

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Texas Gas Transmission, LLC

Docket No. CP04-373-000

ORDER ISSUING CERTIFICATE

(Issued February 11, 2005)

1. On July 7, 2004, Texas Gas Transmission, LLC (Texas Gas) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) seeking a certificate of public convenience and necessity authorizing it to expand its gas storage facilities at its market area storage complex, located in Kentucky and Indiana, to provide additional market area storage services to its customers. The storage expansion project entails the installation of two new turbine compressors at Texas Gas' Midland 3 Compressor Station, located in Muhlenberg County, Kentucky. The Commission will approve this project and concludes that doing so is in the public interest because the expansion facilities will enable Texas Gas to meet its customers' demonstrated need for additional no-notice and firm storage services.

**Background and Proposal**

2. Texas Gas operates a major natural gas pipeline system and is engaged in the transportation of gas from various sources in Texas and Louisiana to various markets in the south, midwest and northeast. Texas Gas states that its market area storage complex, located in Texas Gas' Rate Zone 3, consists of nine storage fields owned and operated by Texas Gas in Kentucky and Indiana. Texas Gas asserts that the Midland Gas Storage Field is the largest of these fields and provides over 70 percent of Texas Gas' seasonal and daily storage capacity. Texas Gas explains that the Midland 3 Compressor Station, which is an integral part of the storage complex, is currently equipped with two 2,000 horsepower (hp) Delaval reciprocating engine gas compressor units that were installed in 1973 and 1975, one 2,250 hp Cooper-Bessemer reciprocating engine gas compressor unit that was installed in 1980 and later up-rated to 2,610 hp and two 1,250 hp Dresser-Rand electric motor driven compressors that were installed in 2000.

3. Texas Gas asserts that the market area storage serves a number of roles on its system. Texas Gas indicates that the storage field acts as a surrogate for pipeline capacity upstream of the storage complex, which allows upstream facilities to be generally designed to meet demand based on the daily average, whereas facilities downstream of storage are designed on a peak day basis. Further, Texas Gas states that the market area storage serves various operational purposes, such as supporting system management and load balancing.

4. Texas Gas explains that its market area storage complex also supports its firm no-notice services (Rate Schedules NNS, SGT, SNS)<sup>1</sup> and its firm storage service (Rate Schedule FSS). According to Texas Gas, when it unbundled its services pursuant to Order No. 636, the Commission approved the establishment of two no-notice services to replicate the transportation service previously embedded in Texas Gas' bundled firm sales service. Texas Gas' no-notice service under Rate Schedule NNS consists of a combination of pipeline capacity (the nominated component of the service) and storage capacity (the un-nominated component of the service). Texas Gas states that the un-nominated storage component of its NNS service is provided on a no-notice basis and permits variable hourly flows up to 1/16<sup>th</sup> of the daily NNS contract demand. Texas Gas indicates that while it was required to offer both no-notice service and firm storage service when it unbundled its services, all of Texas Gas' available firm storage was initially allocated to no-notice services when customers made their service elections. Texas Gas asserts that since 1993, some storage capacity has been converted to FSS service, but the majority of Texas Gas' storage capacity continues to be dedicated to no-notice services consistent with its customers' wishes.

5. Texas Gas states that to assess market demand for additional firm storage capacity under existing rate schedules, it conducted a non-binding open season in January 2004. In response, Texas Gas maintains that shippers expressed substantial interest in both additional no-notice service (NNS) and/or firm storage service (FSS). Texas Gas states that the subsequent binding open season resulted in binding precedent agreements for the additional storage capacity. The precedent agreements provide that the expansion shippers will pay the lesser of the currently effective rates for no-notice service or a specific rate stated in the agreements. One customer, ONEOK Energy Marketing and Trading Company, LP, requested service only for additional storage capacity under Rate Schedule NNS, and the other customer, ProLiance Energy, LLC, requested service under

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<sup>1</sup> Texas Gas also provides a no-notice service for small customers under Rate Schedule SGT. Under another schedule, Rate Schedule SNS, Texas Gas provides for summer no-notice service.

both Rate Schedules NNS and FSS. Texas Gas asserts that neither customer is affiliated with Texas Gas. Texas Gas explains that the expansion project it is proposing here would allow shippers to withdraw on a firm basis an additional 80.6 million cubic feet of gas per day (MMcf/d) and will permit Texas Gas to utilize an additional 8.2 billion cubic feet (Bcf) of working gas in the Midland Gas Storage Field.

6. Texas Gas states that it anticipates beginning construction activities on April 1, 2005, and hopes to begin operations on November 1, 2005. To accomplish the expansion of the storage facilities, Texas Gas proposes to construct/install and operate two 6,811 hp Solar Taurus 60 gas turbines driving two separable Solar C402 centrifugal gas compressors, to be housed inside a new Turbine/Compressor Building, located within the existing Midland 3 Compressor Station site. In addition, Texas Gas proposes to construct and operate various auxiliary equipment, as described in more detail in the application.

7. Texas Gas estimates that the project will cost \$20,691,600. Service will be provided for the expansion shippers under Rate Schedules NNS and FSS. Texas Gas proposes initial rates for the incremental capacity equal to the maximum rates for Rate Schedule FSS. For service under Rate Schedule NNS Texas Gas has agreed to charge a rate equal to the lesser of a rate cap or the maximum rate for service under that rate schedule. At currently effective rates, the rate would be the maximum rates. As detailed in Exhibit N, Texas Gas asserts that the revenues from the expansion shippers for each of the first three years of the service are estimated to be \$7,776,860 as compared to first year costs of approximately \$4,203,340. Texas Gas asserts that since the project revenues exceed project costs, rolled-in treatment is consistent with the “no subsidy requirement” of the Commission’s Certificate Policy Statement.<sup>2</sup>

### **Interventions**

8. Notice of Texas Gas’ application was published in the *Federal Register* on July 22, 2004, 69 Fed. Reg. 43,839 (2004). ConocoPhillips Company, Atmos Energy Corporation, Louisville Gas and Electric Company and the Memphis Light, Gas and Water Division filed timely, unopposed motions to intervene.<sup>3</sup> Additionally, The East Ohio Gas Company, d/b/a Dominion East Ohio, The Peoples Natural Gas Company,

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<sup>2</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 92 FERC ¶ 61,094, *order on further clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

<sup>3</sup> Timely, unopposed motions to intervene are granted pursuant to 18 CFR § 385.214.

d/b/a Dominion Peoples, and Hope Gas, Inc., d/b/a Dominion Hope (Dominion), jointly, and The Western Tennessee Municipal Group, Jackson Energy Authority, City of Jackson, Tennessee, and The Kentucky Cities (the Cities), jointly filed timely, unopposed motions to intervene with comments. As discussed below, Dominion and the Cities raise concerns regarding the proposed rates the expansion shippers will pay. Proliance Energy, LLC, filed a timely, unopposed motion to intervene and comments in support of the project.

9. PSEG Resources & Trade LLC filed a motion to intervene out of time. Since late intervention will not delay the proceeding, prejudice the rights of any parties, or place an additional burden on existing parties, for good cause shown, the Commission will grant the motion to intervene out of time.<sup>4</sup>

### **Discussion**

10. The facilities proposed by Texas Gas to expand its storage capacity will be used to store gas in interstate commerce; therefore, the construction and operation of those facilities are subject to the Natural Gas Act and the Commission's jurisdiction.

### **Compliance with Certificate Policy**

11. On September 15, 1999, the Commission issued its Certificate Policy Statement to provide guidance regarding how it will evaluate proposals for certificating new construction.<sup>5</sup> That policy statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences of a proposed project. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

<sup>5</sup> *See supra* note 2.

12. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on its existing customers. The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' captive customers, and on landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified, after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

### **Subsidization By Existing Shippers**

13. Texas Gas will provide services to the expansion shippers under its existing Rate Schedules NNS and FSS and will charge either the maximum rates under those rate schedules or, for service under Rate Schedule NNS, a rate cap. However, as the rate cap is higher than the currently effective rate, the maximum rate is the applicable rate under the terms of the contracts. As shown in Exhibits I and N, the rates the expansion shippers will pay for their services will generate revenues exceeding the incremental cost of service of the proposed project. Specifically, the revenues from the expansion shippers for each of the first three years of the service are estimated to be \$7,776,860. This is more than the estimated average first year cost of service which is \$4,203,340. Since Texas Gas' existing customers will not subsidize the project, Texas Gas may roll the costs of the project into the rate base for its rates under Rate Schedules NNS and FSS in its next general rate case.

14. Dominion in its comments does not oppose Texas Gas' proposal nor is it raising a subsidization issue at this time. Dominion indicates, however, that Texas Gas is required to file a general rate case to be effective no later than November 1, 2005, which coincides with the expected in-service date of the proposed storage expansion project. Therefore, Dominion seeks assurance that it will not be precluded from raising the subsidization issue, including cost allocation and rate design, or presenting evidence that the allocation of storage costs to non-storage services would create an improper subsidization, in Texas Gas' upcoming general rate case.

15. The Cities are concerned that the expansion shippers may receive an unduly preferential discount because the rate caps in their precedent agreements could be lower than any new higher rates which the Commission would approve in Texas Gas' required

general rate case. According to the Cities, Texas Gas has not justified any discount for these shippers. The Cities assert that Texas Gas should state that the rates for no-notice service that it will propose in the upcoming rate case will not exceed the rates offered to the new customers. Alternatively, the Cities urge the Commission to determine in this proceeding that the rate caps offered to the new shippers are not unduly discriminatory and not a bar to a finding that the project is in the public interest.

16. It is speculative whether Texas Gas' new rates will exceed the rate caps provided in the expansion shippers' precedent agreements. The analysis undertaken here regarding compliance with the Certificate Policy Statement is properly based on Texas Gas' currently effective rates. The decision made here regarding the pricing of the facilities will apply in the first rate case after the facilities go into operation, unless parties can demonstrate that circumstances have changed significantly between the time the certificate was issued and the first rate case.<sup>6</sup> Therefore, Dominion, the Cities or other parties may raise relevant issues in the appropriate Texas Gas general rate case.

**Effect of Project on Existing Shippers, Competing Pipelines and Landowners**

17. The construction of the facilities as proposed will not result in any adverse operational effects on existing Texas Gas customers because the level and quality of service provided existing shippers remains unchanged.

18. Also, the proposed project will have no adverse effect on other pipelines in the area or their captive customers. Texas Gas' expanded storage capacity is designed to meet incremental demand on its system and, therefore, no service on any other pipeline will be displaced. Further, construction of the proposed facilities will not have an adverse impact on landowners or communities near the Midland 3 Compressor Station because the proposed construction will be confined to the approximately 32 maintained acres of the existing compressor station site. Therefore, Texas Gas does not have to obtain additional rights-of-way or exercise eminent domain to construct this project.

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<sup>6</sup> See *Pricing Policy For New And Existing Facilities Constructed By Interstate Natural Gas Pipelines*, 71 FERC ¶ 61,241, 61,918 (1995), and *Northern Border Pipeline Company*, 90 FERC ¶ 61,263, 61,877 (2000).

19. For all of the above reasons, the Commission finds that Texas Gas' proposal complies with the Certificate Policy Statement. As explained, Texas Gas has demonstrated that there is a market for the additional services, the initial rates will not result in a subsidy for the project by existing shippers, existing shippers will benefit by the expanded withdrawal capacity from Texas Gas' storage facilities, and no other pipelines, their captive customers or landowners will be adversely affected.

### **Environmental Review**

20. Commission staff prepared an environmental assessment (EA) for Texas Gas' proposal to install two 6,811 horsepower Solar Taurus 60 gas turbine compressors and a new generator in addition to constructing a new compressor building and extending the existing auxiliary building at the Midland 3 Compressor Station, Muhlenberg County, Kentucky. The EA addresses water resources, fisheries, wildlife, vegetation, cultural resources, soils, land use, air quality, noise quality, polychlorinated biphenyl contamination, and alternatives.

21. Based on the discussion in the EA, the Commission concludes that if the project is constructed in accordance with Texas Gas' application and the environmental conditions set forth in the Appendix hereto, the Commission's approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

22. We note further that any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>7</sup> Texas Gas shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Texas Gas. Texas Gas shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

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<sup>7</sup>See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

**Conclusion**

23. For all of the reasons discussed above, the Commission concludes that Texas Gas' proposal to construct and operate the storage expansion project, as described herein, is required by the public convenience and necessity and, accordingly, a certificate will be issued to Texas Gas authorizing this project. At a hearing held on February 9, 2005, 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) A certificate of public convenience and necessity is issued to Texas Gas authorizing it to construct and operate the Midland Gas Storage Field expansion project, as more particularly described herein.

(B) Texas Gas shall construct and place into operation the facilities authorized herein within one year from the date of this order in accordance with section 157.20(b) of the Commission's regulations

(C) The certificate issued to Texas Gas is conditioned on its compliance with the Natural Gas Act and all relevant Commission regulations, in particular with Part 154 and paragraphs (a), (c), (e) and (f) of section 157.20 of the regulations.

(D) Texas Gas shall execute firm service agreements equal to the level of service and consistent with the terms of service represented in its precedent agreements with its customers for service prior to commencing construction.

(E) The certificate issued in paragraph (A) above is conditioned on Texas Gas' compliance with the environmental conditions included in the Appendix to this order.

(F) Texas Gas shall notify the Commission's environmental staff by telephone and/or facsimile of an environmental noncompliance identified by other federal, state or local agencies on the same day that such agency notifies Texas Gas. Texas Gas shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.



(G) PSEG Resources & Trade LLC's motion to intervene out of time is granted.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

## APPENDIX

### Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. Texas Gas shall follow the construction procedures and mitigation measures described in its application and as identified in the environmental assessment, unless modified by this order. Texas Gas must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction activities associated with abandonment of the project. This authority shall allow:
  - a. the modification of conditions of this order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction.
3. Texas Gas shall file a noise survey with the Secretary no later than 60 days after placing the authorized compressor units at the Midland 3 Compressor Station in service. If the noise attributable to the operation of the facility at full load exceeds an Ldn of 55 dBA at any nearby NSAs, Texas Gas should install additional noise controls to meet that level within 1 year of the in-service date. Texas Gas should confirm compliance with the Ldn of 55 dBA requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.