

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company

Docket No. CP05-418-000

ORDER GRANTING, IN PART, AND DENYING, IN PART,
REQUEST FOR ABANDONMENT AUTHORITY
AND DENYING REQUEST FOR ASSIGNMENT OF CAPACITY

(Issued January 20, 2006)

1. On September 15, 2005, Tennessee Gas Pipeline Company (Tennessee) filed an application under sections 7(b) of the Natural Gas Act (NGA) seeking authorization to abandon certain certificated transportation services. These services include capacity entitlements it currently provides for Dynegy Marketing and Trade (Dynegy) on its South Pass 77 System that it co-owns with Columbia Gulf Transmission Corporation (Columbia Gulf) and related downstream services. Tennessee also requests authorization under NGA section 7(c) to acquire Dynegy's capacity entitlements on Columbia Gulf's portion of the facilities. As discussed below, we will grant the requested abandonment authority, in part, but deny the proposed reassignment of the South Pass 77 System capacity.

Background

2. In 1980, the Commission authorized Tennessee and Columbia Gulf to construct and operate a pipeline comprised of facilities extending from South Pass Block 77 offshore Louisiana to Tennessee's system in Plaquemines Parish, Louisiana (South Pass 77 System).¹ In 1981 and 1983, Tennessee and Columbia Gulf constructed additional facilities to expand the South Pass 77 System.² Tennessee and Columbia Gulf entered into several agreements with Gulf Oil Corporation (Gulf Oil), predecessor in interest to

¹*Tennessee Gas Pipeline Co.*, 12 FERC ¶ 61,307 (1980). Tennessee and Columbia Gulf co-own the facilities and Tennessee is the operator.

²*Tennessee Gas Pipeline Co.*, 16 FERC ¶ 61,054 (1981) and *Tennessee Gas Pipeline Co.*, 22 FERC ¶ 61,208 (1983). Tennessee and Columbia Gulf are each 50 percent owners of the facilities certificated in 1980 and 1981. Tennessee and Columbia Gulf are each 40 percent owners of the facilities certificated in 1983. The remaining 20 percent of the 1983 facilities were certificated to United Gas Pipe Line Company (United). The 1983 project was called the South Pass 47 Project.

Dynegy, under which Gulf Oil contributed to the costs to construct the initial and expansion facilities.³ In return, Gulf Oil was entitled to a percent of the capacity on the South Pass 77 System (capacity entitlements).

3. Specifically, Gulf Oil contributed 25 percent to the cost of construction of the initial facilities in exchange for 25 percent of the capacity on the facilities. Gulf Oil's 25 percent capacity entitlement in the initial facilities was derived 50 percent from Tennessee's and 50 percent from Columbia Gulf's respective ownership interests. Gulf Oil contributed 16.67 percent to construct the 1981 expansion facilities in exchange for 16.67 percent of the capacity on the facilities. Seventy percent of Gulf Oil's resulting capacity entitlement in the 1981 expansion project was derived from Tennessee's ownership interest, and the remaining 30 percent was derived from Columbia Gulf's. Similarly, in 1983, Gulf Oil contributed 43.5 percent to the cost to construct the 1983 expansion facilities and received equivalent capacity entitlements. Gulf Oil's capacity entitlement on the 1983 expansion facilities was derived 50 percent from Tennessee's and 50 percent from Columbia Gulf's respective ownership interests.

4. Gulf Oil's rights to transportation service on the South Pass 77 System were determined under five Letter Agreements between Tennessee, Columbia Gulf, and Gulf Oil.⁴ Each Letter Agreement, among other things, states that Tennessee and Columbia Gulf agreed to provide for Gulf Oil "the right to have certain volumes of its gas handled in the proposed facilities pursuant to a Transportation Agreement."⁵ Each Letter Agreement also provides that monthly operation and maintenance costs and capital replacement costs are shared between Tennessee, Columbia Gulf, and Gulf Oil on the basis of each party's use of the facilities during the month.

³ On July 1, 1985, Gulf Oil merged with Chevron U.S.A., Inc. Chevron U.S.A., Inc. assigned the South Pass 77 System capacity entitlements to Dynegy Holdings, Inc. effective March 1, 1997. That same day, Dynegy Holdings, Inc. assigned these rights to Dynegy.

⁴ The Letter Agreements, dated September 5, 1980, September 30, 1980, August 21, 1981, and November 7, 1983, are located in Exhibit U in the Application.

⁵ Tennessee did not provide any Transportation Agreements pertaining to the capacity at issue in this proceeding. In response to a data request, Columbia Gulf stated that no rate schedules or service agreements currently exist between Dynegy and Columbia Gulf. *See* October 31, 2005 response to Data Request 1. Rate Schedule T-124 also references a joint agreement between Tennessee and Columbia Gulf for the construction, ownership, operation, and maintenance of the South Pass 77 facilities. In an October 31, 2005 response to a staff data request, Tennessee filed a Construction, Ownership, Operation, and Maintenance Agreement between it and Columbia Gulf. However, the filed agreement is dated September 13, 1996.

5. In addition to the service on South Pass 77 System, Gulf Oil obtained downstream transportation services from Tennessee from the terminus of the South Pass 77 System to a point on Tennessee's system near Venice, Louisiana. In 1981, the Commission issued a case-specific transportation certificate authorizing Tennessee's downstream transportation service under Tennessee Rate Schedule T-124.⁶

6. As Gulf Oil's successor in interest, Dynegey's has South Pass 77 System capacity entitlements and downstream service by Tennessee under Rate Schedule T-124 service as follows:

Segment	Total (Mcf)	Tennessee (Mcf)	Columbia Gulf (Mcf)
Original SP 77	125,000	62,500	62,500
First Expansion	16,667	11,666	5,001
Second Expansion	27,400	13,700	13,700
Rate Schedule T-124		141,860 Dth	

Proposal

7. Tennessee states that Dynegey has not used its South Pass 77 System capacity since 1999 and no longer desires to hold it. Tennessee states that it and Dynegey have entered into two agreements concerning Dynegey's capacity entitlements on the South Pass 77 System and the downstream capacity. Under the Termination Agreement, Dynegey intends to terminate its capacity entitlements on Tennessee's portion of the South Pass 77 System and downstream service under Tennessee's Rate Schedule T-124. Under the Assignment Agreement, Dynegey intends to assign its capacity entitlements on Columbia Gulf's portion of the South Pass 77 System to Tennessee.

8. Specifically, under the Termination Agreement, Dynegey has agreed to pay Tennessee \$627,185.82 to terminate its rights and obligations to the Dynegey's capacity on Tennessee's portion of the South Pass 77 System capacity and to the downstream Rate Schedule T-124 capacity. Additionally, the Termination Agreement states that Tennessee would be responsible for Dynegey's share of Tennessee's portion of South Pass 77 System costs until July 31, 2006.

9. Under the Assignment Agreement, Dynegey would provide Columbia Gulf 90 days notice to exercise a right of first refusal for Columbia Gulf to acquire Dynegey's capacity on Columbia Gulf's portion of the South Pass 77 system. If Columbia Gulf does not exercise its right of first refusal, Dynegey would assign its capacity entitlements on

⁶ *Tennessee Gas Pipeline Co.*, 17 FERC ¶ 62,196 (1981). This transportation was available under Article XI of Rate Schedule T-124 which provides for a term equal to the term of the Construction, Ownership, Operating and Maintenance Agreement for Project 77. Tennessee's Original Volume No. 2, Original Sheet No. 1194, effective June 1, 1986.

Columbia Gulf's portion of the South Pass 77 System to Tennessee along with a transfer payment of \$579,600.18.⁷ Additionally, the Assignment Agreement states that Tennessee would be responsible for Dynegey's share of Columbia Gulf's portion of South Pass 77 System costs until July 31, 2006.

10. Tennessee requests that the Commission: (1) approve and authorize the termination, abandonment, and revision of Dynegey's capacity entitlements on Tennessee's portion of the South Pass 77 System; (2) approve and authorize the assignment of Dynegey's capacity entitlements on Columbia Gulf's portion of the South Pass 77 System; and (3) approve the abandonment of Dynegey's downstream transportation service under Tennessee's Rate Schedule T-124. Tennessee states that the additional capacity would become available for Part 284 open-access service under its FERC Gas Tariff.

Interventions

11. Notice of Tennessee's application was published in the *Federal Register* (70 Fed. Reg. 57586) on October 3, 2005. Timely, unopposed motions to intervene were filed by Atmos Energy Corporation; Columbia Gulf Transmission Company; Consolidated Edison Company of New York and Orange and Rockland Utilities, Inc. (jointly ConEd); Louisville Gas and Electric Company; and ProLiance Energy, LLC.⁸ In its motion to intervene, ConEd raises concerns regarding Tennessee proposal to acquire the Columbia Gulf capacity. Tennessee filed a reply to ConEd's motion. All filings are accepted into the record and addressed below.

Discussion

12. Tennessee proposes the abandonment of services and the reassignment of pipeline capacity used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission. Therefore, Tennessee's proposal is subject to the requirements of NGA sections 7(b) and (c).

13. In 1980, the Commission issued Tennessee and Columbia Gulf a certificate of public convenience and necessity to construct, acquire, and operate the original South

⁷ The Assignment Agreement is between Dynegey and Tennessee. While the Assignment Agreement provides that Dynegey intend to give Columbia a right of first refusal to the capacity, Columbia Gulf is not a party to the Assignment Agreement. In an October 31, 2005 response to a data request, Columbia Gulf states that it conditionally waived its right of first refusal rights.

⁸ Timely, unopposed motions to intervene are allowed by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2005).

Pass 77 System and to provide transportation service for Gulf Oil using such facilities.⁹ Similar certificates were issued for the capacity created by the subsequent expansions of the South Pass 77 System.¹⁰ Thus, Dynege, as the successor in interest to Gulf Oil, has capacity entitlements on Tennessee's and Columbia Gulf's South Pass 77 System that resulted from the construction of the initial and expansion facilities. These capacity entitlements are certificated service obligations that require abandonment authorizations for both pipelines to implement Tennessee's proposal.

Tennessee's Capacity

14. As stated, Dynege no longer requires its capacity entitlements on Tennessee's portion on the South Pass 77 System, or related downstream service on Tennessee's system under Rate Schedule T-124. Upon abandonment, Tennessee's South Pass 77 System capacity, presently dedicated to Dynege and Dynege's downstream capacity under Tennessee's Rate Schedule T-124, will become available for Tennessee to offer to others under its Part 284 blanket transportation certificate. Making this capacity available to other shippers will better serve the interstate market and provide for a more efficient use of the South Pass 77 System and Tennessee's downstream capacity. Accordingly, we conclude that the proposed abandonment of Dynege's capacity entitlement on Tennessee's portion of the South Pass 77 System and downstream Rate Schedule T-124 service is consistent with the public convenience and necessity.

Columbia Gulf's Capacity

15. Columbia Gulf is the holder of a certificate of public convenience and necessity to construct and operate its portion of the South Pass 77 System that is necessary to provide, among other things, Dynege's 81,201 Mcf/d capacity entitlement. Columbia Gulf has not requested authority to abandon its certificated 81,201 Mcf/d service obligation to Dynege or the corresponding ownership interest in the South Pass 77 System. Therefore, an assignment of the Dynege capacity on Columbia Gulf's portion of the South Pass 77 system, as proposed, is denied.

16. Moreover, the transportation service Columbia Gulf provides to Dynege is a case-specific certificated service under Part 157 of the Commission's regulations. Tennessee, in essence, is requesting that the Commission authorize abandonment of Columbia Gulf's certificated service for Dynege and issue Columbia Gulf a new case-specific certificate to provide the service for Tennessee. We reject the proposal to provide service under Part 157 case-specific certificate authority as inconsistent with our policy, as set forth in Order

⁹ *Tennessee Gas Pipeline Co.*, 12 FERC at 61,709.

¹⁰ *Tennessee Gas Pipeline Co.*, 16 FERC at 61,097 and 22 FERC at 61,378.

No. 636,¹¹ to promote open access transportation as a means to ensure as competitive an environment as possible for natural gas services.¹² If it wishes to do so, Columbia Gulf may abandon its service obligations to Dynegy with an appropriate NGA section 7(b) filing. The proposed service can then be provided under Part 284 of the Commission's regulations.

At-Risk Condition

17. ConEd states that it does not object to Tennessee's acquisition of Dynegy's capacity entitlements. However, ConEd requests that the Commission impose an at-risk condition on Tennessee with respect to Tennessee's proposal to purchase capacity on its system without any demonstration of market demand for that capacity. Concerning the abandonment of Dynegy's capacity entitlements on Tennessee's portion of the South Pass 77 System, the Commission does not require a pipeline to alter its existing transmission rates to remove or add any costs as a consequence of the action taken in an abandonment proceeding.¹³ Any issues related to costs associated with the abandonment of these capacity entitlements can be addressed in Tennessee's next NGA section 4 rate proceeding. Because we are denying Tennessee's request to acquire Dynegy's capacity entitlements on Columbia Gulf, ConEd's request for an at-risk condition is moot with respect to the Columbia Gulf capacity.

Conclusion

18. The Commission finds abandonment of Dynegy's capacity entitlements on Tennessee's portion of the South Pass 77 System and on Tennessee's downstream facilities will better serve the interstate market and provide for a more efficient use of these facilities. However, Tennessee's proposal to acquire Dynegy's capacity on

¹¹ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *aff'd in part, rev'd in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *cert. denied sub nom. Associated Gas Distributors v. FERC*, 520 U.S. 1224 (1997), *on remand*, Order No. 636-C, 78 FERC P 61,186 (1997), *order on reh'g*, Order No. 636-D, 83 FERC ¶ 61,210 (1998).

¹² *See, e.g., Paiute Pipeline Company*, 109 FERC ¶ 61,333 P 34 (2004); *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,309 P 9-10 (2002), *order denying reh'g*, 102 FERC ¶ 61,120 (2003); *Algonquin LNG Inc.*, 60 FERC ¶ 61,127 at 61,451 (1992), *order on reh'g*, 61 FERC ¶ 61,292 (1992); and *Blue Lake Gas Storage Co.*, 59 FERC ¶ 61,118 at 61,456-57 (1992).

¹³ *See, e.g., Equitrans, LP*, 98 FERC ¶ 61,160 at 61,591 (2002).

Columbia Gulf's portion of the South Pass 77 System would not increase access to that capacity, but would increase operating costs for Tennessee. Further, Columbia Gulf has not requested authority to abandon its certificated service obligations to Dynegy or to reassign any of its South Pass 77 System capacity to Tennessee. Therefore, the Commission finds that the abandonment and reassignment of Dynegy's Columbia Gulf capacity is not permitted by the public convenience and necessity.

19. The abandonment of Dynegy's capacity entitlements on Tennessee's portion of the South Pass 77 System and downstream facilities will not have a significant impact on the environment as there will be no change in the facilities or their operation.

20. At a hearing held on January 19, 2006, there was received and made a part of the record in this proceeding all filed evidence, including the application, as supplemented, and exhibits thereto, and after consideration thereof,

The Commission orders:

(A) Abandonment approval is granted to Tennessee under NGA section 7(b), to abandon Dynegy's capacity entitlements on Tennessee's portion of the South Pass 77 System and downstream service under Rate Schedule T-124.

(B) Abandonment approval of Dynegy's capacity entitlements on Columbia Gulf's portion of the South Pass 77 System, is denied; the proposal for reassignment of such capacity to Tennessee is denied.

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

(D) Tennessee shall file revised tariff sheets to reflect the abandonment of Rate Schedule T-124 within 15 days of the date of the abandonment.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.