

165 FERC ¶ 61,217  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP16-496-001

ORDER DENYING REHEARING

(Issued December 7, 2018)

1. On December 15, 2017, the Commission granted, pursuant to section 7(c) of the Natural Gas Act,<sup>1</sup> Tennessee Gas Pipeline Company, L.L.C.'s (Tennessee) request to construct and operate compression facilities in San Patricio and Jackson Counties, Texas (Lone Star Project).<sup>2</sup> On January 16, 2018, Indicated Shippers<sup>3</sup> requested rehearing of the December 2017 Order. For the reasons discussed below, this request is denied.

**I. Background and Rehearing Request**

2. The Lone Star Project includes two new bi-directional compressor stations on Tennessee's 100 Line: one 10,915 horsepower (hp) Solar Taurus 70 gas turbine/compressor unit and appurtenances in San Patricio County, Texas; and one 20,500-hp Solar Titan 130 gas turbine/compressor unit and appurtenances in Jackson County, Texas.

3. Tennessee reserved certain existing capacity on its system for the project pursuant to Article XXVI, Section 5.8 of the General Terms and Conditions of its FERC Gas Tariff. Specifically, Tennessee reserved 300,000 dekatherms per day (Dth/d) on its

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<sup>1</sup> 15 U.S.C. § 717f(c) (2012).

<sup>2</sup> *Tennessee Gas Pipeline Co., L.L.C.*, 161 FERC 61,265 (2017) (December 2017 Order).

<sup>3</sup> Indicated Shippers includes: Anardarko Energy Service Company, Chief Oil & Gas LLC, Conoco Phillips Company, ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, and Shell Energy North America (U.S.) Inc.

100 Line and 300,000 Dth/d on its 500 Line, as well as 300,000 Dth/d of meter capacity at Meter No. 412754.

4. The project is designed to provide up to 300,000 Dth/d of firm transportation service from a primary receipt point on Tennessee's 500 line in Jasper County, Mississippi, to a primary delivery point at a new interconnection with Cheniere Corpus Christi Pipeline, L.P. on Tennessee's 100 Line in San Patricio County, Texas, for Corpus Christi Liquefaction, LLC, the project shipper.

5. As relevant here, the Commission authorized Tennessee to use its general system rates under Rate Schedules FT-A as the initial recourse rates for firm transportation service to be provided on the Lone Star Project.<sup>4</sup> The Commission also granted Tennessee's request for a predetermination that it can roll the costs of the project into its general system rates in its next NGA section 4 general rate proceeding, absent a change in circumstances.<sup>5</sup>

## **II. Procedural Matters**

6. On February 14, 2018, Tennessee filed an answer to Indicated Shippers' rehearing request. Rule 713(d) of the Commission's Rules of Practice and Procedure prohibits answers to a request for rehearing.<sup>6</sup> Accordingly, we reject Tennessee's answer to Indicated Shippers' rehearing request.

## **III. Discussion**

7. Indicated Shippers request that the Commission reverse its decision approving Tennessee's general system rates as the initial recourse rates for the project and, instead require Tennessee to establish incremental recourse rates that include the cost of the existing capacity reserved for this project. Indicated Shippers also request that the Commission reverse its decision granting a predetermination of rolled-in rate treatment because the cost-revenue analysis did not include the reserved capacity costs.

8. The arguments presented in Indicated Shippers' rehearing request conflate the Commission's determinations to first set an initial recourse rate for the project, followed by a predetermination of rolled-in rate treatment.<sup>7</sup> As further discussed below, the

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<sup>4</sup> December 2017 Order, 161 FERC ¶ 61,265 at P 22.

<sup>5</sup> *Id.* P 34.

<sup>6</sup> 18 C.F.R. § 385.713(d)(1) (2012).

<sup>7</sup> Request for Rehearing at 15. Indicated Shippers argue that the Commission's decisions to allow Tennessee to charge existing Rate Schedule FT-A recourse rates and

Commission's determination to approve the use of a pipeline's general system rate is based on whether an illustrative incremental rate is higher than the general system rate (not whether projected costs of the proposed service exceed projected revenues). Upon a determination that the general system rate should be used for the expansion project because it is greater than the illustrative incremental rate, the Commission then determines whether it is appropriate to grant a predetermination that the expansion project costs can be rolled-in to the system rates in a future NGA section 4 or 5 rate proceeding. If the projected revenues exceed the costs of the proposed project, the Commission will grant the predetermination. We note that these are two distinct determinations and address Indicated Shippers' arguments as such.

**A. The Commission's Approval of Tennessee's Existing System Rates as the Initial Recourse Rates for the Project Is Appropriate**

9. Indicated Shippers contend that the Commission erred by permitting Tennessee to charge its general system recourse rate as the section 7 initial rate for the Lone Star Project. Reiterating an argument raised in their protest to the project application, Indicated Shippers insist that the Commission should have required Tennessee to charge an incremental recourse rate for the project that is based on the incremental costs of the project plus the costs of the existing reserved capacity.<sup>8</sup> In support, Indicated Shippers point out that although the capacity path of the project includes an approximately 370-mile segment of Tennessee's 500 Line and an approximately 740-mile segment of the 100 Line, no costs associated with this path are included in the rate treatment for the project. According to Indicated Shippers, the Commission's decision to exclude the cost of reserved capacity in calculating an incremental recourse rate violates the Commission's principle that a pipeline's "cost of service...should generally be allocated to properly match cost incurrence to cost causation."<sup>9</sup> Indicated Shippers also contend that the Commission's ruling is inconsistent with the Commission's decision in

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grant a predetermination of rolled-in rate treatment present a common issue: "whether the projected costs of the proposed service exceed projected revenues, requiring incremental rate treatment, or whether project revenues exceed the costs, justifying use of system-wide rates and roll-in in a future proceeding."

<sup>8</sup> Indicated Shippers derive the cost of service attributable to the reserved capacity based on the existing maximum recourse reservation rate of \$8.3417 per Dth and a commodity rate of \$0.0042 per Dth for a Zone 1 to Zone 0 transportation path. Request for Rehearing at 11 n.39.

<sup>9</sup> Request for Rehearing at 7 (citing *Williston Basin Interstate Pipeline Co.*, 107 FERC ¶ 61,164 (2004); *Transcontinental Gas Pipe Line Co.*, 112 FERC ¶ 61,170 (2005); and *ANR Pipeline Co.*, 156 FERC ¶ 61,212 (2016)).

*Transcontinental Gas Pipeline Co., LLC* to approve an incremental rate that included the cost of capacity reserved for the project.<sup>10</sup>

10. We disagree. The Certificate Policy Statement requires that, as a threshold matter, “in establishing the public convenience and necessity for existing pipelines proposing an expansion . . . the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers.”<sup>11</sup> For integrated mainline expansions, where capacity is added to the existing pipeline system through the addition of looping or compression, the Commission permits a pipeline to charge an incremental rate when it is greater than the applicable general system rate.<sup>12</sup> Commission policy with regards to the development of an illustrative incremental rate is that the rate includes only the costs of the new facilities being constructed.<sup>13</sup> On the other hand, if the illustrative incremental rate for the expansion project is lower than the pipeline’s applicable general system rate, the Commission requires the pipeline to charge the expansion shippers its applicable general system rate.<sup>14</sup> The December 2017 Order found that the illustrative incremental reservation charge based on the project’s cost of service and incremental capacity was lower than Tennessee’s existing Rate Schedule FT-A reservation charge. Consistent with the Commission’s “higher of” policy, the order approved Tennessee’s proposal to charge its existing Rate Schedule FT-A rates including a reservation charge

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<sup>10</sup> *Id.* (citing *Transcontinental Gas Pipeline Co., LLC*, 128 FERC ¶ 61,223, at P 17 n. 6 (2009) (Transco Order)).

<sup>11</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

<sup>12</sup> *Southern Natural Gas Co.*, 124 FERC ¶ 61,058, at P 38 (2008). *See also Tennessee Gas Pipeline Co.*, 136 FERC ¶ 61,125, at P 18 (2011).

<sup>13</sup> The December 2017 Order acknowledged that the Commission deviated from this policy in the Transco Order where the Commission accepted the pipeline’s proposal to include the costs of reserved capacity in the calculation of the incremental rates. December 2017 Order, 161 FERC ¶ 61,265 at n.21.

<sup>14</sup> *See Trunkline Gas Co., LLC*, 153 FERC ¶ 61,300, at P 61 (2015). *See also Columbia Gas Transmission, LLC*, 146 FERC ¶ 61,075, at P 26 (2014).

of \$8.3417 per Dth applicable for Zone 1 to Zone 0 deliveries as the initial recourse rates for service on the project facilities.<sup>15</sup>

11. We affirm the December 2017 Order's approval of Tennessee's applicable general system rate as the initial recourse rates for service on the project. The fact that Tennessee has reserved capacity for the project does not change the appropriateness of the Commission's "higher of" policy or require Tennessee to include the costs of the reserved capacity in the calculation of the illustrative incremental rate. For integrated expansions of existing pipeline systems such as this, where capacity is added through some combination of increased compression or pipeline looping, the gas being transported for the expansion shippers will invariably be transported through some existing pipeline facilities; however, the Commission's incremental rate policy does not require that the costs of any system capacity utilized in the project be allocated to the incremental rate shipper in designing the incremental rate as those costs are already recovered in Tennessee's system rates.<sup>16</sup> Tennessee's existing Rate Schedule FT-A's maximum reservation rate of \$8.3417 per Dth for Zone 1 to Zone 0 firm transportation service is designed to recover the full fixed costs associated with a Zone 1 to Zone 0 capacity path, and thus, contrary to Indicated Shippers' contention, includes costs associated with transportation on the existing capacity in Zone 1 and Zone 0 that was reserved for the project, i.e., the capacity on Lines 100 and 500. Because the existing maximum rate is designed to recover the costs of the entire zone to zone transaction, no additional charge is needed to permit Tennessee to recover its cost of service for the capacity reserved for the project.<sup>17</sup> Under these circumstances, where the illustrative incremental rate is lower than the existing Rate Schedule FT-A reservation rate, establishing the existing Rate Schedule FT-A reservation rate for service on the project is

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<sup>15</sup> The December 2017 Order also approved Tennessee's existing commodity charge. December 2017 Order, 161 FERC ¶ 61,265 at P 22.

<sup>16</sup> *Transcontinental Gas Pipeline Co., LLC*, 141 FERC ¶ 61,091, at P 27 (2012). See also *Tennessee Gas Pipeline Co., L.L.C.*, 154 FERC ¶ 61,191, at PP 21, 22 (2016), *order granting reh'g and clarification*, 160 FERC ¶ 61,027 (2017) (Finding that Tennessee's existing customers would not subsidize the project because Tennessee, which reserved 32,000 Dth/d of existing firm transportation capacity on its system for the project and did not propose to include reserved capacity costs in its incremental rate, would recover the expansion costs through the incremental rate).

<sup>17</sup> However, this is without prejudice to a customer seeking to support an incremental rate design that allocates reserved capacity costs to incremental services in a NGA section 4 rate proceeding, where all of the pipeline's costs are considered.

consistent with the no-subsidy rule of the Certificate Policy Statement, Tennessee's zone rate structure, and cost causation principles.<sup>18</sup>

**B. The Commission's Determination to Approve a Predetermination of Rolled-in Rate Treatment is Supported**

12. Indicated Shippers also argue that the Commission erred in granting Tennessee a predetermination of rolled-in rate treatment based on Tennessee's cost and revenue analysis that excluded the costs of the reserved capacity. Indicated Shippers argue that the Commission's decision to grant a predetermination of rolled-in rate treatment deviates from cost causation principles and the no-subsidy requirement of the Certificate Policy Statement. Indicated Shippers also claim that the Commission's grant of a predetermination of rolled-in rate treatment exceeds its authority under NGA section 7 because its predetermination has the potential to bind parties in a future section 4 or 5 rate case and shifts the burden of proof to parties seeking incremental rate treatment in a future case to show a changed circumstance.<sup>19</sup>

13. For an expansion project where the Commission approves the use of the pipeline's applicable system rate, as is the case here, the Commission examines whether granting a predetermination of rolled-in rate treatment for the expansion project is appropriate. As explained in the December 2017 Order, to receive approval for a predetermination, a pipeline must show that the incremental revenues of an expansion project will exceed the incremental costs of the project.<sup>20</sup> In such a situation, granting a predetermination that the pipeline can roll in the costs of the expansion into its system-wide rates in the next general rate case is appropriate because it will not result in cross-subsidization of the project's costs by the pipeline's existing shippers, consistent with the Certificate Policy Statement. It is not appropriate to include the embedded cost of existing capacity reserved for the project, as Indicated Shippers contend, because those costs are already included in Tennessee's current rates and are not relevant to this analysis. Thus, we find that the December 2017 Order appropriately granted a predetermination of rolled-in rate treatment based on Tennessee's comparison in Exhibit N, which showed that incremental

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<sup>18</sup> See *Trunkline Gas Co., LLC*, 119 FERC ¶ 61,078, at P 24 (2007).

<sup>19</sup> Request for Rehearing at 13-14 (citing *Tennessee Gas Pipeline L.L.C.*, 160 FERC ¶ 61,027 (2017)).

<sup>20</sup> December 2017 Order, 161 FERC ¶ 61,265 at P 28.

revenues of the project using actual contract volumes and the maximum recourse rate exceeded the incremental costs of the project.<sup>21</sup>

14. We also disagree that the Commission's grant of a predetermination of rolled-in rate treatment exceeds its authority under NGA section 7. Indicated Shippers cite *Tennessee Gas Pipeline, L.L.C.*<sup>22</sup> to allege that the Commission exceeded its authority under section 7 to grant the predetermination.<sup>23</sup> On rehearing in that proceeding, we found we erred by stating that Tennessee would not be allowed to reflect the reserved capacity costs in the system rates because the Commission has no authority in a section 7 proceeding to adjust existing system rates.<sup>24</sup> In the present case, we are making a determination regarding the appropriate initial rate for the project and whether a predetermination of rolled in rate treatment for the project is appropriate. We are not adjusting any existing system rates.

15. Here, a predetermination of rolled-in rate treatment is supported because the record shows project revenues would exceed project costs and, under these circumstances, rolling in the costs of the project in a future rate case would benefit existing customers. Granting a predetermination of rolled-in rate treatment only operates to shift the burden of presenting evidence to parties opposing rolled-in rate treatment in the future section 4 rate proceeding to show that there have been material changes since the certificate proceeding that undermine the basis for the predetermination.<sup>25</sup> It does not shift the burden of persuasion. The purpose of a predetermination of rolled-in rate treatment is to provide some measure of rate certainty to the pipeline applicant, its existing shippers, and prospective shippers, including the shippers that will use the proposed expansion capacity.<sup>26</sup> Furthermore, the December 2017 Order

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<sup>21</sup> *Id.* Indicated Shippers also assert that the Commission failed to distinguish its predetermination of roll-in for the Lone Star Project from its denial of a pre-grant of roll-in rate treatment in *ANR Pipeline Co.*, 156 FERC ¶ 61,212 at P 14 (order denying ANR's request because projected revenues for each of the first three years of the project are less than the project's costs). However, unlike *ANR*, the Commission found that the projected revenues for the Lone Star Project exceeded costs.

<sup>22</sup> 160 FERC ¶ 61,027.

<sup>23</sup> Request for Rehearing at 13-14.

<sup>24</sup> *Tennessee Gas Pipeline, L.L.C.*, 160 FERC ¶ 61,027 at P 6.

<sup>25</sup> *See Texas Eastern Transmission, LP*, 153 FERC ¶ 61,311, at P 33 (2015).

<sup>26</sup> *See Magnolia LNG, LLC*, 155 FERC ¶ 61,033, at P 40 (2016).

required Tennessee to separately account for the costs and revenues associated with the Lone Star Project in a manner that will enable parties to a future NGA general section 4 rate proceeding to present evidence that there has been changed circumstances (e.g., a significant increase of costs or reduction in expected revenues) that would undermine the basis for the predetermination.<sup>27</sup> For these reasons, the December 2017 Order's approval of a predetermination of rolled-in rate treatment for the Lone Star Project is consistent with Commission policy and NGA section 7.

The Commission orders:

Indicated Shippers' request for rehearing is denied, as discussed above.

By the Commission. Commissioner McIntyre is not voting on this order.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>27</sup> December 2017 Order, 161 FERC ¶ 61,265 at P 35.