

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Kinder Morgan Interstate
Gas Transmission LLC

Docket No. RP03-12-001

ORDER ON CLARIFICATION

(Issued May 23, 2003)

1. On December 2, 2002, Public Service Company of Colorado (PSCo) sought clarification or, in the alternative, rehearing of the Commission's order issued on October 31, 2002.¹ In that order, the Commission accepted proposed tariff language filed by Kinder Morgan Interstate Gas Transmission LLC (KMIGT) that would grant it blanket authority to acquire transportation and storage capacity on the systems of other interstate pipelines, intrastate pipelines, and local distribution companies (LDC), and to operate that capacity as if it were part of KMIGT's own system, subject to the terms and conditions of its tariff.
2. As discussed below, we grant PSCo's request for clarification, and dismiss its request for rehearing as moot. This order benefits customers by clarifying the type of off-system capacity that an interstate pipeline may seek to acquire.

I. Background

3. On October 4, 2002, KMIGT filed to incorporate a new provision in its tariff to address its acquisition and use of off-system capacity, as well as to obtain a related waiver of the Commission's "shipper must hold title" requirement. KMIGT stated that under this new provision, KMIGT would apply its generally applicable system rates and tariffs to any transportation or storage service it provides using such off-system capacity.

¹Kinder Morgan Interstate Gas Transmission LLC, 101 FERC ¶ 61,118 (2002) (October 31 Order).

4. PSCo protested KMIGT's filing, arguing that the Commission should reject KMIGT's request for blanket authority to the extent that the pipeline was seeking to acquire capacity on non-NGA regulated pipeline systems. PSCo stated that the Commission should instead direct KMIGT to seek authorization on a case-by-case basis if it wants to acquire such capacity. In support of its argument, PSCo explained that a proposal by an interstate pipeline to acquire capacity on LDCs raises a host of complex jurisdictional issues and could result in dual-jurisdiction facilities. Accordingly, PSCo argued that KMIGT should be directed to delete any reference to LDC capacity from its proposed tariff language and that any request by KMIGT to obtain such capacity should be made on a case-by-case basis.

5. In the October 31 Order, the Commission accepted KMIGT's proposal, finding the proposal to be consistent with the policy established in Texas Eastern.² The Commission explained that under the Texas Eastern policy, it was no longer necessary for an interstate pipeline to obtain approval before acquiring off-system capacity, provided that the acquiring pipeline agreed to be at risk for unrecovered costs of that capacity. Also, the pipeline need not request a waiver of the "shipper must hold title" policy every time it sought to acquire off-system capacity so long as it treats the acquired capacity as though it were a part of the acquiring pipeline's own system. Accordingly, once a pipeline has revised its tariff to include a statement that it would "only transport for others on offsystem capacity pursuant to its existing tariff and rates," the Commission would grant waiver of the "shipper must have title" policy for any such subsequent transportation provided by the pipeline.³ The Commission found that PSCo's concerns were beyond the scope of this proceeding since KMIGT's proposal did not address what, if any, certificate authority may be required for off-system pipeline capacity to be used to provide transportation in interstate capacity.

II. PSCo's Request for Clarification

6. In its request for clarification, PSCo explains that there are two distinct subsets of LDC capacity that could be contracted by an interstate pipeline. PSCo states that the first subset involves LDCs that provide transportation service to markets outside their state pursuant to a limited jurisdiction certificate granted under § 284.224.⁴ PSCo clarifies that

²Texas Eastern Transmission Corp., 93 FERC ¶ 61,273 (2000) (Order on Remand) (Texas Eastern).

³Texas Eastern Transmission Corp., 95 FERC ¶ 61,056 (2001) (Order Denying Clarification and Rehearing).

⁴18 C.F.R. § 284.224 (2002).

it does not object to KMIGT's acquisition of this type of LDC capacity which is offered under an Order No. 63 certificate.

7. However, PSCo contends that another type of LDC capacity, by operation of the Hinshaw exemption from Commission jurisdiction provided by NGA Section 1(c), is subject to the exclusive jurisdiction of state commissions. As such, PSCo argues that an interstate pipeline cannot acquire this non-jurisdictional Hinshaw capacity since such a situation would create the potential for jurisdictional and policy conflicts between the state commissions and this Commission. Moreover, PSCo cites to the Commission's decision in Texas Gas as support of the proposition that an interstate pipeline's acquisition of LDC capacity should be limited to capacity that is made available pursuant to a § 284.224 blanket certificate.⁵

8. Accordingly, PSCo requests that the Commission clarify that the only LDC capacity that KMIGT may acquire pursuant to its proposed tariff language is LDC capacity that is made available pursuant to a Commission-issued blanket certificate. PSCo states that if the Commission grants this clarification, its alternative request for rehearing is rendered moot.

III. KMIGT's Response

9. On December 17, 2002, KMIGT filed comments in response to PSCo's request for clarification. KMIGT states that the Commission should reject PSCo's request as an unjustified attempt to inhibit competition from interstate pipelines, stating that PSCo does not cite to any applicable Commission regulation or precedent in support of the position that the only LDC capacity that an interstate pipeline may acquire is capacity offered pursuant to a § 284.224 blanket certificate.

10. Moreover, KMIGT contends that PSCo misunderstood the Commission's holding in Texas Gas. Instead of limiting the type of LDC capacity that an interstate pipeline may acquire, KMIGT states that Texas Gas supports a policy allowing interstate pipelines to acquire LDC capacity regardless of whether the LDC has a § 284.224 blanket certificate. As such, KMIGT argues that the Commission should reject PSCo's reading of Texas Gas since it would invalidate established Commission precedent on the acquisition of off-system capacity. KMIGT also states that prior Commission orders have not restricted the type of off-system capacity that interstate pipelines may acquire to only capacity that is made available pursuant to an intrastate pipeline's blanket authorization to perform NGPA Section 311 transportation.

⁵Texas Gas Transmission Corp., 97 FERC ¶ 61,250 (2001) (Texas Gas).

IV. Discussion

11. The Commission grants PSCo's requested clarification. A sale of capacity by an LDC or intrastate pipeline to an interstate pipeline would result in the use of the LDC's or intrastate pipeline's facilities for interstate service subject to this Commission's jurisdiction. Therefore, before the LDC or intrastate pipeline could enter into such a transaction, it would have to obtain the appropriate authorization from the Commission. Whether to seek such a certificate would, of course, be voluntary with the LDC or intrastate pipeline since the Commission does not require such entities to make their facilities available for interstate service.⁶ Once having obtained such a certificate, the LDC or intrastate pipeline would have to make the subject capacity available to all customers, including interstate pipelines, on a non-discriminatory basis. The Texas Gas decision is consistent with this holding.

12. In Texas Gas the Commission held that an interstate pipeline may receive a generic waiver of the "shipper must have title" policy for any future transportation service using off-system capacity if the pipeline agrees to render such service pursuant to its Commission-approved tariff and existing rates. The Commission held that "[w]hether the capacity is provided by other pipelines or local distribution companies, any services using that capacity must be offered under the open access terms and conditions of Texas Gas's tariff."⁷ In addition, the Commission held that "like intrastate pipelines, local distribution companies may contract to provide transportation service to interstate pipelines so long as they have the requisite authority pursuant to § 284.224(b)(3) of the Commission's regulations."⁸

13. Thus, PSCo's interpretation of the Commission's decision in Texas Gas is correct and the Commission clarifies that the only LDC or intrastate capacity that an interstate pipeline may acquire is LDC capacity that is offered pursuant to a § 284.224 or § 284.227 blanket certificate.

14. Accordingly, having granted PSCo's request for clarification, we will dismiss its alternative request for rehearing as moot.

The Commission orders:

⁶See 18 C.F.R. § 284.224(b)(1) (2002) (any local distribution company or any Hinshaw pipeline may apply for a blanket certificate).

⁷See supra note 5.

⁸Id. (emphasis added).

PSCo's request for clarification is hereby granted and its request for rehearing is hereby dismissed as moot.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.