

FERC Revisits, Reaffirms Policies Related to Nonjurisdictionality of Gathering Facilities

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On June 18, 2009, the Federal Energy Regulatory Commission (FERC or Commission) issued an order in Northwest Pipeline GP (Northwest) and Parachute Pipeline LLC (Parachute), Docket Nos. CP09-66 and CP09-67, [127 FERC ¶ 61,261] addressing issues relating to the exempt status of gathering facilities under section 1(b) of the Natural Gas Act (NGA).

In related filings, Northwest filed an application for authority to abandon its certificate authority to lease and operate the Parachute Lateral as part of its interstate transmission system while Parachute petitioned the Commission for a determination that the Parachute Lateral would be exempt from the Commission's jurisdiction after abandonment by Northwest.

The Parachute Lateral was constructed by Northwest pursuant to a FERC certificate and placed in service in May 2007. In November 2007, ownership of the Parachute Lateral facilities was transferred to Parachute, an affiliate of Northwest and a wholly-owned subsidiary of Williams Field Services Company, LLC (Williams Field Services) under a lease-back arrangement where Northwest would continue to hold a FERC certificate and operate the Parachute Lateral as a jurisdictional facility under its FERC-approved tariff.

The Parachute Lateral consists of approximately 37.6 miles of 30-inch diameter pipeline and related facilities extending from the Piceance producing area to the Greasewood Hub in western Colorado. With the expected completion of a significant CO₂ treating and cryogenic gas processing facility (the Willow Creek Processing Plant) by Williams Field Services located near the Greasewood Hub, Parachute asserts that the function and nature of the Parachute Lateral will be changing to one that is consistent with that of gathering facilities.

FERC applied its primary function test, to determine whether the described facilities should be viewed as gathering facilities. The Commission noted that:

The [primary function] test includes consideration of physical and geographic factors including: (1) the length and diameter of the pipeline, (2) the extension of the facility beyond the central point in the field, (3) the facility's geographic configuration, (4) the location of compressors and processing

plants, (5) the location of wells along all or part of the facility, and (6) the operating pressure of the pipeline.

The Commission also considers “the purpose, location and operation of the facility, the general business activity of the owner . . . and whether the jurisdictional determination is consistent with the NGA.”

The Commission found that the 37.6 mile length and 30-inch diameter of the pipeline is not inconsistent with a gathering function. With the construction of the Willow Creek Processing Plant at the downstream end of the Parachute Lateral, the Commission also found that the new plant would serve as the central point in the field. The configuration of the Parachute Lateral was described as a “spine-type geographic configuration” located within a single state and therefore consistent with a gathering function. Although upstream dew point facilities exist at the Piceance producing area near the beginning of the Parachute Lateral, it was noted that the lateral would transport “wet” gas and untreated gas to the new processing facilities at the Willow Creek Processing Plant and that there would be no separate compression facilities located on the Parachute Lateral. Notwithstanding a 4.99 mile portion of the Parachute Lateral being located downstream of the Willow Creek Processing Plant, FERC approved this “relatively short 'stub'” as being incidental to the processing plant operations and therefore exempt from Commission jurisdiction.

FERC found that the Parachute Lateral was in a developing production area where additional wells were expected to be connected to the lateral. While Parachute Lateral's operating pressure (ranging from approximately 900 psig to nearly 1,470 psig) is relatively high, the Commission noted that such pressures were necessary to deal with the changes in elevation from 5,700 to 8,700 feet, then descending to the elevation of 6,400 feet at the Willow Creek Processing Plant.

Other considerations, such as:

- ownership of the facilities by Williams Field Services, a midstream company that has been in the gathering and processing business for decades and is active in developing production areas in the Four Corners area and in Wyoming,
- support for Parachute's petition from the one existing Parachute Lateral shipper (a Williams affiliate), and
- no objection from any interveners

helped justify the Commission's ultimate decision in finding that the Parachute Lateral qualified as a gathering facility under the primary function test.

While the Commission's decision concerning the Parachute Lateral reaffirms the primary function test as the standard by which the Commission will make gathering facility determinations, this specific application of the primary function test has expanded the envelope of what constitutes gathering under section 1 (b) of the NGA by finding a 37.6 mile, 30-inch pipeline, with a stub line of nearly 5 miles extending beyond the

processing plant, exempt from Commission jurisdiction.

1. FERC's primary function test was initially formulated in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983). It was later modified in *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990) and has been applied recently in *Tenn. Gas Pipeline Co.*, 124 FERC ¶ 61,128 (2008). The use of the primary function test has been affirmed in various cases upon judicial review, including its application to Northwest-related facilities in *Northwest Pipeline Corp. v. FERC*, 905 F. 2d 1403 (10th Cir. 1990).

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