

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pinnacle Pipeline Company

Docket Nos. CP03-323-001
CP03-324-001
CP03-325-001

ORDER GRANTING REHEARING

(Issued January 28, 2004)

1. On October 8, 2003, the Commission issued an order granting Pinnacle Pipeline Company (Pinnacle),¹ *inter alia*, certificate authority under Section 7 (c) of the Natural Gas Act (NGA) to own and operate an existing pipeline lateral facility, known as the Hobbs Lateral, in New Mexico, and a blanket certificate to perform open-access transportation service under Part 284, Subpart G of the Commission's regulations. This order grants Pinnacle's November 7, 2003 request for rehearing of the October 8, 2003 Order to authorize Pinnacle's use of its annual throughput, rather than system capacity, in designing its firm recourse rates.

Background

2. In the October 8, 2003 Order the Commission found that it was in the public interest to grant Pinnacle's requests for various certificate authorizations since they would allow Pinnacle to continue its current service and to transport increased volumes of natural gas for use as fuel at two electric power plants owned by Southwestern Public Service Company (Southwestern Public Service), the sole shipper on the Hobbs Lateral, a 5-mile long, 10-inch diameter pipeline.² Pinnacle stated in its filing that it had entered into a negotiated rate agreement with Southwestern Public Service. It also proposed

¹ 105 FERC ¶ 61,051 (2003).

² Pinnacle explained in its certificate application that it failed to seek the requisite certificate authorizations prior to constructing the Hobbs Lateral in 1991 due to a good faith misunderstanding that the facility would qualify for the Hinshaw exemption in Section 1 (c) of the NGA. *Id.* at p.7.

maximum recourse rates for firm and interruptible service. The Commission required Pinnacle to recalculate its recourse rates for the Hobbs Lateral by using annual system capacity rather than actual throughput volume.

Request for Rehearing

3. Pinnacle requests the Commission to grant rehearing to allow it to use its projected annual throughput to design its firm service recourse rates, because actual system capacity does not reasonably reflect the annual gas volumes that Pinnacle will transport through the Hobbs Lateral. Pinnacle states that the Hobbs Lateral is used by Southwest Public Service to obtain high pressure delivery for two electric generating plants, the Cunningham and Maddox Plants, which have a peak day capacity of 166,000 MMBtu. Therefore, although the Hobbs Lateral has a theoretical total maximum annual throughput of 45,260,000 MMBtu, the highest annual throughput ever achieved by Pinnacle was 14,678,000 MMBtu in 1998.³

4. Pinnacle further explains that the peaking service required by Southwest Public Service demands rapid, high pressure startup on infrequent peaking service days, but that on other days Pinnacle has no need to maintain any base load generation at or near the level of the peak day requirements. Moreover, Southwestern Public Service has alternate sources of low pressure gas supplies and no known plans to expand the Cunningham and Maddox Plants. Pinnacle adds that the Hobbs Lateral is in a remote area where there are no other customers seeking transportation services. For these reasons Pinnacle states that it has no realistic expectation of transporting gas anywhere near its annual design capacity.

Discussion

5. Under similar circumstances, the Commission has permitted other pipelines to base their rates on billing determinants other than the annual physical capacity of the pipeline. For example, in Pacific Gas Transmission Co., 70 FERC ¶ 61,016 (1995) (PGT), the Commission allowed PGT to construct a 12-inch lateral, rather than a 10-inch lateral, because the additional cost for the larger pipe was small and an additional market for the excess capacity was likely to develop in the future. Thus, the pipeline was excused from basing its rates on the physical capacity of the lateral for the first two years of its operation.

³ Attachment to request for rehearing at p. 5, Affidavit of Mr. William G. Janacek, Senior Vice-President and Chief Operating Officer for Markwest Pinnacle, L.P.

6. In Crossroads Pipeline Co., 73 FERC ¶ 61,138 (1995) (Crossroads) the Commission stated that the policy of requiring rates to be designed on actual capacity was also intended to deter pipelines from oversizing facilities in order to over-recover costs. In that case, the Commission found that there was no possibility of overbuilding, since the Crossroads facilities were already built and, therefore, permitted the pipeline to base its rates on projected demand for capacity rather than actual physical capacity. Further, the Commission noted that over-recovery of costs could be addressed when the pipeline filed its required cost and revenue study, pursuant to Section 4 of the NGA.

7. The Commission finds that the circumstances of this case also warrant departure from the Commission's general policy of requiring a pipeline to base its rates on actual capacity. As was the case in PGT, Pinnacle built the Hobbs Lateral facilities at a specific size to meet the special peak day needs of one customer, Southwestern Public Service. Next, as was the case in Crossroads, the basic facilities here are already built so there is no danger that Pinnacle will overbuild.

8. Finally, the Commission's October 8, 2003 Order requires Pinnacle to submit a cost and revenue study under Section 4 of the NGA within three years of operation to justify its recourse rates. If that study indicates that Pinnacle's annual sale of firm capacity exceeds the rate design level, the Commission can exercise its authority under Section 5 of the NGA to remedy the situation. Under the facts of this case and with this rate filing safeguard that will allow the Commission to review the issue of cost over-recovery, the Commission will grant Pinnacle's request for rehearing.

The Commission orders:

Pinnacle's request for rehearing of the October 8, 2003 Order is granted.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary.