

150 FERC ¶ 61,102
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP14-552-000

ORDER APPROVING ABANDONMENT AND ISSUING CERTIFICATE

(Issued February 19, 2015)

1. On September 22, 2014, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations,² requesting authorization to abandon, construct, and operate compression facilities at Compressor Station 245 in Herkimer County, New York (Station 245 Project). For the reasons discussed below, we will grant the requested authorizations, subject to appropriate conditions.

I. Background and Proposals

2. Tennessee is a limited liability company formed under the laws of the State of Delaware. Tennessee is engaged in the transportation and storage of natural gas in interstate commerce subject to the Commission's jurisdiction and is a "natural gas company" as defined by section 2(6) of the NGA.³ Tennessee's mainline transmission system extends in a northeasterly direction from Texas, through Louisiana, Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island, and Connecticut.

¹ 15 U.S.C. §§ 717f(b), (c) (2012).

² 18 C.F.R. Part 157 (2014).

³ 15 U.S.C. § 717a(6) (2012).

3. Currently, Tennessee operates nine compressor units with a combined certificated rating of 19,600 horsepower (hp)⁴ at Station 245 in Herkimer County, New York. The New York State Department of Environmental Conservation (NYSDEC) performed a review and analysis of compressor unit emissions at Station 245 and concluded that, due to its air emissions, a 3,500 hp Worthington ML unit (Unit 6A) should be removed from service or replaced by December 2015.⁵ Tennessee notes that the NYSDEC also concluded that three other of Tennessee's existing compressor units (Worthington UTC Units 3A, 4A, and 5A, each rated at 1,400 hp) could continue to operate within the current air emission limits.

4. In response to the NYSDEC findings, Tennessee proposes to abandon Unit 6A in place. In addition, Tennessee proposes to retire Units 3A, 4A, and 5A from active service, stating that while those units are not completely technologically obsolete, it is becoming more difficult to obtain replacement parts for them and repairs are growing more costly over time. Tennessee proposes to maintain and operate Units 3A, 4A, and 5A as redundant units. Tennessee states that retention of the three retired units will enable it to continue meeting its firm obligations when one or more of the active compressor units is out of service for repairs or maintenance. Tennessee states that the retired units will not be operated to create additional horsepower at the station.

5. Tennessee proposes to install, in place of the abandoned and retired units, a single Solar Taurus 70 turbine compressor unit with a site-rated capacity of 8,219 hp.⁶ As a

⁴ In its November 17, 2014 response to a data request, Tennessee states that Station 245 contains nine compressor units with a total of 19,600 hp. This corrects an error in its application, which states that Station 245 contains seven compressor units with a total of 19,700 hp.

⁵ Tennessee and the NYSDEC agree that there is no demonstrated technology that can effectively reduce the Worthington ML Unit's nitrogen oxides (NOx) emission rate below the current emission limit.

⁶ According to in the Interstate Natural Gas Association of America White Paper entitled "Waste Energy Opportunities for Interstate Natural Gas Pipelines" (February 2008), based on then-current technologies and power prices, there is potential for the recovery of waste heat energy at compressor stations with gas turbines over 15,000 hp and a 60 percent load factor. Upon completion of the project, Tennessee's Station 245 will have more than 15,000 hp of compression. However, the new gas turbine compressor unit is only site-rated at 8,219 hp and the existing units at Station 245 are reciprocating. Reciprocating compressors are not candidates for waste heat recovery because they have lower exhaust temperatures and flows and are smaller in size in comparison to gas turbine compressors. Thus, even though the total horsepower at Station 245 will be greater than the threshold determined in the White Paper, Station 245 may not be a viable candidate for waste heat recovery.

result of the proposed substitution of units, the total horsepower at Station 245 will increase by 519 hp, from 19,600 hp to 20,119 hp. However, Tennessee states that the increase in the rated capacity of the compressor unit will not affect its mainline capacity.

6. Tennessee states that all project construction will occur within the existing Station 245 property. The estimated cost of the proposed project is approximately \$32.2 million.

II. Notice and Interventions

7. Notice of Tennessee's application was published in the *Federal Register* on October 7, 2014 (79 Fed. Reg. 60,459). Atmos Energy Corporation, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (jointly), The National Grid Gas Delivery Companies, National Fuel Gas Distribution Corporation, New York State Electric and Gas Corporation, and PSEG Energy Resources and Trade, LLC filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁷

8. On November 24, 2014, the Environmental Protection Agency (EPA) filed comments on the proposed project, recommending that the Commission expand the scope of analysis for the Environmental Assessment (EA). The EPA's concerns are addressed in the EA.

III. Discussion

9. Since Tennessee proposes to construct, operate, and abandon facilities used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.⁸

A. Abandonment

10. Tennessee requests authorization to abandon in place compressor Unit 6A at Station 245. The compression proposed to be abandoned will be replaced by the proposed Solar Taurus compression unit, as discussed herein. Thus, we find the proposed abandonment to be permitted by the public convenience or necessity, subject to compliance with the environmental conditions described below.

⁷ 18 C.F.R. § 385.214(c) (2014).

⁸ 15 U.S.C. §§ 717f(b), (c), (e) (2012).

B. Application of the Certificate Policy Statement

11. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.⁹ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline facilities construction.

12. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

13. As discussed above, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from existing customers. The Certificate Policy Statement provides that it is not a subsidy for existing customers to pay for projects designed to improve existing service or the reliability of that service.¹⁰ The Station 245 Project will replace, with a single new unit, an existing unit that is unable to meet required emission levels, as well as three other units that are deteriorating and becoming more costly to maintain. Given these circumstances, we find that it is appropriate to allow Tennessee to recover the project's costs from existing customers.

⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

¹⁰ Certificate Policy Statement, 88 FERC ¶ 61,227 at n.12.

14. We also find that the proposal will not degrade service to Tennessee's existing customers. In addition, other pipelines and their captive customers will not be adversely impacted because the proposal is not intended to replace existing service on other pipelines. Further, no pipeline has protested the application.

15. The new compression facilities will be constructed within the existing Station 245 property. Thus, we find that Tennessee has designed the project to minimize adverse effects on landowners and surrounding communities.

16. Based on the benefits the project will provide to Tennessee's customers, the lack of adverse effects on customers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of Tennessee's proposal, subject to the conditions discussed below.

C. Environmental Analysis

17. On October 24, 2014, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

18. We received comments in response to the NOI from the EPA. The primary issues that EPA raised concern the project purpose and need, alternatives, cumulative impacts, segmentation, safety, pollution prevention, and environmental justice.

19. To satisfy the requirements of the National Environmental Policy Act, our staff prepared an EA for Tennessee's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, cultural resources, air quality, noise, safety, and alternatives. The EPA's comments in response to the NOI were addressed in the EA. The EA was placed into the public record on December 19, 2014.

20. Based on the analysis in the EA, we conclude that if constructed and abandoned in accordance with Tennessee's application and supplements, and in compliance with the environmental conditions in the appendix to this Order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

21. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws,

may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹¹

22. At a hearing held on February 19, 2015, 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, and all comments submitted, and upon consideration of the record,

The Commission orders:

(A) Tennessee is granted permission and approval, pursuant to section 7(b) of the NGA, to abandon facilities, as described herein and in the application.

(B) A certificate of public convenience and necessity is issued to Tennessee to construct and operate pipeline facilities as described and conditioned herein, and as more fully described in the application.

(C) The certificate authority granted in Ordering Paragraph (B) shall be conditioned on Tennessee's:

- (1) completion of authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all of the Commission's applicable regulations under the NGA including, but not limited to, Parts 154, 157, 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) compliance with the environmental conditions in the appendix to this Order.

(D) Tennessee shall notify the Commission's environmental staff by telephone, e-mail, or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Tennessee. Tennessee

¹¹ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply Corp. v. Pub. Serv. Comm'n of State of N.Y.*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission Sys., L.P.*, 52 FERC ¶ 61,091 (1990), *order on reh'g*, 59 FERC ¶ 61,094 (1992).

shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. Tennessee shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Tennessee must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility location shall be as shown in the EA. **As soon as they are available, and before the start of construction**, Tennessee shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

5. Tennessee shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all facility relocations, staging areas, contractor yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspaces allowed by the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan or minor field realignments per landowner needs and requirements that do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the authorization and before construction begins**, Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Tennessee must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Tennessee will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Tennessee will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;

- d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Tennessee will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Tennessee's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Tennessee will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Tennessee shall employ at least one EI. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Tennessee shall file updated status reports with the Secretary **on a monthly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Tennessee's efforts to obtain the necessary federal authorizations;

- b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Tennessee from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tennessee's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Tennessee shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Tennessee must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the construction work areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Tennessee has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. Tennessee shall file a noise survey with the Secretary **no later than 60 days** after placing the modified Compressor Station 245 in service. If a full load condition noise survey is not possible, Tennessee shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within six**

months. If the noise attributable to the operation of all of the equipment at Compressor Station 245 under interim or full horsepower load conditions exceeds a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any nearby noise-sensitive areas, Tennessee shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within one year** of the in-service date. Tennessee shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.