168 FERC ¶ 61,008
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

Texas Eastern Transmission, LP	Docket Nos. CP19-104-000
Columbia Gas Transmission, LLC	CP19-103-000

ORDER GRANTING ABANDONMENT AUTHORITY

(Issued July 8, 2019)

1. On March 1, 2019, Texas Eastern Transmission, LP (Texas Eastern) filed in Docket No. CP19-104-000 and Columbia Gas Transmission, LLC (Columbia) filed in Docket No. CP19-103-000 applications pursuant to section 7(b) of the Natural Gas Act (NGA)[1] and Part 157 of the Commission's regulations[2] requesting orders approving the abandonment of the individually certificated natural gas exchange service between the parties provided under Rate Schedules X-128 (Texas Eastern) and X-130 (Columbia). This order grants the requested abandonment authorities, as discussed below.

I. Background

2. Texas Eastern and Columbia are natural gas companies as defined in the NGA and are subject to the jurisdiction of the Commission. Texas Eastern is engaged in the business of transporting natural gas on its transmission system extending from Texas, Louisiana, and the offshore Gulf of Mexico area, through the states of Mississippi, Arkansas, Alabama, Maryland, West Virginia, Missouri, Tennessee, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and New Jersey, to its terminus in New York in the New York City metropolitan area. Columbia's natural gas transmission and storage system extends through Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia, and West Virginia.

3. On August 15, 1985, the Commission issued an order[3] granting Part 157 case-specific certificates authorizing Texas Eastern and Columbia to exchange up to 80,000 dekatherms per day to provide each pipeline with operational flexibility to meet their customers' needs.

[1] 15 U.S.C. § 717f(b) (2012).

[2] 18 C.F.R. pt. 157 (2018).

[3] *Texas Eastern Transmission Corp.*, 32 FERC ¶ 61,227, at ordering para. (B)(3) and (E) (1985).

Texas Eastern and Columbia entered into an agreement to effectuate the exchange, now included in Columbia's tariff as Rate Schedule X-130 and in Texas Eastern's tariff as Rate Schedule X-128. Texas Eastern and Columbia provided the exchange service to each other via displacement, whereby Texas Eastern delivered up to 80,000 dekatherms per day of natural gas at designated delivery points on a year-round, firm basis, and Columbia delivered to Texas Eastern equivalent firm quantities at designated delivery points on the same year-round, firm basis.

4. The exchange agreement provides that after the primary term, which ended on October 31, 2000, the agreement continues until either party terminates the agreement by providing written notice to the other party not less than two years before the termination date designated in such notice.[4] On October 30, 2014, Texas Eastern provided notice to Columbia of its intent to terminate the exchange agreement effective October 31, 2018. Texas Eastern states that it has modified its system beginning in 2014 to reverse flow and, as a result, gas now physically flows in the same direction of flow as the exchange agreement with Columbia. Texas Eastern states that it no longer utilized the exchange agreement to provide firm service to its customers. Texas Eastern further states that continuation of the exchange could no longer be accomplished without constructing additional facilities.[5]

5. The exchange agreement terminated on October 31, 2018. Columbia states since October 31, 2018, it has replaced the service it had received from Texas Eastern with capacity release agreements on Texas Eastern.[6] Because the services performed under Rate Schedules X-130 and X-128 were individually certificated and not subject to pre-granted abandonment authorization, Texas Eastern and Columbia belatedly request approval to abandon the services performed under those rate schedules and ask that such abandonment become effective on the date the Commission issues the authorization to abandon the subject rate schedules.

[4] Exchange Agreement at Article II.

[5] Texas Eastern April 8, 2019 Data Response at 1.

[6] Columbia April 2, 2019 Answer at 5. Columbia's costs associated with the capacity release agreements that serve to replace the exchange agreement are the subject of proceedings pending in Docket No. RP19-763-000. *See Columbia Gas Transmission, LLC*, 166 FERC ¶ 61,229, at P 4 (2019) (annual Transportation Costs Rate Adjustment filing, which reflects costs associated with contracts with shippers on Texas Eastern through capacity release arrangements to replace the now terminated exchange service).

II. Notice, Interventions, Protest and Answers

6. Notice of the application was issued on March 7, 2019, and published in the *Federal Register* on March 14, 2019.[7] The notice set March 13, 2019, as the deadline for filing motions to intervene and comments.

7. Exelon Corporation (Exelon); National Grid Gas Delivery Companies; PSEG Energy Resources & Trade LLC; New Jersey Natural Gas Company; NJR Energy Services Company; jointly Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Virginia, Inc. (together, NiSource Distribution Companies); Washington Gas Light Company (Washington Gas); and Cities of Charlottesville and Richmond, Virginia (Cities) filed timely, unopposed motions to intervene in both dockets. Virginia Natural Gas, Inc., Equinor Natural Gas LLC, and Antero Resources Corporation (Antero) filed timely, unopposed motions to intervene in Docket No. CP19-103-000, and Philadelphia Gas Works filed a timely, unopposed motion to intervene in Docket No. CP19-104-000. The timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.[8]

8. On March 14, 2019, National Fuel Gas Distribution filed a late motion to intervene in both dockets. On March 15, 2019, Orange & Rockland Utilities, Inc. (Orange and Rockland) filed a late motion to intervene in Docket No. CP19-103-000. On March 15, 2019, Con Edison Company of New York (Con Edison) and Orange and Rockland jointly, and on March 19, 2019, Columbia, filed late motions to intervene in Docket No. CP19-104-000. As the notice of application set an intervention date that pre-dated the date of the notice was published in the Federal Register, the Commission finds good cause for the late filings and will grant the late motions to intervene.

9. The NiSource Distribution Companies filed timely comments in Docket No. CP19-103-000. Waashington Gas and Antero filed timely comments and protests in Docket No. CP19-103-000. The Cities filed timely comments and protests in both, Docket Nos. CP19-103-000 and CP19-104-000.

10. The NiSource Distribution Companies are local distribution companies that are customers of Columbia relying on firm transportation and storage services from Columbia and as such, allege that they benefit from the Texas Eastern/Columbia exchange service. The NiSource Distribution Companies contend that the applicants, in seeking to abandon the exchange services provided under Part 157 case-specific section 7(c) certificate authority, must overcome a presumption in favor of continued service,[9] and have failed to do so. NiSource Distribution Companies ask that any abandonment approval be

[7] 84 Fed. Reg. 9326 (2019).

[8] 18 C.F.R. § 385.214 (2018).

[9] NiSource Distribution Companies Comments at 4 (citing *Transcontinental Gas Pipe Line Corp., v. FPC*, 488 F.2d 1325, 1328, 1335 (D.C. Cir. 1973)).

conditioned on a showing that Columbia has access to reliable, long-term resources to replace the exchange service with Texas Eastern and that the abandonment will not result in a significant increase in costs to Columbia's shippers.

11. Washington Gas, Antero, and Cities, customers of Columbia, assert that the applications should be denied for failing to demonstrate that the proposed abandonment of exchange services is permitted by the public convenience and necessity, stating that the replacement service Columbia has obtained through capacity release will result in higher costs to Columbia's shippers. Washington Gas and Cities further assert that abandonment will also result in decreased long-term reliability and flexibility of service. Cities are concerned that the capacity release market will not have sufficient available capacity to replicate the service Texas Eastern provides to Columbia under case-specific certificate authority. Washington Gas states that the replacement capacity is only for a limited term, is not subject to automatic renewal or a right of first refusal, does not provide year-round service, and might cause operational disruptions. Cities also request that the Commission consolidate the proceedings and, if the Commission does not immediately deny the requested abandonment, convene a technical conference or hearing; Exelon states that it joins in that request.

12. Texas Eastern and Columbia filed answers to the protests, and Exelon filed an answer supporting Cities' protest. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or to answers, the Commission finds good cause to waive Rule 213(a) to admit these pleadings, as they have provided information that assists in the decision making process.[10]

13. In response to the protests, Texas Eastern and Columbia reiterate that their requests for abandonment authorization are supported by the explicit terms of the exchange agreement. Texas Eastern states that Columbia had previously declined to contract for open-access service options offered under Texas Eastern's certificate authority pursuant to Part 284 of the Commission's regulations[11] in 2013, when Texas Eastern first discussed its intention to terminate the exchange agreement. Columbia states that it has continued to meet its firm service obligations by replacing the exchange agreement service with service obtained through capacity release agreements with no operational impact on its customers.

14. Although Texas Eastern's and Columbia's applications raise similar issues, the existing records are sufficient for us to consider and address the applications together in this order as related cases. Therefore, we find no need for formal consolidation.[12] Further, the parties have raised no issues of material fact and the existing records in these

[10] 18 C.F.R. § 385.213(a)(2) (2018).

[11] 18 C.F.R. pt. 284 (2018).

[12] *See Williams Natural Gas Co.*, 67 FERC ¶ 61,252, at 61,826 (1994).

proceedings are sufficient to support our decision in this order.[13] Therefore, there is no need for a technical conference or trial-type evidentiary hearing.[14]

III. Discussion

15. The abandonment of the exchange services involving transporting natural gas in interstate commerce are subject to the Commission's jurisdiction and the requirements of subsection (b) of section 7 of the NGA.[15] Section 7(b) of the NGA allows an interstate natural gas pipeline company to abandon jurisdictional facilities or services only if the abandonment is permitted by the "present or future public convenience or necessity."[16] The Commission has stated that continuity and stability of existing service are the primary considerations in assessing the public convenience or necessity of a permanent cessation of service under section 7(b).[17] The courts have explained that 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.[18]

16. The Commission examines abandonment applications on a case-by-case basis. In deciding whether a proposed abandonment is warranted, the Commission considers all relevant factors, but the criteria vary with the circumstances of the particular proposal. If the Commission finds that an applicant's proposed abandonment will not jeopardize continuity of existing gas transportation services, it will defer to the applicant's business judgment.[19]

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[13] *See, e.g., Florida Gas Transmission Co., LLC*, 143 FERC ¶ 61,215, at P 27 & n.22 (2013).

[14] The Commission is holding a technical conference on July 10, 2019, in the related rate proceeding in Docket No. RP19-763-000.

[15] 15 U.S.C. § 717f(b).

[16] *Id.*

[17] *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).

[18] *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).

[19] *See, e.g., Transwestern Pipeline Co., LLC*, 140 FERC ¶ 61,147, at P 13 (2012) (citing *Trunkline Gas Co.*, 94 FERC ¶ 61,381, at 62,420 (2001)).

17. While Texas Eastern and Columbia do not have *pregranted* authorization to abandon their case-specific Part 157 services, that does not mean that they must continue to provide the case-specific services indefinitely. Rather, it means that they must file for, and receive, specific Commission authority before abandoning the services.[20] As discussed below, we will approve the abandonment of the individually certificated natural gas exchange service being provided under Rate Schedules X-128 (Texas Eastern) and X-130 (Columbia).

18. Texas Eastern states that prior to its termination, the exchange service with Columbia provided Texas Eastern with gas on a west-to-east basis, with Texas Eastern delivering gas to Columbia at points east of where it received gas from Columbia, and provided Columbia with gas on an east-to-west basis. The firm nature of Texas Eastern's obligations was predicated upon the ability to accomplish the exchange by displacement. This allowed both Texas Eastern and Columbia to avoid constructing additional facilities by exchanging volumes of gas at mutually agreed upon locations to effect deliveries. However, as Texas Eastern's system operations changed in response to market demand, Texas Eastern began to modify its system beginning in 2014 to reverse flow. The system was modified through western Pennsylvania and Ohio with gas now physically flowing from east to west, in the same direction of flow as the exchange with Columbia. Due to this change in flow on the system, the exchange agreement no longer provided the mutual benefit to Texas Eastern in that the displacement of volumes could no longer be depended upon for effecting deliveries under the exchange and Texas Eastern no longer utilized the exchange to provide firm quantities of gas to its customers.

19. Texas Eastern's and Columbia's exchange service agreement provides that after the expiration of the primary term on October 31, 2000, either party may terminate the agreement by providing written notice to the other party not less than two years before the termination date designated in such notice. Texas Eastern first notified Columbia of its desire to terminate the exchange agreement in 2013, and offered Columbia replacement open-access services under Part 284, which Columbia declined. Texas Eastern and Columbia instead agreed to continue the exchange agreement until October 31, 2018, and Texas Eastern provided notice of termination on October, 31, 2014, well before the

[20] Texas Eastern and Columbia have abandoned the services that had been provided under the now-terminated exchange agreement without proper prior authorization from the Commission. The Commission takes seriously any company's failure to comply with the requirements for Commission approval prior to providing jurisdictional transportation service or to taking jurisdictional facilities out of service, and may take appropriate enforcement action if, in its discretion, it determines such action is warranted. While we will not take enforcement action against Texas Eastern and Columbia here, the companies are reminded that, in the future, when they do business that requires Commission authorization, they must submit required filings to obtain requisite authorizations on timely bases or face possible Commission sanctions.

beginning of the required two-year notice period. Columbia had the option to participate in Texas Eastern's February 27 - March 27, 2015 open season or contract with Texas Eastern to obtain other Part 284 open-access service to replace the Part 157 case-specific exchange service to ensure that Columbia could continue to receive the same quality of service it received under the exchange agreement. Although Columbia did not pursue these options, it was notified that the exchange agreement would terminate and it elected to continue to meet its firm service obligations by replacing the exchange agreement service with service obtained through capacity release agreements with no operational impact on its customers.[21] While this may result in increased costs to Columbia's customers (as the service was previously provided at no fee), the Commission does not believe that requiring Texas Eastern to continue to provide a service that is no longer operationally viable and that was terminated according to the terms of the contract with appropriate notice, is justified in order for Columbia to continue to provide service to its customers.[22]

20. Cities note that the Commission has previously denied an application to abandon an exchange service where an applicant failed to justify reversing the Commission's previous determination that the agreement was in the public convenience and necessity.[23] That case, however, is not precise as it pertained to an unexpired contract of indefinite duration.[24] The Commission does not presume that service under case-specific Part 157 authority should continue after expiration of the service contracts. Although the Commission has not required customers under Part 157 contracts to convert to Part 284 service before termination of the existing individually certificated transportation agreements, termination of Part 157 service upon expiration of those contracts is appropriate unless shown otherwise under the particular circumstances.[25] In reaching that conclusion, the Commission has recognized that many Part 157 certificates were designed to address the special circumstances that existed at the time the contracts were executed, and that it is thus appropriate, within broad limits, to give effect to these arrangements as long as the contracts are in effect so that the parties' reasonable

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[21] See Columbia's April 8, 2019 Data Response and Columbia's answer at 5. Columbia has issued a request for proposal to contract for continued service to fulfill its service obligations.

[22] This does not relieve Columbia of its obligation to maintain service to its customers.

[23] Cities' Motion to Intervene, Protest, and Request for Consolidation at 8 (citing *Tennessee Gas Pipeline Co.*, 83 FERC ¶ 61,284 (1998) (*Tennessee*)).

[24] *Tennessee*, 83 FERC ¶ 61,284 at 62,178 (*Transco*).

[25] *Transcontinental Gas Pipe Line Corporation*, 55 FERC ¶ 61,446 at 62,363 (1991).

expectations on entering the contract can be relied on.[26] However, the Commission has explained that once the contracts expire, allowing the shipper to continue the arrangement under existing terms could allow the shipper to unfairly receive favorable treatment not available to other shippers.[27]

21. Cities' and Antero's reliance on Commission orders cited to support their contentions that the applicants must show that the public interest will not be disserved by a proposed abandonment[28] and that charging higher rates is an adverse effect[29] is misplaced, as those orders pertained to proposed abandonment of Part 284 open access service, not abandonment of the kind of Part 157 case-specific authority at issue in this proceeding.

22. Here, the protesting parties' real concern is not with the abandonment per se, but rather with the costs associated with the replacement capacity release agreements that Columbia proposes to reflect in its rates through its Transportation Costs Rate Adjustment filing in Docket No. RP19-763-000, which was accepted to become effective April 1, 2019, subject to refund and the outcome of a technical conference.[30] But, the potential for future rate effects does not require us to deny the abandonment.[31] Columbia and its customers, like any other customers of jurisdictional interstate pipeline companies, are entitled to just and reasonable rates. However, the public convenience or necessity does not require that Columbia or its customers continue to receive service at a price lower, or a quality higher, than that available to other shippers.[32] That Columbia may now incur

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[26] *Transco*, 55 FERC ¶ 61,446 at 62,378.

[27] *Id.*

[28] Cities' Motion to Intervene, Protest, and Request for Consolidation at 6 (citing *Gulf South Pipeline Co., LP*, 145 FERC ¶ 61,236, at P 45 (2013)).

[29] Antero's Motion to Intervene and Protest at 4 (citing *Gulf South Pipeline Co., LP*, 145 FERC ¶ 61,236, at P 104 (2013), *reh'g denied*, 154 FERC ¶ 61,219 (2016); *Southern Natural Gas Co.*, 126 FERC ¶ 61,246, at P 45 (2009); *Transcontinental Gas Pipe Line Corp.*, 110 FERC ¶ 61,337, at P 44 (2005)).

[30] *Columbia Gas Transmission, LLC*, 166 FERC ¶ 61,229.

[31] As noted supra note 6, the proper forum for consideration of the impact of the subject transactions on Columbia's rates is not in an order addressing abandonment and removal of a rate schedule under which service is no longer being provided, but in Columbia's TCRA proceeding where all the relevant facts and circumstances bearing upon Columbia's proposed rates can be considered.

[32] *See Transcontinental Gas Pipe Line Co., LLC*, 134 FERC ¶ 61,238 at PP 39-41, *reh'g denied*, 137 FERC ¶ 61,203 (2011) (finding that once contracts have expired, allowing a shipper to continue the arrangement under existing terms may allow the

costs to replace the exchange service previously provided at no cost under the exchange agreement does not make it unreasonable for the Commission to decline to require Texas Eastern to continue its current services to Columbia under Part 157 case-specific certificate authority upon expiration of the underlying contract. In this case, Texas Eastern has shown that continuing the exchange service would adversely affect Texas Eastern's customers (by being potentially subject to the costs associated with building the facilities Texas Eastern would need to continue service), and Columbia has shown that it has available alternatives to the exchange service. Given that the Commission cannot grant abandonment authority to Texas Eastern without also allowing Columbia to abandon the exchange service, on balance the equities lie with granting the abandonment.

23. Environmental review of both Texas Eastern's and Columbia's requests under section 380.4 concludes that the proposed abandonments are qualified as a categorical exclusion under section 380.4(a)(36).

24. Consistent with the above discussion, the Commission finds that Texas Eastern's and Columbia's abandonment of natural gas exchange services provided to each other under case-specific certificate authority and rate schedules is permitted by the present or future public convenience or necessity. The Commission therefore grants the abandonment proposals. 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, submitted in support of the authorizations sought herein, and upon consideration of the record.

The Commission orders:

(A) Texas Eastern and Columbia are authorized under section 7(b) of the NGA to abandon their natural gas exchange services provided to each other under Texas Eastern's Rate Schedule X-128 and Columbia's Rate Schedule X-130.

(B) Texas Eastern and Columbia shall file actual tariff records under section 4 of the NGA to cancel these rate schedules within 30 days of the date this order issues.

(C) The late interventions are granted.

(D) Texas Eastern's and Columbia's answers are accepted.

(E) The requests for consolidation, technical conference and/or evidentiary hearing are denied.

By the Commission. Commissioner McNamee is not participating.

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shipper to continue receiving favorable treatment not available to other shippers and that such a shipper has no entitlement to a quality of service beyond that available to others).

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.