

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

June 8, 2023

IN RE:

EXPEDITED PETITION OF WEST TENNESSEE
GAS PIPELINE, LLC FOR THE ISSUANCE OF A
CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY

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DOCKET NO.
22-00138

ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

This matter came before Chairman Herbert H. Hilliard, Commissioner Robin L. Morrison, Commissioner Clay R. Good, Commissioner Kenneth C. Hill, and Commissioner John Hie of the Tennessee Public Utility Commission, (“TPUC” or “Commission”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on March 20, 2023 for consideration of the *Expedited Petition of West Tennessee Gas Pipeline, LLC for the Issuance of a Certificate of Public Convenience and Necessity* (“*Petition*”) filed by West Tennessee Gas Pipeline, LLC (“WTGP,” “Company,” or “Petitioner”) on December 19, 2022. In its *Petition*, WTGP requests the Commission’s approval of a Certificate of Public Convenience and Necessity (“CCN”), with its accompanying privilege and franchise, to own and operate a gas pipeline in West Tennessee serving, among others, Ford Motor Company’s BlueOval City Project.

BACKGROUND AND *PETITION*

WTGP is a Tennessee limited liability company with its principal place of business located in Tulsa, Oklahoma.¹ WTGP filed a *Petition* on December 19, 2022 seeking expedited approval of a CCN to construct, own, and operate a natural gas pipeline in West Tennessee. The pipeline

¹ *Petition*, p. 2 (December 19, 2022).

will provide natural gas service to Ford Motor Company’s (“Ford”) BlueOval venture, BlueOval SK, LLC (“BlueOval City” or “BlueOval City Project”). The initial service area of WTGP will be in Haywood County, including the BlueOval City Project and the Brownsville Energy Authority (“BEA”).² BEA is the nearest provider offering gas services in the geographic area but does not have the ability or capacity to provide service to the proposed service area. BEA will provide service to Supplier Park, an area within BlueOval City occupied by entities other than Ford or Ford affiliates, and will become a customer of WTGP to supply gas service to Supplier Park. Once granted a CCN, WTGP will offer service to potential customers similarly situated to Ford and BEA within the service area, as permitted and capability allows, at negotiated rates approved by the Commission.³

WTGP will receive deliveries from Trunkline Gas Company, LLC (“Trunkline Gas”) and transport this gas approximately seven (7) miles to BlueOval City. Trunkline Gas owns and operates a natural gas pipeline transporting gas for delivery from the Gulf coast of Texas and Louisiana through several states, including Mississippi, Arkansas, Tennessee, and Kentucky. The Interconnect Point between Trunkline Gas and WTGP will be located within the State of Tennessee, less than one (1) mile southwest of Mason, Tennessee.⁴

WTGP affirms in its *Petition*, that it will adhere to all applicable state and federal law requirements, and Commission policies, rules, and orders.⁵ The Company describes its technical, managerial, and financial ability and provides Exhibits that demonstrate the experience and

² *Id.* at 4-5, Exh. E. *See also* Updated Exhibit E to the Petition of West Tennessee Gas Pipeline, LLC for the Issuance of a Certificate of Public Convenience and Necessity, Which Replaces the Original Exhibit E filed on December 19, 2022 (January 5, 2023).

³ *Id.*

⁴ *Id.* at 5.

⁵ *Id.*

abilities of key personnel and the Company's financial capability to construct, own, and operate the gas pipeline proposed.⁶

Finally, the *Petition* asserts that the Hinshaw Amendment exception to Federal Energy Regulatory Commission ("FERC") jurisdiction of interstate gas pipelines is applicable to the WTGP gas service to the BlueOval City Project. The Company asserts that the Interconnect point where WTGP takes delivery of gas is located within the State of Tennessee. In addition, the gas delivered to WTGP will be fully consumed by customers located within the State of Tennessee. Finally, WTGP states that upon approval of its *Petition* and the granting of a CCN, the Company will be state regulated.⁷

In support of its *Petition*, the Company filed maps showing the location of the WTGP proposed service area and relevant facility locations, documents demonstrating the corporate structure and management experience of the Company, and a letter from the Brownsville Energy Authority indicating that the area is not served by or in the service territory of another gas service provider.⁸ The Company also filed the testimony of Mark Johnson, President of WTGP; Andrew Therrell, Chief Financial Officer of WTGP; and Robert Mitchell, Chief Operating Officer of WTGP.

Mr. Johnson testifies that, as President of WTGP, he will oversee the Company's operation, including working directly with Ford and BEA to ensure that they have reliable, safe, and affordable natural gas services through WTGP. He also will oversee the long-term success of the Company and ensure that it is well capitalized for any future projects needed in the proposed service area.⁹ Mr. Johnson further states that the data used to prepare Exhibits A and B to the

⁶ *Id.* at 6-10, Exhs. A, B, G, and H.

⁷ *Id.* at 11-12.

⁸ *Id.* at Exhs. A-H.

⁹ Mark Johnson, Pre-Filed Direct Testimony, p. 2 (December 19, 2022).

Petition was acquired from records of WTGP and its members.¹⁰ Mr. Johnson testifies concerning the background of each of the WTGP members and that these members will provide cash for the investment in the WTGP system and are committed to the long-term success of the project. He describes his background and experience, stating that he will provide lead management experience to ensure WTGP will operate with high standards as evidence of WTGP's managerial, financial, and technical ability.¹¹

Mr. Mitchell states that as the Chief Operating Officer of WTGP, he will oversee the day-to-day operations of the Company, including supervision of employees, regulatory compliance, safety, and engineering.¹² His testimony sponsors Exhibits D, E, F, G, I and L to the *Petition* and Exhibits 1 and 2 to his testimony. He states that the data used as sources to these Exhibits was acquired from records of WTGP and its members.¹³ Mr. Mitchell describes the process that resulted in the potential development of the proposed gas pipeline to serve Ford's BlueOval City Project, stating that Ford evaluated various options for acquiring and obtaining the necessary natural gas service requirements for the project and decided a connection with Trunkline Gas Company, LLC would be the most economic source. Mr. Mitchell affirms that the negotiations between Ford and Southwest Energy, L.P., a company with a long-standing relationship with Ford to supply gas for its facilities, were at arms-length.¹⁴ Mr. Mitchell further states that the proposed gas pipeline will be located and operated solely within the state of Tennessee and the gas delivered to WTGP by Trunkline Gas will be fully consumed within the state of Tennessee.¹⁵ Mr. Mitchell attests that the officers and key personnel of WTGP have the technical and managerial experience

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 1, 3-8, 10.

¹² Robert Mitchell, Pre-Filed Direct Testimony, p. 2 (December 19, 2022).

¹³ *Id.* at 3.

¹⁴ *Id.* at 3-4.

¹⁵ *Id.* at 8.

to construct, own, and operate WTGP.¹⁶ Mr. Mitchell testifies WTGP has negotiated gas transport service agreements with Ford and BEA. The agreements include the rates charged by WTGP and are set forth in the service agreements filed under seal with the Commission. He further states that WTGP does not intend to serve any customers other than Ford and BEA but will seek Commission approval if such gas transport service is requested and negotiated in the future.¹⁷ Mr. Mitchell testifies that WTGP possesses the financial ability and technical and managerial expertise to construct, own, operate and manage the proposed gas pipeline.¹⁸ Mr. Mitchell asserts that WTGP will operate the gas pipeline separately and independently from the operation of any other gas pipelines, facilities, assets, or services owned or operated by any of its members.¹⁹ He also testifies that complete engineering plans and associated pipeline schematics will be submitted to the Commission upon completion of the final design and that the Company will comply with Commission Rules to ensure its pipeline is constructed, installed, maintained, and operated in accordance with accepted good engineering practice in the gas industry to assure safe and reliable service.²⁰

Mr. Therrell is the Chief Financial Officer of WTGP and possesses an indirect equity ownership interest in WTGP through his ownership interest in JT Energy, LLC, a member of WTGP.²¹ Mr. Therrell sponsors Exhibits C and H to the *Petition* and attests that the data used to prepare these Exhibits was acquired from the records of WTGP and its members.²² Mr. Therrell testifies that the Projected Balance Sheet and Income Statement presented as Exhibit H were compiled in conjunction with Mr. Mitchell and Mr. Johnson using existing expertise gained over

¹⁶ *Id.* at 5.

¹⁷ *Id.* 6.

¹⁸ *Id.* at 8-10.

¹⁹ *Id.* at 10.

²⁰ *Id.* at 10-11.

²¹ Andrew Therrell, Pre-Filed Direct Testimony, p. 1 (December 19, 2022).

²² *Id.* at 2-3.

decades in the energy industry with any services provided by an affiliate being allocated on an arms-length basis. These projections illustrate the overall economics of the pipeline on a stand-alone basis with anticipated capital costs of the project, associated depreciation, anticipated annual income from the tariff, and anticipated annual operating costs of the pipeline.²³ Mr. Therrell explains that the capital investments reflected on the balance sheet are based on the financial commitment of the WTGP members to WTGP without the use of debt financing and attests that these members are committed both financially and professionally to ensuring WTGP is timely built and operates with a high standard of care.²⁴ Mr. Therrell testifies that the *Petition* and supporting documentation demonstrate that WTGP has the financial capability and expertise to construct, own, operate, and manage the proposed gas pipeline. Mr. Therrell also affirms that WTGP will maintain its books and supporting documentation in conformance with the National Association of Regulatory Utility Commissioners (“NARUC”) Uniform System of Accounts for Gas Pipelines and comply with all applicable state and federal laws, regulations, rules, and orders, including those of the Commission.²⁵

The Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) filed a letter on January 19, 2023 indicating that WTGP had met with and provided answers to questions from the Consumer Advocate relative to the project. As a result of the information obtained and review of the *Petition* and testimony in the docket, the Consumer Advocate expressed its intent not to intervene in the proceeding.²⁶ No party sought intervention in this matter.

²³ *Id.* at 3-4.

²⁴ *Id.* at 4-5.

²⁵ *Id.* at 6.

²⁶ Letter to Chairman Herbert H. Hilliard Re Consumer Advocate Intent Not to Intervene at This Time in This Proceeding, From Victoria B. Glover, Consumer Advocate (January 19, 2023).

THE HEARING

A Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on March 20, 2023, as noticed by the Commission on March 10, 2023. Participating in the Hearing were:

West Tennessee Gas Pipeline – Melvin Malone, Esq., and J.W. Luna, Esq., Butler Snow LLP, The Pinnacle at Symphony Place, 150 Third Avenue South, Suite 1600, Nashville, Tennessee; Mark Johnson, President, Robert Mitchell, Chief Operating Officer, and Andrew Therrell, Chief Financial Officer, 2431 East 61st Street, Suite 800, Tulsa, Oklahoma.

During the Hearing, Mark Johnson, President of WTGP, Robert Mitchell, Chief Operating Officer of WTGP, and Andrew Therrell, Chief Financial Officer of WTGP, presented testimony on behalf of the Company. Each adopted and summarized his respective Pre-Filed Direct Testimony and provided the Company's new business address. Each witness was subject to questions from the voting panel of Commissioners and Commission Staff. Members of the public were given an opportunity to offer comments, at which time, no comments were submitted.

STANDARD FOR COMMISSION APPROVAL

FERC has jurisdiction over interstate gas pipelines, with exceptions.²⁷ A pipeline is exempt from FERC regulation if it meets the "Hinshaw" standards established in 15 U.S.C. § 717(c). To qualify for Hinshaw status, a pipeline must be subject to state regulation, receive all of its out-of-state gas from persons within or at the boundary of a state, and such gas must ultimately be consumed within the state.²⁸ Congress has concluded such pipelines are matters primarily of local concern, and so are more appropriately regulated by pertinent state agencies rather than FERC. In

²⁷ 15 U.S.C. § 717 *et seq.*

²⁸ 15 U.S.C. § 717(c).

instances where the Hinshaw Amendment is applicable, rates and services of the pipeline are regulated by a state Commission.²⁹

A public utility is not permitted to begin construction or operation of a new utility service without first obtaining a CCN from the Commission, as set forth in Tenn. Code Ann. § 65-4-201(a), which states:

No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the commission, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate; provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.³⁰

The Commission has jurisdiction to set the rates of public utilities operating in the State of Tennessee.³¹ In pertinent part, Tenn. Code Ann. § 65-5-101 provides:

(a) The Tennessee public utility commission has the power after hearing upon notice, by order in writing, to fix just and reasonable individual rates, joint rates, tolls, fares, charges or schedules thereof... .

In setting just and reasonable rates for public utilities, the Commission balances the interests of the utilities subject to its jurisdiction with the interests of Tennessee consumers.³² The Commission

²⁹ *Id.*

³⁰ Tenn. Code Ann. § 65-4-109 (2022).

³¹ Tenn. Code Ann. §§ 65-4-101(6); 65-4-104; 65-5-101, *et seq.* (2022).

³² Tenn. Code Ann. § 65-5-201 (2022).

must approve rates that provide regulated utilities the opportunity to earn a just and reasonable return on investments.³³

FINDINGS AND CONCLUSIONS

In its *Petition*, WTGP asserts that it falls within the Commission's jurisdiction under the Hinshaw Amendment and requests that the Commission grant it a CCN to provide natural gas service to the BlueOval City Project in Haywood County, Tennessee, at rates submitted to the Commission for approval. Based on a review and consideration of the pleadings, the Pre-Filed Testimony, and the entire administrative record, the voting panel made the following findings and conclusions:

The panel found that Trunkline Gas will transport and deliver gas to WTGP at the Interconnect Point located within the State of Tennessee. All gas delivered to WTGP at the Interconnect Point will be fully consumed within the State of Tennessee by WTGP's customers, Ford and BEA and/or BEA's customers at Supplier Park within the BlueOval City Project. Further, upon approval of WTGP's *Petition*, all services and rates will be regulated by a state commission. Therefore, the panel found that the WTGP proposed gas pipeline meets each of the requirements to qualify for Hinshaw status and falls within the jurisdiction of the Commission. The panel unanimously voted to apply Hinshaw status to the WTGP proposed project and to properly exercise its authority to consider WTGP's request for a CCN to serve BlueOval City.

The panel further found that that the BlueOval City Project requires natural gas service to move forward with the proposed development at which Ford will produce electric trucks and SK Innovation will produce batteries for Ford's electric trucks. No other gas service provider is currently serving the proposed service area and the nearest provider has stated that it does not have the ability or capacity to provide such services. The BlueOval City Project, funded by Ford Motor Company, is the largest

³³ See *Bluefield Water Works and Improvement Company v. Pub. Serv. Comm. of the State of West Virginia*, 262 U.S. 679 (1923).

economic development project in the history of the state and will provide approximately 5,800 jobs. Therefore, the panel voted unanimously that there exists a public need to provide natural gas service to the BlueOval City Project as required by Tenn. Code Ann. § 65-4-201(a).

The panel found that WTGP has provided sufficient evidence that the project is well funded with financial commitment in place and secured to provide sufficient funding to construct, own, and operate a gas pipeline in Tennessee. In addition, based upon the Company's contractual demand and proposed rates, the projected annual revenues will recover the anticipated annual expense to operate the pipeline. Further, the panel found that WTGP has provided sufficient evidence that the Company employs personnel with varied educations and experience including accounting, marketing, finance, gas processing, and chemical engineering and that WTGP's members contribute experience and expertise in the natural gas industry. Therefore, the panel found that WTGP has demonstrated that it possesses the requisite managerial, financial, and technical capabilities to provide natural gas service to the BlueOval City Project. In addition, WTGP provided all information required by Commission Rules and affirms that it will comply with all applicable state and federal laws, as well as all Commission rules, regulations, and orders. Based upon these findings, the panel voted unanimously to grant the Company's *Petition* for a CCN to construct and operate a natural gas pipeline for the transportation of natural gas to Ford's BlueOval City and the BEA located in Haywood County, Tennessee.

The panel also found that WTGP is serving two (2) customers, Ford and BEA, who are industrial and/or public entity customers, the parties have entered arms-length negotiations concerning rates, service terms, and conditions. Based upon review of the proposed contracts, the Commission found that the rates, service terms, and conditions contained within the contracts are reasonable. The panel voted unanimously to approve the contracts. The panel further unanimously voted to direct WTGP to submit any future additional contracts to add customers to the Commission for consideration and

approval.

IT IS THEREFORE ORDERED THAT:

1. The *Expedited Petition of West Tennessee Gas Pipeline, LLC for the Issuance of a Certificate of Public Convenience and Necessity* filed by West Tennessee Gas Pipeline, LLC is approved.

2. West Tennessee Gas Pipeline, LLC is directed to submit any future additional contracts that add customers to the Commission for consideration.

3. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.


4. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Chairman Herbert H. Hilliard,
Commissioner Robin L. Morrison,
Commissioner Clay R. Good,
Commissioner Kenneth C. Hill and
Commissioner John Hie concurring.**

None dissenting.

ATTEST:

A handwritten signature in dark ink, appearing to read "Earl Taylor" with a stylized flourish at the end.

Earl R. Taylor, Executive Director