

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

Transcontinental Gas Pipe Line Company, LLC) Docket No. CP21-94-004

**MOTION TO INTERVENE AND SUPPORTING COMMENTS
OF AMERICAN FOREST & PAPER ASSOCIATION AND INDUSTRIAL ENERGY
CONSUMERS OF AMERICA**

On September 6, 2024, Transcontinental Gas Pipe Line Company, LLC (“Transco”) requested pursuant to section 7(c)(1)(B) of the Natural Gas Act (“NGA”) and section 157.17 of the regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”), that the Commission issue a temporary certificate of public convenience and necessity for Transco’s Regional Energy Access Expansion (“REA” or the “Project”). Transco states a temporary certificate is necessary to “prevent an emergency caused by the sudden loss of over 2,000,000 dekatherms per day (“Dth/d”) of natural gas pipeline transportation capacity in the Mid-Atlantic and Northeastern United States.”¹ Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,² and the Commission’s Notice of Extending Comment Period,³ the American Forest & Paper Association (“AF&PA”) and Industrial Energy Consumers of America (“IECA”) hereby submit this motion to intervene and comments in support in the above-captioned proceeding.⁴ In support of this motion, AF&PA and IECA state as follows:

¹ Application at 1.

² 18 C.F.R. §§ 385.214 (2024).

³ See FERC, Notice of Extending Comment Period, Docket No. CP21-94-004 (Sept. 19, 2024).

⁴ As AF&PA and IECA are participating in Transco’s ongoing general NGA section 4 rate case in Docket No. RP24-1035, AF&PA and IECA reserve all arguments relating to the REA cost of service and cost allocation.

I. COMMUNICATIONS

All correspondence, communications, pleadings, and other documents relating to this proceeding should be served upon the following:

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II. BACKGROUND

On July 30, 2024, the D.C. Circuit vacated the Commission’s certificate for the REA.⁵ The REA added incremental capacity contracted, in part, by natural gas marketers using capacity to serve manufacturing, power generation, residential, and other end users.⁶ In addition, the REA replaced thirteen existing compressor units serving existing customers on Transco’s fully subscribed system.⁷ Together, Transco states the REA facilities are responsible for providing over 2 Bcf/d of firm transportation capacity to deliver the critical natural gas supplies needed for manufacturing companies, power generators, homes and other end users.⁸

Once the court’s mandate issues, Transco will not have authorization to operate its REA facilities.⁹ If REA facilities are taken out of service, Transco states its delivery capacity into New

⁵ *N.J. Conservation Found. v. FERC*, 111 F.4th 42 (D.C. Cir. 2024).

⁶ Application at 6; *see also Transcontinental Gas Pipe Line Co., LLC*, 182 FERC ¶ 61,006, at P 1 (2023) (“Certificate Order”).

⁷ Application at 6; Certificate Order, 182 FERC ¶ 61,006 at P 1.

⁸ Application at 5.

⁹ 15 U.S.C. § 717f(c)(1)(A) (“No natural-gas company . . . shall engage in the transportation . . . of natural gas, subject to the jurisdiction of the Commission, . . . or operate any such facilities or extensions thereof. . . unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations[.]”).

Jersey, New York, Pennsylvania, Maryland, and Delaware will reduce by 22.6 %.¹⁰ Specifically, Transco’s system would suffer a loss of over 2,064,400 Dth/d of fully subscribed natural gas pipeline capacity in the Mid-Atlantic and Northeastern United States of which 1,235,000 Dth/d is existing capacity on Transco’s pipeline that is subscribed under pre-existing contracts.¹¹ Transco states the loss of REA capacity “would be equivalent to the natural gas necessary to heat 10.6 million homes or generate electricity to power around 7 million homes each day.”¹²

To make matters worse, the potential massive shortfall could occur during the winter heating season in a resource-constrained, densely populated region.¹³ Transco states it has no year-round capacity to spare, and that the loss of REA capacity would heighten congestion on other pipelines in the region, imperiling electric system reliability and causing delivered natural gas prices to spike.¹⁴

Transco requests that the Commission issue a temporary certificate under NGA section 7(c)(1)(B) to continue operating the REA to prevent potentially catastrophic consequences.

III. MOTION TO INTERVENE

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and

¹⁰ Application at 2.

¹¹ *Id.* at 2.

¹² *Id.* at 20.

¹³ See Congressional Research Service, *Natural Gas Reliability: Issues for Congress*, at 11 (July 15, 2024), <https://crsreports.congress.gov/product/pdf/R/R48127> (“Certain parts of the country face particularly constrained natural gas supplies due to historical limits in regional infrastructure development. The Southwest and Northeast are two regions where natural gas pipeline constraints have contributed to recent supply emergencies during periods of high natural gas demand, or have given rise to specific concerns about future gas shortages.”).

¹⁴ Application at 5, 16.

recyclable resources and are committed to continuous improvement through the industry's sustainability initiative – Better Practices, Better Planet 2020. The forest products industry accounts for approximately 4% of the total U.S. manufacturing GDP, manufactures over \$200 billion in products annually, and employs approximately 900,000 men and women. The industry meets a payroll of approximately \$50 billion annually and is among the top ten manufacturing sector employers in forty-five states. AF&PA member companies receive gas on Transco's system.

The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with \$1.3 trillion in annual sales, over 12,000 facilities nationwide, and with more than 1.9 million employees. It is an organization created to promote the interests of manufacturing companies through advocacy and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, consumer goods, building products, automotive, independent oil refining, and cement. IECA members are served through Transco.

As customers that receive gas delivered over Transco, AF&PA and IECA members have a direct and substantial interest in this proceeding. AF&PA and IECA's intervention is in the public interest, and the groups cannot be adequately represented by any other party in this proceeding. Thus, granting this motion would be in the public interest. AF&PA and IECA request that this intervention be granted with all rights associated with that status.

IV. COMMENTS

a. FERC Should Grant Transco's Request for a Temporary Certificate to Maintain Adequate Service.

AF&PA and IECA urge the Commission to issue Transco a temporary certificate to continue to operate the REA. Under NGA section 7(c)(1)(B), the Commission has the authority to “issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, . . . pending the determination of an application for a certificate.”¹⁵ Courts have found “cases of emergency” include an “economic emergency” and where “[c]onsumers were then dependent on the supplies of gas provided pursuant to the original certificates.”¹⁶ Similarly, in *Spire STL Pipeline LLC*, the Commission found that an emergency exists when a pipeline’s customer “will experience a loss of gas supply potentially impacting hundreds of thousands of homes and business[es] during the winter heating season.”¹⁷ The loss of 2,064,400 Dth/d of fully subscribed incremental and pre-existing firm transportation capacity that is critical to serve manufacturing companies, power generators, homes, businesses, and other end-users undoubtedly constitutes an emergency.

AF&PA and IECA members rely on natural gas. In the event the REA is forced to shut down, service to AF&PA and IECA member plants could be curtailed, forcing some members to resort to burning more expensive LNG, CNG, and diesel. The majority of IECA members directly rely on natural gas in their manufacturing processes and as a feedstock for their products. For many IECA members, there is no substitute for natural gas as a fuel or feedstock. IECA member

¹⁵ 15 U.S.C. § 717f(c)(1)(B).

¹⁶ *Hunt Oil Co. v. FPC*, 334 F.2d 474, 479-80 (5th Cir. 1964).

¹⁷ *Spire STL Pipeline, LLC*, 177 FERC ¶ 61,147, at P 47 (2021).

companies have invested hundreds of billions of dollars in equipment that can only operate on natural gas.¹⁸

AF&PA and IECA members would also be adversely affected by the loss of service to natural gas-powered generators and possible load shedding to maintain electric reliability. Sudden loss of natural gas service, or electric power, could result in irreparable damage to manufacturing plant equipment, dangerous conditions for workers, and adverse economic impacts for manufacturers. As an example, in December 2022, during a period of extreme cold in the Southeast, natural gas prices spiked due to insufficient natural gas pipeline infrastructure and manufacturers faced increased costs and lost revenue due to partial shutdowns. For just one AF&PA member, the estimated adverse impact from that event was \$10 million.

The economic impact would not stop with our member companies. AF&PA and IECA companies produce vital products, such as agricultural inputs needed to produce crops important to the world's food supply, packaging and production of medicines, food, construction products such as steel and wallboard to construct homes, buildings, and cars, thereby impacting supply chains nationwide including production of national defense equipment.

Further, the plants provide good jobs and support local communities. Manufacturing companies employ thousands, employing approximately 25,100 in Delaware, 243,100 in New Jersey, 110,000 in Maryland, and 545,400 in Pennsylvania. AF&PA and IECA are concerned about the health and welfare of the thousands of employees that work at their members' facilities who may lose heat for their homes during the winter. Transco states that "[r]emoval of REA from service would leave [local distribution companies] in New Jersey and Southeastern Pennsylvania unable to meet design day requirements" which in a cold snap could result in "significant curtailment of

¹⁸ See IECA, Comments Supporting Regional Energy Access Expansion Project, Docket No. CP21-94-000, at 1 (July 25, 2022) (Accession No. 20220725-5054).

natural gas service to homes . . . with potentially catastrophic results.”¹⁹

The loss of 2 Bcf/d of fully subscribed incremental and pre-existing firm natural gas transportation capacity that is critical to serve manufacturing companies, power generators, homes, businesses, and other end-users is an emergency for which the Commission can prevent by granting Transco a temporary certificate.

b. Failure to grant a temporary certificate effectively constitutes an unlawful abandonment of natural gas transportation service.

Unless a temporary certificate is granted, once the mandate issues Transco will be forced to cease service on all or part its Project facilities indefinitely, if not permanently, depending on when and how the Commission acts on remand. This circumstance is not analogous to a temporary outage where the pipeline is working to bring facilities back into service.²⁰ Shippers using incremental capacity, including those serving manufacturing companies, have no certainty that the lost service on the Project’s facilities will be restored. Put simply, without a temporary certificate, Transco will be forced to effectively abandon service rendered by means of its Project facilities.

NGA section 7(b) does not permit such result. Abandonment may only be allowed with the “approval of the Commission” and a finding by the Commission that “the present or future public convenience or necessity permit such abandonment.”²¹ As the Commission has recognized, the courts have explained that “a pipeline which has obtained a certificate of public convenience and necessity has an obligation, deeply embedded in the law, to continue service.”²² Only after a

¹⁹ Application at 21 (citation omitted).

²⁰ Cf. *Peregrine Oil & Gas II, LLC v. Tex. E. Transmission, LP*, 161 FERC ¶ 61,109, at P 17 (2017).

²¹ 15 U.S.C. § 717f(b).

²² See *Gulf S. Pipeline Co., LP*, 154 FERC ¶ 61,219, at P 56 (2016) (citing *Mich. Consol. Gas Co. v. FPC*, 283 F.2d 204, 214, 108 U.S. App. D.C. 409 (D.C. Cir. 1960)).

showing that “the public interest will in *no way* be disserved by the abandonment” can the Commission approve an abandonment.²³

Such showing cannot be made here. REA’s incremental capacity is fully subscribed by firm shippers.²⁴ Transco cannot assure firm shippers that they will receive adequate continuity of service if service ceases. The Transco system is fully subscribed.²⁵ It has no room to spare. And the Northeast faces constrained natural gas supplies due to historical limits in regional infrastructure development.²⁶ Under these circumstances, prior Commission precedent dictates that abandonment cannot be approved.²⁷ The Commission need not be reminded that “[n]o single factor in the Commission’s duty to protect the public can be more important to the public than the continuity of service furnished.”²⁸

V. CONCLUSION

For the foregoing reasons, AF&PA and IECA respectfully request that the Commission: (1) grant AF&PA and IECA’s motion to intervene in this proceeding; and (2) expeditiously issue Transco a temporary certificate to continue to operate the REA.

²³ *Id.* P 21 (emphasis added).

²⁴ Application at 7; Certificate Order, 182 FERC ¶ 61,006 at P 36.

²⁵ Application at 17.

²⁶ See Congressional Research Service, *Natural Gas Reliability: Issues for Congress*, at 11 (July 15, 2024), <https://crsreports.congress.gov/product/pdf/R/R48127>.

²⁷ See *Gulf S. Pipeline Co., LP*, 154 FERC ¶ 61,219 at P 27 (“We routinely authorize the abandonment of interstate pipeline facilities by sale to intrastate pipelines when we find the transfer to be consistent with the public convenience and necessity. In those cases, however, the Commission found that continuity and stability of service was not an issue, because there were no firm shippers on the facilities, or no firm shippers had protested, or protesting firm shippers were assured an adequate continuity of service. In contrast, here there are existing firm shippers, and many of them protest the proposed abandonment, and the record shows that continuity and stability of service to firm shippers would be impaired if abandonment is approved.”).

²⁸ *Sunray Mid-Continent Oil Co. v. FPC*, 267 F.2d 471, 473 (10th Cir. 1959).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing document to be served upon each person designated on the Service List for this docket compiled by the Secretary in accordance with the Commission's Rules of Practice and Procedure.

Dated at Washington, DC, this 8th day of October 2024.

/s/ Carolyn E. Clarkin
Carolyn E. Clarkin