

147 FERC ¶ 61,041
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Trunkline Gas Company, LLC

Docket No. CP12-491-001

ORDER DENYING REHEARING

(Issued April 17, 2014)

1. On November 7, 2013, the Commission issued an order granting Trunkline Gas Company, LLC's (Trunkline) request under section 7(b) of the Natural Gas Act (NGA)¹ to abandon by sale to an affiliate approximately 770 miles of mainline transmission pipeline and appurtenant facilities for conversion to oil pipeline transmission service.² On December 9, 2013, the Michigan Public Service Commission (Michigan PSC) and Consumers Energy Company (Consumers) filed requests for rehearing. For the reasons set forth below, the Commission will deny the requests for rehearing.

Background

2. Trunkline, a limited liability company organized and existing under the laws of Delaware, is a natural gas company as defined by section 2(6) of the NGA engaged in the business of transporting natural gas in interstate commerce.³ Trunkline's interstate pipeline system extends from Texas, Louisiana, and production areas in the Gulf of Mexico, northeast to a principal terminus at the Indiana-Michigan state line near Elkhart, Indiana.

¹ 15 U.S.C. § 717f(b) (2012).

² *Trunkline Gas Co., LLC*, 145 FERC ¶ 61,108 (2013) (November 7 Order).

³ 15 U.S.C. § 717a(6) (2012).

3. On July 26, 2012, Trunkline filed an application to abandon by sale to an affiliate⁴ approximately 770 miles of mainline transmission pipeline and appurtenant facilities from Buna, Texas to the Tuscola, Illinois compressor station, and abandon in place twelve compressor units. The abandonment would reduce Trunkline's certificated system-wide mainline transportation service level from 1,555 thousand dekatherms (MDth) per day to 958 MDth per day through its Independence, Missouri compressor station, and from 1,109 MDth per day to 920 MDth per day out of the Texas portion of its system through the Longville, Louisiana compressor station.⁵

4. The November 7 Order authorized Trunkline's proposed abandonment. In doing so, the Commission found that there will be no significant adverse impacts to existing firm or interruptible services as a result of the abandonment. The Commission found that the lack of customer interest in contracting for firm capacity on Trunkline's system at maximum rates during Trunkline's three open seasons supports Trunkline's assertion that its mainline capacity is underutilized.⁶ Further, the Commission found that the facilities Trunkline seeks to abandon are not needed to ensure continuity of service.⁷

Discussion

A. Public Convenience or Necessity Determination

5. Because the pipeline facilities Trunkline proposes to abandon are certificated facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the abandonment is subject to the requirements of section 7(b) of the NGA. Section 7(b) provides:

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the

⁴ Trunkline's application states that its parent company, Energy Transfer Equity, L.P. would designate the affiliate. Energy Transfer Equity, L.P. is the parent of Southern Union Company, which indirectly owns 100 percent of the equity interest in Trunkline.

⁵ November 7 Order, 145 FERC ¶ 61,108 at P 4.

⁶ *Id.* P 51.

⁷ *Id.* P 63.

continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.⁸

6. When considering the criteria for abandonment under section 7(b), two important principles apply: (1) a pipeline which has obtained a certificate of public convenience and necessity to serve a particular market has an obligation, deeply embedded in the law, to continue to serve; and (2) the burden of proof is on the applicant to show that the public convenience or necessity permits abandonment, that is, that the public interest will in no way be disserved by abandonment.⁹

7. The Commission examines abandonment applications on a case-by-case basis.¹⁰ In deciding whether a proposed abandonment is warranted, the Commission considers all relevant factors, but the criteria vary as the circumstances of the abandonment proposal vary. Among the factors that the Commission has considered in reviewing a request for abandonment by sale are: (1) the needs of the two natural gas systems and the public markets they serve; (2) the economic effect on the pipelines and their customers; and (3) the presumption in favor of continued service.¹¹ The central focus of a NGA section 7(b) abandonment evaluation is not whether there is any harm to any narrow interest. Rather, the Commission takes a broad view in abandonment proceedings and evaluates proposed abandonment applications against the benefits to the market as a whole.¹²

⁸ 15 U.S.C. § 717f (2012).

⁹ See *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204, 214 (D.C. Cir. 1960); *Transcontinental Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1328 (D.C. Cir. 1973).

¹⁰ *Transwestern Pipeline Co. L.L.C.*, 140 FERC ¶ 61,147, at P 12 (2012).

¹¹ *Southern Natural Gas Co.*, 126 FERC ¶ 61,246, at P 27 (2009).

¹² See *Southern Natural Gas Co.*, 50 FERC ¶ 61,081, at 61,222 (1990). See also *Consolidated Edison Co. v. FERC*, 823 F.2d 630, 643 (D.C. Cir. 1987) (“We agree with FERC that the ‘public convenience or necessity’ language of the NGA’s abandonment provision envisions agency policy-making to fit the regulatory climate.”).

1. Impact on Service to Current Customers

8. Consumers¹³ and the Michigan PSC¹⁴ assert that the Commission erred in concluding that the proposed abandonment will not impact the ability of Trunkline to meet its firm contractual obligations.¹⁵ Consumers and the Michigan PSC state that the November 7 Order does not provide a sufficient evidentiary basis for concluding that Trunkline can satisfy its current and future firm commitments.¹⁶ Consumers states that the Commission failed to explain how its engineering analysis confirms Trunkline's assertion that the proposed abandonment would not impact its firm service.¹⁷

9. The Michigan PSC also asserts that the November 7 Order inadequately addressed the impacts that the proposed abandonment would have on interruptible capacity.¹⁸ The Michigan PSC contends that Commission staff should have required Trunkline to quantify the volume of interruptible capacity that is currently utilized instead of relying on Trunkline's representation that it expects to be able to continue to provide interruptible transportation in addition to providing contracted-for firm service.¹⁹

10. The November 7 Order appropriately focused on the impacts, if any, of the proposal on firm service to customers. The Commission is justified in relying on a lack of detriments to firm customers when determining whether to grant abandonment authority. Firm customers pay most of a pipeline's fixed costs through reservation charges, regardless of whether the shippers use their reserved capacity or not. In return, pipelines are under an obligation to provide service to firm customers that may be abridged only in very limited circumstances. Interruptible customers pay only for the services they actually receive. Interruptible customers do not pay for fixed costs attributable to unused capacity. A pipeline's service to interruptible customers is secondary to the firm shippers' service. For these reasons, the Commission's primary

¹³ Consumers is a public utility and a firm transportation customer of Trunkline.

¹⁴ The Michigan PSC is the state agency with jurisdiction over rates, charges, and conditions of service for the retail sale of natural gas and electricity in Michigan.

¹⁵ Consumers Rehearing Request at 5; Michigan PSC Rehearing Request at 9.

¹⁶ *Id.*

¹⁷ Consumers Rehearing Request at 5.

¹⁸ Michigan PSC Rehearing Request at 9.

¹⁹ Michigan PSC Rehearing Request at 8 (citing November 7 Order, 145 FERC ¶ 61,108 at P 26).

focus is on the impacts of abandonment on firm customers, as compared to impacts on interruptible customers. Nonetheless, because Michigan PSC and Consumers have raised concerns regarding the impact of the proposed abandonment on interruptible service, we address those concerns herein.

11. Commission staff reviewed the flow diagrams and flow information submitted with Trunkline's application, as well as additional data filed by Trunkline. Our review of Trunkline's data confirm Trunkline's conclusion that the proposed abandonment would not adversely impact Trunkline's ability to its firm service obligations.²⁰ In particular, Commission staff's February 19, 2013 data request asked Trunkline to support its statement that its system has sufficient capacity to meet all of its firm transportation commitments following the proposed abandonment by submitting steady state and transient hydraulic pipe flow simulation studies of Trunkline's system for the upcoming winter season (November 1, 2013 through March 30, 2014) and summer season (April 1, 2014 through October 31, 2014). In response, Trunkline submitted supplemental information demonstrating that there will be sufficient capacity on its system to meet all firm transportation commitments.²¹

12. The November 7 Order states that our engineering analysis confirms that the abandonment will not impact Trunkline's ability to meet its firm contractual obligations.²² Specifically, Trunkline's flow data indicates that after abandonment, there will be sufficient capacity on Trunkline's system to meet Trunkline's total winter and summer season firm service obligations of 933 MDth per day and 842 Dth per day respectively.²³ Commission staff reviewed the pleadings and supplemental information, and where additional information was required for a thorough review, requested additional information in four separate data requests. Consumers and the 43 other parties and commenters to the proceeding offered no evidence that contradicts the information provided by Trunkline in its application, answer to protests, and responses to Commission data requests, nor did Consumers, the protestors, or commenters identify any flaws or errors contained in the information provided by Trunkline. Consumers, in

²⁰ Trunkline filed data responses on November 7 and 8, 2012, December 10, 2012, January 22, 2013, and February 4 and 26, 2013 in response to Commission staff's October 24, 2012, November 29, 2012, January 9, 2013, and February 19, 2013 data requests.

²¹ November 7 Order, 145 FERC ¶ 61,108 at P 29 (citing Trunkline February 26, 2013 Data Response, Attachment 1).

²² *Id.* P 32.

²³ Trunkline's February 26, 2013 Data Response No. 1.

its request for rehearing, has filed nothing to support a substantially different interpretation of the evidence in the record.

13. The November 7 Order notes that Trunkline expects to be able to continue to provide interruptible transportation in addition to providing contracted-for firm service, given that its actual pipeline utilization averages 45 to 70 percent of capacity under contract.²⁴ Since this contracted capacity will not be abandoned, these historic utilization rates imply that there will be significant unutilized capacity available for either capacity release or interruptible transportation services.

14. Consumers and the Michigan PSC have not supported their claims regarding potential impacts to firm or interruptible customers, nor has either identified any flaws or errors in the information provided by Trunkline. We deny rehearing on this issue.

2. Continuity of Service

15. Consumers asserts that the November 7 Order fails to address Consumers' concern that the proposed abandonment of compression would compromise Trunkline's ability to meet a pressure commitment that it has with Consumers at the Trunkline Elkhart interchange.²⁵

16. Trunkline stated that its system will continue to operate at the current pressure after abandonment and supported that position with its pipeline flow analysis.²⁶ Consumers has not identified any flaw in Trunkline's analysis. Consumers implied in its protest and repeats in its request for rehearing that it has a contractual right with Trunkline to a specific delivery pressure. The November 7 Order noted Trunkline's response that it is not required to deliver gas at any specific predetermined pressure.²⁷ In support of Trunkline's contention that there was no contractual pressure commitment between itself and Consumers, Trunkline cited its tariff, which states that "Deliveries of Gas at the Point of Delivery shall be at such pressure as may exist in Trunkline's pipeline at such point from time to time."²⁸ The November 7 Order concluded that Consumers' concerns were unsubstantiated.²⁹ On rehearing, Consumers has not provided information

²⁴ November 7 Order, 145 FERC ¶ 61,108 at P 26.

²⁵ Consumers Rehearing Request at 6.

²⁶ November 7 Order, 145 FERC ¶ 61,108 at P 55.

²⁷ *Id.* P 61.

²⁸ *Id.* P 62.

²⁹ *Id.* P 64.

establishing an obligation on the part of Trunkline to provide gas at a specific pressure, or even any evidence supporting its implication that there might be a credible problem regarding Trunkline's ability to maintain current pressure levels.

17. We affirm the November 7 Order's conclusion that there will be no continuity of service issues. Consumers' request for rehearing is denied.

3. Availability Of Capacity in the Future

18. The Michigan PSC contends that the November 7 Order inadequately addresses its concern about maintaining sufficient availability of capacity in the future. The Michigan PSC asserts that the multi-year average planning horizon for the development and construction of a natural gas pipeline suggests that any decision to abandon service on an existing pipeline should not be limited to a review of just the current system demands but instead should also evaluate numerous factors including the anticipated increased future reliance on natural gas throughout Trunkline's service territory.³⁰

19. The Michigan PSC asserts that the Commission failed to address the Midwest Independent Transmission System Operator's (MISO) concern that Trunkline's proposed abandonment may exacerbate the potential for natural gas curtailments to power generation facilities in the MISO service area.³¹ Further, the Michigan PSC challenges the November 7 Order's characterization of its concern about the availability of future capacity as speculative and beyond the scope of the abandonment proceeding. The Michigan PSC states that, by definition, any discussion of future demand is speculative.

20. The willingness of customers to sign contracts for firm service at non-discounted rates is an appropriate indicator for forecasting future demand for increased service. The rehearing parties had the opportunity to contract for firm service during the three open seasons held by Trunkline and chose not to do so. As stated in the November 7 Order, we will not require a pipeline to retain in reserve, and existing firm shippers to financially

³⁰ Michigan PSC Rehearing Request at 6 (referencing prior comments reporting an average seven-year planning horizon submitted during the Commission's AD12-12 technical conference).

³¹ *Id.* at 7. MISO projects that approximately 12,000 megawatts of existing coal-fired capacity will be retired as a result of the Mercury and Air Toxics Standards regulations. *Id.* at 6 (citing data from a MISO report titled, *Embedded Natural Gas-Fired Electric Power Generation Infrastructure Analysis: An Analysis of Daily Pipeline Capacity Availability* (MISO Report)).

support, unused transmission capacity awaiting the arrival of potential firm demand that may or may not materialize.³²

21. The November 7 Order explains that the MISO Report that contains the analysis projecting the retirement of existing coal-fired capacity explicitly states that pipeline capacity is affected by a number of operational capabilities and factors including shale gas developments impacting pipeline flow patterns, infrastructure build-out, backhaul opportunities, structural contractual issues, pipeline utilization and utilization rates, integration of market-area storage capacity versus mainline capacity, secondary capacity markets, asset management arrangements and other contracting options, and discretionary pipeline operations and flexibilities.³³

22. As stated in the November 7 Order, the Commission considers the continuity of existing shippers' service to be the primary issue in deciding whether to authorize an abandonment.³⁴ The apparent lack of interest by existing or potential shippers in contracting for the capacity that Trunkline proposed to abandon, as demonstrated by their failure to participate in the three open seasons held by Trunkline, invalidates the general concerns expressed concerning the negative future impacts of the abandonment on customers in Michigan. We affirm our conclusion that the lack of interest in obtaining additional capacity on a long-term basis, except at deeply discounted rates, suggests a belief on the part of the market that alternatives will exist to serve the future needs of Michigan. The Michigan PSC's request for rehearing is denied.

4. Abandonment Conclusion

23. The Michigan PSC contends that the Commission inadequately balanced the benefits and detriments of the proposed abandonment.³⁵ In particular, the Michigan PSC contends that the Commission erroneously limited its analysis to fluctuations in firm transportation capacity contracts and ignored evidence in the record of the increased use of interruptible transportation capacity contracts.³⁶ The Michigan PSC asserts that the Commission failed to recognize that it is understandable that a temporary reduction in the

³² November 7 Order, 145 FERC ¶ 61,108 at P 75.

³³ *Id.* at footnote 102 (citing MISO Report).

³⁴ *Id.* P 71.

³⁵ Michigan PSC Rehearing Request at 2.

³⁶ *Id.* at 8 (restating Consumers' concern expressed in the underlying abandonment proceeding that Trunkline's description of Consumers' reduction in firm transportation service does not accurately reflect Consumers' level of reliance on Trunkline's system).

market value of firm transportation capacity could cause existing firm shippers to reduce their firm contracts and rely instead on the availability of interruptible capacity at reduced prices.³⁷ The Michigan PSC asserts that fluctuations from time to time in the demand for pipeline capacity are to be expected, and contends that the availability and pricing of Trunkline's capacity is a function of the market and should not serve as a basis for concluding that such capacity is no longer needed.³⁸

24. Consistent with Commission precedent, the November 7 Order balanced potential benefits, harms, and continuity of service factors in the context of Trunkline's proposal. The November 7 Order found that while Consumers' assertion that its reliance on Trunkline's capacity through the use of interruptible service has grown since 2003, the primary factor in our balancing analysis was Consumers' unwillingness to contract for firm capacity at undiscounted tariff rates during Trunkline's open seasons, including an open season held after Trunkline filed its abandonment application.³⁹ While, as argued by the Michigan PSC, it is understandable that shippers may choose to forgo paying the reservation charges associated with firm service when there is ample interruptible capacity available, a pipeline is not required to retain facilities otherwise unnecessary for the continued transportation of natural gas in interstate commerce for the purpose of ensuring the continued availability of discounted service to those who do not place a sufficient value on the service to contract for it on a firm basis at the established recourse rate.⁴⁰ The section 7(b) public convenience or necessity standard does not allow the Commission to approve any abandonment that will cause the public interest to be

³⁷ *Id.* at 4.

³⁸ *Id.* at 4-5.

³⁹ November 7 Order, 145 FERC ¶ 61,108 at P 51.

⁴⁰ See *Trunkline Gas Co.*, 94 FERC ¶ 61,381 (2001). Trunkline proposed to abandon a 720-mile-long loop segment of its main transmission line by sale to a company that would convert the pipeline to transport petroleum products. The Commission approved the abandonment only after finding that it would not adversely affect Trunkline's ability to meet its firm service obligations. The Commission also considered the concerns of interruptible shippers that were receiving service at discounted rates and had protested on the ground, inter alia, that Trunkline's sale of the loop would reduce the amount of capacity available for interruptible service and, thus, Trunkline's incentive to discount its interruptible rate as steeply in the future. The Commission did not dispute the possibility that Trunkline would no longer have sufficient capacity to satisfy all interruptible service requests. However, the Commission approved Trunkline's abandonment proposal, observing that investors "do not construct an interstate pipeline or continue it in operation to serve only interruptible customers at discounted rates." 94 FERC at 62,421.

disserved by the abandonment, but does not require a showing of benefits from the abandonment.⁴¹ Nothing cited by the rehearing parties calls into question the balancing of our analysis in the November 7 Order. Thus, the November 7 Order properly finds that the public interest will not be disserved by the abandonment.

B. Sufficiency of Evidence in the Record

25. Consumers and the Michigan PSC state that the Commission erred in concluding that there is no need for an evidentiary trial-type hearing or technical conference.⁴² The Michigan PSC states that such a forum is appropriate for analyzing whether the abandonment would: (1) result in a reduction in system pressures; (2) increase the need for costly new compression in the future; or (3) impact the natural gas market by reducing access to diverse supplies. The Michigan PSC also requested a hearing or technical conference to resolve other issues including: (1) whether ratepayers should be entitled to any proceeds in excess of net depreciated original cost from a sale of the abandoned facilities; (2) whether the transfer of these facilities to Trunkline's affiliate provides a true indication of the market value of such facilities; (3) exactly what level of long- or short-term firm commitment is needed to maintain the pipeline capacity in light of the existing firm and interruptible revenues the pipeline has collected as compared to its overall cost of service.⁴³

26. Section 7(b) of the NGA provides for a hearing when an applicant seeks authorization to abandon facilities subject to the jurisdiction of the Commission, but does not require that all such hearings be trial-type hearings. An evidentiary trial-type hearing

⁴¹ *Transcontinental Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1328 (D.C. Cir. 1973) (citing *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204, 214) summarized the following principles:

(1) a pipeline which has obtained a certificate of public convenience and necessity to serve a particular market has 'an obligation, deeply embedded in the law, to continue service,' and (2) the burden of proof is on the applicant for abandonment to show that the 'public convenience and necessity' permits abandonment, that is, that the public interest 'will in no way be disserved' by abandonment.

⁴² Consumers Rehearing Request at 1.

⁴³ Michigan PSC Rehearing Request at 11-12.

is only necessary when material issues of fact are in dispute that cannot be resolved on the basis of the written record.⁴⁴

27. We have satisfied the hearing requirement by affording all interested parties a full and complete opportunity to present their views to the Commission through numerous written submissions. The November 7 Order appropriately concluded that the written evidentiary record provided a sufficient basis upon which to resolve the factual issues raised by Michigan PSC and Consumers in this case.⁴⁵ Aside from the concern of maintaining pipeline system pressure, as addressed above, the Michigan PSC and Consumers allege no error with respect to the findings made in the November 7 Order for any of the issues it contends should be addressed in a formal hearing. We find that there is no material issue of fact that could not be resolved on the basis of the written record in this proceeding. Thus, we will deny rehearing on this issue.

28. The Michigan PSC states that in declining to convene a technical conference in this proceeding, the Commission failed to follow the approach employed in the gas-electric coordination proceedings in Docket No. AD12-12.⁴⁶ There, the Commission conducted a series of technical conferences to facilitate natural gas-electric coordination in recognition of the fact that natural gas is expected to be relied on more heavily in future electricity generation. The fact that a technical conference was an appropriate forum to seek multi-sector input on gas-electric coordination does not mean that the same forum is required for an individual abandonment proceeding where there are no material issues of fact that cannot be resolved on the basis of the written record. Thus, we will deny rehearing on this issue.

C. Discovery and Cross Examination

29. Consumers asserts that the Commission's engineering analysis should not be considered substantial evidence and that the Commission should not rely on Trunkline's statements that it will be able to maintain flexibility and reliability for its existing customers because the intervenors did not have an opportunity to conduct discovery or subject the preparer to cross examination.⁴⁷

⁴⁴ See *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124, 128-29 (D.C. Cir. 1981); See also *El Paso Natural Gas Co.*, 136 FERC ¶ 61,180, at P 28 (2011).

⁴⁵ November 7 Order, 145 FERC ¶ 61,108 at P 83.

⁴⁶ Michigan PSC Rehearing Request at 7.

⁴⁷ Consumers Rehearing Request at 5.

30. In cases not set for hearing under Subpart E of Part 385 of our regulations, interested members of the public can file written comments or protests to the application or to the Commission's environmental analysis. To the extent the Commission needs additional information to address these comments or protests, or if intervenors seek information Commission staff deems relevant that a company does not provide, staff will, as here, issue its own data requests seeking such information from the applicant. Commission staff will review the comments or protests and information provided and the issues will be addressed in the Commission order.

31. The Commission's decision in this proceeding is based solely on evidence filed in the record. As discussed above, Commission staff submitted four data requests to Trunkline and Trunkline filed six responses to the requests. Trunkline's responses to the data requests, when combined with all of the other filings in this proceeding, provided the written evidentiary record necessary to analyze/evaluate the engineering issues present in this proceeding. Consumers has had adequate opportunity to challenge specific assertions made by Trunkline on the continuity of service issues, including the opportunity to draw the Commission's attention to what it believed to be any specific deficiencies in the record, and to present its own evaluation or analysis of the information in the record. The Commission has reviewed the various flow data and model simulations filed in the record by Trunkline and agrees that filed information indeed indicates that Trunkline would be able to continue to meet its firm contractual obligations after the proposed abandonment. Consumers states that it disagrees with Trunkline's assertions, and with the Commission's acceptance of them, but it does not point to any alleged mistakes or omissions in the various flow data and simulations filed in the record by Trunkline, nor has Consumers submitted any models of its own that indicate a different result. Consumers has not demonstrated that it was injured because it was unable to conduct discovery and cross-examine Commission staff in this proceeding.

The Commission orders:

As discussed above, Consumers' and the Michigan PSC's rehearing requests are denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.