

127 FERC ¶ 61,153
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

CenterPoint Energy Gas Transmission Company

Docket No. CP08-463-000

ORDER APPROVING LEASE

(Issued May 21, 2009)

1. On August 19, 2008, CenterPoint Energy Gas Transmission Company (CenterPoint) filed an application proposing to transfer ownership of its Line CP-3, an approximately 11-mile long, 16-inch diameter pipeline located in Harrison County, Texas, to a non-jurisdictional passive owner, CrossPoint Pipeline, LLC (CrossPoint) and to leaseback Line CP-3 from CrossPoint. Line CP-3 connects PVR East Texas Gas Processing, LLC's (PVR East Texas) new gas processing plant, the Crossroads Plant, to CenterPoint's Line CP. CenterPoint also requests authorization to lease and operate 600 feet of pipeline and metering facilities constructed and owned by PVR East Texas (PVR East Texas facilities) in association with the Crossroads Plant. For the reasons discussed below, we will grant CenterPoint's requested authorizations.

I. Background

2. CenterPoint's Line CP is an approximately 172-mile long, 42-inch diameter pipeline with a total certificated capacity of 1,553,000 dekatherms per day (Dth/d) extending from the Carthage Hub in Carthage, Texas to interstate pipelines connected to CenterPoint at the Perryville Hub in Richland Parish, Louisiana.¹ PVR East Texas' Crossroads Plant is approximately 11 miles from Line CP. CenterPoint states that PVR East Texas approached pipeline companies, including CenterPoint, regarding transportation services for processed gas from the plant. CenterPoint states that PVR East Texas' negotiations with the pipelines were premised on (1) the ability of the pipeline company to provide very-near-term transportation services for the processed gas; and (2) the potential for PVR East Texas to obtain a 50 percent ownership interest in the

¹ See *CenterPoint Energy Gas Transmission Co.*, 117 FERC ¶ 61,003 (2006) (authorizing construction of Line CP); *CenterPoint Energy Gas Transmission Co.*, 119 FERC ¶ 61,138 (2007) (authorizing expansion of Line CP).

facilities that would transport the processed gas. CenterPoint proposed a plan, to which PVR East Texas agreed, that would accommodate PVR East Texas' conditions.

3. Under its plan, CenterPoint would provide PVR East Texas near-term transportation services in two steps. First, as an interim measure until CenterPoint completed construction of Line CP-3 to connect the Crossroads Plant to CenterPoint's Line CP, CenterPoint would accept volumes from the Crossroads Plant through the PVR East Texas' 600-foot plant line and metering facilities that connect the Crossroads Plant to CenterPoint's Line F-185. Second, after CenterPoint completed construction of Line CP-3, CenterPoint would provide transportation service through that line instead of the PVR East Texas facilities. CenterPoint states that it entered into an interim agreement with Connect Energy Services, LLC (Connect Energy), an affiliate of PVR East Texas and title holder of the natural gas delivered from the Crossroads Plant, for service from the interconnect between the PVR East Texas facilities and CenterPoint's Line F-185. CenterPoint also entered into two long-term negotiated rate agreements with Connect Energy that would replace the interim agreement once service began on Line CP-3.

4. CenterPoint states that it constructed Line CP-3 under the automatic provisions of its Part 157 blanket construction certificate and currently provides service through the line to Connect Energy. CenterPoint states that the PVR East Texas facilities remain in place and could be used if operational constraints prevent PVR East Texas from flowing gas into Line CP-3.

5. To accommodate PVR East Texas' interest in obtaining a 50 percent ownership interest in the facilities that would transport the processed gas from its Crossroads Plant, CenterPoint and PVR East Texas formed a limited liability company, CrossPoint Pipeline, in which CenterPoint and PVR East Texas are the current members, each owning a 50 percent interest. CenterPoint states that it and CrossPoint entered into an operating agreement which requires CenterPoint to transfer title to Line CP-3 to CrossPoint and requires PVR East Texas to transfer title to the PVR East Texas facilities to CrossPoint and make a financial contribution to CrossPoint. The operating agreement also provides that CenterPoint and CrossPoint enter a lease agreement whereby CenterPoint will lease Line CP-3 and the PVR East Texas facilities from CrossPoint and operate all of the facilities as part of the CenterPoint system.

6. Under Article 12 of the operating agreement CenterPoint will purchase Line CP-3 and the PVR East Texas facilities from CrossPoint at the expiration of the lease agreement or subsequent lease agreement or on the dissolution of CrossPoint for any reason.

7. CenterPoint and PVR East Texas agreed that after Line CP-3 went into service, CenterPoint would seek Commission approval to contribute Line CP-3 to CrossPoint in a manner consistent with Commission regulations and to leaseback the facilities from CrossPoint.

II. Proposal

8. CenterPoint requests Commission authorization to: (1) transfer ownership of Line CP-3 to CrossPoint and to leaseback Line CP-3 and continue to operate the line as part of its interstate pipeline system; and (2) lease the PVR East Texas facilities from CrossPoint and operate them as part of its interstate pipeline system. CenterPoint states that its proposed shared ownership of Line CP-3 and the PVR East Texas facilities is appropriate because CenterPoint would retain operational control over the facilities and continue to operate them as part of its system under its existing tariff while CrossPoint would hold a passive interest in the facilities. CenterPoint states that the requested approvals would not affect the natural gas transmission and other services it provides to its customers.

9. Under the lease agreement, CenterPoint will make monthly base rental payments of \$.08/MMBtu to CrossPoint for: (1) all quantities of gas contracted on the leased facilities for which CenterPoint is paid a reservation charge but for which no transportation service is actually provided; and (2) all quantities of gas actually transported by CenterPoint on the leased facilities. An operation and maintenance (O&M) fee will be deducted from the base rental fee each month. If, after deducting the O&M fee, the net rental fee for any month is negative, CenterPoint is not required to pay the net rental fee for that month.

10. Assuming the Commission approves the lease, the lease will remain in effect for seven years following its effective date and will automatically renew for subsequent one-year periods until either CenterPoint or CrossPoint provides advance written notice of termination at least one year before the end of any term. CenterPoint acknowledges that, notwithstanding the termination rights otherwise contained in the lease agreement, termination of the lease cannot take effect without Commission authorization.

III Notice and Interventions

11. Public notice of CenterPoint's application was published in the *Federal Register* on November 20, 2008 (73 Fed. Reg. 72,784). The Arkansas Public Service Commission filed a timely notice of intervention and Atmos Energy Corporation filed a timely motion to intervene.² No protests or objections to the proposal were filed.

² Timely notices of intervention and motions to intervene are granted by operation of Rule 214 of the Commission Rules of Practice and Procedure. *See* 18 C.F.R. §§ 385.214(a)(2) and 385.214(a)(3) (2008).

IV. Discussion

12. Since CenterPoint's proposals involve facilities certificated for natural gas service in interstate commerce subject to the jurisdiction of the Commission, the proposals are subject to the requirements of sections (c) and (e) of section 7 of the NGA.

A. Certificate Policy Statement

13. We shall consider CenterPoint's proposal to transfer Line CP-3 to CrossPoint and leaseback the Line CP-3 capacity under the provisions of our Certificate Policy Statement.³ In a situation where an applicant proposes to lease facilities that have already been certificated and constructed, as is the case here, the Certificate Policy Statement's concerns with disruptions of the environment and the exercise of eminent domain are not implicated.

14. However, the threshold requirement under the Certificate Policy Statement that a pipeline must be prepared to financially support the project without relying on subsidization from its existing customers is equally as applicable to a pipeline's lease of capacity on existing facilities as it is to the construction of new facilities. Similarly, whether the applicant has made efforts to eliminate or minimize any adverse effects the proposal might have on the applicant's existing customers and existing pipelines in the market and their captive customers is also relevant to our evaluation.

15. CenterPoint's proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. As explained above, CenterPoint built Line CP-3 under its Part 157 blanket certificate⁴ which authorizes the pipeline to use its existing system rates as recourse rates for service on Line CP-3 and establishes a presumption of rolled-in rate

³ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

⁴ On May 13, 2008 CenterPoint filed under §157.208(g) of the Commission's regulations a request for waiver of the automatic project cost limit of \$10,200,000 for projects constructed in 2008 (*see* § 157.208(d) of the Commission's regulations) for Line CP-3. As reflected in CenterPoint's March 23, 2009 data response, the actual cost of Line CP-3 was \$11,006,583 (*see* March 23, 2009 data response, Exhibit N, p.4, line No. 1).

treatment.⁵ Under the proposed transfer of ownership/leaseback, CenterPoint will continue to offer service on Line CP-3 under its existing recourse rates and tariff. However, CenterPoint will remove the costs associated with the CP-3 facilities from its books and instead reflect the lease payments made to CrossPoint. In response to a staff data request, CenterPoint submitted an exhibit that demonstrates that the costs over the seven-year term of the lease are less than the cost of service associated with CenterPoint's continued ownership of the facilities during that seven-year period.⁶ Under these circumstances, we find that CenterPoint's proposal will have no adverse financial impact on existing customers and thus meets the threshold requirement of no subsidization.

16. We also conclude that CenterPoint's proposal will not have adverse impacts on existing pipelines or their customers. CenterPoint will continue to operate Line CP-3 under the terms and conditions of its Part 284 tariff and rates. Connect Energy, the only shipper currently using Line CP-3, will continue to transport gas on the line under CenterPoint's tariff and rates without any change to its transportation service agreements. In addition, the lease agreement will have no impact on the ability of any other CenterPoint shipper to use Line CP-3. There is no evidence that service on other pipelines will be displaced or bypassed.

17. Since CenterPoint's proposal satisfies the requirements of the Certificate Policy Statement, we find that the public convenience and necessity will require approval of the lease proposal.

B. Accounting

18. CenterPoint proposes to account for the transfer of Line CP-3 to CrossPoint by crediting Account 101, Gas Plant In Service, and debiting Account 108, Accumulated Provision for Depreciation of Gas Utility Plant, and Account 123, Investment in Associated Companies. Further, CenterPoint proposes to record the rental payments to CrossPoint for the leaseback of Line CP-3 from CrossPoint in Account 860, Rents.

19. CenterPoint's proposed accounting for the transfer of Line CP-3 to CrossPoint is generally in compliance with the Commission's Uniform System of Accounts. CenterPoint is directed to account for the transfer of Line CP-3 in accordance with the Commission's Gas Plant Instruction No. 5, Gas Plant Purchased or Sold, and Account

⁵ This presumption for Part 157 blanket certificate projects is based on the expectation that the rate impact of such rolling-in will be negligible. However, the presumption may be rebutted in future rate proceedings.

⁶ See CenterPoint's March 23, 2009 data response, Exhibit N.

102, Gas Plant Purchased or Sold, and to file its final journal entries to clear Account 102 no later than six months after the completion of the transaction.⁷ The filing must provide a complete explanation of the proposed accounting and must be in such detail as to allow the Commission to verify and evaluate all related transactions.

C. Environmental Analysis

20. Environmental review of this proposal under section 380.4 concludes that the proposed transfer of ownership interests and the lease and operation of the facilities qualify as categorical exclusions under sections 380.4(a)(31) and (27), respectively, since the requested authorizations involve no construction of facilities.⁸

21. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to CenterPoint authorizing it to transfer, leaseback and operate, as part of CenterPoint's system, Line CP-3, as described in the body of this order.

(B) A certificate of public convenience and necessity is issued to CenterPoint authorizing it to lease and operate, as part of CenterPoint's system, the PVR East Texas Facilities, as described in the body of this order.

(C) The certificate authorizations granted in Ordering Paragraphs (A) and (B) are conditioned on CenterPoint's acceptance of such authority in accordance with the provisions of section 157.20(a) of the regulations, 18 C.F.R. § 157.20(a) (2008).

(D) CenterPoint shall adhere to the accounting requirements discussed in the body of this order.

⁷ 18 C.F.R. Part 201 (2008).

⁸ 18 C.F.R. §§ 380.4(a)(31) and 380.4(a)(27) (2008).

(E) Except as provided herein, the terms and conditions of CenterPoint's certificate authorizations to construct and expand Line CP, granted in orders issued October 2, 2006, in Docket No. CP06-85-000, and May 17, 2007, in Docket Nos. CP07-41-000 and CP06-85-002, are unchanged.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.