

166 FERC ¶ 61,196
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Arena Energy, LP, Castex Offshore, Inc.
EnVen Energy Ventures, LLC
Fieldwood Energy LLC
Walter Oil & Gas Corporation
W&T Offshore, Inc.

Docket No. RP19-310-000

v.

High Point Gas Transmission, LLC

ORDER ON COMPLAINT

(Issued March 21, 2019)

1. On November 21, 2018, Arena Energy LP, Castex Offshore, Inc., EnVen Energy Ventures, LLC, Fieldwood Energy LLC, W&T Offshore, Inc., and Walter Oil & Gas Corporation (collectively, Producer Coalition) filed a complaint (Complaint) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure,¹ against High Point Gas Transmission, LLC (High Point). In the Complaint, the Producer Coalition contends that because High Point failed to adequately respond to a request for transportation service, High Point violated the Commission's open-access transportation policies, the Commission's policies with respect to an interstate pipeline acquiring off-system capacity, and High Point's tariff. As discussed below, the Commission denies the Complaint.

¹ 18 C.F.R. § 385.206 (2018).

I. Background

A. Certificate Order

2. On December 12, 2017, High Point and its affiliate High Point Gas Gathering (HPGG) filed a joint application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations in Docket Nos. CP18-27-000 and CP18-28-000. The joint application requested, *inter alia*, approval of a capacity lease arrangement pursuant to which High Point would lease 150,000 dekatherms (Dth) per day of capacity on HPGG's system for use by High Point in providing service under High Point's tariff. High Point also requested that certain sections of its tariff provisions be amended to effectuate the proposed lease. HPGG requested a limited jurisdiction certificate to carry out its responsibilities under the proposed lease agreement, and sought a Commission determination that the proposed lease would not affect the jurisdictional status of HPGG's system.²

3. High Point stated that it requested this authorization because it was informed by Enterprise Gas Processing LLC (Enterprise) that the Toca processing plant would be shut down in late 2018. High Point averred that 85 to 90 percent of the gas it transports was delivered to downstream markets via Southern Natural Gas Company, LLC (Southern Natural) after being processed at the Toca processing plant. Therefore, High Point concluded that in order to allow the gas it transports to continue to access downstream markets, it was necessary to reconfigure its system to access a different processing plant.

4. According to the application, to accomplish this reconfiguration, High Point and HPGG sought approval of a lease arrangement whereby High Point would lease capacity on HPGG's Viosca Knoll Gathering System (VKG System) from the point of interconnection between High Point and HPGG, to a delivery point between HPGG and Destin Pipeline Company, LLC (Destin). High Point proposed to reverse the flow on its Main Pass System in order to deliver unprocessed gas onto HPGG's VKG System. The unprocessed gas would be transported on the VKG System to an interconnection with Destin at the Main Pass Block 260 Platform (MP 260). High Point proposed to enter into an interruptible transportation agreement with Destin, pursuant to its tariff, to deliver gas to the Pascagoula Plant,³ and eventually to downstream pipelines.

² Because HPGG is engaged in the gathering of natural gas, it is exempted from the Commission's jurisdiction.

³ Specifically, to reach the Pascagoula Plant, High Point proposed to reverse flow on its mainline system in order to make deliveries to HPGG's VKG System. Then High

5. On May 22, 2018, the Commission issued an order approving the requested lease finding that (1) there are benefits from using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the term of the lease on a net present value basis; and (3) the lease arrangement does not adversely affect existing customers.⁴

6. In arriving at this finding, the Commission addressed concerns raised by parties to the Producer Coalition who had protested High Point's certificate application.⁵ The Producer Coalition argued that because High Point, HPGG, and Destin are affiliated companies, it is unlikely that High Point seriously considered other alternatives that would allow gas to continue to flow following the closure of the Toca Plant. The Producer Coalition also asserted that High Point's proposal did not ensure a long-term solution to this problem because High Point has the option to terminate the lease after five years.

7. The Commission found that all the parties to the proceeding "agree that the closure of the Toca Plant will result in significant disruptions to shippers that use [High Point's] system,"⁶ and reasoned that because High Point did not have any firm customers, no shipper, including the members of the Producer Coalition, would be entitled to deliver gas to a particular point. The Commission found that High Point had reasonably concluded that the proposed lease would allow shippers continued access to downstream markets while avoiding the need to construct additional facilities and that no other party had proposed a viable alternative to this proposal. The Commission also found that no shipper was prevented from either constructing alternative facilities or contracting with other pipelines that may better meet the shipper's objectives.

Point would lease, for an initial period of five years, 150,000 Dth per day of capacity on the VKG System between the receipt point with High Point at the Main Pass Block 289 Platform (MP 289) and the delivery point with Destin at MP 260.

⁴ *High Point Gas Transmission, LLC*, 163 FERC ¶ 61,135, at P 12 (2018) (Certificate Order), *order on reh'g*, 165 FERC ¶ 61,208 (2018) (Rehearing Order) (citing *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 69 (2002)).

⁵ In the Certificate Order, the Producer Coalition was comprised of Arena Energy, LP, Castex Offshore, Inc., Energy XXI Gulf Coast, Inc., EPL Oil & Gas, Inc., W&T Offshore, Inc., and Walter Oil & Gas Corporation. *Id.* P 9, n.11.

⁶ Certificate Order, 163 FERC ¶ 61,135 at P 25.

8. The Producer Coalition asserted that High Point did not provide support to demonstrate that its proposal was operationally possible and also argued that the Commission require High Point to deliver gas to points other than Destin on the VKG System, and in particular to permit an interconnect with Transcontinental Gas Pipe Line Company, L.L.C. (Transco), regardless of whether the delivery point is in the “path” of the capacity being leased. The Commission found that the proposed lease arrangement did not adversely affect existing customers on High Point’s system. Moreover, the Commission determined that it would not require High Point to offer service beyond the path of its capacity lease because the Commission views a lease of pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor’s pipeline, and under the subject lease High Point has no entitlement to deliver gas to points outside of the leased path. The Commission stated that it encouraged High Point, its shippers, and other pipelines “to continue to examine possible alternative transportation arrangements that will best serve the pipelines, customers, and markets.”⁷

B. Certificate Order Rehearing

9. The Producer Coalition requested rehearing of the Commission’s May 22, 2018 certificate authorization. On December 6, 2018, the Commission addressed the Producer Coalition’s request and stated that:

The Producer Coalition protested the lease agreement between [High Point] and [HPGG] and objects again on rehearing, because the lease agreement precludes its members from delivering gas to Transcontinental Gas Pipe Line Company (Transco) on the VKG System at Main Pass Block 261 Platform (MP 261). The Producer Coalition argues that the Certificate Order erred when it stated that the MP 261 interconnect was not in the lease path. Because the Transco meter station is physically located between the lease path’s receipt and delivery points, the Producer Coalition argues that the Commission’s open access regulations require that interruptible shippers be given access on a secondary basis.⁸

10. On rehearing, the Commission reiterated the policies it relied on in the Certificate Order and explained again that it “treats a lease of interstate pipeline capacity differently

⁷ Certificate Order, 163 FERC ¶ 61,135 at P 39.

⁸ Rehearing Order, 165 FERC ¶ 61,208 at P 7.

than transportation service.”⁹ In addition, the Commission noted that the Certificate Order explained that the lease agreement between High Point and HPGG provided that HPGG would provide service solely between the receipt point at MP 289 and the delivery point with Destin at MP 260.¹⁰ Moreover, “the MP 261 interconnect is located on the VKG System between the leased agreement’s receipt and delivery points, [High Point’s] point-to-point lease path does not include access to the MP 261 interconnect.”¹¹

11. On rehearing, the Producer Coalition also argued that the Commission should require access to the MP 261 interconnect if there is no physical or operational reason that would justify the denial. The Commission declined the Producer Coalition request to require High Point and HPGG to include the MP 261 interconnect as a delivery point because it was not included in the leased capacity agreement. The Commission reasoned that the lease terms, including the receipt and delivery points on the leased capacity, were negotiated by the parties and reflect the economic value the parties placed on that discrete segment of capacity. The Commission found again that because the lease agreement only conveys capacity from the interconnections at MP 289 to MP 260, High Point is not permitted to access any other points on the VKG System.¹²

⁹ *Id.* P 8. As the Commission explained:

A lease is an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline: the lessee needs NGA section 7(c) certificate authorization to acquire the capacity and a non-jurisdictional lessor needs a limited 7(c) certificate authorization to enter into the lease agreement. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The lessor may continue to operate the leased capacity, but it no longer has any right to use the leased capacity. *Similarly, the lessee has no right to access any points not bargained for in the lease agreement. Id.* (footnotes omitted) (emphasis added).

¹⁰ *Id.* P 9 (citing Certificate Order, 163 FERC ¶ 61,135 at P 6).

¹¹ Rehearing Order, 165 FERC ¶ 61,208 at P 9 (citing Certificate Order, 163 FERC ¶ 61,135 at P 39).

¹² Rehearing Order, 165 FERC ¶ 61,208 at P 10 (citing Gulf S. Pipeline Co., LP, 120 FERC ¶ 61,291, at P 47 (2007) (explaining that the Commission will not require an

12. The Producer Coalition also claimed that the Commission violated its open access regulations when it indicated in the Certificate Order that interruptible shippers were not entitled to use the MP 261 interconnect. The Producer Coalition argued that whether its members are firm shippers is irrelevant because High Point is still required to provide service on an open access basis to interruptible customers. The Commission explained again in its Rehearing Order that its determination does not violate the Commission's open access regulations because the MP 261 interconnect is not part of the lease agreement and, therefore, is not part of the High Point system.¹³ The Commission then found that based on the benefits associated with the bargained for lease agreement between High Point and HPGG, there was no reason to reject or require the parties to alter the lease agreement based on the Producer Coalition's concerns. Accordingly, the Commission denied rehearing.

II. The Complaint and Responsive Pleadings

A. Producer Coalition Complaint

13. On November 21, 2018, the Producer Coalition filed its Complaint, alleging that High Point failed to adequately respond to a request for transportation service, and is therefore in violation of the Commission's open-access transportation policies, the Commission's policies with respect to an interstate pipeline acquiring off-system capacity, and High Point's tariff. The Producer Coalition asserts that it sent a letter to High Point on October 2, 2018 requesting that High Point take the necessary steps to permit deliveries to the MP 261 delivery point.¹⁴ The Producer Coalition states that on October 11, 2018, High Point responded stating that the Certificate Order did not require it to offer service beyond the capacity path on the VKG System, but that it was "open to continuing a dialogue going forward."¹⁵

existing interconnect as a primary receipt and delivery point for a lease because "the specific points in the lease were negotiated by the parties").

¹³ Rehearing Order, 165 FERC ¶ 61,208 at P 10.

¹⁴ The Producer Coalition asserts that the letter was sent to High Point by Arena Energy, LP, Castex Offshore, Inc., Energy XXI Gulf Coast, Inc., W&T Offshore, Inc., and Superior Natural Gas Corporation (Superior), on behalf of its affiliate Walter Oil & Gas Corp.

¹⁵ Producer Complaint at 7 (citing Attachment B).

14. The Producer Coalition asserts that on October 16, 2018, it requested that High Point provide it with the ITS transportation rate that High Point would charge them for deliveries to MP 261, and when such deliveries could commence.¹⁶ The Producer Coalition asserts that on October 30, 2018, High Point responded to the October 16, 2018 letter stating:

... the path utilizing MP 260 is the only practical way for Producer's gas to be transported at this time. Finally, as you are aware, adding MP 261 as an additional delivery point would present issues that would have potential adverse consequences to HPGG and its shippers, including the Producers.¹⁷

15. The Producer Coalition argues that this response compelled it to file the instant complaint because High Point's response ignored its request for service and raised, for the first time, operational assertions without any supporting documentation. The Producer Coalition asserts that there are no operational bars to High Point providing the requested transportation, and further asserts that High Point is "merely stonewalling the request to require shippers to only be permitted to deliver their gas to Destin."¹⁸

16. The Producer Coalition asserts that High Point's failure to respond to the requests for transportation service to the MP 261 delivery point, a point through which VKG System currently is delivering gas constitutes a violation of the Commission's open-access transportation policies, the Commission's policies with respect to an interstate pipeline acquiring off-system capacity, and High Point's tariff. The Producer Coalition asserts that once it signed the lease on the VKG System, High Point was required to provide service on those facilities in a non-discriminatory fashion and in an open-access manner consistent with sections 284.7(b), (c), and (f) of the Commission's regulations.¹⁹

The Producer Coalition further argues that:

It must be emphasized that [High Point], HPGG, and Destin are all affiliated through common ownership by American Midstream Partners, LP (American Midstream). Moreover, American Midstream and Enterprise Products Partners, LP

¹⁶ *Id.* at Attachment C.

¹⁷ *Id.* at 8 (citing Attachment D).

¹⁸ Producer Complaint at 8.

¹⁹ Producer Coalition Complaint at 9 (citing 18 C.F.R. § 284.9(b) (2018)).

(“Enterprise”), which owns the Pascagoula gas processing plant, recently announced that they have entered into an agreement under which American Midstream may elect to purchase a 25% interest in the plant.²⁰

17. The Producer Coalition surmises that High Point is “refusing to consider transporting gas to the MP 261 delivery point likely because it is favoring and protecting the economic interests of its affiliates and its parent company’s economic interest in the Pascagoula processing plant.”²¹ The Producer Coalition asserts that HPGG currently is delivering non-jurisdictional gas to the subject point and that High Point has raised only specious operational arguments against providing the requested service in its October 30, 2018 letter. Accordingly, the Producer Coalition argues that it is unduly discriminatory for High Point to refuse to lease additional VKG System capacity to deliver gas to the MP 261 delivery point when it has leased capacity on the VKG System to provide transportation service on and to the benefit of its pipeline affiliates and parent company.

18. Lastly, the Producer Coalition argues that High Point’s tariff states that it will utilize off-system capacity to render service for its shippers. The Producer Coalition asserts that its request to deliver gas to MP 261 would utilize the capacity High Point has leased from HPGG on the VKG System and that High Point’s refusal to provide such service is anticompetitive and unduly discriminatory. The Producer Coalition asserts that High Point is not using the leased capacity to provide service to its shippers consistent with the Commission’s regulations or its tariff. Rather, it asserts that High Point “intends to selectively provide transportation service on the VKG [System] leased capacity only if the gas is ultimately delivered to the Pascagoula processing plant.”²²

19. As relief, the Producer Coalition requests that the Commission order High Point to provide transportation service on its leased capacity on the VKG System for delivery to the MP 261 delivery point, and, if necessary, obtain additional leased capacity on the VKGS System to effectuate such deliveries.

B. December 11, 2018 High Point Answer

20. On December 11, 2018, High Point filed an answer to the instant Complaint stating that the Complaint should be dismissed because:

²⁰ Producer Coalition Complaint at 10 (citing Attachment E).

²¹ Producer Coalition Complaint at 10.

²² Producer Coalition Complaint at 12.

(1) it is an untimely and repetitive second request for rehearing of the [Certificate] Order; (2) the [Certificate] Order is now a final order that bars the Complaint under the doctrine of collateral estoppel; (3) the Commission does not have authority to compel [High Point] to lease additional capacity from [HPGG]; (4) the Commission does not have the authority to compel [HPGG] to lease its capacity to [High Point]; and (5) a grant of the relief requested would, at the expense of the HP Companies, change the economics relied upon by the HP Companies to justify the service that has already been certificated.²³

21. High Point states that the Complaint is an attempt to obtain a better deal than the arrangement certificated by the Commission. High Point alleges that the facts have not changed since the rehearing request was filed and the fact that the Producer Coalition sent letters to High Point requesting service to MP 261 does not change the Commission's rejection in the Certificate Order and the Rehearing Order of that same request. High Point argues that this additional argument is an untimely supplement to the Producer Coalition's rehearing request. High Point submits that the doctrine of collateral estoppel prohibits a party from bringing a different claim on an issue that has already been decided. High Point argues that the Producer Coalition's arguments and requested relief were rejected in a final Commission order and that they are barred from submitting the same claims.²⁴

22. High Point also argues that the Producer Coalition now acknowledges that the leased capacity does not include the WFS interconnect at MP 261, and that High Point has no ability to deliver gas to that point under the lease. High Point argues that the Producer Coalition's request for the Commission to order High Point to lease additional capacity from HPGG must be rejected because the Commission has no authority to compel pipelines subject to its jurisdiction to construct or acquire gas facilities.²⁵

²³ December 11, 2018 High Point Answer at 4-5.

²⁴ December 11, 2018 High Point Answer at 6, (citing *Entergy Services, Inc.*, 128 FERC ¶ 63,015, at P 321 (2009), *NStar Elec. Co.*, 120 FERC ¶ 61,261, at P 33 (2007) (citations omitted)).

²⁵ December 11, 2018 High Point Answer at 15 (citing U.S.C. ¶ 717f(a); *Panhandle Eastern Pipe Line Co. v. FPC*, 204 F.2d 675, 680 (3d Cir. 1953); *Texas Eastern Trans., LP*, 141 FERC ¶ 61,043, at P 28 (2012)). High Point continues stating

23. Moreover, High Point maintains that the Producer Coalition's characterization of its recent requests for delivery of gas to MP 261 as a "request for transportation service" does not change the fact that the Commission has found that High Point does not have the right to deliver gas to points that are not located on its owned or leased system,²⁶ and neither the Commission's open access policies nor the off-system policies cited by the Producer Coalition change this fact or require pipelines to provide service to points not located on their systems.²⁷

24. High Point states that in the certificate proceeding High Point proposed and the Commission approved one delivery point for the proposed service -- MP 260. High Point asserts that to require it to acquire additional leased capacity would be inconsistent with the economics relied upon it to offer the arrangement. High Point asserts that the Rehearing Order reasoned that the point-to-point lease reflects the economic value the parties placed on that discrete segment of capacity. High Point argues that the Producer Coalition cannot require it to change the terms of the lease they negotiated or the value each party placed on the transaction.

25. Finally, in response to the Producer Coalition's protest that there may be a better solution that would enable gas to be processed at other facilities, High Point stated that it would consider proposals for service to other outlets. High Point asserts that the Producer Coalition now argues that High Point did not adequately respond to requests for service. However, High Point responds that the Producer Coalition only reiterated their request for High Point to lease additional capacity for the purpose of including MP 261 as a delivery point, which High Point had already declined to do. High Point argues that the Certificate Order found that "neither the Producer Coalition nor any other commenter has proposed a viable alternative to [High Point's] proposal" and that "no shipper is prevented from either constructing alternative facilities or contracting with other pipelines that may better meet the shipper's objective."²⁸

that, even if the Commission had authority to compel interstate pipelines subject to its jurisdiction to acquire capacity by lease it clearly lacks authority to compel HPGG, a pipeline not subject to its jurisdiction, to lease or otherwise provide its capacity to another pipeline. High Point Answer at 8-9.

²⁶ December 11, 2018 High Point Answer at 7-8.

²⁷ *Id.* (citing Producer Coalition Complaint at 8-9 (citing Sections 284.7(b), (c) and (f))).

²⁸ December 11, 2018 High Point Answer at 11 (citing Certificate Order, 163 FERC ¶ 61,135 at P 24).

C. December 21, 2018 Producer Coalition Answer

26. On December 21, 2018, the Producer Coalition filed an answer to High Point's answer asserting that the allegations set forth in the Complaint are distinct from the arguments raised in the Rehearing Order. The Producer Coalition states that in its request for rehearing, it argued that the MP 261 delivery point on the VKG System was within the delivery path of the capacity leased by High Point and that the Commission found that the leased capacity path did not include the MP 261 delivery point. The Producer Coalition claims that in the Complaint, it is asserting that once the leased capacity became part of High Point's system, any transportation service provided over such capacity must be provided on an open-access basis in a non-discriminatory fashion. Conceding that the MP 261 delivery point is not within the VKG System leased capacity path, Producer Coalition argues that once the capacity is subject to the tariff of the pipeline, any shipper is entitled to request service on such capacity, and the pipeline is barred from refusing such requested service on the basis of undue discrimination in favor of its affiliated companies.²⁹

27. The Producer Coalition argues that High Point's refusal to grant the transportation request to the MP 261 delivery point is also contrary to the Commission's interconnect policy set forth in *Panhandle Eastern Pipe Line Co.*³⁰ The Producer Coalition asserts that in *Panhandle* the Commission set forth five conditions to be met by a party desiring an interconnection and asserts that all five conditions have been met concerning its request to deliver gas to the MP 261.³¹

²⁹ December 21, 2018 Producer Coalition Answer at 8.

³⁰ December 21, 2018 Producer Coalition Answer at 11 (citing 91 FERC ¶ 61,037 (2000) (*Panhandle*)).

³¹ December 21, 2018 Producer Coalition cites the following from *Panhandle*:

The policy announced here enables a party desiring access to a pipeline to obtain an interconnection if it satisfies five conditions. First, the party seeking the interconnection must be willing to bear the costs of the construction if the pipeline performs that task. In the alternative, the party seeking the interconnection could construct the facilities itself in compliance with the pipeline's technical requirements. Second, the proposed interconnection must not adversely affect the pipeline's operations. Third, the proposed

28. The Producer Coalition contends that High Point has already leased capacity on the VKG System to deliver gas to its two pipeline affiliates for the ultimate processing by the Pascagoula gas processing plant that is (or will soon be) partially owned by its parent corporation. Once High Point entered into the lease with HPGG for the VKG System capacity for its own account, it cannot now refuse to enter into similar lease arrangements on behalf of third parties merely to protect its and its affiliates' and parent corporation's competitive interests.

D. January 3, 2019 High Point Answer

29. On January 3, 2019, High Point filed an answer to the Producer Coalition's answer. High Point states that the Producer Coalition continues to ignore that the Commission's policies do not require pipelines to provide service to points not on their systems. High Point states that the Producer Coalition's answer concedes that MP 261 is not within the path of the leased capacity, and thus High Point cannot be required to provide service to a point that is outside the path of the leased capacity (or inside the path of the leased capacity but not identified as a delivery point in the lease).³² It also claims that the Producer Coalition does not satisfy the conditions of the Commission's interconnect policy.

interconnection and any resulting transportation must not diminish service to the pipeline's existing customers. Fourth, the proposed interconnection must not cause the pipeline to be in violation of any applicable environmental or safety laws or regulations with respect to the facilities required to establish an interconnection with the pipeline's existing facilities. Finally, the proposed interconnection must not cause the pipeline to be in violation of its right-of-way agreements or any other contractual obligations with respect to the interconnection facilities. *When these conditions are met, the pipeline cannot deny an interconnection, regardless of whether it previously has allowed an interconnection for a similarly-situated shipper.* Producer Coalition Answer at 11 (citing *Panhandle*, 91 FERC at 61,141 (emphasis supplied by Producer Coalition)).

³² January 3, 2019 High Point Answer at 3.

III. Public Notice of Filing

30. On November 23, 2018, the Commission issued a notice of the Producer Coalition's complaint with responses due as provided in Rules 211 and 214 of the Commission's Rules of Practice and Procedure.³³ On December 11, 2018, High Point filed an answer to the instant complaint. On December 21, 2018, the Producer Coalition filed an answer in response to High Point's answer. Thereafter on January 3, 2019, High Point filed an additional answer to the Producer Coalition's December 21, 2018 Answer.

31. Pursuant to Rule 214,³⁴ all timely motions to intervene and any unopposed motions to intervene filed out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to an answer unless otherwise ordered by the decisional authority.³⁵ We accept the additional answers filed by the Producer Coalition and High Point because such answers provide information that assisted us in our decision-making process.

IV. Discussion

33. We deny the Producer Coalition complaint. As discussed below, and consistent with the findings in the Certificate Order and Rehearing Order, and as the Producer Coalition concedes, the MP 261 point, for which certain producers sought service, is not included within the capacity that High Point leased from the VKG System, and nothing in our regulations or policies requires High Point to lease more capacity to serve the Producer Coalition's request. Additionally, we find that the Producer Coalition's claims of undue discrimination are unfounded. Finally, contrary to their assertions, we find that the Producer Coalition did not make a showing that it satisfied the criteria of the Commission's interconnect policy.³⁶

34. As set forth above, the Commission recently approved the lease mechanism through which High Point provides the subject services finding both that there are

³³ 18 C.F.R. §§ 385.211, 385.214 (2018).

³⁴ *Id.* § 385.214.

³⁵ 18 C.F.R. § 385.213 (a)(2) (2018).

³⁶ *Panhandle*, 91 FERC ¶ 61,037.

benefits from using a lease arrangement and that the lease arrangement does not adversely affect existing customers.³⁷ In approving the subject lease, the Commission reviewed concerns raised by the Producer Coalition that the companies involved were affiliated and the effect this fact would have on the proposed resolution of the Toca Plant situation.³⁸ Upon examination, the Commission found that all the parties in the proceeding “agree that the closure of the Toca Plant will result in significant disruptions to shippers that use HP Transmission's system”³⁹ and reasoned that because High Point did not have any firm customers, no shipper, including the members of the Producer Coalition, would be entitled to deliver gas to a particular point.⁴⁰

35. Moreover, the Commission found that High Point had reasonably concluded that the proposed lease would allow shippers continued access to downstream markets while avoiding the need to construct additional facilities, and that no other party had proposed a viable alternative to this proposal. The Commission also found that no shipper was prevented from either constructing alternative facilities or contracting with other pipelines that may better meet the shipper's objectives.

36. The Commission emphasized this point on rehearing where the Producer Coalition argued that the Commission should require access to the MP 261 interconnect if there is no physical or operational reason that would justify the denial. The Commission denied this request, reasoning that the lease terms, including the receipt and delivery points on the leased capacity, were negotiated by the parties and reflect the economic value the

³⁷ Certificate Order, 163 FERC ¶ 61,135 at P 12, *order on reh'g*, 165 FERC ¶ 61,208 (2018) (citing *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276 at P 69).

³⁸ In particular, in approving the subject lease, the Commission disagreed with the Producer Coalition's contention that the Commission should more closely examine the proposal because of the affiliated nature of the parties and stated that it examines leases among affiliates and non-affiliates using the same criteria. Certificate Order, 163 FERC at P 24, n.24 (citing *Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042 (2017) (approving a lease of pipeline capacity from an affiliated local distribution company); *NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022 (2017) (approving a lease of pipeline capacity from an affiliated local distribution company); *Discovery Producer Services LLC*, 117 FERC ¶ 61,243 (2006) (approving a lease of pipeline capacity from an affiliated gas gathering company).

³⁹ Certificate Order, 163 FERC ¶ 61,135 at P 25.

⁴⁰ *Id.* P 24.

parties placed on that discrete segment of capacity. The Commission held that because the lease agreement only conveys capacity from the interconnections at MP 289 to MP 260, High Point is not permitted to access any other points on the VKG System.⁴¹

37. Moreover, we reject the Producer Coalition's claim that denying interruptible shippers the use of the MP 261 interconnect violated the open access regulations. The Producer Coalition asserts that because High Point is an interstate pipeline providing interruptible transportation service, it must provide such service in a non-discriminatory fashion and in an open-access manner. The Commission explained that this denial of the requested service does not violate the Commission's open access regulations because the MP 261 interconnect is not part of the lease agreement and, therefore, is not part of the High Point system.⁴² In its Complaint, the Producer Coalition has not provided any argument that would compel the Commission to find otherwise.

38. In spite of the arguments raised by the Producer Coalition, the Commission found that the proposed lease arrangement did not adversely affect existing customers on High Point's system.⁴³ Moreover, the Commission stated that it would not require High Point to offer service beyond the path of its capacity lease.⁴⁴ The Commission encouraged High Point, its shippers, and other pipelines "to continue to examine possible alternative transportation arrangements that will best serve the pipelines, customers, and markets."⁴⁵ On December 6, 2018, the Commission affirmed its findings on rehearing.⁴⁶

⁴¹ Rehearing Order, 165 FERC ¶ 61,208 at P 10 (citing *Gulf S. Pipeline Co., LP*, 120 FERC ¶ 61,291 at P 47 (explaining that the Commission will not require an existing interconnect as a primary receipt and delivery point for a lease because "the specific points in the lease were negotiated by the parties").

⁴² Rehearing Order, 165 FERC ¶ 61,208 at P 12.

⁴³ Certificate Order, 163 FERC ¶ 61,135 at PP 14 & 37.

⁴⁴ *Id.* P 39. The Commission reasoned that it views a lease of pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline. Because High Point had no entitlement to deliver gas to points outside of the path of the capacity being leased, the Commission states that it would not require it to offer service beyond the path of its capacity lease. *Id.*

⁴⁵ Certificate Order, 163 FERC ¶ 61,135 at P 39.

⁴⁶ Rehearing Order, 165 FERC ¶ 61,208.

39. Because the Producer Coalition filed the Complaint on November 21, 2018, before the Commission affirmed the Certificate Order on rehearing, the Producer Coalition did not have the full benefit of the Commission's reasoning in affirming the Certificate Order when it filed the Complaint. Accordingly, we examine the events subsequent to our approval of the lease, and our recent affirmation of that approval, to determine if events have transpired that would render the original findings unjust and unreasonable.

40. Subsequent to the Commission's approval of the lease and order on rehearing, on October 2, 2018, the Producer Coalition sent High Point a letter requesting that High Point take the steps necessary to permit deliveries to the MP 261 delivery point, "including coordinating with and acquiring from HPGG any necessary VKG [System] capacity." The Producer Coalition stated that it expected High Point to take whatever steps necessary to implement this request, including coordinating with and acquiring from HPGG any necessary VKG System capacity at the identical interruptible transportation rate for service on the VKG System leased capacity. In the letter the Producer Coalition requested that High Point include the interconnect at the MP Block 261 platform:

as an eligible delivery point in each of the Producers' Rate Schedule ITS transportation agreement amendments that we understand will be tendered by [High Point] to the Producers (and other affected parties) prior to the commencement of service by High Point on the leased VKGS capacity . . . [in the Certificate Order.]⁴⁷

41. The Producer Coalition states that its request was "consistent with the statement" that High Point and HPGG made in its answer to the protests that were filed in these Certificate Order dockets that High Point and HPGG would consider any proposals to create other outlets for gas on their systems.⁴⁸

42. High Point states that on October 11, 2018 it responded to the October 2, 2018 letter stating that in the Certificate Order the Commission "refused to require [High Point] to offer service beyond the path of the capacity leased from [High Point]" and that the "tariff approved by [the Commission] clearly states that the \$0.04/Dth rate on the leased capacity is 'Applicable to Service to Delivery Point at Main Pass Block

⁴⁷ Producer Coalition Complaint at Attachment A.

⁴⁸ *Id.* (citing Motion of High Point Gas Transmission LLC and High Point Gas Gathering LLC for Leave To Answer and Answer, filed January 29, 2018, at 6).

260 Platform.”⁴⁹ High Point concluded stating that it was “open to continuing a dialogue going forward.”

43. On October 16, 2018, the Producer Coalition replied to High Point’s October 11, 2018 response letter by requesting that High Point provide them with the ITS transportation rate that High Point would charge them for deliveries to MP 261, and when such deliveries could commence. The letter concluded by stating that it should be considered a formal request for transportation service.⁵⁰

44. By letter dated October 30, 2018, High Point stated that:

... the path utilizing MP 260 is the only practical way for Producer’s gas to be transported at this time. Finally, as you are aware, adding MP 261 as an additional delivery point would present issues that would have potential adverse consequences to HPGG and its shippers, including the Producers.⁵¹

45. The Producer Coalition asserts that because High Point refused its request for service for operational reasons without any supporting documentation, the Producer Coalition filed the instant complaint. However, the Commission’s review of this evidence reveals that the Producer Coalition simply reiterated requests mirroring the issues it raised in the certificate proceeding which were rejected by the Commission. In its letters the Producer Coalition requests that High Point take the steps necessary to permit deliveries to the MP 261 delivery point, including acquiring additional capacity so that High Point could serve the Producer Coalition under its interruptible transportation rate. As High Point correctly points out in its October 11, 2018 letter, although the Producer Coalition stated that it expected High Point to acquire any additional capacity necessary to implement the Producer Coalition’s request, in the Certificate Order the Commission explicitly refused to require High Point to offer service beyond the path of the capacity it had leased.⁵²

⁴⁹ Producer Coalition Complaint at Attachment B.

⁵⁰ Producer Coalition Complaint at Attachment C.

⁵¹ Producer Coalition Complaint at Attachment D.

⁵² Certificate Order, 163 FERC ¶ 61,135 at P 24. *See also* Rehearing Order, 165 FERC ¶ 61,208 at P 10 (“Because the lease agreement only conveys capacity from

46. The Producer Coalition makes much of High Point's response in its second letter that adding MP 261 as an additional delivery point would present issues that would have "potential adverse consequences to HPGG and its shippers, including the Producers." The Producer Coalition asserts that there are no operational bars to High Point providing the requested transportation and reasons that High Point is "refusing to consider transporting gas to the Main Pass 261 delivery point likely because it is favoring and protecting the economic interests of its affiliates and its parent company's economic interest in the Pascagoula processing plant."⁵³ However, the Commission finds that the Certificate Order found that "neither the Producer Coalition nor any other commenter has proposed a viable alternative to [High Point's] proposal."⁵⁴ Moreover, the Commission found in the Certificate Order and the Rehearing Order, that High Point was not obligated to obtain additional capacity to reach the MP 261 delivery point in any event.⁵⁵ Therefore, any discussion that High Point's refusal to provide service beyond its initial reason, that it could not provide the service without obtaining additional capacity and that the Commission had held that it was not required to acquire such capacity to implement requests for service to MP 261, is superfluous.

47. In its December 21, 2018 Answer, the Producer Coalition concedes that the MP 261 delivery point is not within the VKG System leased capacity path.⁵⁶ However, the Producer Coalition argues that High Point's refusal to grant the transportation request to the MP 261 delivery point is contrary to the Commission's interconnect policy set forth in *Panhandle*.⁵⁷ The Producer Coalition asserts that all five conditions of the *Panhandle* doctrine have been met concerning its request to deliver gas to MP 261.

the interconnections at MP 289 to MP 260, [High Point] *is not permitted to access any other points on the VKG System.*") (emphasis added).

⁵³ Producer Coalition Complaint at 10.

⁵⁴ Certificate Order, 163 FERC ¶ 61,135 at P 24.

⁵⁵ *Id.* P 39 and Rehearing Order, 165 FERC ¶ 61,208 at P 10.

⁵⁶ December 21, 2018 Producer Coalition Answer at 8.

⁵⁷ December 21, 2018 Producer Coalition Answer at 11 (citing *Panhandle*, 91 FERC ¶ 61,037).

48. The Commission finds that its *Panhandle* interconnection policy does not require pipelines to provide interconnections with points that are not on their systems. In *Panhandle*, the Commission stated that:

The Commission emphasizes that this new policy, which relates only to the construction of new interconnections, does not require a pipeline to expand its facilities, to construct any facilities leading up to an interconnection, or even to construct the interconnection itself.⁵⁸

49. Moreover, the Commission finds that the Producer Coalition's request does not satisfy the fifth condition of the interconnect policy, namely that the "proposed interconnection must not cause the pipeline to be in violation of its right-of-way agreements or *any other contractual obligations with respect to the interconnection facilities*."⁵⁹ In the instant proceeding, the Commission approved a lease agreement whereby High Point leased capacity on HPGG's VKG System from the point of interconnection between High Point and HPGG, to a delivery point between HPGG and Destin. Moreover, the Commission stated in both the Certificate Order⁶⁰ and the Rehearing Order⁶¹ that the lease agreement reached by High Point and HPGG did not permit High Point any entitlement to deliver gas to points outside of the leased path. In fact, the Commission stated "[b]ecause the lease agreement only conveys capacity from the interconnections at MP 289 to MP 260, [High Point] is not permitted to access any other points on the VKG System."⁶²

50. Therefore, for the Producer Coalition to successfully invoke the Commission's *Panhandle* doctrine to obtain an interconnection on High Point's system, the Producer Coalition would first have to show how an interconnect with High Point to reach MP 261 would not require High Point to expand its facilities, or to construct any facilities leading up to the interconnection. Moreover, the Producer Coalition would be required to show how its request for an interconnect does not violate the fifth condition of the *Panhandle* doctrine in that granting a delivery interconnect would require that High Point violate the terms of a pre-existing lease which does not allow a delivery point on the leased capacity

⁵⁸ *Panhandle*, 91 FERC at 61,141.

⁵⁹ *Id.* (emphasis added).

⁶⁰ 163 FERC ¶ 61,135 at P 39.

⁶¹ 165 FERC ¶ 61,208 at P 10.

⁶² *Id.*

that is not part of High Point's system. The Producer Coalition does not make either of these showings, and therefore we deny the Complaint.

The Commission orders:

The Complaint is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.