146 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Dominion Transmission, Inc.
and Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP13-545-000

ORDER APPROVING ABANDONMENT AND ISSUING CERTIFICATE

(Issued January 16, 2014)

1. On September 6, 2013, Dominion Transmission, Inc. (Dominion) and Tennessee Gas Pipeline Company, L.L.C. (Tennessee) jointly filed an application under section 7(b) of the Natural Gas Act (NGA)[1] for authorization for Tennessee to abandon capacity it leases on Dominion's system between Ellisburg and Leidy, Pennsylvania.

2. As discussed below, we will approve Tennessee's request for NGA section 7(b) authorization to abandon its leased capacity on Dominion's system. We will also grant Dominion NGA section 7(c)[2] authorization to reacquire the capacity.

I. **Background and Proposals**

3. Dominion and Tennessee are both natural gas companies, as defined under section 2(6) of the NGA.[3] Dominion provides interstate natural gas transportation and storage services for customers in Maryland, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia. Tennessee provides interstate natural gas transportation service on its transmission system extending from Texas and Louisiana, and the Gulf of Mexico, through Texas, Louisiana, Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island, and Connecticut.

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[1] 15 U.S.C. § 717f(b) (2012).

[2] 15 U.S.C. § 717f(c) (2012).

[3] 15 U.S.C. § 717a(6) (2012).

4. On June 28, 2002, the Commission issued an order granting Dominion and National Fuel Gas Supply Corporation (National Fuel) certificate authority to add compression on their jointly owned line between Ellisburg and Leidy, Pennsylvania, to create capacity sufficient to transport an additional 280,000 dekatherms per day (Dth/day) of natural gas on a firm basis. The order also granted certificate authority for Tennessee to acquire by lease capacity sufficient to transport 150,000 Dth/day from Dominion and 130,000 Dth/day from National Fuel, accounting for all of the new capacity to be created on the Ellisburg-Leidy Line.[4] Prior to Tennessee's lease of capacity on the Ellisburg-Leidy Line, Tennessee delivered its shippers' gas to its interconnection at Ellisburg with Dominion and National Fuel. From there, shippers needed separate service agreements with Dominion or National Fuel for deliveries further downstream, including to the interconnections with Transcontinental Gas Pipe Line Corporation (Transco) and Texas Eastern Transmission Corporation (Texas Eastern) at the Leidy Hub at the end of the Ellisburg-Leidy Line. Tennessee's lease of capacity on the Ellisburg-Leidy Line made it possible for its shippers to receive service all the way to the interconnections with Transco and Texas Eastern at the Leidy Hub under Tennessee's tariff.

5. In accordance with the terms of Tennessee's capacity lease agreement with Dominion, Tennessee gave Dominion one-year's notice of its intent to terminate the lease agreement. Tennessee requested and Dominion agreed to have the lease agreement expire contractually on September 30, 2013, to correspond with the end of a calendar month.

6. Dominion and Tennessee jointly request Commission authorization to abandon the capacity lease agreement, effective September 30, 2013. They state that no customer will lose service or be otherwise harmed by Tennessee's abandonment of the leased capacity. Dominion states that it will make an additional 150,000 Dth/day of open-access transportation service available under its own tariff.[5]

II. Notice and Interventions

7. Public notice of Tennessee and Dominion's joint application was issued on September 10, 2013, and published in the *Federal Register* on September 17, 2013 (78 Fed. Reg. 57,145). NJR Energy Services Company; New Jersey Natural Gas

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[4] *Dominion Transmission, Inc. et al.*, 99 FERC ¶ 61,367, *order on reh'g and clarification*, 101 FERC ¶ 61,047 (2002). In that case, the Commission also issued a certificate of public convenience and necessity to Dominion to construct and operate additional capacity, which it would lease to Tennessee, at two existing compressor stations located on its system. *Id.*

[5] Tennessee has not filed for authorization to abandon the capacity on the Ellisburg-Leidy Line that Tennessee leases from National Fuel.

Company; National Grid Delivery Companies; Hess Corporation; Exelon Corporation; Consolidated Edison Company of New York, Inc. jointly with Philadelphia Gas Works; and Public Service Company of North Carolina filed timely, unopposed motions to intervene.[6]

8. New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation jointly filed a late motion to intervene. We will grant the late motion to intervene because, at this stage of the proceeding, granting the late motion will not cause undue delay or burden on existing parties.[7]

9. No party filed a protest or adverse comments regarding Tennessee and Dominion's application seeking authorization for Tennessee to abandon its lease of capacity from Dominion.

III. Discussion

10. Because the leased capacity is used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, Tennessee's abandonment of the leased capacity, and Dominion's reacquisition and use of the capacity for service under its tariff, are subject to the requirements of subsections (b) and (c) of NGA section 7, respectively.

11. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest in the lessor's pipeline subject to the lessor pipeline obtaining NGA section 7(b) authorization to abandon the capacity by lease and the lessee pipeline receiving section 7(c) certification to acquire the capacity by lease.[8] When the parties seek to terminate the capacity lease arrangement, the Commission requires the lessee pipeline to obtain authorization under section 7(b) of the NGA to abandon the leased capacity and the lessor pipeline to obtain certificate authorization under section 7(c) of the NGA to reacquire the capacity for use in providing service under its own tariff.[9]

12. The contractual lease agreement between Dominion and Tennessee expired on September 30, 2013. Tennessee states it no longer needs the leased capacity to provide service for its customers. Abandonment of the capacity will relieve Tennessee from

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[6] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c)(1) (2013).

[7] 18 C.F.R. § 385.214(c)(2) (2013).

[8] *Texas Eastern Gas Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001); *Panhandle Eastern Pipe Line Co.*, 73 FERC ¶ 61,137, at 61,390 (1995). *See also Trunkline Gas Co., LLC*, 132 FERC ¶ 61,069, at P 7 (2010).

[9] *See Islander East Pipeline Co. et al.*, 102 FERC ¶ 61,054, at P 35 (2003).

having to make monthly lease payments to Dominion. Therefore, we find Tennessee's proposed abandonment is permitted by the present or future public convenience or necessity.

13. Although Dominion failed to explicitly request authorization to reacquire the abandoned capacity, we will consider Dominion's reacquisition of the subject capacity in light of guidance provided by the Commission's Certificate Policy Statement.[10] Under the Certificate Policy Statement, the threshold concern is whether a pipeline's proposal to construct, acquire, or lease facilities or capacity would rely on subsidization by existing shippers that do not need additional service and would not otherwise receive commensurate benefits from the proposal. The Commission has stated that, in general, when a lessor pipeline is reacquiring capacity that it has been leasing to another pipeline, as in this case, the subsidization and competitive concerns addressed by the Certificate Policy Statement are not implicated.[11]

14. In this case, the subject capacity was leased to Tennessee immediately upon construction. Dominion states that it will offer the additional 150,000 Dth/d of transportation service at its applicable system rates. The Commission approves Dominion's proposed use of its system rates as the initial rates for the acquired capacity. However, as Dominion has not demonstrated demand for additional service sufficient to recover the incremental costs, the Commission will not issue a presumption that the costs attributable to the reacquired capacity may be rolled into Dominion's system rates in a future section 4 rate proceeding. The Commission directs Dominion to keep separate books and accounting of costs attributable to the reacquired capacity. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710. Such measures will enable us to protect existing customers from subsidization that might result from under-collection of the incremental cost of service associated with the reacquired capacity, as well as help the Commission and parties to rate proceedings accurately determine the costs of reacquiring the capacity.

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[10] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement). *See, e.g., Texas Eastern Transmission, LP, et al.*, 133 FERC ¶ 61,055, at PP 9-10 (2010) (*Texas Eastern*) (finding, based on application of Certificate Policy Statement's applicable criteria, that the public convenience and necessity required a grant of certificate authorization for Texas Eastern to reacquire and use for its own services capacity it had been leasing to Texas Gas Transmission).

[11] *Texas Eastern*, 133 FERC ¶ 61,055 at P 9.

15. We find that Dominion's reacquisition of this existing capacity will not adversely impact other pipelines in the market or their captive customers or affect any landowners or communities. Additionally, as noted above, none of Dominion's shippers have raised any concerns regarding Tennessee's abandonment of the capacity. Finally, since Dominion's reacquisition of the capacity involves no construction, it raises no environmental concerns.

16. In view of the above considerations, we find that Tennessee's abandonment and Dominion's reacquisition of the subject capacity are in the public convenience and necessity. We also find that is appropriate under the circumstances to grant Tennessee and Dominion's request that we exercise our discretion to make Tennessee's abandonment authorization retroactive to September 30, 2013.[12] No party has raised any concerns regarding the abandonment proposal, including the applicants' request that the abandonment authorization be made retroactively effective to their mutually agreed upon expiration date for their service contract.[13] Making Tennessee's abandonment authorization retroactive to September 30, 2013, will ensure that Tennessee has no certificate obligation to make lease payments to Dominion for periods after that date.

17. At a hearing held on January 16, 2014, 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) Tennessee is granted permission and approval under section 7(b) of the Natural Gas Act to abandon capacity leased from Dominion, as more fully described in this order and application, effective September 30, 2013.

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[12] The Commission has discretionary authority to grant retroactive abandonment under the NGA. *Northern Natural Gas Co., et al. v. FERC,* 785 F.2d 338, 343 (D.C. Cir. 1986) ("Congress has granted the Commission broad remedial authority in Section 16 of the Natural Gas Act . . . this authority is broad enough to include discretionary retroactive abandonment authorizations under appropriate equitable circumstances."). The Commission has exercised this discretion when it has found that equitable circumstances make retroactive abandonment authority appropriate, e.g., when failure to do so would result in the incurrence of demand charges by a shipper for services not utilized. *See, e.g., Transcontinental Gas Pipe Line Corp.,* 73 FERC ¶ 61,301 (1995).

[13] *Cf. Panhandle Eastern Pipe Line Co.,* 45 FERC ¶ 61,283 (1988) (granting retroactive abandonment of a sales service because, among other things, no party objected to the proposed date and no person was adversely affected by the date).

(B) A certificate of public convenience and necessity is issued to Dominion under section 7(c) of the Natural Gas Act authorizing it to reacquire the leased capacity from Tennessee, as more fully described in this order and the application.

(C) The abandonment approval and certificate authorization issued in Ordering Paragraphs (A) and (B) are conditioned on Dominion and Tennessee complying with all applicable Commission regulations under the Natural Gas Act and particularly section 154 and paragraphs (a), (d), (e), and (f) of section 157.20 of the Commission's regulations.

(D) New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation's joint motion for late intervention is granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.