

171 FERC ¶ 61,050  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick, Bernard L. McNamee,  
and James P. Danly.

Texas Eastern Transmission, LP  
Columbia Gas Transmission, LLC

Docket Nos. CP19-104-001  
CP19-103-001

ORDER DENYING REHEARING

(Issued April 16, 2020)

1. On July 8, 2019, the Commission issued an order granting Texas Eastern Transmission, LP (Texas Eastern) and Columbia Gas Transmission, LLC (Columbia) authority to abandon a specified individually certificated natural gas exchange service between the two companies.<sup>1</sup> Washington Gas Light Company (Washington Gas) filed a timely request for rehearing of the order. As discussed below, we deny Washington Gas' request for rehearing.

**I. Background**

2. On August 15, 1985, the Commission granted Part 157 case-specific certificates to Texas Eastern and Columbia that authorized the pipelines to exchange up to 80,000 dekatherms (Dth) per day of natural gas.<sup>2</sup> To avoid constructing additional facilities, Texas Eastern and Columbia entered into an exchange agreement, which provided that Columbia would deliver firm quantities of natural gas, year-round, to Texas Eastern's system at designated delivery points on a west-to-east basis and Texas Eastern would deliver the same firm quantities of natural gas to Columbia's system at designated delivery points, year-round, on an east-to-west basis.<sup>3</sup> The exchange agreement is

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<sup>1</sup> *Tex. E. Transmission, LP & Columbia Gas Transmission, LLC*, 168 FERC ¶ 61,008 (2019) (Abandonment Order).

<sup>2</sup> *Tex. E. Transmission Corp.*, 32 FERC ¶ 61,227, at ordering para. (B)(3) & (E) (1985).

<sup>3</sup> Abandonment Order, 168 FERC ¶ 61,008 at P 3; *see* Texas Eastern April 8, 2019 Answer at 3.

included in Texas Eastern's tariff as Rate Schedule X-128 and Columbia's tariff as Rate Schedule X-130.<sup>4</sup>

3. The exchange agreement had a primary term that ended on October 31, 2000.<sup>5</sup> After the primary term, the agreement remained effective and could be terminated by one party giving written notice to the other party no less than two years before the termination date requested in the notice.<sup>6</sup> On October 30, 2014, Texas Eastern notified Columbia of its intent to terminate the exchange agreement effective October 31, 2018,<sup>7</sup> stating that it no longer utilized the exchange agreement to provide firm service to its customers.<sup>8</sup> Texas Eastern explained that it modified its system in 2014 to reverse the flow of gas and provide service to its customers on an east-to-west basis—the same direction of flow as its exchange with Columbia.<sup>9</sup> Further, Texas Eastern stated it could no longer meet the terms of the agreement because it would have to construct additional facilities to continue the capacity exchange with Columbia.<sup>10</sup>

4. The exchange agreement terminated on October 31, 2018. Columbia has explained that after October 31, 2018, it replaced the service it received from Texas Eastern with capacity release agreements on Texas Eastern's system.<sup>11</sup> The services performed under Rate Schedules X-128 and X-130 were individually certificated and not subject to pre-granted abandonment authorization. Therefore, Texas Eastern and

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<sup>4</sup> Abandonment Order, 168 FERC ¶ 61,008 at P 3.

<sup>5</sup> *Id.* P 4 (citing Exchange Agreement at Article II).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*; see Texas Eastern April 8, 2019 Answer at 3.

<sup>9</sup> Abandonment Order, 168 FERC ¶ 61,008 at P 4; see Texas Eastern April 8, 2019 Answer at 3.

<sup>10</sup> Texas Eastern April 8, 2019 Data Response at 1.

<sup>11</sup> Columbia April 2, 2019 Answer at 5. On March 5, 2020, the Commission approved Columbia's recovery of the costs associated with the capacity release agreements that serve to replace the exchange agreement through its Transportation Cost Rate Adjustment mechanism. *Columbia Gas Transmission, LLC*, 170 FERC ¶ 61,181, at PP 20, 24 (2020) (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).

Columbia belatedly requested approval to abandon the services performed under those rate schedules and asked that such abandonment become effective on the date the Commission grants abandonment authority for the subject rate schedules.<sup>12</sup>

5. In response to Columbia's and Texas Eastern's request for abandonment of service, Washington Gas, a customer of Columbia, filed a motion to intervene and protest.<sup>13</sup> Specifically, Washington Gas stated that the requested abandonment of the exchange service is not permitted by the public convenience and necessity because the replacement service Columbia obtained through capacity release would result in increased costs to Columbia's shippers.<sup>14</sup> Washington Gas also asserted that abandonment would cause decreased long-term reliability and flexibility of service that Washington Gas currently receives from Columbia.<sup>15</sup> Finally, Washington Gas stated that Columbia's replacement capacity is problematic because the capacity is only available 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.<sup>16</sup>

6. On July 8, 2019, the Commission granted Texas Eastern's and Columbia's request to abandon the natural gas exchange services provided to each other under case-specific certificate authority and rate schedules.<sup>17</sup> In response to protestors' concerns, the Commission determined that the public convenience and necessity does not require that Columbia and its customers continue to receive service at a price lower, or a quality

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<sup>12</sup> As stated in the Abandonment Order, the Commission recognizes that Texas Eastern and Columbia failed to comply with the requirement to obtain Commission approval prior to abandoning the services performed under Rate Schedules X-128 and X-130. Abandonment Order, 168 FERC ¶ 61,008 at P 17 n.20. While we have declined to do so here, we emphasize that the Commission may take appropriate enforcement action if, in its discretion, it determines such action is warranted.

<sup>13</sup> See Washington Gas Motion to Intervene and Protest at 1-7; Abandonment Order, 168 FERC ¶ 61,008 at PP 7, 9 (noting interventions and protests filed by Antero, the Cities of Charlottesville and Richmond, Virginia).

<sup>14</sup> Abandonment Order, 168 FERC ¶ 61,008 at P 11; Washington Gas Motion to Intervene and Protest at 3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*; Washington Gas Motion to Intervene and Protest at 4.

<sup>17</sup> Abandonment Order, 168 FERC ¶ 61,008 at P 24.

higher, than that available to other shippers.<sup>18</sup> The Commission recognized that as a result of the abandonment, Columbia will have to incur additional costs to replace the capacity it received under the exchange service, which was provided at no cost.<sup>19</sup> However, the Commission found that the public interest does not require Texas Eastern to continue its current services to Columbia under Part 157 case-specific certificate authority upon expiration of the underlying contract.<sup>20</sup> The Commission determined that Texas Eastern demonstrated that continuing the exchange service would adversely affect Texas Eastern's other customers (which might be potentially subject to the costs associated with building the facilities Texas Eastern would need to continue the exchange service to Columbia), and Columbia demonstrated that it has available alternatives to the exchange service.<sup>21</sup> The Commission stated that it could not grant abandonment authority to Texas Eastern without also allowing Columbia to abandon the exchange service.<sup>22</sup> Accordingly, the Commission found 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.<sup>23</sup>

7. Washington Gas filed a timely request for rehearing of the Abandonment Order.

## **II. Procedural Issues**

8. On August 22, 2019, Texas Eastern filed a motion for leave to answer and answer to Washington Gas' request for rehearing. Rule 713(d)(1) of the Commission's Rules of

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<sup>18</sup> *Id.* P 22 (citing *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 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)).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* P 24.

Practice and Procedure prohibits answers to a request for rehearing.<sup>24</sup> Accordingly, we deny Texas Eastern's motion and reject Texas Eastern's filing.

### III. Discussion

9. Washington Gas argues that the Commission did not comply with the NGA when it approved the abandonment of long-time useful service at a reasonable cost.<sup>25</sup>

10. We deny rehearing. The Abandonment Order explained that the abandonment of the exchange services involving transporting natural gas in interstate commerce are subject to the Commission's jurisdiction and the requirements of NGA section 7(b),<sup>26</sup> which 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."<sup>27</sup> 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).<sup>28</sup> 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.<sup>29</sup> Texas Eastern and Columbia stated that their requests for abandonment authorization are supported by the explicit terms of the exchange agreement.<sup>30</sup> The exchange agreement allowed both parties to avoid constructing additional facilities by exchanging volumes of natural gas at mutually agreed upon locations to make the deliveries.<sup>31</sup> However, since 2014, Texas Eastern began modifications to its system to reverse flow of natural gas, and, as a result, gas now flows

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<sup>24</sup> 18 C.F.R. § 385.713(d)(1) (2019).

<sup>25</sup> *Id.*

<sup>26</sup> Abandonment Order, 168 FERC ¶ 61,008 at P 15 (citing 15 U.S.C. § 717f(b) (2018)).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* (citing *Mich. Consol. Gas Co. v. FPC*, 283 F.2d 204, 214 (D.C. Cir. 1960); *Transcon. Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1328 (D.C. Cir. 1973)).

<sup>29</sup> *Id.*

<sup>30</sup> Texas Eastern Answer at 4; Columbia Answer at 4; Abandonment Order, 168 FERC ¶ 61,008 at P 13.

<sup>31</sup> Abandonment Order, 168 FERC ¶ 61,008 at P 18.

in the same direction of flow as the exchange agreement with Columbia.<sup>32</sup> Thus, Texas Eastern no longer utilized the exchange agreement to provide firm service to its customers and would need to construct additional facilities to continue service to Columbia under the exchange agreement.<sup>33</sup> Accordingly the Abandonment Order found, and we agree, 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.<sup>34</sup>

11. Washington Gas asserts that the Commission prematurely authorized abandonment of Columbia's Rate Schedule X-130<sup>35</sup> and requests that the Commission reverse its authorization of Columbia's and Texas Eastern's requests to abandon service.<sup>36</sup> Specifically, Washington Gas states that the Commission should have deferred action on Columbia's and Texas Eastern's request to abandon service until the Commission acts on Columbia's request to pass through increased rates from its substitute services through its annual Transportation Costs Rate Adjustment (TCRA) mechanism in Docket No. RP19-763-000.<sup>37</sup> Washington Gas argues that delaying action until the resolution of the TCRA proceeding would give the Commission (1) information to determine whether abandonment of service will negatively impact Columbia's rates or its reliability of service and (2) the ability to grant recourse to Columbia's customers.<sup>38</sup> Washington Gas states that if the Commission determines that Columbia's customers will experience a degradation of service in the TCRA proceeding, the Commission could direct Columbia and Texas Eastern to continue their exchange of services—a remedy no longer available due to the Commission's grant of abandonment authority.<sup>39</sup>

12. We disagree and affirm the Commission's determination in the Abandonment Order that Washington Gas' real concern does not lie with the abandonment of the

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<sup>32</sup> *Id.* P 4.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* P 24.

<sup>35</sup> Washington Gas Request for Rehearing at 3.

<sup>36</sup> *Id.* at 5.

<sup>37</sup> *Id.* at 3.

<sup>38</sup> *Id.* at 3-4.

<sup>39</sup> *Id.* at 4.

exchange agreement;<sup>40</sup> but rather with the costs associated with Columbia's replacement capacity release agreements, which are reflected as proposed rates in its TCRA filing in Docket No. RP19-763-000.<sup>41</sup> The Commission is not required to deny an abandonment application when customers could experience future rate impacts.<sup>42</sup> Accordingly, we affirm our finding in the Abandonment Order that the appropriate proceeding for consideration of Columbia's rates is in the TCRA proceeding, where the Commission's review will take into account all relevant facts and circumstances bearing upon Columbia's proposed rates and determines the just and reasonable rate.<sup>43</sup>

13. As the Abandonment Order explained, the Commission does not presume that service under case-specific Part 157 authority should continue after expiration of the service contracts.<sup>44</sup> The Commission typically finds that termination of Part 157 service is appropriate upon the expiration of an exchange agreement, unless shown otherwise in particular circumstances.<sup>45</sup> The Commission recognizes that many Part 157 certificates address special circumstances that existed at the time the contracts were executed; therefore, it is appropriate to maintain the parties' expectations as long as the contracts are in effect.<sup>46</sup> However, the public convenience or necessity does not require that Columbia or its customers (such as Washington Gas) continue to receive service at a price lower, or a quality higher, than that available to other Texas Eastern shippers.<sup>47</sup> By the terms of its contract, Columbia's service exchange agreement with Texas Eastern expired on October 31, 2018. We previously explained, and confirm here, that allowing customers such as Washington Gas to receive service under the expired contract terms

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<sup>40</sup> Abandonment Order, 168 FERC ¶ 61,008 at P 22.

<sup>41</sup> *Id.* P 22 (citing *Columbia Gas Transmission, LLC*, 166 FERC ¶ 61,229 (2019)).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* n.31. In Docket No. RP19-763-000, the Commission approved Columbia's costs of the contracts for replacement capacity on Texas Eastern's systems and determined that Columbia can recover those costs through its TCRA. *Columbia Gas Transmission, LLC*, 170 FERC ¶ 61,181 at P 20.

<sup>44</sup> Abandonment Order, 168 FERC ¶ 61,008 at P 20.

<sup>45</sup> *Id.* (citing *Transcontinental Gas Pipe Line Corp.*, 55 FERC ¶ 61,446, at 62,363 (1991)).

<sup>46</sup> *Id.* (citing *Transcontinental Gas Pipe Line Corp.*, 55 FERC ¶ 61,446 at 62,378).

<sup>47</sup> *See supra* n.17.

could allow shippers to unfairly receive favorable treatment that is not available to other shippers.<sup>48</sup>

14. Washington Gas argues that Columbia's statements that it replaced Texas Eastern's exchange service are exaggerated,<sup>49</sup> asserting that Columbia's replacement contracts are for a term of only one season and one year and require Columbia to rely on interruptible service to obtain gas for its system from certain delivery points listed on the replacement arrangements.<sup>50</sup> Washington Gas further claims that the Commission erred by relying on Columbia's statements and should have examined all rate impacts on Columbia's customers prior to granting abandonment authority. In addition, Washington Gas argues the Commission should have required Columbia and Texas Eastern to explain why there was not latent capacity on the Texas Eastern system that could have been used to serve the western Pennsylvania to western Ohio transportation path on a continuous basis, even after flows have been reversed.<sup>51</sup>

15. As the Abandonment Order explained, in 2013, Texas Eastern first notified Columbia of its desire to terminate the exchange agreement and offered Columbia replacement open-access services under Part 284 of the Commission's regulations, which Columbia declined.<sup>52</sup> Instead, Texas Eastern and Columbia agreed to continue the exchange agreement until October 31, 2018.<sup>53</sup> On October 31, 2014, Texas Eastern provided Columbia notice of termination of the exchange agreement, well before the agreement's required two-year notice period.<sup>54</sup> Columbia had the option to participate in Texas Eastern's February 27 to March 27, 2015 open season or to 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.<sup>55</sup> Although Columbia did not pursue these options, it was notified that the exchange agreement would terminate and it elected

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<sup>48</sup> Abandonment Order, 168 FERC ¶ 61,008 at P 20.

<sup>49</sup> Washington Gas Request for Rehearing at 4.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Abandonment Order, 168 FERC ¶ 61,008 at P 19.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

to continue to meet its firm service obligations by replacing the exchange agreement service with service obtained through capacity release agreements.<sup>56</sup> As explained in the Abandonment Order, we agree that, although Columbia's decision to replace its service through capacity release agreements may result in increased costs to Columbia's customers (as the service was previously provided at no fee), we will not compel 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, in order for Columbia to continue to provide the same service at the same price to its customers.<sup>57</sup>

16. We have no reason to question Texas Eastern's statements that it cannot provide service under the exchange agreement without constructing new facilities and Washington Gas provides no evidence to the contrary. Further, we will not compel Texas Eastern to continue an exchange service with Columbia under an agreement that is no longer mutually beneficial to both parties. As described above, the exchange agreement mutually benefitted Texas Eastern and Columbia by giving both parties operational flexibility.<sup>58</sup> Specifically, Texas Eastern was able to deliver gas at specified exchange points through backhaul, which resulted in fuel and electric power savings on its system.<sup>59</sup> However, due to improvements on its system, this is no longer the case.<sup>60</sup> Accordingly, we deny Washington Gas' request for rehearing.

The Commission orders:

Washington Gas Light Company's request for rehearing is denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>56</sup> *Id.* (citing Columbia April 8, 2019 Data Response and Columbia Answer at 5).

<sup>57</sup> *Id.*

<sup>58</sup> Abandonment Order, 168 FERC ¶ 61,008 at P 3.

<sup>59</sup> *See* Texas Eastern March 28, 2019 Answer at 6.

<sup>60</sup> *Id.* at 6-7.