

151 FERC ¶ 61,130
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Black Hills Shoshone Pipeline, LLC
Energy West Development, Inc.

Docket No. CP15-32-000
Docket No. CP15-33-000

ORDER GRANTING ABANDONMENT
AND ISSUING CERTIFICATES

(Issued May 14, 2015)

1. On December 16, 2014, as supplemented on April 28, 2015, Black Hills Shoshone Pipeline, LLC (Black Hills) and Energy West Development, Inc. (Energy West) filed a joint application under section 7 of the Natural Gas Act (NGA)¹ requesting: (1) NGA section 7(b) authorization for Energy West to abandon by sale the Shoshone Pipeline, an approximately 30-mile-long, six-inch-diameter pipeline system located in Montana and Wyoming; (2) a certificate of public convenience and necessity under NGA section 7(c) and Part 157 of the Commission's regulations authorizing Black Hills to acquire and operate the Shoshone Pipeline and to provide service at the same rates, terms, and conditions currently applicable to service under Energy West's tariff; (3) a blanket certificate pursuant to Subpart F of Part 157 of the Commission's regulations for Black Hills to perform certain routine construction, operation and abandonment activities; and (4) a blanket certificate pursuant to Subpart G of Part 284 of the Commission's regulations authorizing Black Hills to provide open access firm and interruptible transportation services. The Commission will grant the requested authorizations, subject to conditions, as discussed below.

I. Background and Proposal

2. Energy West, a subsidiary of Energy West Incorporated, in turn, a subsidiary of Gas Natural, Inc., is a natural gas company, as defined by section 2(6) of the NGA. Energy West owns and operates the Shoshone Pipeline, an interstate natural gas pipeline subject to the Commission's NGA jurisdiction, and Glacier Pipeline, a non-jurisdictional gathering pipeline system. Black Hills, a subsidiary of Cheyenne Light, Fuel and Power

¹ 15 U.S.C. § 717f(c) (2012).

Company, in turn, a subsidiary of Black Hills Corporation, is a Wyoming corporation that is not currently a natural gas company regulated by the Commission.

3. The Shoshone Pipeline runs bi-directionally between an interconnection with Energy West Wyoming at Cody, Wyoming, and an interconnection with Northwestern Energy, Inc.'s intrastate pipeline near Warren, Montana. It serves one shipper, Energy West Resources, Inc., an affiliate of Energy West, and has the capacity to provide approximately 13,500 MMBtu per day of transportation service.

4. The Shoshone Pipeline was constructed in 1960 to transport non-jurisdictional liquids. In 2000, an affiliate of Energy West purchased it from Montana Power Company and transferred it to Energy West. In 2003, the Commission authorized Energy West to convert and operate the Shoshone Pipeline to transport natural gas in interstate commerce and provide open access firm and interruptible transportation services.²

5. On October 10, 2014, Energy West executed an asset purchase agreement to sell the Shoshone Pipeline and certain other assets, including the Glacier Pipeline gathering system, to Black Hills Exploration and Production, Inc. (Black Hills E&P).³ Energy West will convey the facilities to Black Hills E&P, which will immediately convey them to Black Hills.

6. Energy West requests authorization to abandon the Shoshone Pipeline by sale to Black Hills E&P, and Black Hills requests a certificate of public convenience and necessity to acquire and operate the Shoshone Pipeline.⁴ Black Hills will own 100 percent of the Shoshone Pipeline and operate it as a natural gas pipeline, providing the same NGA-jurisdictional transportation services currently offered by Energy West, under the same rates, terms and conditions of service.

² *Energy West Development, Inc.*, 103 FERC ¶ 61,015 (2003).

³ Black Hills E&P, a Wyoming corporation and a wholly-owned subsidiary of Black Hills Corporation, currently owns no jurisdictional facilities.

⁴ Black Hills is not seeking a waiver from the Standards of Conduct because it will not conduct transmission transactions with an affiliate that engages in marketing functions. *See* 18 C.F.R. § 358.3 (2014); *see also Destin Pipeline Co., et al.*, 110 FERC ¶ 61,135, PP 7-12 (2005). If Black Hills starts conducting transmission transactions with an affiliate that engages in marketing activities, Black Hills must comply with or seek a waiver of the Standards of Conduct at that time.

II. Notice

7. Notice of Energy West's and Black Hills's joint application was published in the *Federal Register* on January 9, 2015.⁵ No motions to intervene, comments, or protests were filed.

III. Discussion

8. Because Energy West seeks to abandon and Black Hills seeks to acquire and operate facilities used for the transportation of natural gas in interstate commerce subject to the Commission's jurisdiction, the proposals are subject to the requirements of NGA sections 7(b), (c), and (e).⁶

Abandonment

9. Section 7(b) allows an interstate pipeline company to abandon jurisdictional facilities only if the abandonment is permitted by the present or future public convenience or necessity. When a pipeline company proposes to abandon facilities, continuity and stability of existing services are the primary considerations in assessing whether the public convenience and necessity permit abandonment.⁷ After its transfer to Black Hills, the pipeline at issue here will be available for gas transportation service under the same rates, terms, and conditions as currently available. Therefore, there will be continuity of the gas transportation services currently being provided by Energy West. The proposed abandonment will not interrupt, reduce, terminate, or affect the quality of any natural gas transportation services currently being rendered. Accordingly, the Commission will grant the requested abandonment authorization.

Certificate Authorization

10. Under the Certificate Policy Statement⁸ the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from 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 existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction. If residual

⁵ 80 Fed. Reg. 1399 (Jan. 9, 2015).

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

⁷ *El Paso Natural Gas Co., L.L.C.*, 148 FERC ¶ 61,226, P 12 (2014).

⁸ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission 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 the Commission proceed to complete the environmental analysis where other interests are considered.

11. As discussed above, the threshold requirement for pipelines proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Black Hills currently has no natural gas transportation customers that could subsidize the acquisition of the Shoshone Pipeline. Accordingly, the threshold no-subsidy requirement under the Certificate Policy Statement has been met.

12. We also find that the proposal will not degrade service to Energy West's existing customer; Black Hills will continue to meet existing firm obligations to that customer. In addition, there will be no adverse impact on other pipelines in the region or their captive customers. No pipeline company has protested the proposal. The proposed project will disturb no land and will have no adverse impacts on landowners and surrounding communities.

13. We find, consistent with the Certificate Policy Statement and NGA section 7, that the public convenience and necessity permits approval of the proposal, subject to the conditions discussed below.

Rates

14. Black Hills proposes to charge the same rates for firm and interruptible service on the Shoshone Pipeline as Energy West currently provides under its NGA Gas Tariff. For firm service, Black Hills proposes a maximum reservation rate of \$2.81 per MMBtu, which is the current recourse rate for service on Shoshone Pipeline under Energy West's Rate Schedule FT. For interruptible service, Black Hills proposes a rate of \$0.092 per MMBtu, which is the current recourse rate under Energy West's Rate Schedule IT for service on the Shoshone Pipeline.⁹ The Commission accepts Black Hills's proposed initial rates for firm and interruptible transportation service.

15. Applicants note that Energy West's rates were approved by the Commission in the Certificate Order in Docket No. CP03-02-000, *et al.* Additionally, the Certificate Order required Energy West to file a cost and revenue study at the end of its first three years of operation, which it filed to justify its cost-based firm and interruptible transportation

⁹ *Energy West Development, Inc.*, 103 FERC ¶ 61,368 (2003).

rates.¹⁰ The Applicants state that the Commission has previously approved applications similarly requesting the continuance of rates in the current circumstances.¹¹ The Applicants request that the Commission allow that additional cost and revenue data related to Black Hills be filed two years after the completion of the sale and transfer of the Shoshone Pipeline.¹²

16. The Commission will accept Black Hills's proposed rates, which are the rates approved in Energy West's Certificate proceeding. Because the proposed rates are the existing rates and there are no new proposed facilities, the Commission will not require additional cost and revenue data at this time.¹³ However, the Commission will require Black Hills to file to justify its initial recourse rates at the end of its first two years of operation after completion of the sale and transfer of the Shoshone Pipeline.

17. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost of service data.¹⁴ Black Hills's cost and revenue study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, Black Hills is advised to include as part of the eFiling description, a reference to Docket Nos. CP15-32-000 and CP15-33-000 and the cost and revenue study.¹⁵ After reviewing the data, the Commission will determine whether to exercise its authority under NGA section 5 to investigate whether the rates remain just and reasonable. In the alternative, in lieu of this filing, Black Hills may make a NGA general section 4 rate filing to propose alternative rates to be effective no later than two years after the in-service date for its facilities.

¹⁰ Energy West, Compliance Filing of Cost and Revenue Study, Docket No. RP03-433-004 (filed July 13, 2006).

¹¹ The Applicants cite *Equitrans, LP*, 135 FERC ¶ 62,006 (2011), and *Sabine Pipe Line Co.*, 90 FERC ¶ 61,189 (2000).

¹² Black Hills Application, p. 9, footnote 24.

¹³ In light of the facts that Black Hills proposes to adopt Energy West's current recourse rates as initial rates for service and to file additional cost and revenue data at the end of its first two years of operation, and that no shipper has protested the application, the Commission will waive the requirement at 18 C.F.R. § 157.14(a)(16) (2014) for the filing of an Exhibit N (Revenues – Expenses – Income) as part of Black Hills's application.

¹⁴ 18 C.F.R. § 154.313 (2014).

¹⁵ *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

Tariff

18. Applicants state that shippers on Black Hills will continue to receive service under the same terms and conditions as are currently available under Energy West's NGA Gas Tariff. Black Hills's *pro forma* tariff is the same as the Energy West tariff in all substantive respects. Applicants state that differences between the two tariffs reflect changes made to substitute the name and contact information of Black Hills for Energy West in all relevant places in the tariff language. Applicants further state that, to the extent intervening changes are made to Energy West's current tariff, those changes will be reflected in the active tariff to be filed by Black Hills following issuance of the certificate.

19. The Commission will accept Black Hills's *pro forma* tariff as it is substantially identical to Energy West's tariff. Black Hills must file actual tariff records in the format required by Order No. 714¹⁶ and Part 154 of the Commission's regulations, at least 30 but not more than 60 days prior to the commencement of service. Furthermore, the Commission notes that Black Hills's *pro forma* tariff records contain several different formats and fonts. In many parts, the fonts are very small. In the baseline tariff submission, tariff text must be legible.¹⁷ During review of the *pro forma* tariff records, the Commission also found numerous misspellings and typographical errors. For example, in the Table of Contents to the tariff the words Measurement and Title are misspelled on lines 10 and 14, respectively. Black Hills should review the entire tariff and correct these and other misspellings and typographical errors. Black Hills's baseline tariff filing should be filed through the eTariff portal using a Type of Filing Code 740.

20. Energy West is required to cancel its effective tariffs¹⁸ in accordance with section 154.602 of the Commission's regulations.

Environment

21. Energy West's abandonment and Black Hills's acquisition of facilities qualify as categorical exclusions from the need for environmental review under section 380.4(a)(31) of the Commission's regulations.¹⁹

¹⁶ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs ¶ 31,276 (2008).

¹⁷ *Boston Edison Co.*, 98 FERC ¶ 61,292, at P 42 (2002).

¹⁸ Energy West has two tariffs on file with the Commission. Energy West is required to file to cancel both Tariff ID 28 and Tariff ID 147.

¹⁹ 18 C.F.R. § 380.4(a)(31) (2014).

Section 157 Subpart F Blanket Certificate

22. Black Hills has applied for a Part 157, Subpart F blanket construction certificate, which is generally applicable to all interstate pipelines. A Part 157, Subpart F blanket certificate would authorize Black Hills to perform certain routine activities and abandon certain services and facilities automatically, or pursuant to simplified prior notice requests, as is specified in sections 157.208 through 157.218 of the Commission's Regulations, as may be amended from time to time. Because Black Hills will become an interstate pipeline with the issuance of a certificate to convert and operate pipeline facilities, we will also issue Black Hills the requested Part 157, Subpart F, blanket certificate.

Section 284 Subpart G Blanket Certificate

23. Black Hills has applied for a Part 284, Subpart G blanket transportation certificate, which is generally applicable to all interstate pipelines. Part 284, Subpart G blanket certificates provide natural gas pipelines certain automatic NGA section 7 natural gas transportation authorizations for individual customers under the terms of its contract and tariff. Because black Hills will become an interstate pipeline with the issuance of a certificate to convert and operate the proposed pipeline facilities, and because a Part 284, Subpart G blanket certificate is required for Black Hills to offer transportation services, the Commission will issue Black Hills the requested Part 284 certificate authority.

24. At a hearing held on May 14, 2015, the Commission on its own motion, received and made part of the record all evidence, including the application, as amended, and exhibits thereto, submitted in this proceeding in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) Energy West is granted permission and approval under NGA section 7(b) to abandon by sale to Black Hills the facilities described in this order and in the application.

(B) Energy West shall notify the Commission of the effective date of abandonment within 10 days thereof. Energy West shall complete the authorized abandonment within one year from the date of this order.

(C) Energy West shall comply with Part 154 of the Commission's regulations.

(D) A certificate of public convenience and necessity is issued to Black Hills authorizing it to own and operate the facilities, as described and conditioned herein, and as more fully described in the application.

(E) The certificate authority granted in Ordering Paragraph (D) is conditioned on Black Hills's:

- (1) completion of acquisition of the 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; and
- (2) compliance with all applicable Commission regulations under the NGA including, but not limited to Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations.

(F) Black Hills's proposed initial rates for transportation on the facilities are accepted, as more fully discussed above.

(G) Black Hills must file actual tariff records setting forth its actual tariff records not less than 30 days, nor more than 60 days, prior to commencement of service under Black Hills's tariff.

(H) Black Hills must file a justification of its existing cost-based firm and interruptible recourse rates, as discussed herein, within two years of its in-service date.

(I) Applicants shall account for the transaction in accordance with Gas Plant Instruction No. 5 and Account 102, Gas Plant Purchased or Sold, of the Uniform System of Accounts. Applicants must submit their final accounting to clear Account 102 within six months of the date the transfer is consummated, and the accounting submission must provide all the accounting entries related to the sale along with narrative explanations describing the basis for the entries.

(J) A certificate of public convenience and necessity is issued authorizing Black Hills to perform the activities specified in Subpart F of Part 157 of the Commission's Regulations, as may be amended from time to time.

(K) A certificate of public convenience and necessity is issued authorizing Black Hills to perform the activities specified in Subpart G of Part 284 of the Commission's Regulations, as may be amended from time to time.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.