

129 FERC ¶ 61,255
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Company, LLC
and Copano Field Services/Central Gulf Coast, L.P.

Docket No. CP09-38-000

ORDER DENYING ABANDONMENT AUTHORITY

(Issued December 17, 2009)

1. On December 19, 2008, in Docket No. CP09-38-000, Transcontinental Gas Pipe Line Company, LLC (Transco) and Copano Field Services/Central Gulf Coast, L.P. (Copano) filed a joint application under section 7(b) of the Natural Gas Act (NGA)¹ seeking authorization for Transco to abandon its McMullen Lateral in Texas by sale to Copano. Transco and Copano also request that the Commission determine that upon transfer to Copano the subject facilities will be non-jurisdictional gathering facilities exempt from the Commission's jurisdiction under NGA section 1(b).²

2. For the reasons discussed below, we deny Transco's request for authority to abandon the McMullen Lateral because the record does not support a finding that the proposed abandonment is permitted by the public convenience or necessity. The request for a finding that the McMullen Lateral would be a non-jurisdictional gathering facility if transferred to Copano is dismissed as moot.

I. Background and Proposal

3. Transco is a natural gas company engaged in the transportation of natural gas in interstate commerce through its natural gas transmission system extending from its supply sources in Texas, Louisiana, Mississippi, and the offshore Gulf of Mexico through Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to the New York metropolitan area.

¹ 15 U.S.C. § 717f(b) (2006).

² 15 U.S.C. § 717(b) (2006).

4. Copano owns and operates natural gas gathering facilities in the area of the McMullen Lateral and provides gathering, compression, treating, dehydration, conditioning, and processing services to customers in a five-county area surrounding the Houston Central Plant, a processing plant owned by a subsidiary of Copano's parent, Copano Energy.³ Copano does not own any facilities subject to the Commission's jurisdiction under the NGA.

5. Transco's McMullen Lateral is a 24-inch-diameter, 151.7-mile-long pipeline in McMullen and Wharton Counties, Texas. The McMullen Lateral connects to Regency Field Service, LLC's (Regency) Tilden gas treatment plant (Tilden Plant) at its upstream west end and with Transco's Compressor Station 30 (Station 30) at its downstream east end. Transco uses the McMullen Lateral to receive and transport gas from production areas to its mainline pipeline system downstream of Station 30. The lateral is part of Transco's production area IT feeder service zone, in which Transco is authorized to provide only interruptible transportation service. During the 12 months prior to September 2008, 27 shippers received interruptible transportation service on the lateral, with an average gas flow of 60 million cubic feet per day (MMcf/d).

6. Transco proposes to abandon the McMullen Lateral by sale to Copano, which states that it would operate the lateral as a gathering facility after disconnecting the lateral from Transco's system immediately upstream of Transco's Station 30 so that there would no longer be direct access from the lateral to Station 30. To maintain access to Station 30, however, Copano would construct two new lines: (1) a 25-mile-long, 24-inch-diameter inlet pipeline from the lateral to the Houston Central Plant that would also connect to several of Copano's existing gathering lines; and (2) a 25-mile-long, 16-inch-diameter outlet pipeline that would lead away from the Houston Central Plant to an interconnect at Transco's Station 30. Copano states that gas transported by the McMullen Lateral and processed at the Houston Central Plant would be blended with unprocessed gas gathered from existing and future production connected to the new outlet pipeline from the Houston Central Plant prior to delivery at Transco's Station 30. The commingled stream of processed and raw gas would be pipeline quality.

II. Notice, Interventions, Protests, and Answers

7. The application for abandonment and request for jurisdictional determination was published in the *Federal Register* on January 12, 2009.⁴ Timely, unopposed motions to intervene were filed by Consolidated Edison Company of New York, Inc.; Crimson

³ Copano is an indirect wholly-owned subsidiary of Copano Pipelines Group, L.L.C, which in turn is owned by Copano Energy, L.L.C., (Copano Energy).

⁴ 74 Fed. Reg. 1203 (2009).

Exploration Operating, Inc. (Crimson); DCP Midstream, LP and DCP Midstream Marketing, LLC (collectively, DCP); El Paso E&P Company, L.P. (El Paso E&P); Escondido Gas Storage, LLC (Escondido); Exxon Mobile Corporation; LaSalle Pipeline, LP (LaSalle); Mission Valley Pipeline Company, LP (Mission Valley); National Energy & Trade, LP (NET); National Fuel Gas Distribution Corporation; PECO Energy Company; Philadelphia Gas Works; Piedmont Natural Gas Company, Inc.; Regency; Southwest Energy, L.P. (Southwest Energy); South Texas Electric Cooperative, Inc. (STEC); Superior Natural Gas Corporation; UGI Distribution Companies; and, Upstream Energy Services, L.P. (Upstream Energy).⁵

8. Protests were filed by DCP, Mission Valley, STEC, NET, LaSalle, and Regency. DCP owns the Three Rivers gas processing plant (DCP Plant), which delivers gas to the McMullen Lateral. Mission Valley is a Hinshaw pipeline with a capacity of approximately 54,000 million British thermal units (MMBtu) per day that receives 100 percent of its gas supplies from the McMullen Lateral.

9. STEC, a non-profit cooperative, operates the Rayburn and Pearsall Plants – electric generation power plants that serve primarily residential customers in South Texas – which are dependent on receiving gas through the McMullen Lateral for use as fuel in generating electricity. NET acts as agent for STEC in arranging for supplies and transportation services on the McMullen Lateral, Mission Valley, and LaSalle. NET is the sole firm shipper on Mission Valley which receives NET's gas from the McMullen Lateral for redelivery to STEC's Rayburn electric generation plant.

10. At the time Transco and Copano filed their application, LaSalle's 54-mile-long intrastate pipeline was under construction. The pipeline is now finished and in service with a maximum initial capacity of 102,000 MMBtu per day, and receives gas from the McMullen Lateral for redelivery to STEC's Pearsall electric generation plant. The LaSalle pipeline presently receives 100 percent of its load from the McMullen Lateral.

11. Regency is the owner of a large gathering system in South Texas and the Tilden Plant – the gas processing plant located at the upstream terminus of the McMullen Lateral. Regency delivers an average of 28,000 MMBtu per day of natural gas to Transco at the Tilden Plant tailgate. Regency is not a shipper on the McMullen Lateral, but gathers and/or sells natural gas to third parties for delivery onto the lateral.

12. The protestors variously argue that Transco's proposed abandonment of the McMullen Lateral is not in the public interest because: (1) existing shippers on the lateral will be harmed by the abandonment while all benefits will accrue only to Transco

⁵ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2009).

and Copano; (2) the lateral has historically operated as a jurisdictional transmission facility as part of Transco's system and circumstances have not changed; (3) the lateral provides essential interstate transportation service and the proposed accommodations to existing shippers are inadequate; (4) there is no assurance that Copano will complete the promised construction of facilities that would make it possible for shippers to maintain continued access to Transco's Station 30 and downstream system; (5) there is no indication that Transco is not recovering the costs of operating and maintaining the lateral; (6) the lateral is an integrated part of Transco's system and separation of the lateral from Transco's downstream transmission facilities would result in additional costs and burdens to existing shippers and Regency customers; (7) significant quantities of processed, pipeline quality gas presently flow on the lateral and these volumes would not benefit from additional processing; (8) STEC, DCP, Mission Valley and LaSalle have recently expended significant amounts of money to improve their connections with the lateral and/or to build new facilities connected to the lateral in reliance on the ability to receive gas from or deliver gas to the lateral; and (9) STEC would have to make significant facility modifications to its electric generation plants if the quality of gas on the lateral were to change.

13. Transco and Copano filed answers to the protests. NET, DCP, Regency, and STEC filed answers to the applicants' answer, and Transco and Copano filed answers to those filings. Subsequent supplements, responses, and answers were also filed by the protesting parties, the applicants, Escondido, and the Public Utility Commission of Texas. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers, the Commission finds good cause to waive Rule 213(a) and admit these answers because they provide information that has assisted in our decisionmaking.⁶

III. Discussion

A. Abandonment

14. Since the facilities Transco proposes to abandon are certificated facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposed abandonment is subject to the requirements of NGA section 7(b).⁷ For the reasons given below, we will deny Transco's request for abandonment authority.

⁶ 18 C.F.R. § 385.213(a)(3) (2006).

⁷ 15 U.S.C. § 717f(b) (2006).

15. Section 7(b) provides that the abandonment of natural gas facilities or services can only be granted “after due hearing, and a finding by the Commission . . . that the present or future public convenience or necessity permits such abandonment.”⁸ Historically, in reviewing a request by an interstate pipeline for authority to abandon facilities by sale or transfer to another jurisdictional pipeline company or to a non-jurisdictional company such as a gatherer, the Commission has considered: the needs of the two natural gas systems and the customers and markets they serve, the environmental effects of its decision, the economic effect on the pipelines and their customers, the level of assurance of continued service to customers dependent on the subject facilities, and the relative abilities of the companies to use the facilities to provide natural gas services.⁹ The Commission weighs the claimed benefits of the abandonment against any detriments.¹⁰

16. In support of its application, applicants state that the proposed abandonment is in the public interest because: (1) Transco will be able to reduce future operating and maintenance expenses and avoid the capital costs to abandon and physically remove the facilities; (2) Copano will be able to integrate the McMullen Lateral into its existing gathering systems to provide access to new supply and gas gathering and processing options not currently available to shippers on the lateral; and (3) shippers will be able to maintain the ability to deliver gas to Transco’s system at Station 30 and to gain access to additional downstream markets. Transco also emphasizes that the McMullen Lateral is underutilized because it has a design capacity of 180 MMcf of gas per day but a current utilization of only 60 MMcf per day. Transco attributes the diminished throughput on the lateral primarily to its current inability to provide processing and treatment opportunities that are available from third parties in the area.

1. Open-Access Transportation Service

17. Protestors argue that abandonment is not in the public interest because they would be adversely affected by the proposed abandonment, significant quantities of pipeline quality gas currently flow on the lateral, gas supplies currently flowing on the lateral do not need additional processing, shippers are dependent on open-access transportation service on the lateral to reach Station 30 and other downstream markets, and there is no evidence that Transco is not recovering the costs of operating and maintaining the McMullen Lateral. Protestors point out that three previous Commission orders have

⁸ *Id.*

⁹ *Northern Natural Gas Co.*, 123 FERC ¶ 61,325, at P 12 (2008) (*Northern Natural*). See also *Transcontinental Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1330 (D.C. Cir. 1973).

¹⁰ *Northern Natural*, 123 FERC ¶ 61,325 at P 13.

denied proposals by Transco to sell the McMullen Lateral, finding that Transco failed to support its contention that the lateral is underutilized to the extent that it is not essential to the provision of its open-access interstate transportation service.¹¹ Protestors argue that the circumstances supporting denial of abandonment in those orders have not changed.

18. NET is a shipper on the lateral and asserts that it will be adversely affected by the proposed abandonment because it relies on Transco's open-access transportation service to supply the STEC power plants with contracted for gas quantities at required gas quality levels. NET states that STEC cannot accept rich, high carbon gas for use in its plants' gas turbines without considerable expense or violation of air permits. NET states that, as the manager of gas supplies for STEC's two electric generation plants, it is a shipper on the Mission Valley pipeline, which receives gas from the McMullen Lateral for redelivery to STEC's Rayburn Plant, and on the LaSalle pipeline, which receives gas from the McMullen Lateral for redelivery to STEC's Pearsall Plant. The Mission Valley and LaSalle pipelines receive 100 percent of their gas load via the McMullen Lateral.

19. DCP and Regency argue that Transco's proposed abandonment of the McMullen Lateral cannot be justified because significant volumes of processed gas currently flow on the lateral, and the currently flowing supplies would need additional processing only if they are commingled downstream with unprocessed gas supplies as the result of Copano's plans.

¹¹ The Commission has denied three previous proposals by Transco to abandon the McMullen Lateral. In *Williams Gas Processing-Gulf Coast Gathering Co.*, 87 FERC ¶ 61,144 (1999), *reh'g denied*, 89 FERC ¶ 61,016 (1999) (*Williams*), the Commission determined that the lateral operates as a jurisdictional transmission facility, and found that the Tilden processing plant is the central point where gathering ends and transmission begins. 87 FERC at 61,591-92; 89 FERC at 61,066. In *Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,118 (2003) (*Transco I*), the Commission denied Transco's request to abandon the McMullen Lateral and other facilities by sale to an intrastate pipeline company because the facilities were not so underused by Transco as to support a finding that they were not essential to its provision of open-access interstate service. 103 FERC ¶ 61,118 at P 9, 16. In *Transcontinental Gas Pipe Line Corp.*, 110 FERC ¶ 61,337 (2005) (*Transco II*), the Commission denied Transco's request to abandon the McMullen Lateral and other facilities by sale to a gathering company, which planned to extend and connect its system to the McMullen Lateral and deliver gas supplies through its processing plant. Again, the Commission found that the McMullen Lateral and other facilities at issue transport significant volumes of interstate gas supplies and were not so underused by Transco as to support a finding that they were no longer essential to its provision of open-access interstate transportation service. 110 FERC ¶ 61,337 at P 33.

20. DCP states that gas volumes entering the McMullen Lateral from DCP's processing plant averaged 35 MMcf per day in 2008, of which an average of 20 MMcf were owned by DCP and transported on the lateral under its IT feeder service agreement with Transco. DCP believes that any requirement of additional processing at the Houston Central Plant and the related costs to shippers and their gas customers raises significant concerns regarding the competitiveness of gas prices at Transco's Station 30, a critical market hub.

21. Regency is concerned because Copano's plans would cause producers and other customers who have their gas processed at Regency's Tilden processing plant to lose their present direct access to the interstate pipeline grid at the tailgate of Regency's processing plant where gas enters the McMullen Lateral. Regency is also concerned that Copano's operation of the McMullen Lateral as a gathering line accepting raw, unprocessed gas for processing at the Houston Central Plant, operated by Copano's affiliate, will cause Copano to require all gas entering the lateral to have a high heavy hydrocarbon content, thereby stranding gas processed at the Tilden Plant which can only deliver gas into the McMullen Lateral. Regency maintains that Copano has refused to address gas quality specifications for gas from Regency's Tilden Plant or other matters such as pressure, maximum quantity, rates and fuel retention relating to the continued receipt of gas by the McMullen Lateral from the Tilden Plant for redelivery to Station 30 (via the Houston Central processing plant and the new inlet and outlet lines that Copano plans to build between that processing plant and the McMullen Lateral).

22. Transco counters protestors' claim that the McMullen Lateral is essential to Transco's interstate transportation services by emphasizing that only five percent of the gas pooled at Station 30 is delivered by the McMullen Lateral, and only 33 percent of the design capacity of the lateral is currently utilized. Transco also emphasizes that there are no firm contracts for service on the lateral. Transco further counters that the Commission's prior jurisdictional determinations regarding the McMullen Lateral were made under circumstances different from those relevant in this proceeding. In particular, Transco states that none of the prior cases involved a proposal to integrate the McMullen Lateral into a gathering system with as much access as Copano's to production, and that concerns expressed by the Commission in prior proceedings have been addressed in the current application.

23. Transco states that while the Commission held in *Williams Gas Processing-Gulf Coast Gathering Co. (Williams)*¹² that the Tilden processing plant at the upstream end of the McMullen Lateral is the demarcation point between gathering and transmission, the Tilden Plant should no longer be viewed as the end of gathering since the plant, now owned by Regency, only treats gas for the removal of carbon dioxide and hydrogen

¹² 87 FERC ¶ 61,144 (1999), *reh'g denied*, 89 FERC ¶ 61,016 (1999).

sulfide. In view of Copano's plans for the lateral, Transco argues that the current proposal is different from *Williams* because Copano's plans would result in processed gas from the Tilden Plant being diluted to non-pipeline quality by the introduction of raw, unprocessed gas so that all of the gas in the McMullen Lateral would need to undergo processing at the Houston Central processing plant.

24. Transco further states that in *Transcontinental Gas Pipe Line Corp. (Transco I)*¹³ the Commission found that Transco's abandonment of the McMullen Lateral would prevent Transco from honoring its interstate service contracts because it was unclear that any continuity of service would be assured from Transco's upstream South Padre transmission system in the Gulf of Mexico to Transco's Station 30 if the lateral was transferred. Transco argues that the current proposal is different because Transco no longer serves interstate transportation customers upstream of the McMullen Lateral, and the lateral is no longer between two of Transco's other transmission lines, as it was at the time the Commission issued its *Transco I* order. Furthermore, Transco argues that its abandonment of the lateral will not cause current customers any adverse rate impacts because there would be no rate stacking. Transco argues that the circumstances in this proceeding are also different because Copano's plans to build additional lines off the McMullen Lateral to and from the Houston Central Plant are not speculative because the lateral lies in the heart of Copano's gathering area.

25. Transco states that in *Transcontinental Gas Pipe Line Corp. (Transco II)*¹⁴ the Commission again denied abandonment because of the potential bifurcation of Transco's interstate pipeline system, stacked rates and undue rate discrimination against shippers, and speculative integration. Transco argues that in the current proposal the McMullen Lateral is a discrete line that is not necessary for Transco's provision of interstate transportation service, and there will be no stacked rates or speculative integration.

26. Copano responds that protestors ignore the need for additional access to processing plants for gas gathered in the area. Copano states that it will be able to offer producers and shippers in the region access to new supplies and markets, and a greater array of benefits such as access to efficient treating and processing, conditioning, additional gathering of unprocessed gas not yet meeting downstream pipeline gas quality standards, increased facility utilization, reduced capital costs for non-pipeline quality gas, and other system improvements. Transco states that it currently relies on in-line blending because the Tilden and DCP Plants only remove hydrogen sulfide and carbon dioxide, which limits the gas quantity that Transco can accept on the lateral.

¹³ 103 FERC ¶ 61,118 (2003).

¹⁴ 110 FERC ¶ 61,337 (2005).

27. Copano asserts that all gas currently flowing on the lateral will have access to Station 30 through the Houston Central processing plant and the two new detour lines to be built by Copano. Copano stresses that there is no reason to doubt its representations before the Commission that it will build the detour lines. Copano further responds that there will be no additional costs to any shipper for volumes which flow on the McMullen Lateral and on the lines that Copano will construct to and from the Houston Central processing plant.

2. Applicants' Proposed Alternatives/Accommodations

28. Protestors argue that applicants' proposed accommodations to existing shippers are inadequate. DCP and Regency state that no specifics have been provided by Copano as to how it will provide service to specific customers on the McMullen Lateral. STEC argues that Copano will not provide the same quality of service that STEC is currently receiving from Transco because Copano's discussion of an alternative connection for STEC with Trunkline Gas Company (Trunkline) implicitly concedes that Copano plans to turn the McMullen Lateral into a wet pipeline transporting unprocessed, rich gas, and gas will not flow at existing pressures. STEC maintains that Copano's suggested Trunkline alternative is not viable for the Rayburn Plant and that Copano's suggested intrastate pipeline service for the Pearsall Plant supply is not a valid substitute for the existing service provided by Transco.

29. Transco responds that in the past the Commission has only considered whether a company acquiring gathering facilities from an interstate pipeline will provide comparable service, not the same exact service.¹⁵ Transco states that in *Trunkline Gas Co. (Trunkline)* the Commission granted abandonment authority where "existing shippers can continue to receive service under similar terms and conditions to that which they received" prior to the abandonment despite changes in circumstances such as a decrease in delivery points and having to pay additional gathering fees.¹⁶

30. Transco argues that the protestors ignore Copano's plans to change how the lateral operates and functions. Transco asserts these changes will be in the public interest because Copano will be able to offer additional gathering and gas processing services. Transco argues that protestors misunderstand the reasons for the historical flexibility on the lateral, which is the result of more gas received onto the lateral than is delivered off of it. Transco asserted that the interconnection with the LaSalle pipeline would eliminate

¹⁵ Citing *Trunkline Gas Co.*, 81 FERC ¶ 61,351 (1997) (*Trunkline*).

¹⁶ *Id.* at 62,640.

this flexibility on the lateral.¹⁷ Transco states that pressure assurances do not currently exist on the lateral, and Transco has no contractual or tariff obligation to operate the lateral at the current prevailing pressure.

31. Copano states that it has offered STEC other service options to supply the Rayburn and Pearsall electric generation plants with pipeline quality gas from sources other than the McMullen Lateral at no cost to STEC. For the Rayburn Plant, Copano states that it would construct an 8-mile-long, 10-inch-diameter pipeline and 55,000 MMBtu per day metering facilities to connect STEC's Rayburn Plant to Trunkline's interstate pipeline, and an interconnection between the planned outlet line from the Houston Central Plant and Trunkline's pipeline, so that gas can be transported to the Rayburn Plant via Trunkline. For the Pearsall Plant, Copano states it would construct a 25-mile-long, 12-inch-diameter pipeline called the McMullen Loop to move gas to the LaSalle pipeline from the DCP Plant and Houston Pipe Line Company LP.

3. Recent Investments in Reliance on McMullen Lateral

32. DCP states that it recently made substantial investments in interconnection upgrades at the interconnection between the McMullen Lateral and the DCP Plant to flow its processed gas on the lateral. Similarly, STEC states that it has invested over \$400 million in the Rayburn and Pearsall power plants and has contracted for firm transportation on a new pipeline – the LaSalle Lateral – to connect the Pearsall Plant to the McMullen Lateral. Escondido commented that it is developing a 12 Bcf storage project to store dry, pipeline quality gas and to service interstate natural gas shippers. Escondido states that the McMullen Lateral is the access point to the interstate market for Escondido's customers.

33. Applicants respond that although NET and DCP are shippers on the McMullen Lateral, interconnection agreements and related investments should not control the Commission's determination whether to approve Transco's abandonment of the lateral. Applicants state that currently there is insufficient gas supply on the lateral to serve STEC's needs for its power plants and currently STEC is receiving gas from other sources. Applicants also emphasize that there is no reverse flow on the lateral to potentially bring gas from Station 30 to STEC's electric generation plants.

4. Commission Determination

34. In prior proceedings in which the Commission denied Transco's requests for authorization to abandon facilities that included the McMullen Lateral, we found that

¹⁷ As noted above, the LaSalle pipeline was still under construction when Transco and Copano filed their application, but is now in service.

Transco had failed to support its contention that the facilities were underutilized to the extent that they were not essential to the provision of Transco's open-access interstate transportation service, and that the proposed abandonment lacked evidence of benefits sufficient to outweigh the potential adverse impacts of forcing customers to discontinue service from Transco and accept service from the intrastate pipeline or gathering company seeking to acquire the facilities. In the *Transco I* and *Transco II* proceedings the utilization rates for the facilities, including the McMullen Lateral, at issue were 30 and 29 percent, respectively. In this proceeding, Transco's responses to staff data requests indicate that the McMullen Lateral is currently utilized at 33 percent of its full capacity, or 60 MMcf per day of gas flow.

35. Transco proposes to discontinue service on the McMullen Lateral and require shippers to accept service from a non-jurisdictional gathering company. Transco states that the benefits of its abandonment proposal are its ability to avoid the costs associated with the lateral, and shippers and producers in the area having additional opportunities for processing of their gas.

36. While Transco asserts that it, and presumably its shippers, would benefit from the abandonment by the removal of the lateral from Transco's balance sheet, no existing customers commenting in this proceeding have indicated a need for the processing service that Copano's plans would make available and necessary. Indeed, protestors have emphasized that gas volumes currently flowing on the McMullen Lateral need no additional processing. Thus, they are concerned that the applicants' proposal would cause them to incur additional expense for processing that will only be necessary if the applicants' proposal is approved (with the result that current shippers' gas is commingled with raw, unprocessed gas). Although four intervenors express support for the applicants' proposal, they only cite the same reasons as the applicants without acknowledging the detriment that the proposal would cause to the protestors.¹⁸

¹⁸ Southwest Energy is an interruptible shipper on the McMullen Lateral and states that Copano would use the lateral more effectively to provide services not currently available to customers and to allow rich gas supplies on the lateral to be processed for delivery to downstream markets. However, Southwest Energy does not indicate whether it believes it would benefit itself from the Commission's approval of the proposal. Upstream Energy Services states that it is an interruptible shipper on the McMullen Lateral and that it supports the proposal because Copano's plans should ensure shippers continued access to Transco's system at Station 30 without incurring stacked rates as well as flexibility and access to additional downstream markets. Crimson and El Paso E&P are not currently shippers on the McMullen Lateral, but state that approval of the abandonment would provide customers that market gas at the tailgate of the Houston Central Plant access to additional markets for their gas.

37. The protestors have also convincingly described other potential detriments that the applicants' proposal would cause to shippers that currently rely on the lateral. In particular, protesting shippers currently flowing pipeline quality gas on the lateral are concerned that approval of the abandonment proposal would result in such customers having to depend on a non-jurisdictional gathering company to access downstream interstate markets. Some parties, including DCP, STEC, and NET, have recently made significant financial commitments in reliance on the lateral's continuing to provide open-access service and transporting gas within Transco's tariff quality limits.

38. Transco's arguments to distinguish the current case from prior abandonment attempts are unconvincing. Transco's basic argument is that the Commission should base its decision whether to grant abandonment on the future operation of the McMullen Lateral by Copano. Applicants state that Copano has promised not to charge additional processing rates, and that four additional pipelines will be built to obviate the protestors' concerns – two pipelines off the lateral to and from the Houston Central Plant to ensure continued access to Transco's Station 30, a pipeline to the Rayburn electric power plant, and another pipeline to the Pearsall power plant. Therefore, abandonment of the McMullen Lateral should be authorized. However, when determining whether to grant abandonment authority for a pipeline where shippers protest, the Commission assesses the function of the facilities as currently operating, not how they will be used if the abandonment is granted.¹⁹

39. Transco cites *Trunkline* for the proposition that Commission precedent only requires that shippers be afforded similar service, not a guarantee that circumstances will never change. Transco also argues that *Trunkline* supports applicants' position that the Commission should give significant weight to Copano's plans to change how the McMullen Lateral operates so that transportation service on that facility is upstream of processing, thereby supporting a finding that the McMullen Lateral will function as a gathering facility if acquired by Copano. However, in the cited proceeding, *Trunkline* sought to abandon facilities that were already functioning as gathering facilities as a result of the construction of a processing plant upstream of the facilities.²⁰

¹⁹ *Southern Natural Gas Co.*, 126 FERC ¶ 61,246, at P 43 (2009).

²⁰ In *Trunkline*, the Commission cited prior orders in which the Commission determined that the abandonment of facilities properly found to perform a gathering function was in the public interest even where the existing shippers might have to pay both a gathering and a transmission rate. *Trunkline*, 81 FERC ¶ 61,351 at n.15, citing *Williams Natural Gas Co.*, 74 FERC ¶ 61,103 (1996); *Williams Natural Gas Co.*, 71 FERC ¶ 61,115 (1995), *order on reh'g*, 75 FERC ¶ 61,036 (1996); *Panhandle Eastern Pipe Line Co.*, 71 FERC ¶ 61,201 (1995). However, while the Commission limited its finding in each of those orders to how the subject facilities would function if the

(continued...)

40. Furthermore, while Transco and Copano assert that there would be no additional processing costs at the Houston Central Plant and that Copano would construct new facilities to address the protestors' concerns over continued access to Transco's system at Station 30, the Commission would have no jurisdiction to ensure that Copano follows through with its pronouncements.²¹ Finally, as protestors emphasize, Transco does not allege that it is not recovering the costs of operating and maintaining the lateral.

41. In light of the foregoing considerations, we find that Transco has failed to support its contention that the McMullen Lateral is underutilized to the extent that it is no longer essential to the provision of Transco's open-access interstate transportation service. We further find that Transco's proposal lacks evidence of benefits sufficient to support a finding that the public convenience or necessity permits customers currently receiving service from Transco under NGA section 7 to be forced to discontinue such service and accept non-jurisdictional gathering service from Copano. Accordingly, we will deny Transco's request for section 7(b) authority to abandon the McMullen Lateral by sale to Copano.

abandonment proposal was approved so that they could be acquired by a gathering company, the discussions in the orders indicate that the primary function of the facilities at issue was already gathering, notwithstanding that they were still part of the interstate pipelines' systems. In any event, in proceedings involving protesting firm shippers or, as in this case, where customers have not had the option of signing up for firm service on the facilities at issue, the Commission believes rate concerns should also be given weight in balancing factors bearing on the public interest. As the Commission pointed out in *Transco II*, while the protesting customers are not firm shippers, the costs of the facilities at issue nevertheless 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. 110 FERC ¶ 61,337 at P 33.

²¹ In addition, similar to the Commission's observations in *Transco II* in which Transco sought to sell facilities including the McMullen Lateral to a gathering company, the Commission cannot require a gatherer such as Copano to offer service that would replicate the quality of service IT feeder shippers now receive as customers of Transco. Transco's service is subject to the Commission's open-access regulations that require interstate pipelines to implement procedures for allocation of capacity, to provide equal and timely access for all shippers to information relevant to the availability of open-access transportation services, to post available capacity electronically, to offer flexible receipt and delivery points, and to meet other service requirements. 110 FERC ¶ 61,337 at n. 26.

B. Request for Determination of Lateral's Jurisdictional Status

42. Applicants request that the Commission find under its primary function test that, upon abandonment and modification by Copano, the McMullen Lateral's primary function would be non-jurisdictional gathering. As discussed above, when an interstate pipeline's proposed abandonment of facilities is protested, the Commission first analyzes the function of the facilities as they currently operate as part of the interstate pipeline's system, not how they would operate if the proposed abandonment were approved and the facilities were acquired and operated by another company as part of the latter's existing system or as a stand-alone system. In this case, we have determined that the McMullen Lateral continues to provide essential interstate transportation service and abandonment is not permitted by the public convenience and necessity. Therefore, we need not reach a decision as to whether the McMullen Lateral with Copano's planned modifications would perform a gathering function.

The Commission orders:

(A) Transco's request for authorization to abandon the McMullen Lateral is denied.

(B) The request for a finding that the McMullen Lateral would be a non-jurisdictional gathering facility if transferred to Copano is dismissed as moot.

(C) The answers and replies to comments, protests, answers, and responses are accepted to the extent discussed herein.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.