

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Tennessee Gas Pipeline Co., L.L.C } Docket Nos. CP11-44-
RP11-1597-**

**APPLICATION OF TENNESSEE GAS PIPELINE CO., L.L.C.
FOR PARTIAL REHEARING**

Pursuant to Section 19(a) of the Natural Gas Act¹ and Rules 203(a), 212 and 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),² Tennessee Gas Pipeline Company, L.L.C. (“Tennessee”) hereby applies for partial rehearing of the *Order Approving, In Part, And Denying In Part, Abandonment, Determining Jurisdictional Status Of Facilities, And Dismissing Offer Of Settlement* issued November 3, 2011 (“November 3, 2011 Order”).³

¹ 15 U.S.C.A. § 717r(a) (2011).

² 18 C.F.R. §§ 385.203(a), 385.212 and 385.713 (2011).

³ 137 FERC ¶ 61,105.

Granting Tennessee’s request rehearing—specific to requirements imposed on Tennessee if facilities are not sold to Kinetica Partners LLC (“Kinetica”)—will not prejudice its and Kinetica’s effort to pursue a purchase and sale consistent with the November 3, 2011 Order. Tennessee and Kinetica are discussing the effect of the November 3, 2011 Order on their proposed transaction and will advise the Commission how and when they propose to proceed.

Specifically, Tennessee seeks rehearing of two aspects of the November 3, 2011 Order: first, the requirement in Paragraph 107 and footnote 101 that Tennessee refunctionalize facilities that it owns from transmission to gathering for accounting and ratemaking purposes; and, second, the dismissal of the Offer of Settlement in Paragraph 102.

In support of its request for rehearing, Tennessee states as follows:

I.
BACKGROUND

Tennessee entered into a purchase and sale agreement with Kinetica in October 2010. The PSA established the price, terms, and conditions under which Tennessee would sell to Kinetica certain facilities, defined as “Production Area Facilities,” that Tennessee currently owns and operates in interstate commerce under the Natural Gas Act and Commission jurisdiction. The PSA includes conditions precedent to closing the purchase and sale, including the condition precedent that each Tennessee, as seller, and Kinetica, as buyer, obtain various consents, approvals, and authorizations. Among the authorizations was each party’s obtaining different authorizations from the Commission, acceptable to that party in its sole discretion.

In pursuit of its Commission authorizations, Tennessee applied on December 3, 2010 for approval to sell to Kinetica the Production Area Facilities, which Tennessee believes is permitted by the public convenience and necessity under § 7(b) of the Natural Gas Act. Also on December 3, 2010, Tennessee filed an Offer of Settlement based on an agreement in principle with firm customers regarding accounting and ratemaking for the abandonment.

As part of its application for abandonment, Tennessee included a copy of the PSA in Exhibit U, as required by Commission regulations.⁴ In the PSA, the Commission authorizations that Tennessee sought and needed to close the transaction are defined at length:

“Seller's FERC Authorization” means all required final and non-appealable order(s) from the FERC, acceptable to Seller in its sole discretion, including but not limited to orders granting (a) all necessary abandonment authorization, including under Section 7(b) of the Natural Gas Act of 1938, with respect to (i) Seller's abandonment of the Pipeline Assets and related certificated agreements, if any, (ii) Seller's abandonment of all natural gas transportation and other natural gas services on the Pipeline Assets, (iii) termination of all jurisdictional service agreements with respect to the Pipeline Assets, if any, and (iv) transfer of all receipt points under any firm transportation contract with a shipper on any of the Pipeline Assets from offshore wellhead points to an onshore pooling point; (b) amendment of the existing GSR Settlement dated February 28, 1997 in Docket No. RP93-151, et al., in a manner satisfactory to Seller in its sole discretion; (c) establishment of a regulatory asset recoverable in the jurisdictional rates of Seller and otherwise acceptable to Seller in its sole discretion; and (d) authorization to include in such regulatory asset in the future any costs related to the abandonment or retirement of the Pipeline Assets that may be incurred by Seller despite the performance or nonperformance by Buyer of its obligations under this Agreement.⁵

⁴ 18 C.F.R. § 157.18(b) (2011).

⁵ PSA at 43-44.

Important to this request for rehearing, neither the PSA nor Tennessee's application to the Commission included as part of seller's authorizations any request that the Production Area Facilities be deemed gathering as currently owned and operated by Tennessee, or if not sold to Kinetica.

In pursuit of its own authorizations, Kinetica petitioned the Commission on December 10, 2010 for a declaratory order that the Production Area Facilities, "following Tennessee's abandonment of them by sale if such abandonment is approved by the Commission," will qualify as gathering facilities.⁶ Kinetica's petition followed the definition of its authorizations in the PSA:

"Buyer's FERC Authorization" means all required final and non appealable order(s) from the FERC including but not limited to an appropriate order regarding the non jurisdictional status of the Pipeline Assets, acceptable to Buyer in its sole discretion.⁷

⁶ Kinetica's Petition, at 1 (emphasis added).

⁷⁷ PSA, at 39.

In evaluating Tennessee’s abandonment application and Kinetica’s gathering petition, the November 3, 2011 Order took two steps important to this request for rehearing. First, the Commission stated that it “must first analyze [the facilities] as they currently exist and operate,” because “the proposed abandonment of facilities is protested and it is not clear that [Tennessee] no longer needs the facilities to provide its jurisdictional services.”⁸ Second, the November 3, 2011 Order took the additional step that “Tennessee must refunctionalize the original cost of those facilities from transmission accounts to gathering accounts, *effective the date of this order*.”⁹ The Commission also dismissed (in some paragraphs, rejected) the Offer of Settlement as moot.¹⁰ The Offer of Settlement defined the conditions precedent to becoming effective as follows:

⁸ November 3, 2011 Order, text at footnote 34, citing *Transcontinental Gas Pipe Line Co., LLC*, 129 FERC ¶ 61,255, at P 38 (2009) (citing *Southern Natural Gas Co.*, 126 FERC ¶ 61,246, at P 43 (2009)). See also footnote 54 (“As we stated earlier, our primary function test analysis applies to the facilities as they are currently operated by Tennessee. . .”).

⁹ November 3, 2011 Order, text at footnote 107 (emphasis added) (citing *Transwestern Pipeline Co.*, 72 FERC ¶ 61,085, at n.17 (1995)). See also footnote 101 (“Because in the course of addressing the different systems presented we have found that certain facilities perform a gathering function, Tennessee *will be required to functionalize those facilities as gathering* for rate purposes in its next rate case *if it does not go forward with the sale of the gathering facilities to Kinetica*.”) (emphasis added).

¹⁰ See paragraph 4 (“the Commission is rejecting the settlement agreement”), paragraph 17 (“The Commission . . . is rejecting the Settlement”), paragraph 102 (“we will dismiss the Settlement as moot”), paragraph 106 (“The Commission . . . is rejecting Tennessee’s Offer of Settlement . . .”), and Ordering Paragraph (H) (“The proposed Offer of Settlement is dismissed as moot.”).

The Offer of Settlement will become effective on the date the conditions precedent *have all been met or otherwise have been waived by Tennessee in its sole discretion* (“Effective Date”). The conditions precedent are:

- (1) receipt by Tennessee of a final non-appealable order approving the Offer of Settlement, without modification;
- (2) receipt by Tennessee of a final non-appealable order approving the Abandonment Filing; and
- (3) closing by Tennessee of the sale to Kinetica under the PSA of the Production Area Facilities.¹¹

Paragraph 102 of the November 3, 2011 Order states:

The signatory parties’ agreement to these provisions is contingent on Tennessee receiving a final non-appealable order approving its proposed abandonment in its entirety in this proceeding. As we are denying Tennessee’s request for authorization to abandon the facilities found to be jurisdictional transmission facilities, we will dismiss the Settlement as moot. Therefore, we will not address the parties’ comments regarding the Settlement.

¹¹ Offer of Settlement, at 6 (emphasis added).

The order did not address whether the accounting and ratemaking provisions of the Offer of Settlement could apply to those facilities the Commission approved for abandonment by sale to Kinetica or could otherwise become effective by Tennessee's waiving one or more of the conditions precedent, in its sole discretion, or by Tennessee selling the balance of the facilities following Kinetica's obtaining Commission authorization to operate them on a jurisdictional basis. At the expense of these several options under the Offer of Settlement, the order avoided the merits of the accounting and rate agreements by dismissing the Offer of Settlement as moot.

II.
SPECIFICATION OF ERRORS & STATEMENT OF ISSUES

Section 19(a) of the Natural Gas Act states in relevant part:

“Any person . . . aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person . . . is a party may apply for a rehearing within thirty days after the issuance of such order.”¹² In accordance with Rule 713(c)(1) & (2),¹³ Tennessee provides the following Specification of Errors and Statement of Issues on the November 3, 2011 Order:

Tennessee is aggrieved by the November 3, 2011 Order’s finding that certain facilities—as currently owned and operated by Tennessee—perform a gathering function and must be immediately changed from transmission to gathering for Tennessee’s accounting and ratemaking purposes. Tennessee is also aggrieved by the order’s dismissing the Offer of Settlement as moot and by depriving Tennessee of the discretion to make the Offer of Settlement effective and by avoiding the merits of the accounting and ratemaking provisions of the Offer of Settlement, which are essential to Tennessee’s proceeding with any sale of the Production Area Facilities to Kinetica.

¹² 15 U.S.C.A. § 717r(a) (2011).

¹³ 18 C.F.R. § 385.713(c)(1) & (2) (2011).

Tennessee submits that these parts of the November 3, 2011 Order were in error. The errors create undue uncertainty and risk for Tennessee before and in the absence of a sale to Kinetica, impose on Tennessee a gathering function outside its core business of interstate transportation, and arbitrarily and capriciously go beyond the scope of the authorizations Tennessee requested and of the Commission's authority to act on Tennessee's abandonment application. In a separate filing today, Tennessee also requests that the Commission stay of the effectiveness of the November 3, 2011 Order's requirement that Tennessee immediately refunctionalize the cost of these facilities.

The narrow issues on which Tennessee requests rehearing are specified as follows:

1. Whether the November 3, 2011 Order erred in Paragraph 107 and footnote 101 by finding certain facilities perform a gathering function as currently owned and operated by Tennessee—even if not abandoned by sale to Kinetica—and must be immediately refunctionalized from transmission to gathering and must be treated as gathering in Tennessee’s next rate case. Tennessee submits that the November 3, 2011 Order erred by forcing a gathering determination and immediate refunctionalization on Tennessee that did not take into account all the relevant facts and that went beyond the authorizations requested by either Tennessee or Kinetica, and by exceeding the Commission’s authority under the Natural Gas Act.

2. Whether the November 3, 2011 Order erred in Paragraph 102 by dismissing as moot the Offer of Settlement, which agreement with ratepayers Tennessee must have to proceed with any sale of Production Area Facilities to Kinetica—regardless of the jurisdictional status of the facilities being sold. Tennessee submits that the November 3, 2011 Order erred because the Offer of Settlement can still become effective on its own terms either for those facilities approved for sale to Kinetica or otherwise as Tennessee has the discretion to waive conditions precedent to the effectiveness of the Offer of Settlement or may proceed with Kinetica to sell the remaining facilities on a jurisdictional basis.

III.
REQUEST FOR REHEARING

- A. The November 3, 2011 Order erred by forcing a gathering determination and immediate refunctionalization on Tennessee without taking into account all the relevant facts, going beyond the authorizations requested by either Tennessee or Kinetica, and exceeding the Commission's authority to act under the Natural Gas Act.**

As explained in the background section above, Tennessee did not petition for a determination that the Production Area Facilities perform a gathering function. Tennessee applied for approval under § 7(b) of the Natural Gas Act to abandon by sale to Kinetica and for approval under § 4 of the Act of the Offer of Settlement setting forth accounting and ratemaking agreements between Tennessee and ratepayers. Tennessee did not undertake in the PSA to obtain a determination of gathering status for any of the Production Area Facilities, nor did Tennessee assume any risk of having to immediately refunctionalize as gathering for accounting purposes or to treat any facilities as gathering in its next rate case.

Separate and apart from the Commission authorizations Tennessee needed to proceed with the sale, Kinetica petitioned for a declaratory order that “the facilities it plans to acquire from [Tennessee], following Tennessee’s abandonment of them by sale . . . will qualify as gathering . . . and thus be exempt from FERC jurisdiction when owned and operated by Kinetica.”¹⁴ As explained in its petition, Kinetica intended the facilities to perform a gathering function after buying them from Tennessee and operating them as part of its general business activity of gathering.¹⁵ Tennessee takes no issue with, and in fact supports, the Commission’s granting Kinetica’s petition for those Production Area Facilities declared gathering, if and when purchased and operated by Kinetica.

¹⁴ Kinetica Petition at 1 (emphasis added).

¹⁵ *Id.* at 2-3.

In sum, Tennessee did not request any redetermination regarding the jurisdictional function of the facilities to be abandoned by sale to Kinetica; Kinetica requested a declaration that the facilities will perform a gathering function after they are bought from Tennessee and operated as part of a non-jurisdictional gathering business. The part of the November 3, 2011 Order on which Tennessee seeks rehearing made a change that neither Tennessee nor Kinetica sought, namely “that certain facilities [now] perform a gathering function rather than a transmission function [and] [t]herefore, Tennessee must refunctionalize the original cost of those facilities from transmission accounts to gathering accounts, effective the date of this order.”¹⁶ The order also went so far as to impose on Tennessee a ratemaking requirement that, “[i]n its next section 4 rate case, Tennessee shall refunctionalize, from transmission to gathering, any facilities found herein to be gathering facilities if it has not yet abandoned the facilities.”¹⁷ The order did not state under what provision of the Natural Gas Act these requirements were imposed on Tennessee.

¹⁶ November 3, 2011 Order, para. 107 (emphasis added).

¹⁷ November 3, 2011 Order, Ordering Paragraph (C) (emphasis added).

Tennessee believes that the Commission erred by forcing a change in Tennessee's accounting and ratemaking outside the scope of the requested authorizations, by not factoring into its determination the overall business activities of Tennessee, and by exceeding its authorization to act under the Natural Gas Act. As the November 3, 2011 Order itself recites:

- Tennessee is a natural gas company engaged in the business of transporting and storing natural gas in interstate commerce.
- The facilities Tennessee proposes to abandon are certificated facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission.

Technically, neither Tennessee nor Kinetica attempted to build a record on which a finding could be made that any facilities currently perform a gathering function as owned and operated by Tennessee as part of its overall business activities. Nor did either Tennessee or Kinetica attempt to build any record regarding the appropriate rate treatment of unsold Production Area Facilities in Tennessee's next rate case.

To the extent the November 3, 2011 Order chose to make a determination no party requested, the Commission acted either arbitrarily and capriciously or beyond its authority under the Natural Gas Act.

Based on the record underlying the November 3, 2011 Order, the Commission failed to consider all the facts and circumstances, as required by the primary function test the Commission applied. As described by the Commission, among the factors relevant to a primary function question is “the general business activity of the owner of the facilities.”¹⁸ It is undisputed—indeed acknowledged by the order—that Tennessee is engaged in jurisdictional transportation service using the facilities it now owns but proposed to sell to Kinetica. The November 3, 2011 Order failed to address this factor in imposing on Tennessee the requirement to treat the facilities as gathering for accounting purposes before a sale to Kinetica and for ratemaking purposes if not sold at all. Because the order disregarded Tennessee’s general business activity when imposing on Tennessee the requirement to refunctionalize, the Commission should grant rehearing.

¹⁸ November 3, 2011 Order, para. 30. Paragraph 40 of the November 3, 2011 Order recites that while a non-physical factor such as general business activity is secondary, it cannot be ignored, citing *Jupiter Energy Corp. v. FERC*, 482 F.3d 293, 298 (2007).

Again, Tennessee did not seek a determination that any facilities perform a gathering function as currently owned and operated by Tennessee. Therefore, the Commission took action outside the scope of § 7(b) of the Natural Gas Act, under which Tennessee applied for approval and which applies only to the Commission approving or denying an abandonment for which a pipeline has applied. Section 7(b) states in relevant part:

No natural-gas company shall abandon all or any portion of its facilities . . . without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission . . . that the present or future public convenience or necessity permit such abandonment.¹⁹

Section 7(b) thus prohibits a pipeline from effectuating a proposed abandonment until permitted by the Commission.

In this case, the Commission has made a determination beyond merely granting what Tennessee has proposed to do—namely abandon *by sale to Kinetica, who will operate the facilities as part of its gathering business*. The Commission’s action in ordering the immediate refunctionalizing of facilities that are operated by Tennessee as part of its transmission business is beyond the authority granted the Commission under § 7(b).

¹⁹ 15 U.S.C.A. § 717f(b) (2011).

Ordering Paragraph (C) states: “The subject facilities found herein to have a primary function of gathering are exempt from the Commission’s jurisdiction under NGA section 1(b). In its next section 4 rate case, Tennessee shall refunctionalize, from transmission to gathering, any facilities found herein to be gathering facilities if it has not yet abandoned the facilities.” Thus the November 3, 2011 Order invokes both § 1(b) and § 4 of the Natural Gas Act, but neither section authorizes the action of forcing Tennessee to refunctionalize facilities.

Section 1(b) states in relevant part: “The provisions of this chapter . . . shall not apply . . . to the production or gathering of natural gas.”²⁰ While it is common for petitioners to invoke §1(b) to request that the Commission disclaim jurisdiction over certain business activities, § 1(b) does not authorize the Commission to force a pipeline engaged in interstate transportation to refunctionalize certificated facilities from transmission to gathering, or to dictate in advance the rate treatment of facilities in a future § 4 rate proceeding.

²⁰ 15 U.S.C.A. § 717(b).

Section 4 states that “no change shall be made by any natural-gas company” in any such rate, charge, classification, or service “except after thirty days’ notice to the Commission and to the public.”²¹ As with § 7(b), this section applies to Commission action in response to a pipeline’s proposal to make a change. In this case, Tennessee did not propose any change in the jurisdictional classification of the Production Area Facilities, whereas Kinetica petitioned for a declaration of gathering status after the sale and as the facilities were to be owned and operated as part of Kinetica’s gathering business. Although § 4’s counterpart, § 5, authorizes the Commission to initiate a change,²² the November 3, 2011 Order did not invoke § 5, carry the § 5 burden, or provide Tennessee with notice that the Commission intended—or with the opportunity for a hearing on the issue whether—to make a jurisdictional determination outside the scope of Tennessee’s application or even Kinetica’s petition.²³

²¹ 15 U.S.C.A. § 717d(d) (2011).

²² See, e.g., *Algonquin Gas Transmission Co. v. FERC*, 948 F.2d 1305, 1311 (D.C. Cir. 1991) (“[W]hen the Commission seeks to impose its own rate determinations, rather than accepting or rejecting a change proposed by the gas company, it must do so in compliance with section 5(a) of the NGA.”).

²³ As described in the background section above, the order did state that the Commission would *analyze* the jurisdictional function of the facilities in their current state, before the affirmative changes Kinetica proposed to make. See November 3, 2011 Order, text at footnote 34, citing *Transcontinental Gas Pipe Line Co., LLC*, 129 FERC ¶ 61,255, at P 38 (2009) (“*Transco*”) (citing *Southern Natural Gas Co.*, 126 FERC ¶ 61,246, at P 43 (2009) (“*Southern*”). But it should not follow that Tennessee, not the buyer, must refunctionalize those facilities determined as gathering under this analytical method.

Neither Paragraph 107 nor footnote 101 stated the authority for forcing the gathering determination and immediate refunctionalization on Tennessee.²⁴ As outlined above, Tennessee does not believe that the sections of the Natural Gas Act mentioned in the course of the order—§ 1(b), § 4 and § 7(b)—authorize the immediate refunctionalization of facilities prior to and absent an abandonment by sale to Kinetica. Therefore, Tennessee seeks rehearing of the refunctionalization requirement and requests an order that the jurisdictional determination applies to the facilities after a sale to Kinetica, which proposes to operate them as part of its gathering business.

While *Transco* and *Southern* provide examples of the Commission’s analyzing the primary function of facilities in current operations, neither forced a gathering determination and immediate refunctionalization on the current owner whose general business activities are interstate transportation.

²⁴ The November 3, 2011 Order, in footnote 107 accompanying the text in Paragraph 107, cites *Transwestern Pipeline Co.*, 72 FERC ¶ 61,085, at n.17 (1995) (“*Transwestern*”). Footnote 17 in *Transwestern* does not, however, set a precedent for the Commission’s forcing a gathering determination and immediate refunctionalization on an interstate pipeline. In *Transwestern*, the Commission approved a settlement and “require[d] one accounting change” that was “only intended to modify the accounting treatment for the item discussed in footnote 17”; the Commission did “not modify, in any respect, the rates provided in the settlement or the revenues Transwestern may recover under the settlement.” 72 FERC at p. 61,449-450 (emphasis added). In this case, the November 3, 2011 Order rejected the settlement in Paragraph 102 and then in Paragraph 107 imposed an immediate accounting change on Tennessee that was in no way anticipated by Tennessee or the terms of the settlement the Commission rejected. The changes required in Paragraph 107 and footnote 101 also intended to make a significant change in Tennessee’s next rate case, unlike the one accounting change that was not intended to modify, in any respect, the settlement approved in *Transwestern*.

B. The November 3, 2011 Order erred in dismissing the Offer of Settlement as moot, because the Offer of Settlement can still become effective on its own terms and is essential with Tennessee's pursuing a sale of the Production Area Facilities.

The Offer of Settlement contains agreements between Tennessee and firm customers regarding the accounting and ratemaking treatment of the abandonment by sale of the Production Area Facilities. The Offer of Settlement includes protection from the accounting and ratemaking consequence of Tennessee's having to sell the facilities at less than net book value.

Tennessee acknowledges that the November 3, 2011 Order did not grant all the authorizations requested by Tennessee and Kinetica. However, the order erred in dismissing the Offer of Settlement as moot, because it was “denying Tennessee’s request for authorization to abandon the facilities found to be jurisdictional transmission facilities.”²⁵ Dismissal was in error because the Offer of Settlement could still become effective if, in order to proceed with a sale to the extent authorized by the November 3, 2011 Order, Tennessee waived the condition precedent to have Commission approval to abandon all the Production Area Facilities at once to Kinetica. The Offer of Settlement could also become effective if Tennessee and Kinetica proceed with a sale and purchase of the remaining Production Area Facilities on a jurisdictional basis.

²⁵ November 3, 2011 Order, para. 102.

The conditions precedent in the Offer of Settlement remain the parties' to determine in accordance with the terms of their agreement. The terms of the agreement allow Tennessee to waive one or more of the conditions precedent, and the November 3, 2011 Order did approve in part the abandonment proposed by Tennessee. By dismissing the Offer of Settlement as moot, the November 3, 2011 Order disregarded the terms of the Offer of Settlement in order to "not address the parties' comments."²⁶ The Commission should grant rehearing and address the merits of the accounting and ratemaking provisions of the Offer of Settlement, which are essential to Tennessee's proceeding with any sale of Production Area Facilities to Kinetica.

Rehearing is particularly appropriate here, because the November 3, 2011 Order was without prejudice to Kinetica's obtaining authorization to buy the jurisdictional facilities from Tennessee and operate them in a transmission function. If the parties proceed on that basis, the Offer of Settlement would become effective on its own terms.

²⁶ November 3, 2011 Order, para. 102.

IV. CONCLUSION

The November 3, 2011 Order made a jurisdictional determination and ordered an immediate refunctionalization that went beyond the authorizations than Tennessee—or even Kinetica—needed to move forward with the purchase and sale transaction proposed to the Commission. The order found in error that as currently owned and operated by Tennessee the facilities performed a gathering function different from Tennessee’s general business activity of interstate transportation service. The order forces Tennessee to refunctionalize certain facilities from transmission to gathering before the sale to Kinetica and, if Tennessee does not sell those facilities to Kinetica, the order goes so far as to dictate the rate treatment of those facilities in Tennessee’s next section 4 rate case. The November 3, 2011 Order also erred in dismissing the Offer of Settlement, which dismissal was not necessary under the terms of the settlement and deprives Tennessee of the ability to sell—with the accounting and ratemaking provisions agreed with customers—those facilities the Commission approved for abandonment. The uncertainty and risk caused by these parts of the order aggrieve Tennessee, did not consider all relevant factors, were arbitrarily and capriciously disregarded what the parties requested, and were beyond the authority of the Commission to act under the Natural Gas Act.

V.
RELIEF REQUESTED ON REHEARING

Tennessee requests that the Commission issue an order granting rehearing of the November 3, 2011 Order on the narrow issues presented. First, the Commission should grant rehearing of the November 3, 2011 Order's requirement in Paragraph 107 and footnote 101 that—as currently owned and operated by Tennessee and if not sold to Kinetica—certain facilities should be immediately refunctionalized as gathering for accounting purposes and in Tennessee's next rate case. Second, the Commission should grant rehearing of the November 3, 2011 Order's dismissal of the Offer of Settlement in Paragraph 102, because the settlement contains agreements with ratepayers that are essential to any sale by Tennessee of the Production Area Facilities. The effectiveness of the Offer of Settlement did not depend on a gathering determination for all the Production Area Facilities, and Tennessee may choose to proceed with a sale of the facilities deemed gathering and then of the balance of the Production Area Facilities if Kinetica chooses to obtain Commission authorization to purchase and operate them on an interstate basis.

Respectfully submitted,

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Dated: December 5, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of December, 2011, caused to be served, in accordance with the provisions of Rule 2010 of the Commission's Rules of Practice and Procedure, a copy of the foregoing document upon all parties on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

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