UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Trunkline Gas Company, LLC Sea Robin Pipeline Company, LLC	)	Docket No. CP12-5-000
ANR Pipeline Company	)	Docket No. CP11-543-000
TC Offshore LLC	)	Docket No. CP11-544-000

(Not consolidated)

MOTION FOR LEAVE TO INTERVENE OUT-OF-TIME AND REQUEST FOR REHEARING OF THE NATURAL GAS SUPPLY ASSOCIATION, THE INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA, THE PROCESS GAS CONSUMERS GROUP, THE AMERICAN PUBLIC GAS ASSOCIATION, AND THE AMERICAN FOREST & PAPER ASSOCIATION

Pursuant to Section 19(a) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717r(a), and Rules 212, 214, 713, and 2007 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission"), 18 C.F.R. §§ 385.212, 385.214, 385.713, and 385.2007 (2011), the Natural Gas Supply Association ("NGSA"), the Independent Petroleum Association of America ("IPAA"), the Process Gas Consumers Group ("PGC"), the American Public Gas Association ("APGA"), and the American Forest & Paper Association ("AF&PA"), (collectively, the "Associations") hereby move for leave to intervene out-of-time and request rehearing of the Commission's orders granting abandonment issued on June 21, 2012, in the above-captioned proceedings ("Abandonment Orders").[1]

[1] *ANR Pipeline Company, et al.*, 139 FERC ¶ 61,238 (2012) ("ANR Order"); *Trunkline Gas Company, LLC, et al.*, 139 FERC ¶ 61,239 (2012) ("Trunkline Order").

In the Abandonment Orders, the Commission approved the spin down of offshore pipeline assets without requiring any reduction in mainline rates and without requiring the filing of NGA Section 4 rate cases or otherwise accounting for reduced rate bases. In these orders, the Commission allowed ANR and Trunkline to keep the abandoned facilities in their rate bases.

The Associations note that they take no position as to the merits of the related abandonment applications. However, should the Commission reaffirm its decision to approve these abandonment applications, the Commission should grant rehearing and take appropriate steps to ensure that ANR and Trunkline's shippers are adequately protected from overcharges that may otherwise result from the Commission's approval of these applications.

I. BACKGROUND

On September 1, 2011, ANR Pipeline Company ("ANR") filed an application, in Docket No. CP11-543-000, under section 7(b) of the NGA for authority to abandon by sale to its wholly owned subsidiary, TC Offshore LLC ("TC Offshore"), all of its offshore pipeline facilities in the Gulf of Mexico, as well as certain onshore pipeline facilities in Louisiana and Texas. Also on September 1, 2011, TC Offshore filed an application, in Docket No. CP11-544-000, under section 7(c) of the NGA for certificate authority to acquire and operate the facilities that ANR proposes to abandon.

On October 7, 2011, Trunkline Gas Company, LLC ("Trunkline") and Sea Robin Pipeline Company, LLC ("Sea Robin") filed a joint application pursuant to sections 7(b) and 7(c) of the NGA, requesting authorization for: (1) Trunkline to abandon by sale to Sea Robin virtually all of Trunkline's offshore pipeline facilities in the Gulf of Mexico, offshore Louisiana

and Texas, as well as certain onshore pipeline facilities in Louisiana; and (2) Sea Robin to acquire and operate the facilities Trunkline proposes to abandon.

On June 21, 2012, the Commission issued the Abandonment Orders approving these asset spin-downs without requiring that the abandonment of the assets be reflected as a reduction in rate base.[2] In doing so, the Commission relied on the fact that firm shippers did not protest the abandonment applications.[3]

II. MOTION TO INTERVENE OUT-OF-TIME

A. Identity of the Associations

NGSA represents integrated and independent companies that produce and market natural gas in the United States on issues that broadly affect the natural gas industry. NGSA is the voice of suppliers and marketers who find, sell, transport and deliver approximately 30 percent of the United States' natural gas supply. Established in 1965, NGSA encourages the use of natural gas within a balanced national energy policy and promotes the benefits of competitive markets to ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. consumers. Natural gas produced and marketed by NGSA's members is transported on virtually all of the interstate natural gas pipelines regulated by the Commission.

IPAA represents thousands of American independent oil and natural gas producers and associated service companies. Independent producers develop 95 percent of American oil and gas wells, produce 54 percent of American oil, and produce 85 percent of American natural gas.

APGA is the national association for publicly-owned natural gas distribution systems. There are approximately 1,000 public gas systems in 36 states and almost 700 of these systems are APGA members. Publicly-owned gas systems are not-for-profit, retail distribution entities

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2 *See* Trunkline Order at PP 40-46; ANR Order at P 29-31.

3 *See, e.g.*, Trunkline Order at P 45; ANR Order at P 35.

owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities. APGA members purchase interstate natural gas transportation services at rates and under terms and conditions that are regulated by the Commission.

PGC is a trade association of industrial consumers of natural gas, organized to promote the development and adoption of coordinated, rational, and consistent federal and state policies with respect to gas service to industrial gas users. PGC members own and operate hundreds of plants in virtually every state in the nation. PGC members own and operate manufacturing facilities that consume natural gas delivered through interstate natural gas pipelines systems throughout the U.S.

AF&PA is the national trade association of the forest products industry, representing pulp, paper, packaging and wood products manufacturers, and forest landowners in the United States. AF&PA members make products essential for everyday life from renewable and recyclable resources that sustain the environment. The forest products industry accounts for approximately 5 percent of the total U.S. manufacturing GDP, putting it on par with the automotive and chemical industries. Industry companies produce $200 billion in products annually and employ approximately 900,000 people earning $54 billion in annual payroll. The industry is among the top 10 manufacturing sector employers in 48 states. AF&PA members own and operate facilities that consume natural gas delivered through the numerous interstate natural gas pipelines.

B. Communications

Communications regarding this request should be directed to the following individuals:

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C. Motion for Leave To Intervene Out-of-Time

As organizations representing pipeline shippers and users of gas transported on a large number of interstate gas transmission systems that may be affected by this case, the Associations have an interest in these proceedings, especially given the important policy implications impacting the Associations' members and presented by these proceedings. The Associations are interested in and affected by the results of these proceedings and the Associations' interest is stated in and protected by Rule 214(b)(2)(ii).[5] Additionally, as organizations dedicated to promoting a balanced, rational, and consistent national energy policy, the Associations' participation is in the public interest under Rule 214(b)(2)(iii).[6]

[4] Due to the joint nature of this filing, the Associations respectfully request a waiver of the requirements of Section 385.203 of the Commission's regulations to allow the inclusion of more than two persons on the service list in these proceedings.

[5] 18 C.F.R. 385.214(b)(2)(ii) (2011).

[6] 18 C.F.R. 385.214(b)(2)(iii) (2011).

In considering motions for late intervention under the standards of Rule 214(d),[7] the Commission considers "whether the movant had good cause for not filing timely; any disruption of the proceeding that might result from permitting intervention; whether the movant's interest is adequately represented by other parties; and whether any prejudice to, or additional burden on, existing parties might result from permitting the intervention."[8]

The Associations have good cause for intervening out-of-time. The Associations could not have expected that the Commission would disregard protests regarding pipeline over-recovery, due to abandoned facilities remaining in rate base, because the concerns were not raised by a certain customer group. The Associations expected that its members would be protected and that the resulting rates would be just and reasonable under the NGA.

Further, the Associations' interests cannot be adequately represented or protected by other parties, and no prejudice or burden on existing parties will result from allowing the Associations to intervene. Therefore, the Associations should be granted permission to intervene in the instant proceeding due to their unique position to shed light on the issues presented here.

III. REQUEST FOR REHEARING

In accordance with Rule 713(c), 18 C.F.R. § 385.713(c) (2012), the Associations submit the following specifications of error and statement of the issues on which they seek rehearing.

A. Statement of Issues / Specification of Errors

1. The Commission should uphold its role as the guardian of the public interest and protect all shippers, including mainline shippers, whether a protest is lodged or not. NGA Sections 4, 5, and 7. *Tejas Power Corp. v. FERC*, 908 F.2d 998 (1990). *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). *FPC v. Louisiana Power & Light Co.*, 406 U.S. 621 (1972). *FPC v. Texaco Inc*., 417 U.S. 380 (1974). *United Distribution Cos. v.*

[7] 18 C.F.R. 385.214(d) (2011).

[8] *Erie Boulevard Hydropower, L.P.*, 117 FERC ¶ 61,189 at P 30 (2006).

FERC, 88 F.3d 1105 (D.C. Cir. 1996). *City of Mesa v. FERC*, 993 F.2d 888 (D.C. Cir. 1993). *Atlantic Refining Co. v. Public Service Commission*, 360 U.S. 378, 388 (1959).

2. The Commission should craft an appropriate remedy to ensure that the impact of the spin-down is reflected in rates applicable to the mainline shippers, such as through its conditioning authority, its section 5 authority or such other means as may be available in order to ensure that ANR and Trunkline's shippers continue to pay just and reasonable rates. *Texas Eastern Transmission Corporation*, 45 FERC ¶ 61,296. *Florida Gas Transmission Company*, 20 FERC ¶ 61,298 (1982), *reh'g denied*, 24 FERC ¶ 61,005 (1983), *affirmed without written opinion in Port Everglades Authority v. FERC*, 744 F.2d 878 (D.C. Cir. 1984).

B. Arguments in Support of Request for Rehearing

The Associations take no position regarding the merits of the requests for abandonment. Rather, the Associations' sole focus in this request for rehearing is that, to the extent the Commission approves the abandonments, the Commission should do so in a manner that is consistent with the NGA, protects pipelines customers, and results in just and reasonable rates for ANR and Trunkline's shippers.

1. The Commission Should Uphold Its Role as the Guardian of the Public Interest and Protect Pipeline Shippers.

Under NGA Section 7(b),[9]

> No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

The Supreme Court has explained that "[t]he primary aim of [the NGA] was to protect customers against exploitation at the hands of natural gas companies."[10] In particular, it is well

[9] 15 USC § 717f(b) (2006).

established that the "public convenience and necessity" permits abandonment, only if "the public interest 'will in no way be disserved' by abandonment."[11] As a "representative of the public interest," the Commission may not "act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the Commission."[12] Additionally, "the test of 'present or future public convenience and necessity,' oblige[s] the Commission to protect the ultimate consumers of gas" and constitutes a "consumer protection mandate."[13]

It is also well established that "the public interest that the Commission must protect always includes the interest of consumers in having access to an adequate supply of gas *at a reasonable price*."[14] More importantly, in *Tejas*, the D.C. Circuit remanded to the Commission the approval of a settlement which the Commission approved "because all of the pipeline's resale customers . . . agreed to it and no state public service Commission opposed it."[15] The court reasoned that "the Commission made no effort to look beyond the benefits that it foresees for the pipeline and its [resale customers]."[16] Therefore, under *Tejas*, the Commission may not rely on the lack of protest by a certain category of shippers when the Commission's obligation is to protect the public interest. The Commission must look *beyond* the benefits that it foresees for

(...continued)

[10] *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944); *see also FPC v. Louisiana Power & Light Co.*, 406 U.S. 621, 631 (1972); *FPC v. Texaco Inc*., 417 U.S. 380, 397-401 (1974).

[11] *Transcontinental Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1328 (D.C. Cir. 1973) *citing Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204, 214 (D.C. Cir. 1960).

[12] *Scenic Hudson Preservation Conference v. Fed. Power Comm'n*, 354 F.2d 608, 620 (2nd Cir. 1965).

[13] *City of Mesa v. FERC*, 993 F.2d 888, 895 (D.C. Cir. 1993), *citing Atlantic Refining Co. v. Public Service Commission*, 360 U.S. 378, 388, 79 S.Ct. 1246, 1253, 3 L.Ed.2d 1312 (1959).

[14] *Tejas Power Corp. v. FERC*, 908 F.2d 998 at 1003 (1990) (hereinafter "*Tejas*") (emphasis added).

[15] *Tejas* at 1002.

[16] *Tejas* at 1003.

the parties in the case and address the public interest in light of its overall duty to protect customers and consumers.

Further, it seems almost axiomatic that pipeline rates cannot be just and reasonable if these rates are based on retaining abandoned facilities in rate base. In carrying out its statutory mandates, as interpreted by the courts, the Commission should not condone such a result. Rather, the Commission, as the guardian of the public interest and in fulfilling its duties to protect shippers and to ensure that rates are just and reasonable, must ensure that rates are properly designed based on assets currently owned by the pipeline, properly included in rate base, and reflect costs associated with these assets.

In light of the fact that there is no regulatory requirement for periodic review of pipeline rates, and no refund authority under NGA Section 5, the Commission should take all necessary steps, in the context of approving abandonment applications, to ensure that pipelines are not allowed to over-earn their return. If pipelines are allowed to keep assets in rate base even though these assets are no longer part of their systems and, at the same time, they are not required to adjust their cost of service to account for the spin-down, the pipelines, almost by definition, will be over-earning their legitimate cost of service. This result is unjust and unreasonable, harmful to shippers and should be remedied by the Commission.

In addition, as pipelines continue the trend of shedding upstream segments in response to capacity utilization changes, the public interest requires that the Commission take special care in ensuring that shippers are not burdened with double charges or with otherwise unjust and unreasonable rates related to abandoned facilities as a result of this transition.

2. The Commission Should Craft an Appropriate Solution to Ensure that ANR and Trunkline's Shippers Continue to Pay Just and Reasonable Rates.

The Commission's "responsibility under section 7(b) to determine whether a proposed abandonment is permitted by the public convenience and necessity requires that [it] consider[s] all material circumstances"[17] including "rate base treatment."[18] In carrying out these responsibilities, the Commission should take all necessary steps to ensure that ANR and Trunkline's shippers continue to pay just and reasonable rates. In particular, the Associations request that the Commission rely on its conditioning authority, its Section 5 authority or such other authorities as may be appropriate to fashion a remedy that offers rate protection for ANR and Trunkline's shippers.[19]

IV. CONCLUSION

Wherefore, for the foregoing reasons, the Associations respectfully request that they be permitted to intervene in, and be made a party to, the subject proceedings, with all rights attendant thereto, and that their request for rehearing be granted.

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[17] *Texas Eastern Transmission Corporation*, 45 FERC ¶ 61,296 at p. 61,948 (1988).

[18] *Id*. at n.3, *citing Florida Gas Transmission Company*, 20 FERC ¶ 61,298 (1982), *reh'g denied*, 24 FERC ¶ 61,005 (1983), *affirmed without written opinion in Port Everglades Authority v. FERC*, 744 F.2d 878 (D.C. Cir. 1984).

[19] Specifically, in *Texas Eastern*, the Commission affirmed its authority to condition abandonment on the acceptance of a Part 284 blanket certificate. In so doing, the Commission stated as follows:

> For example, in *Florida Gas Transmission Company*, 20 FERC ¶61,298 (1982), *reh'g enied*, 24 FERC ¶61,005 (1983), we imposed numerous conditions, including conditions on the sales price, revenue crediting, and rate base treatment, on our grant of authority for Florida Gas to abandon facilities by sale. These conditions on the abandonment authority were summarily affirmed in court. *Port Everglades Authority v. FERC*, 744 F.2d 878 (D.C. Cir. 1984) (affirmed without written opinion).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Commission Secretary in these proceedings.

Dated at Washington, DC this 23rd day of July, 2012.

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