

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Zia Natural Gas Company,
An Operating Division of
Natural Gas Processing Company

Docket Nos. CP01-36-001 and
CP01-382-001

v.

Raton Gas Transmission Company
Raton Gas Transmission Company

Docket Nos. CP01-52-001 and
CP01-383-001
[Not Consolidated]

ORDER DENYING REHEARING

(Issued June 9, 2003)

1. On February 28, 2003, the Commission issued an order addressing two complaints filed by Zia Natural Gas Company, an Operating Division of Natural Gas Processing Company (Zia), against Raton Gas Transmission Company (Raton), and two applications filed by Raton for an amendment to its Part 157 certificate and for an immediate temporary certificate, respectively.¹ The February 28 order found that Raton violated Sections 7(b) and (c) of the Natural Gas Act and its Part 157 certificate by illegally abandoning service to Zia and transporting gas for Las Vegas. It ordered Raton to cease transportation service to Las Vegas, allow Zia to inject its gas into Raton's upstream CIG storage capacity, and transport that gas through Raton's system. The order denied Raton's requests for an amendment to its certificate and for an emergency temporary certificate. The order also found that Zia illegally brokered its interstate capacity on Raton.

¹Zia Natural Gas Co., an Operating Division of Natural Gas Processing Co. v. Raton Gas Transmission Co., 102 FERC ¶ 61,249 (2003).

2. On April 1, 2003, Las Vegas filed a request for rehearing of the February 28 order. For the reasons discussed below, we will deny the request for rehearing.

Background

3. Raton is a twenty-mile long interstate pipeline that transports gas from Colorado to New Mexico for two shippers, Raton Natural Gas Company and Zia, pursuant to a case specific Part 157 certificate. Raton is not a Part 284 pipeline and thus does not provide open access transportation service on its system.

4. The facts in this proceeding are set out in detail in the February 28 order. In brief, the case involves two complaints filed by Zia against Raton alleging that Raton violated the NGA and its Part 157 certificate by transporting gas owned by Las Vegas. The February 28 order found that Raton had violated its certificate as alleged by Zia and required Raton to stop transporting Las Vegas' gas.

5. The conflicts in this proceeding arose as a result of the state of New Mexico's retail unbundling program under which Zia was required to offer unbundled transportation service to its New Mexico customers such as Las Vegas. Las Vegas wanted to purchase its own gas for resale and receive unbundled transportation service from Zia in New Mexico. However, the parties could not agree on the use of Zia's upstream interstate transportation capacity on Raton. Nevertheless, Las Vegas began purchasing its own gas. Although the subsequent events are complicated, at their most fundamental they consisted of violations of the NGA and our regulations by both Raton and Zia. For a certain period of time, Raton transported Las Vegas' gas without a certificate of public convenience and necessity and effectively abandoned service to Zia without Commission authorization. At other times, Zia used its interstate capacity on Raton to transport Las Vegas' gas without receiving Commission authorization to provide that interstate transportation.

Rehearing Request

6. Las Vegas requests the Commission to reverse its determination that Raton cannot legally transport gas owned by Las Vegas unless Raton becomes a Part 284 transporter. Contending that the February 28 order failed to address its effect on Las Vegas as a captive customer of Zia, Las Vegas encourages the Commission to use its authority pursuant to Section 16 of the NGA² to fashion an equitable remedy it believes to be consistent with the public interest.

²15 U.S.C. 717(o).

7. Las Vegas notes that, in response to local distribution companies' (LDCs) concerns regarding their inability to respond to state retail unbundling requirements due to conflicting Commission regulations, the Commission has waived its shipper-must-have-title policy for LDC shippers on Part 284 pipelines to allow the LDCs to transport through their interstate capacity their customers' gas. Since Raton is not a Part 284 pipeline, Las Vegas argues that in this proceeding the Commission should waive its Part 157 rules as necessary to allow Raton to transport Las Vegas' gas. Las Vegas also maintains that the Commission should authorize Raton to abandon the portion of Zia's capacity used to serve Las Vegas through Zia. Unless the Commission grants its requests, Las Vegas contends, it will be forced to return to unwanted and more costly bundled transportation service.

Discussion

8. Las Vegas contends that the Commission failed to address the effects of our decision on Las Vegas as a captive customer of Zia. Las Vegas' status as a captive customer is a result of Raton's decision not to convert to open access service under Part 284. The Commission's policies are designed to provide every incentive for interstate pipelines to convert, but have stopped short of ordering such conversion. While agreeing that Las Vegas' captive status is undesirable, we find no basis under existing policy or precedent to require Raton to convert its system to open access or to require Zia, a nonjurisdictional LDC, to apply for abandonment of its capacity on Raton.

9. Las Vegas requests that we waive any policies or regulations as necessary to allow Raton to abandon the portion of its Part 157 service to Zia used to transport gas for Las Vegas and replace it with service to Las Vegas. However, there are several factual differences between this case and the retail unbundling cases to which Las Vegas refers that preclude waiver of our Part 157 rules as Las Vegas requests. First, in the retail unbundling cases the state regulated pipelines and LDCs, not their retail customers such as Las Vegas, requested the waivers as is appropriate, since it is the LDC's interstate capacity at issue. In this proceeding, Zia is opposed to any effective abandonment of its interstate capacity. Second, the Commission granted waivers based on the presumption that the parties would work out a solution with respect to the relevant interstate capacity that would no longer require waivers of our regulations and policies. In other words, the waivers were temporary, unlike the waivers that Las Vegas apparently envisions.³ Third, with respect to Part 157 services specifically, our presumption in temporarily authorizing LDCs to use their interstate capacity to transport their retail customers' gas has been that these case specific services would be converted to Part 284 service when, for example, the underlying

³See, e.g., National Fuel Gas Distribution Corp., 90 FERC ¶ 61,326 (2000); Baltimore Gas and Electric Co., 88 FERC ¶ 61,133 (1999).

contracts between the LDC and its customers expire.⁴ Since Raton is not a Part 284 pipeline, its Part 157 service cannot be converted to open access service. For these reasons, we will deny Las Vegas' request for waivers.

10. As we stated in the February 28 order, as long as Raton remains a Part 157 transporter with no excess capacity, the only way that Raton can transport gas owned by Las Vegas on a firm basis while Zia remains the capacity holder on Raton is through a limited term, limited jurisdiction certificate issued to Zia allowing Zia to use its interstate capacity to transport Las Vegas' gas. The Commission would entertain issuing such a limited-term certificate only if Zia requests it and, during the term of the certificate, the parties in this proceeding actively seek an agreement on the ultimate use of the capacity that would comply with Commission policy and regulations.

The Commission orders:

Las Vegas' request for rehearing is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁴See Atlanta Gas Light Co., 100 FERC ¶ 61,071 at P. 26-27.