

142 FERC ¶ 61,123
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

ConocoPhillips Company

Docket No. RP13-128-001

v.

Texas Eastern Transmission, LP

ORDER DENYING REQUEST FOR REHEARING

(Issued February 21, 2013)

1. On November 26, 2012, ConocoPhillips Company (ConocoPhillips) filed a request for rehearing of the Commission's October 26, 2012 Order dismissing ConocoPhillips's complaint against Texas Eastern Transmission, LP (Texas Eastern).¹ ConocoPhillips's complaint alleged that Texas Eastern's planned route for its Texas Eastern Appalachian to Market Expansion Project (TEAM 2014 Project) would result in unnecessary construction costs and unnecessary disruption of the environment. ConocoPhillips requested that the Commission suspend Texas Eastern's ongoing pre-filing proceeding on its planned TEAM 2014 Project in Docket No. PF12-19-000 and order an evidentiary, trial-type hearing on the issues raised in ConocoPhillips's complaint regarding Texas Eastern's planned route and the reverse open season conducted by Texas Eastern. The Commission dismissed the complaint, noting that it would be appropriate for ConocoPhillips to make its views known in the pre-filing process and, as necessary, raise the issues in any subsequent certificate proceeding addressing an application seeking authority to construct the contemplated TEAM 2014 project.²

2. On rehearing, ConocoPhillips argues that the Commission erred by dismissing ConocoPhillips's complaint. ConocoPhillips contends that administrative efficiency would be achieved and prejudice avoided if the Commission ruled on ConocoPhillips's assertions before Texas Eastern files an application for certificate authorization. For the reasons discussed below, the Commission denies ConocoPhillips's request for rehearing.

¹ *ConocoPhillips v. Texas Eastern*, 141 FERC ¶ 61,071 (2012).

² *Id.* P 4.

Background

3. The TEAM 2014 Project contemplates an expansion of the existing Texas Eastern natural gas pipeline system between Clarington, Ohio, and Lambertville, New Jersey. Currently, Texas Eastern runs a mainline system from Clarington, Ohio, to Uniontown, Pennsylvania. At Uniontown, Pennsylvania, Texas Eastern's mainline divides into separate northern ("Penn-Jersey") and southern ("Capacity Restoration Project" or "CRP") pipeline systems, with the two pipeline paths rejoining into a single mainline system at Lambertville, New Jersey. Texas Eastern is considering an expansion of capacity along the northern Penn-Jersey system.

4. Texas Eastern held an open-season from January 17 through February 17, 2012, inviting potential customers to indicate their interest in new pipeline capacity between Clarington and Lambertville. A reverse open-season was held March 12 through 30, 2012, asking existing shippers if they wanted to release all or a portion of their current firm transportation capacity in order to potentially reduce the scope of the construction that would be necessary to implement the contemplated TEAM 2014 project.

5. In response to the reverse open-season, ConocoPhillips offered to turn back 395,000 dekatherms per day (Dth/d) of firm capacity, primarily along Texas Eastern's southern CRP system.³ On April 20, 2012, Texas Eastern accepted 112,500 Dth/d of ConocoPhillips's turn-back offer for the contract path from Clarington to Uniontown. Texas Eastern did not accept the entire amount of the turn-back capacity offered because the "portion of the project extending in an easterly direction will involve an expansion of Texas Eastern's Penn-Jersey systems" and the "remainder of [ConocoPhillips's] primary path does not follow the expansion path for the project."⁴

6. On July 9, 2012, pursuant to section 157.21(b) of the Commission's regulations,⁵ Texas Eastern filed a request to initiate a pre-filing process for the TEAM 2014 Project, expressing an intent to expand capacity of its system along the Penn-Jersey path. On July 13, 2012, the Commission's Office of Energy Projects approved Texas Eastern's request and established Docket No. PF12-19-000 for the pre-filing process. Texas

³ On November 21, 2009, the Commission granted Texas Eastern a certificate authorizing an expansion project which included, inter alia, the addition of compression facilities to increase the capacity of its southern CRP system in order to provide an additional 455,000 Dth/d service for several shippers. One of those shippers was ConocoPhillips, which had entered into a precedent agreement for 395,000 Dth/d of firm transportation service on the expansion. *Texas Eastern*, 129 FERC ¶ 61,151 (2009).

⁴ ConocoPhillips's Complaint, Exhibit E, at 1 (Oct. 1, 2012).

⁵ 18 C.F.R. § 157.21(b) (2012).

Eastern is currently engaged in the pre-filing process and anticipates filing an application for certificate authorization in early 2013.

7. On October 1, 2012, ConocoPhillips filed a complaint challenging the routing and sizing of the planned TEAM 2014 Project. The complaint alleged that an expansion of the Penn-Jersey section would result in over-building, higher construction costs, and greater environmental impacts. ConocoPhillips argued for expanding the CRP section instead, insisting this would be significantly less costly, would be environmentally preferable, and would enable Texas Eastern to accept more turn-back capacity.

8. In its October 26, 2012 Order, the Commission dismissed ConocoPhillips's complaint, noting that it would be impractical for the Commission to undertake to assess the merits of ConocoPhillips's assertions that the expansion of capacity along Texas Eastern's CRP path would be a preferable means of meeting the needs of the prospective TEAM 2014 Project shippers until Texas Eastern actually filed an application that establishes and describes a proposed route and facilities for the TEAM 2014 Project.

Discussion

9. On rehearing, ConocoPhillips contends that the Commission erred by dismissing ConocoPhillips's complaint as premature and argues that the Commission should rule on the capacity turn-back issues now in order to ascertain viable alternatives for Texas Eastern's planned expansion.⁶ Specifically, ConocoPhillips states that the "most administratively efficient manner to proceed with the TEAM 2014 Project, with minimal prejudice to all parties, is for the Commission to rule on (or set for hearing) the issues in the Complaint regarding capacity turn-back prior to consideration of route alternatives in the pre-filing process, and prior to Texas Eastern filing for a certificate."⁷ Otherwise, ConocoPhillips asserts, Texas Eastern is likely to file a certificate application proposing expansion of the northern Penn-Jersey path's capacity, and the Commission could "ultimately rule in such a certificate proceeding that Texas Eastern should be required to accept ConocoPhillips's turn-back capacity and expand along the environmentally preferable CRP path."⁸ In that event, ConocoPhillips argues Texas Eastern would have to redesign its project, notify a different set of landowners, state agencies, and other stakeholders, initiate a new pre-filing process, and prepare and file a new certificate application.⁹

⁶ ConocoPhillips's Request for Rehearing at p. 2.

⁷ *Id.* at p. 7.

⁸ *Id.* at p. 8.

⁹ *Id.* at pp. 8-9.

10. It is within the Commission's discretion to determine how its administrative resources may be most efficiently utilized.¹⁰ We are not persuaded by ConocoPhillips's argument that administrative efficiency would be somehow served by the Commission's adopting a procedure in which it would undertake to "pre-determin[e] . . . the route [for Texas Eastern's contemplated expansion] prior to a certificate application" for the project even being filed.¹¹ ConocoPhillips ultimately seeks to convince the Commission that a Texas Eastern project to serve the TEAM 2014 customers that utilizes a greater amount of ConocoPhillips's turn-back capacity and expands the capacity of the CRP path is preferable to a project which utilizes a lesser amount of ConocoPhillips's turn-back capacity and expands the capacity of the Penn-Jersey path. However, ConocoPhillips urges the Commission to make this comparison, on the merits, in a proceeding, and at a time, where there is no application for any project pending before the Commission. We do not believe that such an effort would be an efficient use of the Commission's, or any other participant's, resources.

11. The review of the route of a proposed pipeline project – its potential impacts and alternatives – is one of the primary considerations in the Commission's decision on whether a proposed project merits certificate authorization, yet ConocoPhillips is requesting that the Commission reach a determination on this integral issue prior to the filing of an application. While the Commission's staff or others may comment on routing options in pre-filing discussions, the Commission does not pre-determine a preferable route prior to the filing of a certificate application.¹² ConocoPhillips alleges that an expansion of the capacity of the CRP path would have reduced environmental impacts as compared to a Penn-Jersey path expansion. However, the Commission cannot make findings regarding the potential environmental impacts of any route prior to the completion of an environmental review. Preparing such a review is resource intensive; we do not believe it would be an efficient use of the Commission's limited resources to complete such a review in the absence of a filed application.

¹⁰ See *Florida Municipal Power Agency v. FERC*, 315 F.3d 362, 366 (D.C. Cir. 2003), observing that "[a]dministrative agencies enjoy 'broad discretion' to manage their own dockets;" (citing *Telecommunications Resellers Assoc. v. FCC*, 141 F.3d 1193, 1196 (D.C. Cir. 1998)).

¹¹ See ConocoPhillips's Request for Rehearing at p. 9.

¹² See *Southern California Edison Company*, 124 FERC ¶ 61,157, at P 17 (2008) ("It would be premature for us to determine during pre-filing [i.e., before an application is filed] what alternatives may properly be filed with us. The pre-filing period is a time for a potential applicant to begin the process of gathering the information needed to support an application; it is not a time for us to make determinations to rule out [or in] certain alternatives.").

12. The issue of whether Texas Eastern properly solicited and accepted offers from existing customers to turn back capacity in connection with a proposed project is also an issue which we believe can best, and perhaps only, be considered within the context of an actual, proposed project, i.e., one for which a certificate application has actually been filed. While Commission policy requires that a pipeline planning to file an application for construction authorization hold an open-season to solicit offers from existing customers to turn back capacity that could allow down-sizing of the project or obviate the need for the project, the Commission's reverse open-season policy does not require a pipeline company "to take back customers' *unrelated*, unwanted capacity simply because it wants to construct new facilities somewhere else on its system."¹³ The Commission does not accept ConocoPhillips's argument that it would be at all efficient for the Commission to undertake to make such a case specific inquiry¹⁴ independent of an actual certificate proceeding.

13. As discussed in the October 26 Order, the Commission encourages pipelines to use the pre-filing process, as this allows Commission staff, prospective applicants, agencies, and interested individuals to work together prior to a prospective applicant's filing of an application for certificate authorization.¹⁵ Prospective applicants can use the

¹³ *Columbia Gas Transmission Corporation & Texas Eastern Transmission Corporation*, 79 FERC ¶ 61,160, at 61,759 (1997) (italics added).

¹⁴ *See, e.g., PG&E Gas Transmission, Northwest Corporation*, 84 FERC ¶ 61,204, at 62,001 (1998) (PG&E-NW) (a pipeline company planning to file an application for construction authorization to increase system capacity is only required to consider and evaluate offers of turn-back capacity which are similar to the proposed expansion facilities in terms of location, term, and price; thus, the Commission found PG&E-NW should be not required to accept a shipper's capacity turn-back offer because it could prevent PG&E-NW from constructing minor facilities to maximize the utilization of all parts of its system and also would result in PG&E-NW's economic loss because the shipper seeking to turn back capacity had a remaining contract term longer than the contract terms to which expansion shippers had agreed and its contract was for a transportation path longer than the portion of the pipeline system on which capacity would be increased to provide service for expansion shippers under their contracts). *See also Cheyenne Plains Gas Pipeline Company, LLC*, 121 FERC ¶ 61,273, at P 35 (2007) (a pipeline company must offer shippers an opportunity to release capacity prior to filing an application but is not required to accept turn-back offers that would result in the pipeline's economic loss because the shipper seeking to release capacity is unwilling to pay the difference between its contract rate and the rate that the expansion shipper has agreed to pay for capacity).

¹⁵ October 26, 2012 Order, 141 FERC ¶ 61,071 at P 3.

pre-filing procedures to compile information necessary for an application and to identify and seek to resolve potential issues before the application is filed. All the participants in a pre-filing process are provided the opportunity to express their views. The Commission's staff and other participants often recommend changes to aspects of companies' contemplated projects, and companies frequently agree to make route changes and other project modifications in response to pre-filing discussions.¹⁶ During this time, however, neither the Commission nor its staff takes any position on the merits of a potential application.¹⁷

14. We note that after issuance of the October 26, 2012 Order dismissing its complaint, ConocoPhillips filed comments expressing the same concerns in Texas Eastern's pre-filing process in Docket No. PF12-19-000. We further note that Commission staff has requested that ConocoPhillips provide flow diagrams and hydraulic flow models for the different alternatives set forth in the study prepared by Gas Supply Consulting, Inc. (GSC) for ConocoPhillips.¹⁸ Staff also has requested Texas Eastern to provide flow diagrams and hydraulic flow models and other information for each of the alternatives identified in the GSC study submitted by ConocoPhillips and to discuss the operational feasibility of those alternatives, how they would affect project costs and timing, and how well they would meet the needs of the TEAM 2014 Project shippers.¹⁹

15. Regardless of which route Texas Eastern may ultimately propose in an application, the Commission could find that Texas Eastern should have agreed to accept more of the capacity ConocoPhillips offered to turn back during the open season. Therefore, we do not see that ConocoPhillips has been prejudiced by the dismissal of its complaint. Once an application has been filed, all interested persons will have ample opportunity to fully participate in the proceeding. Accordingly, we deny ConocoPhillips's request for rehearing of our October 26, 2012 Order dismissing its complaint requesting that we

¹⁶ *Id.* at footnote 5 (citing examples of pre-filing proceedings in which discussions resulted in the pipeline companies making changes to their planned routes before filing certificate applications).

¹⁷ *See Regulations Implementing Energy Policy Act of 2005; Pre-Filing Procedures for Review of LNG Terminals and Other Natural Gas Facilities*, FERC Stats. & Regs., Proposed Regulations 2004 – 2007 ¶ 32,586, at P 8 (2005).

¹⁸ *See* staff's January 18, 2013 letter to ConocoPhillips in Docket No. PF12-19-000 requesting additional information from ConocoPhillips to support its assertions in its comments and GSC study filed on November 2, 2012 in response to NOI.

¹⁹ *See* staff's January 18, 2013 letter to Texas Eastern in Docket No. PF12-19-000 requesting additional information regarding its project as currently planned and the alternatives suggested in the GSC study filed by ConocoPhillips.

suspend Texas Eastern's pre-filing process and order a full evidentiary, trial-type hearing on the issues raised in the complaint.

The Commission orders:

ConocoPhillips's request for rehearing of the October 26, 2012 Order in this proceeding is denied, for the reasons discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.