiver thereof), and receiving a Notice to Proceed with construction from Commission staff.

8. On January 22, 2020, the Pipe Line Awareness Network for the Northeast (PLAN) filed a comment in opposition to Tennessee's partial waiver request. PLAN argues that now that Holyoke has terminated its precedent agreement for the project, the 2.1-mile-long loop is no longer needed.¹⁵ Specifically PLAN alleges that CMA intends to decrease its deliveries to Agawam, the delivery point for the project, which may eliminate the need for the looping portion of the project.¹⁶ On February 5, 2020, Tennessee filed a response to PLAN's comment stating that PLAN made similar arguments against authorizing the underlying certificate, which the Commission addressed in the Certificate Order.¹⁷ On February 7, 2020, PLAN filed a second comment in response to Tennessee, reiterating that CMA may not need all or part of the capacity represented in its precedent agreement.¹⁸

III. Discussion

9. Where the applicant has supported its application with evidence of capacity subscribed under precedent agreements, our general policy is to condition the certificate on the applicant's executing contracts for the level of service and for the terms of service represented in the precedent agreements before commencing construction.¹⁹ The reason for this requirement is that we believe that executed service agreements or contracts, by their very nature, reflect a higher level of commitment than precedent agreements. In addition, since we ultimately balance a project's demonstrated benefits against its adverse impacts, the requirement that final service agreements be executed prior to the commencement of construction helps to ensure that the evidence of need relied upon in assessing the balance was not illusory.²⁰

10. Although it is our general policy to require the applicant to execute contracts for the total level of service reflected in the precedent agreements before beginning construction,

¹⁵ Pipe Line Awareness Network for the Northeast (PLAN) January 22, 2020 Comment at 1.

¹⁶ *Id.* at 2.

¹⁷ Tennessee February 5, 2020 Response at 2.

¹⁸ PLAN February 7, 2020 Comment at 1-2.

¹⁹ *See, e.g., Dominion Transmission, Inc.*, 136 FERC ¶ 61,031, at P 7 (2011) (*Dominion*).

²⁰ *Id.* *See also Arlington Storage Co.*, 128 FERC ¶ 61,261 (2009).

we have granted partial waivers of this requirement in similar circumstances.²¹ Here, approximately 56 percent of the project is subscribed by CMA, which the Commission has previously found as persuasive evidence of market need for a project.²² As incremental rates have been approved for the project, there is no danger of subsidization by existing customers.²³ Moreover, partial waiver of the contract condition will have no impact on our findings that Tennessee has taken sufficient measures to minimize the impacts of the project on landowners and communities and that the project will not have significant environmental impacts.

11. Regarding PLAN's comments in opposition to the waiver request, it is current Commission policy to not look beyond precedent or service agreements to make judgements about the needs of individual shippers.²⁴ Nothing in the record indicates that CMA has terminated or amended its precedent agreement and PLAN has provided no evidence demonstrating that the 2.1-mile-long pipeline loop is no longer needed due to

²¹ See, e.g., *Elba Express Co., L.L.C.*, 155 FERC ¶ 61,293, at P 8 (2016) (granting partial waiver where five of six shippers executed contracts, representing approximately 58 percent of the project's capacity); *Dominion*, 136 FERC ¶ 61,031 at P 8 (granting partial waiver where shippers executed contracts representing approximately 75 percent of the project's capacity); *SG Resources Mississippi, L.L.C.*, 108 FERC ¶ 61,051, at P 15 (2004) (granting partial waiver where "anchor tenant" became insolvent and was unable to execute an agreement for any quantity of service); *Portland Natural Gas Transmission System*, 83 FERC ¶ 61,080, at 61,388 (1998) (granting partial waiver where six of seven shippers executed firm transportation contracts).

²² See, e.g., *NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022, at P 41 (2017), *on reh'g*, 164 FERC ¶ 61,054 (2018), *aff'd in relevant part*, *City of Oberlin v. FERC*, 937 F.3d 599, 605 (2019) (finding need for a new pipeline system that was 59 percent subscribed); *Elba Express Co., L.L.C.*, 155 FERC ¶ 61,293, at P 8 (2016) (granting partial waiver where five of six shippers executed contracts, representing approximately 58 percent of the project's capacity); *Texas Eastern Transmission, LP*, 129 FERC ¶ 61,151, at P 32 (2009), *on reh'g*, 131 FERC ¶ 61,164 (2010) (issuing a certificate with transportation agreements representing 52 percent of the new project's capacity).

²³ Certificate Order, 169 FERC ¶ 61,230 at P 35 (approving incremental recourse rates for the new capacity created by the 261 Upgrade Project).

²⁴ Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,744 (citing *Transcontinental Gas Pipe Line Corp.*, 82 FERC ¶ 61,084, at 61,316 (1998)).

the reduction in subscribed capacity.²⁵ Moreover, Ordering Paragraph (C) is only waived with regard to Holyoke and we will still require Tennessee to file a written statement affirming that it has executed a firm contract for the capacity level and terms of service represented in the signed precedent agreement with CMA, prior to commencing construction.

12. Therefore, we will grant Tennessee's request for partial waiver of the requirement in Ordering Paragraph (C) of the Certificate Order that Tennessee execute firm contracts for the capacity level and terms of service represented in Holyoke's precedent agreement.

The Commission orders:

Tennessee's request for partial waiver of Ordering Paragraph (C) of the Certificate Order is granted. In all other respects, the Certificate Order is unchanged.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁵ In fact, as noted above, Tennessee states that Holyoke's termination would allow only an approximately 0.3-mile reduction to the length of the pipeline loop, which, as Commission staff has confirmed, would result in additional impacts to wetlands.