

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Corporation Docket No. CP04-385-000
and Crosstex CCNG Transmission, Ltd.

ORDER DENYING ABANDONMENT AUTHORITY

(Issued March 24, 2005)

1. On July 28, 2004, Transcontinental Gas Pipe Line Corporation (Transco) filed an application under section 7(b) of the Natural Gas Act (NGA) seeking Commission approval for Transco to abandon its South Texas Pipeline Facilities by sale to Crosstex CCNG Transmission, Ltd. (Crosstex CCNG). Transco and Crosstex CCNG (together referred to as Applicants) also request that the Commission determine that, following the transfer to Crosstex CCNG, the subject facilities will be intrastate pipeline facilities exempt from the Commission's jurisdiction pursuant to section 1(b) of the NGA.

2. For the reasons discussed below, we find that the proposed abandonment is not in the public interest because the facilities are essential to the provision of open-access interstate service, and because the proposal lacks evidence of benefits sufficient to outweigh potential adverse impacts of forcing customers to discontinue service from Transco and accept service from Crosstex CCNG under section 311 of the Natural Gas Policy Act (NPGA).

I. Background and Proposal

3. Transco is a natural gas company, as defined in the NGA, engaged in the transportation and sale of natural gas in interstate commerce. Transco's natural gas transmission system extends from its principal sources of natural gas supply in Texas, Louisiana, Mississippi and the offshore Gulf of Mexico area, through the States of Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania and New Jersey, to the terminus of Transco's system in the New York City metropolitan area.

4. Crosstex CCNG, which is not affiliated with Transco, is an intrastate pipeline company subject to the jurisdiction of the Texas Railroad Commission with a system consisting of 295 miles of pipeline extending from supply points in south Texas to markets in the Corpus Christi, Texas area.¹ Crosstex CCNG's system interconnects with multiple third-party pipelines both directly and through hubs.

5. Transco states that its South Texas Pipeline Facilities, all located in Transco's Zone 1, include: (1) a 258.37-mile, 10-inch to 26-inch diameter mainline originating in Hidalgo and Cameron Counties, Texas, that receives gas from Transco facilities located both offshore and onshore for transportation to Transco's Compressor Station 30 in Wharton County, Texas; (2) the McMullen Lateral, consisting of 151.71 miles of 24-inch pipeline and 13 miles of 24-inch pipeline loop originating in McMullen County, Texas, that delivers gas supplies from onshore sources to Station 30; (3) four other interconnected laterals with segments (including pipeline loop) ranging from 3.4 to 23.17 miles in length and 6 to 20 inches in diameter; (4) Transco's Compressor Station 20 in Refugio County, Texas; and (5) meter stations, valves, miscellaneous tie-in piping, and other related facilities appurtenant to the above pipeline segments.² Transco states that

¹ Crosstex CCNG is a subsidiary of Crosstex Energy, L.P., an independent midstream energy company engaged in the gathering, transmission, treating, processing, and marketing of natural gas. Removal of carbon dioxide and hydrogen sulfide is the focus of Crosstex Energy, L.P.'s Treating Division, while the other functions are encompassed in its Midstream Division. The Midstream Division comprises approximately 4,500 miles of pipeline and eight processing plants located along the Texas Gulf Coast and in Mississippi, Louisiana, Alabama, and Oklahoma. Besides Crosstex CCNG's intrastate pipeline system, Crosstex Energy, L.P.'s other Midstream Division facilities located in the Texas Gulf Coast area, primarily south of Houston, Texas, consist of the Gulf Coast system's 484 miles of gathering and intrastate transmission pipeline, the Vanderbilt system's 200 miles of gathering pipeline, the Gregory Gathering system's 297 miles of gathering pipeline, and the Gregory Processing Plant.

² Transco proposes to retain certain of its Zone 1 facilities, including Compressor Station 30 facilities, the North Padre Island Lateral (NPI Lateral), and the Central Texas Gathering System (CTGS). The NPI Lateral extends offshore from its interconnection with Transco's South Texas Pipeline Facilities at a point located about 180 miles upstream of Station 30. The CTGS extends offshore from an interconnection with Station 30 and does not interconnect with the South Texas Pipeline Facilities. In order to interconnect with the facilities proposed to be spun off, Transco states that it will relocate a meter station from within its Station 30 to a point just outside the station yard. Transco

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the South Texas Pipeline Facilities have a throughput capacity of 510,000 dekatherms per day (Dth/d).

6. Transco proposes to abandon its South Texas Pipeline Facilities by sale to Crosstex CCNG for \$27.4 million.³ The net book value of the facilities as of June 30, 2004, is stated as \$30.1 million, which includes the unamortized balance of the purchase price that was assigned to the assets when The Williams Companies, Inc. purchased Transco in 1995. Transco states that the South Texas Pipeline Facilities are no longer essential to Transco's provision of interstate transportation service, and that the abandonment would result in reduced costs for its customers by removing the facilities from Transco's cost of service and rate base.

7. Transco also proposes to abandon related transportation services. Transco has one affected firm transportation customer, Sun Company, Inc. (R&M) (Sunoco) for whom Transco seeks to partially abandon transportation service by removing the receipt points located on the South Texas Pipeline Facilities from Sunoco's Rate Schedule FT service agreement and replacing them with a new receipt point at the proposed interconnection with Crosstex CCNG at Station 30. Transco will continue to charge Sunoco the same rate, including fuel. Applicants assert that Sunoco will not be adversely affected by the proposed abandonment because Crosstex CCNG has agreed to provide continued firm transportation service for Sunoco's contract quantity of 41,400 Dth/d at no charge for the primary term of Sunoco's agreement, through July 31, 2012.⁴

will not retain the meter station or any facilities upstream of the meter station, but will retain Zone 1 facilities upstream of the discharge side of the compressors at Station 30 (Station 30 pooling point). Thus, upon transfer, Transco's Zone 1 rate will continue to apply even to the transportation of onshore supplies over the very short distance from the proposed interconnection with Crosstex CCNG just outside the Station 30 yard to the pooling point inside the Station 30 yard.

³ Under separate agreements, Crosstex CCNG will also purchase non-jurisdictional gathering laterals that are connected to Transco's South Texas Pipeline Facilities and owned by Transco's affiliates, WFS Gathering Company, L.L.C. and Goebel Gathering Company, L.L.C.

⁴ Sunoco's contract pre-dates Transco's unbundling settlement in 1991 and was grandfathered under the settlement. The Commission has ruled that Transco must provide Sunoco's service at Transco's FT rate for the term of the contract. *See, Sunoco, Inc. (R&M) v. Transco*, 100 FERC ¶ 61,252 (2002); *Order on Reh'g*, 103 FERC ¶ 61,176 (2003); *Order on Reh'g and Clarification*, 107 ¶ 61,123 (2004); *Notice of Denial*,
(continued...)

8. In addition, Transco requests authorization to abandon individually certificated transportation and exchange services under nine X-Rate Schedule agreements whose primary terms have expired.⁵ Transco states that abandonment of services under the X-Rate Schedules will have no adverse impact on any customers since no gas flow has been recorded under such agreements since 1992.

9. Crosstex CCNG requests that the Commission find that the South Texas Pipeline Facilities and transportation services conducted thereon by Crosstex CCNG will be exempt from the Commission's NGA jurisdiction upon Crosstex CCNG's acquisition of such facilities for use as intrastate pipeline facilities. Crosstex CCNG states that, as part of its intrastate pipeline system in Texas, the subject facilities will enable Crosstex CCNG to provide expanded intrastate gathering, transportation and gas processing services and expanded market access to producers, revitalizing the acquired assets to the mutual advantage of producers and end-use markets. Crosstex CCNG asserts that the proposed acquisition will create an economic incentive for full utilization of an existing 175,000 Dth/d interconnection, in Nueces County, Texas, between the acquired facilities and Crosstex CCNG's existing underutilized system serving the Corpus Christi Ship Channel industrial markets.

10. Crosstex CCNG also plans: (1) to extend its system to connect with the acquired McMullen Lateral in Live Oak County to allow gas to move between its existing and new facilities to intrastate markets on each according to seasonal demands; (2) to connect its affiliated Gulf Coast system at a point where it crosses the acquired facilities to allow access for supplies flowing on the acquired facilities to intrastate markets served by the affiliated Gulf Coast and Vanderbilt systems which are underutilized; and (3) to connect rich gas supplies on the McMullen Lateral to its affiliated Gregory Gathering system, which is underutilized, for delivery of the gas to its affiliated Gregory Processing Plant,

108 FERC ¶ 61,009 (2004). The proposed arrangement for Sunoco is subject to the outcome of Transco's petition for review of the Commission's orders in Docket No. RP02-309 filed with the U.S. Court of Appeals for the District of Columbia Circuit in *Transcontinental Gas Pipe Line Corp. v. Federal Energy Regulatory Commission*, D.C. Cir. No. 04-1234.

⁵ Transco notified each party of its intent to abandon service under the X-Rate Schedule agreements. None of the affected parties has opposed the abandonment. The agreements are with Conoco Inc. (X-256), Florida Gas Transmission Company (X-128), Gulf South Pipeline Company, formerly United Gas Pipe Line Company (X-61, X-159, X-235, and X-238), Texas Eastern Transmission Corporation (X-4, and X-66), and Valero Interstate Transmission Company (X-38).

which currently flows residue gas into intrastate markets. Crosstex CCNG also states that it has identified two additional intrastate markets totaling over 50,000 Dth/d with which it plans to connect upon acquisition of the South Texas Pipeline Facilities.

11. Crosstex CCNG states that it will continue to offer transportation service through the South Texas Pipeline Facilities to Transco's Station 30 pursuant to NGPA section 311(a)(2) and Subpart B of Part 284 of the Commission's implementing regulations.⁶ Thus, Crosstex CCNG asserts, existing shippers on the acquired facilities and on Transco's NPI Lateral may continue to move gas to Station 30 without interruption.

12. Crosstex CCNG states that it is presently operating under a cost-based rate approved by the Texas Railroad Commission (TRRC) that was recently updated and filed with the Commission on June 10, 2004. Crosstex CCNG states that its maximum rate for section 311(a)(2) firm and interruptible transportation service is 11.0 cents per Dth on a 100 percent load factor basis, plus fuel and line loss. Crosstex CCNG states that it will not ask the TRRC to change this rate for at least two years after Crosstex CCNG acquires the South Texas Pipeline Facilities.

13. In addition to its agreement to transport Sunoco's contract quantities for no charge, Crosstex CCNG also agrees to charge NPI Lateral shippers who wish to deliver to Station 30 a transportation fee of 3.0 cents per Dth, plus fuel, line loss, and surcharges for supplies connected to the NPI Lateral as of the date of the transfer. Transco will correspondingly discount its maximum rate for such NPI Lateral shippers by 3.0 cents per Dth (but not below a rate of 3.0 cents per Dth), such that the total transmission rate paid will not exceed Transco's maximum transmission rate, as such rate may change from time to time.⁷ Such rate discounts for NPI Lateral supplies will be offered for a period of three years after the effective date of the transfer of the South Texas Pipeline Facilities to Crosstex CCNG. Since these proposed rates are a transitional mechanism for addressing this unique situation, such rates would not be available to any other shippers or supplies.

⁶ 18 C.F.R. § 284.221, *et seq.*

⁷ Transco's maximum Rate Schedule IT, Zone 1 rate is \$0.0598 per Dth, excluding surcharges, plus a fuel charge of 0.30 percent. Section 3.9 of Rate Schedule IT designates service for a shipper as interruptible feeder transportation when it feeds a firm receipt point where Transco provides firm transportation to that shipper or to another shipper. Section 28.4 of the General Terms and Conditions, Curtailment of Service, provides that ordinary IT service will be curtailed before IT-feeder service paying the maximum rate.

14. Applicants note that, in Docket No. CP02-141-001, the Commission denied Transco's request for approval to abandon these same South Texas Pipeline Facilities by transfer to another intrastate pipeline system, Enbridge Pipelines (Texas Intrastate) LP.⁸ The Commission concluded, among other things, that Transco failed to support its contention that the facilities are underutilized to the extent that they are not essential to the provision of its open access interstate service, and that the proposal lacked evidence of benefit to Transco's customers sufficient to support a finding that the public convenience and necessity permits customers currently receiving NGA section 7 service be forced to discontinue service or be required to accept NGPA section 311 service.

15. Applicants claim to have mitigated or resolved concerns discussed by the Commission in the Transco/Enbridge rehearing order, *i.e.*, Sunoco will continue to receive the same service at the same rates for the term of its FT agreement, NPI Lateral shippers' rates will not exceed Transco's maximum IT rate for a period of three years, and Crosstex CCNG has an existing filed NGPA section 311 rate, which Crosstex CCNG states it will not file to change for a period of two years. Applicants argue that the proposed abandonment is in the public interest because the abandonment: (1) will enable Transco to dispose of facilities that are no longer integral to its provision of interstate transportation service, (2) will result in reduced costs for Transco's customers by removing the facilities from Transco's cost of service and rate base,⁹ and (3) will allow Crosstex CCNG to increase the utilization of the facilities by integrating them into its existing system to serve existing and new markets in Texas, while maintaining the ability to deliver gas to the interstate market.

II. Interventions, Comments, Protests, and Answers

16. The application for abandonment and request for jurisdictional determination was published in the *Federal Register* on August 12, 2004.¹⁰ Timely, unopposed motions to

⁸ *Transco*, 102 FERC ¶ 61,074 (2003); *Order on Reh'g*, 103 FERC ¶ 61,118 (2003).

⁹ The provisions of a settlement agreement approved in Docket Nos. RP01-245, *et al.* (Article V.B) will apply if the Commission determines that the abandonment is appropriate. In the settlement, Transco agreed to make a limited NGA section 4 filing to revise its rates, effective on the date the facilities are spun-off, to reflect the removal of costs associated with such facilities. The obligation to adjust rates associated with spun-off facilities expires on October 1, 2005. *See Transco*, 100 FERC ¶ 61,085 (2002).

¹⁰ 69 Fed. Reg. 49,887 (2004).

intervene were filed by 35 parties, and seven motions to intervene out of time were filed.¹¹

17. Protests or comments were filed by Upstream Protestants,¹² Producer Coalition,¹³ Indicated Shippers,¹⁴ KCS Energy, Inc. (KCS Energy), Enbridge Pipelines (Texas Intrastate) L.P. (Enbridge), Lewis Petro Properties, Inc. (Lewis Petro) (adopting Enbridge's protest), and AROC (Texas), Inc. (adopting Upstream Protestants' protest). Sunoco, Inc. (R&M), referred to as Sunoco, at first protested then withdrew its protest and now supports the project. Transco and Crosstex CCNG individually filed answers to protests. Indicated Shippers and Upstream Protestants filed responses to the answers of Transco and Crosstex CCNG. On November 8, 2004, Applicants filed a response to a staff data request (November 8 data response). Producer Coalition, Upstream Energy, and KCS Energy filed comments on the November 8 data response, and Transco and Crosstex CCNG separately responded to those comments.

18. Granting the late motions for intervention will not delay, disrupt, or otherwise prejudice this proceeding or place undue additional burden on existing parties. Therefore, we will grant the late filed motions to intervene. Rule 213(a) (2) of the

¹¹ See Appendix A. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214(d) (2002).

¹² Upstream Energy Services, L.P. (Upstream Energy), Welder Exploration & Production, Inc., EnerQuest Oil & Gas, L.L.C., Joe McGuffin, Jr., HA. P.C. Oil Inc., Union Gas Operating Company, Inc., BLAKEnergy, LTD, C&E Operating Company, Inc., Dolphin Petroleum, LP, Edge Petroleum Exploration Company, JIL Oil Corp., Lakewood Operating, LTD, Pyle Petroleum, Inc., and Southwest Energy LP (together referred to as Upstream Protestants) intervene separately, but file a joint protest.

¹³ Devon Energy Corporation, Dominion Exploration & Production, Inc., Forest Oil Corporation, Houston Exploration Company, Newfield Exploration Company, Santos USA Corp. (Santos), and Spinnaker Exploration Company (together referred to as Producer Coalition) intervene jointly, except for the separate intervention of Santos, and protest jointly.

¹⁴ Shell Offshore Inc., ChevronTexaco Natural Gas, a Div. of Chevron U.X.A. Inc., BP America Production Company, ConocoPhillips Corporation, and Exxon Mobil Corporation (together referred to as Indicated Shippers) intervene separately, but file a joint protest.

Commission's Rules of Practice and Procedure prohibits answers and responses unless otherwise ordered by the decisional authority.¹⁵ We will accept the answers and responses because they have provided information that assisted us in our decision-making process.

A. Limited Section 4 Filing

19. The City of Richmond, Virginia (Richmond), and The Municipal Gas Authority of Georgia and the Transco Municipal Group (Gas Authority and Municipal Group) urge the Commission to act expeditiously, so that the provisions of the settlement agreement requiring Transco to file a limited section 4 rate case to remove costs associated with facilities spun-off by October 1, 2005 will apply if the Commission determines that the abandonment is appropriate.¹⁶ If the Commission does not issue a final order that permits the transfer of facilities to occur before October 1, 2005, Gas Authority and Municipal Group request the Commission to condition any abandonment authorization on a requirement that Transco file to remove such costs from its rates.

B. Protests

20. Except for Enbridge, an intrastate pipeline company and shipper on the subject facilities, all of the protestors are gas producers, in addition to being transportation service customers on Transco's South Texas Pipeline Facilities. Except for Lewis Petro, a producer behind Enbridge, all protesters are IT shippers on the subject facilities. Protesters argue for denial of the instant proposal, stating that the Commission's reasoning behind its denial of abandonment of these same South Texas Pipeline Facilities by sale to Enbridge holds true today. Indicated Shippers, Producer Coalition, and Upstream Protestants further argue that, if abandonment is approved, Crosstex CCNG should be declared jurisdictional because the proposed inefficient bifurcation of Transco's seamless interstate system is necessary only for Crosstex CCNG's jurisdictional convenience.

21. Protesters variously argue that, as in Transco/Enbridge: (1) the South Texas Pipeline Facilities transport jurisdictional gas from the NPI Lateral and are essential to Transco's ability to provide open access interstate transportation service because significant volumes flow on the facilities; (2) Transco does not claim that it can no longer recover its costs for service on the facilities; (3) the proposed abandonment is protested

¹⁵ 18 CFR § 385.213(a) (2) (2005).

¹⁶ *Supra*, note 9.

by many affected parties; (4) gas volumes transported on the facilities for delivery at Station 30 are subject to higher stacked rates; and (5) Crosstex CCNG's assertion that it will use the facilities for intrastate service in a manner materially different from current operation is speculative. Protesters also contend that the proposal unduly discriminates against onshore IT shippers, would result in lower net back prices for producers, and would create economic barriers to the development of LNG and new domestic natural gas supplies.

22. Applicants answer that the instant proposal is distinguishable from the previous proposal because Transco and Crosstex CCNG have either eliminated or mitigated factors considered by the Commission in denying the Transco/Enbridge abandonment proposal, *i.e.*, the FT customer contract will be honored, rate impacts for NPI Lateral supplies will be mitigated, and the uncertainty surrounding rates is not present, as Crosstex CCNG's maximum section 311 rate is certain and known for a two year period. Applicants also respond that Crosstex CCNG should not be declared jurisdictional upon transfer of the facilities, arguing that transportation under separate regulatory regimes should not matter because similar transportation arrangements exist on other pipeline systems and because increased access to intrastate markets and continued access to interstate markets via section 311 service is adequate to safeguard the interests of shippers.

C. Requests for Technical Conference and Evidentiary Proceeding

23. KCS Energy requests that a technical conference be held regarding the impact of the proposal on the cost to transport gas after the transfer. KCS Energy and Upstream Energy also request further discovery-type evidentiary proceedings to enable the parties to examine the accuracy of facts relied on in Applicants' November 8, 2004, data response and analyze the effect of the proposal on producers' net back prices.

III. Discussion

24. Since the facilities Transco seeks to abandon are facilities certificated to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, Transco's proposed abandonment of its certificated interests in the facilities requires Commission authorization under NGA section 7(b). For the reasons given below, we will deny Transco's request for abandonment authority.

25. Initially, we find that the record in this proceeding is adequate for us to determine whether abandonment of the subject facilities is permitted by the public convenience and necessity. Therefore, we will deny the requests for a technical conference and discovery-type evidentiary proceeding.

A. Proposed Abandonment

1. The facilities are essential to the provision of open-access interstate transportation service.

26. Indicated Shippers and Producer Coalition state that the South Texas Pipeline Facilities are still flowing substantial volumes, and that those facilities are essential to producers and shippers whose gas lies on or upstream of those facilities. Accordingly, Producer Coalition states that Transco fails, as it did in the Enbridge proceeding, to support its claim that the facilities are underutilized to the extent that they are not essential to the provision of its open access interstate transmission service. Producer Coalition also states that the trend in south Texas is toward increased drilling and production.

27. Indicated Shippers state that, where the Commission has approved abandonment of certificated facilities by transfer to intrastate pipelines, there was either no or miniscule throughput, and that none of the cases involved the split of an existing interstate by isolating a segment.¹⁷ Indicated Shippers also assert that, in these earlier cases, the pipelines demonstrated that expenses and costs significantly outweighed the benefits of continued interstate service.¹⁸ In contrast, Indicated Shippers state that the Commission, in *Tennessee Gas Pipeline Company*, rejected an application for authority to abandon facilities where significant volumes continued to be transported.¹⁹ Indicated Shippers and Producer Coalition note that Transco does not allege that it can no longer recover its costs, and conclude that Transco's assertion that the facilities are underutilized does not support its request for abandonment authority.

28. Transco answers that the claim that the South Texas Pipeline Facilities are essential is beside the point because they are not being taken out of service, and will still

¹⁷ *Trunkline Gas Company*, 68 FERC ¶ 61,107 at 61,586 (1994), *vacated*, 74 FERC ¶61,286 (1996) (zero throughput); *Natural Gas Pipeline of America*, 71 FERC ¶ 61,341 at 62,353 (1994) (5,000 Dth/d); *Florida Gas Transmission Company*, 88 FERC ¶ 61,036 at 61,081 (1999), *vacated*, 100 FERC ¶ 61,170 (2002) (3,823 Dth/d).

¹⁸ See e.g., *Florida Gas Transmission Company*, 88 FERC ¶ 61,036 at 61,081 (1999) (continued interstate service would require an expenditure of \$35 million in capital costs).

¹⁹ *Tennessee Gas Pipeline Company*, 70 FERC ¶ 61,244 (1995).

be available for service in interstate commerce pursuant to NGPA section 311. Transco states that the facilities are no longer integral to its provision of open-access interstate transportation service because they are no longer needed to support a merchant role, and that most FT customers elect to make purchases at Station 30. Crosstex CCNG states that, for all but one of the firm shippers that procure their own gas supplies and transport them on Transco's system, the journey begins at the Station 30 pooling point or further downstream, where title is taken, and that the facilities that are essential to open-access interstate transportation are therefore located downstream, not upstream, of Station 30.

29. Crosstex CCNG also states that the Commission has previously found that Transco no longer needs to own and operate the McMullen Lateral, which constitutes a large portion of the South Texas Pipeline Facilities, for Transco's defunct merchant function, and that disposition of the McMullen Lateral would assist in minimizing Transco's operational costs.²⁰ Crosstex CCNG states that the issue relevant to the Commission's consideration of the public interest is not whether the South Texas Pipeline Facilities are currently underutilized, but whether the facilities would be used more efficiently by the acquiring entity.²¹ Crosstex CCNG states that the Commission recognized its ability to realize greater efficiencies from other interstate pipeline facilities when the Commission approved its acquisition of the South of MOPS facilities from Florida Gas Transmission Company (Florida Gas).²² Crosstex CCNG states that it increased utilization of those facilities 20-fold in two years, and that firm customers of Florida Gas now receive supplies from Crosstex CCNG's integrated system for delivery to Florida markets.

30. Crosstex CCNG further answers that downstream shippers and gas consumers would benefit, and that some have urged the Commission to act expeditiously. Crosstex CCNG notes that, in *Tennessee*, market area shippers and gas customers opposed the project,²³ while no gas customer opposes the instant abandonment proposal.

²⁰ Williams Gas Processing – Gulf Coast Gathering Company, L.P., et al., 87 FERC ¶ 61,144 at 61,593 (1993).

²¹ Northern Natural Gas Company (Northern Natural), 95 FERC ¶ 62,126 (2001), Natural Gas Pipeline Company of America (Natural Gas Pipeline), 82 FERC ¶ 61,278 (1998), Texas Gas Transmission Corporation (Texas Gas), et al., 75 FERC ¶ 61,287 (1996).

²² *Florida Gas Transmission Co.*, 99 FERC ¶ 62,052 (2002) (Florida Gas III).

²³ 70 FERC at 61,244 (1995).

31. Crosstex CCNG asserts that protestants offer nothing to disprove its claimed benefits, and that the Commission has rejected protests providing no evidence to refute a stated intention to integrate abandoned facilities.²⁴ Crosstex CCNG argues that common sense and proven history show the protesters' claims to be without foundation, and that given the obvious congruity of the pipeline systems, it would be a waste of latent operational efficiency not to integrate the facilities.

32. Indicated Shippers responds that the applicants make unsubstantiated claims of increased utilization and have no basis to claim that abandonment would result in more efficient service for interstate shippers. Indicated Shippers argue that, to the contrary, replacing shippers' seamless service under section 7 with added section 311 service at higher stacked rates would plainly not be more efficient.

33. While the applicants emphasize that the South Texas Pipeline Facilities have a capacity of 510,000 Dth/d and that their utilization rate is currently only about 29 percent, these facilities still transport significant volumes of interstate gas supplies. The current throughput of about 150,000 Dth/d includes approximately 120,000 Dth/d of gas being delivered to Transco's Station 30, with about 45,000 Dth/d currently being received from Transco's NPI Lateral. Throughput on these facilities remained virtually the same since the Transco/Enbridge proceeding, in which the Commission found that the facilities' "location and operation indicate that they are essential to Transco's ability to provide its open-access interstate transportation services," and that Transco had "failed to support its contention that the facilities are underutilized to the extent that they are not essential to the provision of its open-access interstate transportation service."²⁵ In addition, while Crosstex CCNG states that it seeks to acquire these facilities in order to serve additional markets in Texas, the facilities can be used to transport gas for new Texas markets regardless of whether they are owned by Transco or Crosstex CCNG. While the numerous shippers protesting the instant proposal are not firm shippers, they have not had the option of becoming firm shippers under Transco's IT Feeder System. Nevertheless, the costs of the facilities at issue have been largely recovered through the interruptible rates approved by the Commission and paid by customers for the interstate transportation services provided by the facilities.²⁶

²⁴ *Natural Gas Pipeline*, 82 FERC at 62,088 (1998).

²⁵ 103 FERC ¶ 61,118 (2004).

²⁶ The Commission notes that, even if the protesting shippers were firm shippers, Crosstex CCNG's commitment to continue to transport their existing NGA volumes under section 311 of the NGPA would not replicate the quality of service available to
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34. Bifurcation of an interstate pipeline system and conversion of extensive interstate mainline transportation facilities flowing significant volumes of gas to intrastate regulatory status is unprecedented. Crosstex CCNG cites several cases in which the Commission approved proposals by interstate pipelines to abandon facilities by sale to intrastate pipelines. The cited cases were not protested by any customers served by the facilities at issue and did not involve the bifurcation of an interstate system. Further, the cited *Northern Natural Gas Company* order,²⁷ which was issued under delegated authority, and the *Natural Gas Pipeline Company*²⁸ order involved abandonment of supply laterals that were relatively minor facilities transporting small volumes of gas in comparison to Transco's South Texas Pipeline Facilities. The cited *Texas Gas Transmission Company* order also involved abandonment of a very short pipeline, and the pipeline had already been leased to an affiliate of the acquiring intrastate pipeline.²⁹ Crosstex CCGG also cites a *Florida Gas Transmission Company* order,³⁰ which was also issued pursuant to delegated authority, to support its claimed ability to realize greater efficiencies. However, the South of MOPS facilities that were the subject of that proceeding were transporting less than 5,000 Dth/d when Florida Gas abandoned them by sale to Crosstex CCNG. Again, none of the cited cases involved proposals that would result, like the instant proposal, in bifurcation of an interstate pipeline system.

these shippers and others pursuant to the Commission's open-access regime. To ensure all gas purchasers equal and competitive access to gas markets, the Commission's Order No. 636 open-access regulations required interstate pipelines to implement procedures for allocation of capacity, capacity release mechanisms, and equal and timely access for all shippers to information relevant to the availability of open-access transportation services. An intrastate pipeline providing service under section 311 of the NGPA is not required to offer firm service, have a capacity release program, post available capacity electronically, offer flexible receipt and delivery points, unbundle distinct services, or meet other service requirements contained in Order No. 636. *Cf. Tennessee Gas Pipeline Company*, 70 FERC ¶ 61,244 at 61,760 (1995).

²⁷ 95 FERC ¶ 62,126 (2001).

²⁸ 82 FERC ¶ 61,278 (1998).

²⁹ 75 FERC ¶ 61,287 (1996).

³⁰ 99 FERC ¶ 62,052 (2002).

2. The proposal would result in higher stacked rates.

35. The protesters are especially concerned with the proposal to charge Transco's Zone 1 rate for transportation solely within Station 30, in addition to Crosstex CCNG's section 311 rate. Indicated Shippers object to Transco retaining *de minimus* facilities to charge an IT rate. KCS Energy is concerned that more stringent gas quality standards on Crosstex CCNG's system will result in higher costs. Producer Coalition is concerned that Crosstex CCNG will be allowed to charge higher fuel rates. Protesters also state that the proposal will increase administrative costs due to dealing with two different regulatory regimes.

36. Transco and Crosstex CCNG both dismiss complaints about additional administrative costs, arguing that most of the shippers routinely schedule and nominate on multiple lines. In addition, Transco and Crosstex CCNG state that they will have operational balancing agreements in place so that Transco and Crosstex CCNG, not the shippers, will carry any physical imbalances at the interconnects.

37. Transco also states that it will retain no facilities upstream of Station 30, but that retention of facilities within the Station 30 yard requires Transco to charge the Zone 1 rate for transportation from the interconnection with Crosstex CCNG at the Station 30 yard to the Station 30 pooling point, and that the onshore IT shippers will be treated no differently than other shippers. Transco notes that the NPI Lateral shippers will pay the Zone 1 rate only once for transportation through the NPI Lateral to Station 30. Transco and Crosstex CCNG state that the Commission has recognized in other spin-off and spin-down cases that transfer of facilities may result in customers paying increased rates, and that such a result is neither inequitable nor unwarranted.³¹

38. Transco and Crosstex CCNG state that shippers have had eight years to contemplate service options, noting that IT shippers have been on notice since February 21, 1996, when Transco filed its initial application in Docket No. CP96-206 to spin down production area facilities including the subject facilities to Transco's gathering affiliate.³² Transco states that its Zone 1 rate decline of about 1 cent to 1.2 cents per Dth

³¹ *Transco, et al.*, 97 FERC ¶ 61,300 at 62,409 (2001); *Transco, et al.*, 97 FERC ¶ 61,298 at 62,396 (2001); *Transco, et al.*, 97 FERC ¶ 61,296 at 62,382 (2001); *Transco, et al.*, 96 FERC ¶ 61,118 at 61,454 (2001); *Trunkline Gas Co., et al.*, 95 FERC ¶ 61,337 (2001).

³² *Citing Transco, et al.*, 96 FERC ¶ 61,118 at 61,454 (2001).

for all Zone 1 volumes, including those transported on Transco's CTGS, will benefit many IT shippers.

39. Indicated Shippers responds that the rate benefit to Zone 1 shippers provides little relief for the proposed stacked rates. Indicated Shippers further states that the proposal to charge Transco's Zone 1 rate for transportation solely on Station 30 facilities is analogous to attempts to impose gathering charges for minor facilities that serve no other purpose than to deliver gas a short distance to pipeline transmission facilities, which have consistently been rejected as constituting impermissible rate stacking.³³ Indicated Shippers also states that such rate stacking violates Commission policy against zone rates that do not reasonably reflect either material variations due to the distance over which service is provided or the costs actually incurred in providing the service.³⁴ Upstream Protestants suggest that, were the Commission to consider granting the proposed abandonment, it would be appropriate to conduct a rate investigation, and to eliminate the rate for transportation within the Station 30 yard to the pooling point, or to establish a rate for transportation within the Station 30 yard that is in the public interest.

40. Producer Coalition, KCS Energy and Upstream Energy state that Transco failed to provide any justification for placing the demarcation between its facilities and the spun-off facilities at a point such that gas delivered to Station 30 must be transported a very short distance on remaining Zone 1 facilities. Transco clarifies that Zone 1 includes all of its system located at or upstream of the discharge side of the compressors at Station 30. Transco further states that the point of demarcation was chosen based on Transco's desire to retain ownership and operation of all facilities located within its Station 30 yard, and that there was nothing surreptitious or disingenuous about that determination.

41. KCS Energy and Producer Coalition are also concerned that Crosstex CCNG has not explained its intentions regarding potential unnecessary gas processing requirements. Producer Coalition states that Crosstex CCNG should be required to provide the same assurances of gas quality specifications, including waivers that Transco provides to current shippers, permitting transportation without processing so long as the combined stream downstream of Station 30 complies with Transco's tariff. Crosstex CCNG responds that, over the last few years, the entire pipeline industry has adopted tighter gas

³³ *Natural Gas Clearinghouse v. Panhandle Eastern Pipeline Company*, 60 FERC ¶ 61,007, reh'g 61 FERC ¶ 61,102 (1992), *Energy Production Corp. v. Koch Gateway Pipeline Co.*, 69 FERC ¶ 61,013 (1994).

³⁴ *Panhandle Eastern Pipeline Company*, 59 FERC ¶ 61,244 at 61,848 (1992).

quality specifications in response to stricter market requirements. Further, Crosstex CCNG states that it must adhere to the gas specifications of any downstream pipeline and market to which it delivers gas, and cannot simply waive these specifications. Crosstex CCNG states, however, that it is prepared to pass on any waivers to the extent practicable.

42. We find that the proposal does not comport with the Commission's rate policies. Transco's proposal to charge its Zone 1 rate for transportation solely within its Station 30 yard does not reasonably reflect either material variations due to the distance over which service is provided or the costs actually incurred in providing the service. As a remedy, Transco, at a minimum, would have to file to establish a separate rate for transportation solely within Station 30.

43. Applicants suggest that the Commission should not consider the adverse effects of higher stacked rates in making its determination on abandonment of facilities. In support, Applicants cite cases in which the Commission acknowledged that after transfer of gathering facilities in a spin down or spin off, shippers may pay a higher combined gathering fee and transportation charge than they pay for their current bundled gathering and transportation service, and that this is neither inequitable nor an unwarranted rate stacking as discussed in Order No. 636. Such reasoning, however, does not apply to the spin off of transmission facilities which, as is the case here, will continue to function in the same manner after transfer.

44. Charging higher rates for the same service is an adverse effect the Commission will consider in making its decision in this proceeding. The Commission considered the potential for such an adverse effect in the order on rehearing in Transco's proceeding in which it proposed to abandon the same facilities by sale to Enbridge. In that proceeding, the Commission found that "since Enbridge has not yet filed a proposed rate for NGPA section 311 service using the South Texas Pipeline Facilities, there is no basis for us to weigh the potential rate impact on existing shippers."³⁵ Here, Crosstex CCNG does have a filed rate for section 311; thus, we have a basis to weigh the potential rate impact on existing shippers.

³⁵ *Transco, Order on Reh'g*, 103 FERC ¶ 61,118 (2003).

3. The proposal would result in undue rate discrimination against onshore shippers.

45. Enbridge, Upstream Protestants and Producer Coalition believe that proposed mitigation of stacked rates for offshore supplies, but not for onshore supplies, is unduly discriminatory. Enbridge states that it will be at a competitive disadvantage compared to the NPI Lateral shippers because of such rate mitigation. Producer Coalition states that onshore shippers need the South Texas Pipeline Facilities to access Station 30, just as the NPI Lateral shippers do, and should get the same rate mitigation. Producer Coalition concludes that disparate treatment of clearly interstate shippers is unwarranted, is not permitted by section 311, and is not in the public convenience and necessity.

46. Transco and Crosstex CCNG answer that the proposal to mitigate NPI Lateral shippers' rates is not unduly discriminatory because the onshore non-NPI Lateral shippers are not similarly situated to the offshore NPI Lateral shippers, whose discount applies to all gas supplies connected to the lateral as of the date of the transfer of the facilities. Crosstex CCNG further answers that the discount is a transitional rate proposed as a direct response to the Commission's concerns in the Transco/Enbridge proceeding. Transco adds that the discount is in response to the Commission's concerns related to the unique circumstances for the NPI Lateral shippers resulting from the spin off of an upstream portion of the NPI system.³⁶

47. Upstream Protestants respond that Applicants fail to explain how onshore and offshore differences justify disparate rate treatment under the same IT tariff, and state that approval would sanction Crosstex CCNG's proposed discount to 3 cents for NPI Lateral

³⁶ Previously, Transco was granted permission and approval to abandon, by sale to an affiliate, certain gathering facilities upstream of and connected to the NPI Lateral and the CTGS, *see Transco and Williams Gas Processing-Gulf Coast Company, L.P.*, 96 FERC ¶ 61,115 (2001), *reh'g*, 97 FERC ¶ 61,296 (2001). Subsequently, acting on complaints by producers, the Commission issued an order reasserting jurisdiction over the spun-down facilities located upstream of the NPI Lateral, *see Shell Offshore v. Transco, et al.* 100 FERC ¶ 61,254 (2002), *reh'g* 103 FERC ¶ 61,177 (2003). On July 13, 2004, the United States Court of Appeals for the District of Columbia vacated the order and the order on rehearing, remanding them to the Commission for proceedings not inconsistent with the court's opinion, *see Williams Gas Processing-Gulf Coast Company, L.P., et al., v. Federal Energy Regulatory Commission* D.C. Cir. No. 03-1179. An order on remand was issued on February 15, 2005, *see Shell Offshore v. Transco, et al.*, 110 FERC ¶ 61,162 (2005).

shippers, as opposed to the maximum 11-cent rate that could be charged to onshore shippers. Indicated Shippers respond that the temporary discounts give NPI Lateral shippers no protection from higher stacked rates after the transition period.

48. We agree that Transco's offer of rate mitigation to offshore IT shippers that utilize significant Zone 1 facilities while proposing to charge onshore IT shippers the full Zone 1 rate for utilization of minimal Zone 1 facilities is unduly discriminatory. Whether their supplies are sourced onshore or offshore, IT shippers are similarly situated for the purpose of considering their exposure to higher rates.

4. The proposal would create economic barriers to the development of LNG and new domestic natural gas supplies

49. Indicated Shippers states that it is unsound policy to break up an existing interstate pipeline lying between three proposed liquefied natural gas (LNG) terminals and interstate markets.³⁷ At least two of the proposed LNG projects plan to construct interstate pipelines to interconnect with Transco at locations on its South Texas Pipeline Facilities, as well as with other interstate pipelines in Texas. Indicated Shippers believes that the proposed abandonment would undermine the ability of these significant new LNG supplies to efficiently reach interstate markets by interposing additional stacked rates, as well as additional intrastate tariff requirements and associated overhead costs, and by reducing, to the extent abandoned interstate capacity is dedicated to the intrastate market, the interstate pipeline capacity needed to transport the LNG to interstate markets. Producer Coalition adds that permitting higher stacked rates would reduce net back prices, thus raising barriers to investment in new production.

50. Transco and Crosstex CCNG answer that the proposed abandonment will not impede the development of LNG projects, and that the proposal has the potential to increase net back prices. Transco states that the proposed LNG projects' transactional overhead would not be much affected because the projects already contemplate multiple interstate and intrastate pipeline interconnects,³⁸ and that Crosstex CCNG's incremental

³⁷ Citing, *Corpus Christi LNG* project pending in Docket No. CP04-37-000; *Vista Del Sol LNG* project pending in Docket No. CP04-395-000; and *Ingelside Energy Center* project in pre-filing Docket No. PF04-9-000.

³⁸ Transco states that the LNG projects also propose interconnections with Texas Eastern, Gulf South, Natural Gas Pipeline, Tennessee Gas Pipeline, HPL/Channel, Crosstex Energy, and Tejas.

rate would be just one factor to consider. Transco also states that assertions that there would be a lack of capacity on Crosstex CCNG after the transfer are speculative. Crosstex CCNG states that the volume of LNG will be far more than Transco can handle, and that much of those volumes would be consumed in Texas. Crosstex CCNG also states that, with gas treating and processing facilities, it is better positioned to deal with quality and interchangeability problems related to LNG. Transco notes that it has received no formal request for interconnection with LNG projects, and that no LNG project has intervened in this proceeding.

51. Indicated Shippers respond that direct connections to interstate and intrastate pipelines, not multiple rates and regimes, provide the most efficient access to markets. Indicated Shippers state that it is contrary to the interests of gas customers to burden interstate transportation with inefficient rates, or with terms and conditions that will increase costs to gas customers in the short run or, if suppliers absorb the costs, increase costs in the long run by reducing future gas supplies accessible to Transco's customers. Indicated Shippers concludes that reduced grid efficiency affects gas customers', as well as shippers', economic interests.

52. We find that abandonment of Transco's facilities would not only create economic barriers that may divert some of the existing supplies now available to Transco's downstream customers at Station 30, but would also incrementally raise barriers that may hinder those customers' access to proposed new LNG supplies, as well as the development of new domestic supplies that might otherwise become available to gas customers.

5. Crosstex CCNG's assertions that it would develop new intrastate markets are speculative.

53. Producer Coalition contends Crosstex CCNG's assertions that it would develop new intrastate markets are speculative. Enbridge claims that assertions that gas would be more apt to undergo short hauls upstream of Station 30 after the proposed transfer are speculative. Upstream Protestants state that the alleged new markets are not identified by Crosstex CCNG.

54. Transco answers that Crosstex CCNG would readily integrate the underutilized facilities and have ample economic incentive to maximize throughput, and that IT shippers would benefit from such integration by having additional markets more readily available. Crosstex CCNG states that the protesters contentions are based on a false assumption that Station 30 will be the only outlet. Crosstex states that it has multiple pipeline interconnections, both interstate and intrastate, and that the total consumption of

Texas markets directly or potentially accessible by Crosstex CCNG is in excess of 1.5 Bcf/d.

55. Upstream Protestants respond that the instant proposal is not sufficiently different from the Enbridge proceeding in that there are no specific plans to integrate, that there are concerns that markets may not develop resulting in continued interstate service, that there is no evidence that the net back into the Texas market is higher, and that pointing to a potential 1.5 Bcf/d Texas market is gratuitous and speculative since Crosstex CCNG's current sales are much smaller. Upstream Protestants argue that Transco's and Crosstex CCNG's facilities are already interconnected, and that there is not sufficient demand to fully utilize the existing facilities. They further state that if there were currently sufficient demand, Crosstex CCNG could construct any desired interconnecting facilities even without the proposed sale. Indicated Shippers states that Crosstex CCNG makes no other commitments to access or develop Texas markets; thus, as in the Enbridge proceeding, Crosstex CCNG could continue the status quo of the existing facilities being used to provide interstate service.

56. Applicants provided information in the November 8 data response indicating that the South Texas Pipeline Facilities and Crosstex CCNG's system are interconnected at two points that have unutilized capacity, and that physical capacity exists that would allow all currently flowing volumes to be delivered to Texas markets. Upstream Energy concludes from such information that acquisition of the South Texas Pipeline Facilities by Crosstex CCNG will not open new markets to existing shippers.

57. The record in this proceeding indicates Crosstex CCNG's system has about 360,000 Dth/d of capacity and interconnects with Transco's South Texas Pipeline Facilities in Nueces County. The record also indicates that Crosstex CCNG's existing interconnect has a capacity of 175,000 Dth/d and is underutilized since currently only about 30 MMcf/d is being delivered from Transco's South Texas Pipeline Facilities to markets in Texas. Based on these representations, adequate capacity exists at the Crosstex CCNG-Transco interconnection for Crosstex CCNG to access additional supplies from Transco's system in order to expand its business in Texas without purchasing the South Texas Pipeline Facilities from Transco. Further, Transco can continue to own the facilities and transport additional volumes to the interconnection with Crosstex CCNG without the potential adverse rate consequences for shippers that need to use the facilities to transport interstate gas supplies. These interstate gas supplies include Texas production that shippers want to transport to Transco's Station 30, as well as all the offshore supplies accessed by the facilities, regardless of whether those supplies will be delivered to customers in Texas or are headed for Transco's Station 30.

58. Shippers on Transco's facilities currently pay stacked rates to reach Texas markets on Crosstex CCNG's system. The instant proposal would place the barrier of even higher stacked rates on deliveries to interstate markets at Station 30. Considering that significant volumes continue to be delivered to Station 30, Applicants have not provided adequate evidence to support a finding that could divert those supplies to markets in Texas.³⁹

B. Jurisdictional Determination

59. Indicated Shippers argues that, if abandonment is approved, Crosstex CCNG should be declared jurisdictional because Crosstex CCNG would continue to receive offshore jurisdictional volumes from the NPI Lateral for transportation in interstate commerce. Indicated Shippers further argues that NGPA section 311 was not intended for the purpose proposed, but was intended to be no more than a limited exception to regulation under the NGA. Producer Coalition states that the Commission does not have enough evidence concerning the operation of the facilities to declare that Crosstex CCNG would qualify as an intrastate pipeline.

60. Indicated Shippers states that the proposed abandonment is not in the public interest or public convenience and necessity because it would balkanize the pipeline system by isolating the NPI Lateral and creating stacked rates and multiple regulatory regimes. Indicated Shippers further states that the Commission has rejected other applications to balkanize the interstate pipeline grid, citing *Kansas Pipeline Company*.⁴⁰ Upstream Protestants state that, in that case, the Commission rejected the operation of a series of non-jurisdictional NGPA section 311 pipelines connected at state borders by small interstate pipeline segments as being inconsistent with the comprehensive scheme of federal regulation under the NGA and with the court's interpretation in *Associated Gas*

³⁹ We note that the protests reflect concern that approval of the applicants' proposal would result in lower netback prices for gas production. For example, Indicated Shippers argues that increasing the costs of transportation will either increase costs to gas customers in the short run or, if producers absorb the costs, increase gas costs in the long run by inhibiting exploration and production, thereby reducing future gas supplies accessible to gas customers on the Transco system. We need not reach these issues relating to the proposal's possible effects on net-back pricing to producers or delivered gas prices. For other reasons, as discussed above, we cannot find that the public convenience and necessity permit approval of Transco's abandonment proposal.

⁴⁰ *Kansas Pipeline Company, et al.*, 81 FERC ¶ 61,005 (1997).

*Distributions v. FERC*⁴¹ that the NGPA section 311 was not intended to work a “sweeping change” in the regulatory landscape.⁴² Producer Coalition concurs that Transco’s proposal to spin off portions of its integrated interstate pipeline system are not in the public interest.⁴³

61. Crosstex CCNG answers that the Commission has found that opportunities provided by increased access to intrastate markets and continued access to interstate markets via section NGPA 311 service have been adequate to safe guard the interests of IT shippers.⁴⁴ Transco states that the fact that there will be separate regulatory regimes should not matter. Transco argues that the Commission must analyze the manner in which Crosstex CCNG will utilize the spun off facilities to determine if the facilities will function as intrastate pipeline facilities. Once determined, Transco continues, the classification of the facilities should not be tainted by the classification of the upstream or downstream facilities. Transco contends that there are several instances where pipeline systems exhibit the same kind of interstate-intrastate-interstate configuration as that proposed here.⁴⁵

62. Transco and Crosstex CCNG further state that neither the facts nor rationale in *Kansas Pipeline* apply. Transco and Crosstex CCNG state that Transco is proposing to spin off facilities to a non-affiliate, and that there is not a string of intrastate entities in three states connected by short interstate border links all owned by same parent. In contrast to *Kansas Pipeline*, they state that here, all of the facilities are located in one

⁴¹ 899 F.2d 1250, 1261 (1990).

⁴² 81 FERC at 61,008 (1997).

⁴³ See, *Kansas Pipeline* and *Tennessee*.

⁴⁴ *Florida Gas*, 88 ¶ 61,036 at 61,082 (1999).

⁴⁵ Transco notes, with details, examples of such configuration, such as Sea Robin where gathering goes into interstate then into various interstate and intrastate pipelines (which may redeliver to interstate pipelines), and Sabine Pipeline which goes to Henry Hub, where gas can be further delivered into both interstate and intrastate pipelines. Without details, Transco notes that other examples of such configuration are: Matagorda Offshore Pipeline System; Discovery Gas Transmission; Nautilus Pipeline Company; and Stingray Pipeline Company. Transco further notes that some of the Indicated Shippers are owners of some of these systems.

state, the Applicants are unaffiliated and will not operate as one system, and Station 30 is not near the state border.⁴⁶ Crosstex CCNG also states that the Transco and Crosstex CCNG systems will not be operated with the “clear overriding purpose” of transporting gas in interstate commerce.

63. Indicated Shippers responds that Applicants have not cited any case where the Commission has approved a spin off that isolated an upstream portion of an interstate system. Indicated Shippers states that such bifurcation results in rate stacking and replaces seamless service with a hodgepodge of regulatory and tariff requirements, and that such balkanization is not the kind of unbundling contemplated by Order No. 636, but is an inefficient breakup of the interstate grid that is only necessary for Crosstex CCNG’s jurisdictional convenience, not the public interest.

64. As discussed above, we find that the South Texas Pipeline Facilities are part of a seamless interstate system that is currently flowing significant volumes and is likely to continue do so in the foreseeable future. Shippers have contractual commitments to continue to deliver gas to Station 30. Sunoco’s 41,400 Dth/d of FT capacity, although currently flowing only about 7,000 Dth/d, is contracted through July 31, 2012, for delivery at Station 30. In addition, the NPI Lateral volumes, representing over 29 percent of the currently flowing volumes (about 45,000 Dth/d), will likely continue to be delivered to Station 30. Since we are denying Transco’s request to abandon the facilities, however, we need not reach the question of whether Crosstex CCNG or any other third party could operate the facilities in a manner that would not subject them to regulation under the NGA.

C. Conclusion

65. The facts, in many respects, are not significantly different here than they were in the Transco/Enbridge proceeding. Significant volumes continue to flow on the extensive South Texas Pipeline Facilities for delivery to Station 30. These volumes include gas flowing into the subject facilities from the NPI Lateral, which continues to be classified as a jurisdictional transmission facility. These factors indicate that the South Texas Pipeline Facilities are essential to Transco’s provision of its open-access service. Transco has not claimed, much less demonstrated, that the utilization rate has declined to a level that it cannot recover its costs. Crosstex CCNG’s assertions that it will integrate

⁴⁶ See also *Mid Continent Market Center, Inc. v. Panhandle Eastern Pipe Line Co., et al.*, 86 FERC ¶ 61,259 (1999), where the Commission distinguished *Kansas Pipeline* as having no precedential value because the case at hand did not involve multiple states.

the facilities into its existing intrastate system, expand their utilization, and foster a significant diversion of the capacity to serve Texas markets in a manner materially different from how the facilities currently operate, rely on speculative assessments of market demand. Further, unutilized capacity at existing interconnects assure that Crosstex CCNG can access supplies on the facilities to increase its pipeline business in Texas. No harm would come to Transco's customers, Transco, or Crosstex CCNG through Transco's continued operation of the facilities.

66. Transco states that, if abandonment is granted, it would remove about \$5.6 million from its annual cost of service.⁴⁷ Of that amount, about \$1.2 million would be removed from the annual cost of service for Transco's downstream customers. This benefit to Transco's downstream shippers is relatively small, and those customers would be harmed to the extent that potentially higher upstream costs result in higher gas prices for those customers.

67. Sunoco, the sole firm shipper, would be assured of continued service at the same rates, and the IT rates for existing NPI Lateral supplies would be mitigated for three years. Other IT shippers, however, who do not currently have the option of purchasing firm service and may have contracts for continued transportation to Station 30, would not receive rate mitigation and would be subject to quantifiably higher stacked rates for transportation to Station 30.

68. The proposal, to the extent it results in reduced access to supplies at Station 30, would harm Transco's downstream customers. The proposal would raise economic barriers to the continued delivery of gas to Station 30 and to the access by Transco's customers to proposed new LNG supplies. To the extent increased transportation costs suppress development of new domestic supplies, customers would be further harmed.

69. Crosstex CCNG's assertions that producers will benefit is belied by the fact that, even though there is existing capacity to deliver all of the facilities flowing volumes to Texas markets through existing interconnections with Crosstex CCNG, as well as other systems, only about 21 percent of flowing volumes are being delivered to markets in Texas. Finally, the producers' protests are evidence that Crosstex CCNG has not made a convincing case that they will not be harmed.

70. We find that the proposal lacks evidence of benefits sufficient to outweigh potential detrimental impacts. No harm will come from denial of abandonment, potential

⁴⁷ In Docket No. RP01-245-007, Transco filed a total cost-of-service of \$833,045,112.

adverse consequences are significant, and rate benefits to Transco's customers are small. Therefore, we find that the evidence does not support a finding that the public convenience and necessity permits customers currently receiving service under NGA section 7 to be forced to discontinue service or accept NGPA section 311 service. Accordingly, we will deny Transco's request for authority to abandon the facilities.

The Commission orders:

- (A) Transco's request for abandonment authority is denied.
- (B) The requests for a technical conference and evidentiary proceeding are denied.
- (C) The motions for late intervention are granted.
- (D) The answers and responses to comments, protests, answers, and responses are accepted.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

Intervenors

Timely Intervenors:

Not Commenting:

KeySpan Delivery Companies (KeySpan Energy Delivery New York, KeySpan Energy Delivery Long Island, Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company)
Superior Natural Gas Corp. and Walter Oil & Gas Corp.
Mustang Gas Products, LLC
Piedmont Natural Gas Company, Inc.
Calpine Corporation
Occidental Energy marketing, Inc.
Copano Energy Services/Texas gulf coast, L.P.
City of Richmond, Virginia
Apache Corporation
Swift Energy Company

Commenting:

Municipal Gas Authority of Georgia (consisting of numerous municipalities served directly by Transco in Georgia and Alabama) and Transco Municipal Group (an ad hoc group of municipal distributor customers of Transco located in Alabama, South Carolina, and North Carolina)

Protesting:

Upstream Energy Services, L.P. (requests an evidentiary proceeding), Welder Exploration & Production, Inc., EnerQuest Oil & Gas, L.L.C., Joe McGuffin, Jr., HA. P.C. Oil Inc., Union Gas Operating Company, Inc., BLAKEnergy, LTD, C&E Operating Company, Inc., Dolphin Petroleum, LP, Edge Petroleum Exploration Company, JIL Oil Corp., Lakewood Operating, LTD, Pyle Petroleum, Inc., and Southwest Energy LP (together referred to as Upstream Protestants)

Producer Coalition (consisting of Devon Energy Corporation, Dominion Exploration & Production, Inc., Forest Oil Corporation, Houston Exploration Company, Newfield Exploration Company, Santos USA Corp. (separately intervening), and Spinnaker Exploration Company

Santos USA Corp. (included in the Producer Coalition protest above)
Shell Offshore Inc., ChevronTexaco Natural Gas, a Div. of Chevron U.X.A. Inc.,
BP America Production Company, ConocoPhillips Corporation, and Exxon Mobil
Corporation (collectively protesting as Indicated Shippers, but separately intervening)
Enbridge Pipelines (Texas Intrastate) L.P.
Lewis Petro Properties, Inc. (incorporating Enbridge Pipelines' protest)
KCS Energy, Inc. (protests and requests a technical conference)

Interventions Out-of-Time:

Not Commenting:

UGI Utilities, Inc.
South Carolina Pipeline Corporation
Public Service Company of North Carolina, Inc. and SCANA Energy
Marketing, Inc.
Consolidated Edison Company of New York, Inc.
Atlanta Gas Light Company, and Virginia Natural Gas, Inc.

In Support:

Sunoco, Inc. (R&M)

Protesting:

AROC (Texas), Inc. (adopts protest of Upstream Protestants)