

123 FERC ¶ 61,325
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Northern Natural Gas Company
PVR Midstream LLC

Docket No. CP08-43-000

ORDER GRANTING ABANDONMENT AUTHORITY AND DECLARING
JURISDICTION

(Issued June 30, 2008)

1. On December 21, 2007, in Docket No. CP08-43-000, Northern Natural Gas Company (Northern) and PVR Midstream LLC (PVR) filed a joint application, pursuant to section 7(b) of the Natural Gas Act (NGA)¹ and sections 157.7 and 157.18 of the Commission's regulations,² (1) to abandon by sale certain pipeline, compression, dehydration, and delivery and receipt point facilities (Hemphill System), with appurtenant facilities located in Ochiltree, Roberts, and Hemphill Counties, Texas, and Roger Mills County, Oklahoma and (2) to abandon the services it provides with respect to primary receipt and/or delivery points located on the Hemphill System. The applicants also request the Commission to find the facilities, once abandoned, to be gathering and exempt from the Commission's regulations pursuant to section 1(b) of the NGA.³ Northern seeks the requested abandonment authority in order to sell the subject facilities a new yet to be named Delaware limited liability company referred to as Saleco that Northern formed for the sole purpose of this sale. Northern and PVR state that the Hemphill System will be transferred to and operated by PVR as part of its

¹ 15 U.S.C. § 717f(b) (2000).

² 18 C.F.R. §§ 157.7 and 157.18 (2007).

³ 15 U.S.C. § 717.

nonjurisdictional gathering system pursuant to an agreement between Northern and PVR.⁴

2. For the reasons discussed below, the Commission finds that the requested abandonment authority is permitted by the public convenience and necessity and is granted subject to certain conditions. The Commission also finds that PVR is performing primarily a gathering function and will continue to do so after its acquiring the Hemphill System. Accordingly, pursuant to section 1(b) of the NGA “production and gathering” exemption, PVR is not subject to the Commission’s jurisdiction.

I. Background

3. Northern is a natural gas transmission company engaged in the transportation and sale of natural gas in Delaware, Texas, New Mexico, Oklahoma, Kansas, Nebraska, Iowa, Minnesota, Illinois, Michigan, Wisconsin, North Dakota, South Dakota, and Louisiana. Northern operates under the authorizations granted by and subject to the Commission’s jurisdiction.

4. PVR owns and operates midstream facilities in Texas and Oklahoma, including approximately 3,400 miles of gas gathering pipelines and three natural gas processing facilities. PVR states that its Beaver/Perryton system is located in the vicinity of the Northern’s Hemphill system. This system consists of approximately 1,160 miles of gathering lines and two gas processing facilities, the Beaver Plant and the Spearman Plant.⁵ Currently, PVR states that the Beaver/Perryton system is connected to approximately 700 wells and provides service to numerous area producers in competition with other gathering and processing operators.

5. On April 6, 1943, Northern’s Hemphill System was authorized by the Commission under a Grandfathering Order,⁶ for the purpose of transporting natural gas from the Anadarko Basin to markets on Northern’s System.⁷ As natural gas demand grew in the late 1940s and 1950s, Northern began looping pipelines and adding compression to the system. Northern states that the Hemphill System consists of 10- to 20-inch diameter

⁴ See Northern and PVR’s Application, Exhibit U, Purchase and Sale Agreement, November 7, 2007 (Agreement).

⁵ The Spearman Processing Plant was placed into service in February 2008. See Northern’s June 10, 2008 data response.

⁶ See *Northern Natural Gas Co.*, 3 FPC 967 (1943) (Docket No. G-280).

⁷ The Anadarko Basin lies beneath the Texas panhandle, northwest Oklahoma, and south-central Kansas.

parallel pipelines and compression extending from Northern's mainline in Ochiltree County, Texas southeast approximately 101 miles to Roger Mills County, Oklahoma.

6. Northern is proposing to sell portions of the 10- and 12-inch lines, the Hemphill System, and plans to retain the 12-, 16-, and 20-inch pipelines that parallel the Hemphill System, referred to as the Retained Hemphill System. Currently, Northern asserts that it uses the Hemphill System to transport small amounts of gas using low pressure and the Retained Hemphill System to transport large amounts of gas using high pressure. The Retained Hemphill System will continue to have the capability to receive residue gas from the Anadarko supply basins. The vast majority of the gas being transported from this system flows through the Retained Hemphill System. The Hemphill System has been underutilized in the recent past, and flows on this portion of the system have been approximately 5 percent of the capacity.⁸ Northern asserts since it currently uses the Hemphill System to transport residue gas to markets on Northern's system, the sale of the Hemphill System would have no impact on the ability of shippers to continue to acquire and transport gas to serve markets on Northern's system.

7. Initially, Northern's system was built to provide a merchant service. Northern states it no longer performs a merchant function, and thus, no longer needs to own and operate the Hemphill System as a parallel system to ensure that shippers have access to supplies from the Anadarko Basin area. Northern asserts that the average flow on the line to be sold has been approximately 1.8 million cubic feet per day (MMcf/day) during the past twelve months. Northern will continue to own the Retained Hemphill System allowing shippers in the area to continue to have access to residue gas for their markets.

II. Proposal

8. Northern proposes to abandon by sale to Saleco all of the following facilities, referred to herein as the Hemphill System: (1) approximately 88 miles of 10- to 12-inch pipeline, (2) compressor units located along the length of the pipeline, and (3) appurtenant facilities. The Hemphill System comprises five pipeline segments that begin at Northern's mainline in Ochiltree County, Texas, and extend southeast to Roger Mills County, Oklahoma.⁹ Northern will convey the Hemphill System to Saleco at Northern's net book value of \$1,998,659.¹⁰

⁸ The total capacity of the Hemphill System is 15 MMcf/day.

⁹ Line number TXG52001 is approximately 15 miles of 12-inch pipeline that begins at Northern's mainline and extends to the Hemphill County #1 compressor station. The entire Hemphill County #1 compressor station comprises two units totaling 1,058 horsepower. Line number TXG53201 is approximately 15 miles of 10-inch pipeline that begins at the Hemphill County #1 compressor station and extends to the Hemphill

(continued)

9. Northern states that once Hemphill System is transferred to Saleco, Saleco's membership interests will immediately be conveyed to PVR, pursuant to their Agreement. Northern seeks to abandon the services it provides with respect to primary receipt and/or delivery points located on the facilities proposed for abandonment. Once Saleco is sold to PVR, the Hemphill System will be operated by PVR as part of its nonjurisdictional gathering system. Therefore, Northern and PVR jointly request that the Commission make a finding that the Hemphill System, once abandoned, will perform a gathering function and is therefore exempt from the Commission's jurisdiction, under section 1(b) of the NGA.

10. Northern states that the proposed abandonment of the Hemphill System will not involve the physical removal of any facilities. The abandonment will have no impact on the daily design capacity of, or operating conditions on, Northern's pipeline system, nor will the abandonment have any adverse impact on Northern's existing customers. Northern asserts that the facilities will be abandoned in place and disconnected from the facilities that Northern plans to retain. Northern proposes to close, lock, and tag the block valves in order to separate its facilities from PVR's Hemphill System.

III. Interventions

11. Notice of Northern's and PVR's application was published in the *Federal Register* on January 10, 2008 (73 Fed. Reg. 1868), with a due date of January 24, 2008 for motions to intervene, comments, and protests. Aquila, Inc. d/b/a Aquila Networks and DCP Midstream, LP filed timely, unopposed motions to intervene.¹¹ No protests or adverse comments to the application were filed.

County #2 compressor station. Line number TXG56301 is approximately 13 miles of 12-inch and 5 miles of 10-inch pipeline that begins at the Hemphill County #2 compressor station and extends to the Texas-Oklahoma state line. Line number OKG33901 is approximately 38 miles of 10-inch pipeline that begins at the Texas-Oklahoma state line and extends to a location near the Roger Mills #1 compressor station. Line number OKG49701 is approximately 2 miles of 10-inch pipeline that begins in Roger Mills County, Oklahoma and ties into line number OKG33901.

¹⁰ See Northern's Application at Exhibit Y.

¹¹ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2007).

IV. Discussion

A. Abandonment

12. Since the facilities Northern proposes to abandon by sale are regulated transmission facilities, the proposal is subject to the jurisdiction of the Commission and the requirements of section 7(b) of the NGA. Historically, in reviewing a request for abandonment by sale, the Commission has considered: the needs of the two natural gas systems and the public markets they serve, the environmental effects of its decision,¹² the economic effect on the pipelines and their customers, the presumption in favor of continued service, and the relative diligence of the respective pipelines in providing for adequate natural gas supplies.¹³

13. The subject facilities are not proposed to be abandoned because they are deteriorated or being replaced. The applicants intend that the pipeline will enhance PVR's gathering and processing services, thus providing greater market access to producers. Since no facility will be constructed or removed from service, the proposal raises no environmental issues. Here, the pertinent issues are the underutilization of the Hemphill System, the impact to Northern's present customers, and whether arrangements have been made for the continuation of service. For the reasons given below, we find that the benefits of the proposed abandonment outweigh any potential detriments. Therefore, we will grant Northern's request for abandonment authority.

14. The Commission has granted requests to abandon facilities that were once used to support their merchant gas sales function that a pipeline no longer offers.¹⁴ Northern asserts that the Hemphill System was originally built to support Northern's bundled merchant sales service. However, Northern no longer performs this merchant function and, as a result, the facilities are no longer integral to Northern's system. Currently, these facilities are grossly underutilized by Northern's shippers. Northern states that the portion of the Hemphill System that will be abandoned is used to transport residue gas to

¹² The review of this proposal under 18 C.F.R. § 380.4 confirms that this action qualifies as a categorical exclusion under section 380.4(a)(31).

¹³ *Transcontinental Gas Pipe Line Co. v. FPC*, 488 F.2d 1325, 1330 (1973), *cert. denied sub nom., Natural Gas Pipeline Co. v. Transcontinental Pipeline Corp.*, 417 U.S. 921 (1974) (the La Gloria Field case).

¹⁴ *Columbia Gas Transmission Corp.*, 106 FERC ¶ 61,297, at P 26 (2004); *Trunkline Gas Co.*, 95 FERC ¶ 61,337, at 62,231 (2001) (*Trunkline*); *Natural Gas Pipeline Co. of America*, 94 FERC ¶ 61,186 (2001); *Northern Natural Gas Co.*, 93 FERC ¶ 61,101 (2000).

other markets and is not integral to fulfilling its interstate transmission service obligations. Northern will maintain the parallel 16- to 20-inch diameter Retained Hemphill System which provides a majority of the service being provided to its existing customers and allows Northern's customers to have access to numerous gas supplies for their markets.

15. Northern states that the abandonment of the Hemphill System will benefit customers as a result of (1) the elimination of the operating and maintenance costs associated with these facilities, (2) the elimination of the need to make future capital expenditures for modifications and replacements of these facilities, and (3) the prospective reduction in compressor fuel and unaccounted for (UAF) volumes used in determining Northern's future fuel and UAF retention percentages.

16. PVR will easily be able to interconnect the Hemphill System with PVR's existing gathering and processing complex. The integration of the Hemphill System will significantly enhance PVR's operational flexibility and efficiency in accessing and handling gas supplies and will enable PVR to provide expanded gathering and processing services as well as greater market access to producers. Since the Hemphill System is underutilized as part of Northern's system, PVR's acquisition and operation of the system as part of its gathering facilities will allow the assets to be more productive. The acquisition of these assets by PVR will permit PVR to avoid the construction of additional, potentially-duplicative pipeline and compression, with the incidental impact on landowners and the environment.

17. We find that the facilities to be abandoned were constructed and employed to enable Northern to provide a merchant sales service and related transportation services. Because Northern no longer provides such services, we find Northern no longer needs to retain the Hemphill System. The abandonment will permit Northern to eliminate unnecessary expenses associated with these facilities and allow Northern to make more efficient use of the Retained Hemphill System.

18. Northern asserts that transfer of the Hemphill System to PVR will not adversely affect any of its customers. Recent throughput on the Hemphill System has been approximately 1.8 MMcf/day. Northern states that each of the shippers on the Hemphill System have given their unqualified consent both to the abandonment of the facilities by Northern and to the subsequent operation by PVR of the Hemphill System as a nonjurisdictional gathering system.¹⁵ Northern and PVR assert that firm transportation

¹⁵ On April 3, 2008, Northern and PVR filed consent letters (April 3, 2008 final consent letters) from the shippers on the Hemphill System, evidencing the shipper's consent to the abandonment, sale, and subsequent operation of the Hemphill System by PVR as a nonjurisdictional gathering facility. These shippers include Mewbourne Oil Company, West Texas Gas, Inc., and DCP Midstream, LP.

shippers currently using the Hemphill System will be able to receive continued service from PVR after abandonment under conditions similar to what they currently receive from Northern.¹⁶ PVR has reached agreements with all three shippers on the Hemphill System and has secured their consent to PVR's proposed acquisition and subsequent operation of the facilities.¹⁷ Additionally, Northern contends that it will retain in interstate commerce the pipeline facilities, which parallel the entire length of the Hemphill System, to provide service to any current or future customer.

19. In cases where a pipeline subject to the Commission's jurisdiction seeks to transfer gathering facilities to a nonjurisdictional entity, the Commission has held that it will presume that there are no continuity of service issues present in the proceeding if no customer protests the abandonment of the facilities by that pipeline.¹⁸ Since, PVR has reached agreements with all of the shippers along the Hemphill System, and no customer has protested the abandonment of the facilities by Northern, we find that the abandonment of the Hemphill System will not adversely affect any of Northern's customers.

20. In view of the above considerations, the Commission finds that Northern's abandonment of the Hemphill System is permitted by the public convenience and necessity. For accounting purposes, Northern will be required to clear the abandonment of the Hemphill System through Account 102, *Gas Plant Purchased or Sold*, and remove the original cost and related accumulated depreciation from its books, consistent with Gas Plant Instruction No. 5 Paragraph F.¹⁹

¹⁶ DCP Midstream holds a firm transportation service agreement with Northern for 4 MMcf/day, ending on August 31, 2009. DCP Midstream's volumes account for 90 percent of the volumes transported on the Hemphill System. PVR and DCP Midstream have reached an agreement for PVR to continue to provide nonjurisdictional gathering services to DCP Midstream.

¹⁷ See Northern's Application at Exhibit W and the April 3, 2008 final consent letters.

¹⁸ *Southern Star Central Gas Pipeline, Inc.*, 115 FERC ¶ 61,057, at P 34 (2006); *Transcontinental Gas Pipe Line Co.*, 103 FERC ¶ 61,118, at P 9 (2003); *Colorado Interstate Gas Co.*, 101 FERC ¶ 61,377, at P 13 (2002) (*Colorado Interstate*); *Columbia Gas Transmission Corp.*, 93 FERC ¶ 61,278, at 61,913 (2000) (*Columbia Gas*).

¹⁹ 18 C.F.R. Part 201, Gas Plant Instruction No. 5, Gas plant purchased or sold.

B. Primary Function Test

21. Northern believes that the size, configuration and proposed use of the facilities indicate that their primary function following transfer to PVR will be the gathering of natural gas. Therefore, Northern seeks a determination that the facilities will be, upon transfer, exempt from the Commission's jurisdiction pursuant to the gathering exemption in section 1(b) of the NGA.

22. Under section 1(b) of the NGA, the Commission's jurisdiction does not extend to facilities used for the production or gathering of natural gas or to gathering services.²⁰ The Commission has, over the years, developed a number of legal tests to determine which facilities are nonjurisdictional gathering facilities and which facilities are jurisdictional transmission facilities.²¹ To determine a facility's jurisdictional status, the Commission relies on the modified "primary function test," which includes consideration of several physical and geographical factors, including: (1) the length and diameter of the pipeline(s); (2) the extension of the facility beyond the central point-in-the-field; (3) the facility's geographical configuration; (4) the location of the compressors and processing plants; (5) the location of the wells along all or part of the facility; and (6) the operating pressure of the pipeline(s).²²

23. In addition, the Commission also considers the purpose, location, and operation of the facility, the general business activities of the owner of the facility, and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act (NGPA). The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.²³ In addition to the factors enumerated above, the Commission also weighs any and all other relevant facts

²⁰ The courts have narrowly construed section 1(b) of the NGA exemption to "the physical acts of drawing gas from the earth and preparing it for the first stages of distribution." See, e.g., *Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board*, 474 U.S. 409, 418 (1986) (quoting *Northern Natural Gas Co. v. State Corp. Comm'n of Kansas*, 372 U.S. 84, 90 (1963)).

²¹ See *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990) (*Amerada I*) and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

²² The Commission has further modified the primary function test as applied to facilities located offshore. These modifications are immaterial here, since all facilities are located onshore.

²³ See *Columbia Gas*, 93 FERC ¶ 61,278 at 61,913; *TOMCAT*, 59 FERC ¶ 61,340, at 62,239 n.15 (1992).

and circumstances of a particular case, including non-physical criteria.²⁴ The United States Court of Appeals for the Fifth Circuit stated in *Sea Robin Pipeline Company*,²⁵ however, that while non-physical factors, such as the business of the owner or prior certification of facilities, may be relevant considerations distinguishing transmission or gathering facilities, these kinds of non-physical factors are secondary to physical factors.

24. Applying the criteria of the modified primary function test to evaluate PVR's existing and proposed facilities, the Commission concludes that the subject facilities currently perform primarily a gathering function, and will continue to do so based upon the applicants' representations regarding the proposed expansion. Accordingly, PVR should be classified as a nonjurisdictional gatherer, exempt from Commission jurisdiction under section 1(b) of the NGA.

1. Length and Diameter of the Lines

25. The Hemphill System consists of 60 miles of 10-inch diameter pipeline and 28 miles of 12-inch diameter pipeline. Applicants assert that the lengths of the pipelines merely reflect the distance between Northern's KB mainline and the wet gas producing areas in Roger Mills County, Oklahoma. The Commission has found lines of comparable length and diameter to be gathering.²⁶ Therefore, the length and diameter of these lines is not necessarily inconsistent with a gathering function.

²⁴ *Amerada I*, 52 FERC ¶ 61,268.

²⁵ 127 F.3d 365, 371 (5th Cir. 1997).

²⁶ See, e.g., *Straight Creek Gathering, LP*, 117 FERC ¶ 61,005, at P 13 (2006) (*Straight Creek*) (finding 60 miles of 20-inch diameter backbone pipeline and several 4- to 12-inch lateral lines extending off the backbone to be a nonjurisdictional gathering system); *CenterPoint Energy Gas Transmission Co.*, 116 FERC ¶ 61,293, at P 22 (2006) (*CenterPoint*) (noting that it is not inconsistent to grant gathering status to facilities with lines as long as 13 miles and with 16- to 20-inch diameter segments); *Colorado Interstate*, 101 FERC ¶ 61,377 at P 18 (102 miles of 19- to 24-inch certificated pipelines was found to be gathering); *CNG Transmission Corp.*, 86 FERC ¶ 61,138, at 61,489 (1999), *order on reh'g*, 90 FERC ¶ 61,290 (2000) (finding that 24-inch pipeline facilities were gathering); *Columbia Gas Transmission Corp.*, 79 FERC ¶ 61,045 (1997) (finding that 34.1 miles of 26-inch pipeline was gathering); *ANR Pipeline Co.*, 76 FERC ¶ 61,153, at 61,913 (1996) (*ANR Pipeline*) (a 92-mile long, 16-inch diameter pipeline was found to be gathering); *El Paso Natural Gas Co.*, 57 FERC ¶ 61,186 (1991) (*El Paso*) (a 75-mile long pipeline consisting of about 62 miles of 16-inch diameter pipeline and 13 miles of 20-inch diameter pipeline was found to be gathering).

2. Central Point in the Field

26. The second factor of the primary function test considers whether the facilities extend beyond a central point in the field. The central point in the field test is based on the idea that gathering involves the collection and movement of natural gas through various smaller lines to a central point where gas is delivered into a single large line. Any facilities located upstream of the central point are considered nonjurisdictional gathering facilities, while those facilities located downstream of this point are considered interstate transportation facilities subject to the Commission's jurisdiction.²⁷ We find this factor to be of little determinative significance here, given that all facilities at issue are upstream of processing plants.²⁸

3. Geographic Configuration

27. Gathering systems typically comprise one of two types of geographic configurations: the web-like configuration or the spine-type (or backbone) configuration. The Commission has held that longer pipelines connected to smaller feeder lines are indicative of a gathering function.²⁹ Further, the Commission determined that the location of a system within a single state may be a geographic factor relevant to a gathering determination.³⁰ The Hemphill System, once integrated into PVR's gathering system will consist of a backbone configuration with wells and gathering connections along the entire length of the line. PVR intends to use the Hemphill System, both as a backbone gathering facility and as a means for existing customers currently served by PVR's Beaver/Perryton gathering system to access PVR's new Spearman processing plant. The Commission finds the existing geographic configuration of PVR's system and the applicants' representation of the configuration of the integrated Hemphill System to be consistent with gathering.

²⁷ *El Paso*, 57 FERC at 61,648. See also, *Florida Gas Transmission Co.*, 75 FERC ¶ 61,289, at 61,931 (1996).

²⁸ *CenterPoint*, 116 FERC ¶ 61,293 at P 22. See *Straight Creek*, 117 FERC ¶ 61,005 at P 14 ("The central point in the field test is typically used in the absence of a processing plant. Where there is a processing plant, the plant serves as the central point").

²⁹ *Straight Creek*, 117 FERC ¶ 61,005 at P 13.

³⁰ See, e.g., *Mahue Construction Co.*, 94 FERC ¶ 61,118, at 61,449 (2001).

4. Location of Compression and Processing Facilities

28. The applicants state that the Hemphill System includes six compressor units contained in two compressor stations.³¹ The location and sizing of these units is dictated by the size of the Hemphill System, their original throughput levels and flow characteristics, as well as the prevailing field pressures of attached gas reserves and gathering systems. Applicants state that the compressors were, and currently are, used to gather wet gas to Northern's KB mainline. Once the facilities are transferred to PVR, applicants state that the compression facilities will be used as needed to gather gas to PVR's downstream processing plants, as well as maintain optimal operating pressures on the Hemphill System. The Commission finds that such field compression behind the processing plants would not be inconsistent with a gathering function.³²

29. The Commission has generally found facilities located upstream of processing plants to be gathering.³³ The processing of wet gas to remove impurities, moisture, and liquid to bring gas up to pipeline quality standards for delivery into an interstate pipeline is characteristic of a gathering function.³⁴ The applicants state that upon abandonment and transfer to PVR, the Hemphill System will be integrated into PVR's existing Beaver-Perryton gathering complex by tying the Hemphill System to a pipeline lateral on the

³¹ Northern states that the four compressor units at the Hemphill County #2 compressor station were recently abandoned by Northern. Currently, only one of the two compressor units at the Hemphill County #1 compressor station is running, due to a lack of throughput on the Hemphill System.

³² *El Paso Natural Gas Co.*, 81 FERC ¶ 61,209, at 61,892-93 (1997), *reh'g denied*, 82 FERC ¶ 61,337 (1998), *aff'd*, *Williams Field Services Group, Inc. v. FERC*, 194 F.3d 110 (D.C. Cir 1999).

³³ *See, e.g., CenterPoint*, 116 FERC ¶ 61,293 at P 22; *Transwestern Pipeline Co. (Transwestern)*, 115 FERC ¶ 62,189, at 64,860 (2006); *El Paso Natural Gas Co.*, 81 FERC ¶ 61,209, at 61,892-93 (1997), *reh'g denied*, 82 FERC ¶ 61,377 (1998), *aff'd*, *Williams Field Services Group, Inc. v. FERC*, 194 F.3d 110 (D.C. Cir. 1999); *Koch Gateway Pipeline Co.* 81 FERC ¶ 61,228, at 61,957 (1997) (*Koch Gateway*), and *ANR Pipeline Co.*, 77 FERC ¶ 61,230, at 61,936 (1996).

³⁴ *Straight Creek*, 117 FERC ¶ 61,005 at P 15. *See also (Southern Star Central Gas Pipeline, Inc.)*, 116 FERC ¶ 61,288, at P 37 (2006) (*Southern Star*) ("We do not find it dispositive of the jurisdictional status of the Mulhall Line that the gas entering the line will have been processed in the field since the processing is not sufficient to bring the gas to pipeline quality. The gas must further be processed before it is delivered to Southern Star's system."); *El Paso Natural Gas Co.*, 116 FERC ¶ 62,081, at 64,274 (2006).

East of Canadian River Facilities³⁵ and then connecting the western terminus of the Hemphill System to PVR's Spearman processing plant in Ochiltree County, Texas by an eight-mile "tie-line." The integration would give PVR the option to process existing and new production along the Hemphill System at two processing plants, thus conferring new flexibility and reliability benefits upon current and new PVR gathering customers. The Commission finds that PVR's proposed acquisition of the Hemphill System and integration into its existing gathering facilities upstream of two processing plants is consistent with a gathering function.³⁶

5. Location of the Wells

30. The location of wells along the length of a line is indicative of gathering.³⁷ The Commission has previously held that the location of a facility in a production area surrounded by other gathering lines supports a nonjurisdictional finding.³⁸ However, the absence of wells directly connected to a pipeline does not necessarily prohibit a gathering determination when facilities are located in a production area and operated along existing gathering sub-systems.³⁹ The Hemphill System traverses a region with extremely active and productive gas resources. Applicants state that there is nearly 80 MMcf/day of active gas production within a three-mile corridor along the entire length of the Hemphill System, and exploration in this region is actively on-going.⁴⁰ Once the Hemphill System

³⁵ The East of Canadian River Facilities were acquired by PVR in *Transwestern*, 115 FERC ¶ 62,189.

³⁶ See e.g., *GPM Gas Corp. v. El Paso*, 81 FERC ¶ 61,208, at 61,888 (1997); *Koch Gateway*, 81 FERC ¶ 61,228; *ANR Pipeline Co.*, 77 FERC ¶ 61,230; *Williams Natural Gas Co.*, 71 FERC ¶ 61,115, at 61,375 (1995); *Southern Natural Gas Co.*, 72 FERC ¶ 61,109 at 61,572 (1995); *Northern Natural Gas Co.*, 69 FERC ¶ 61,264, at 62,015 (1994).

³⁷ See, e.g., *Ozark Gas Transmission, LLC*, 101 FERC ¶ 61,205, at P 21 (2002) and *ANR Pipeline*, 76 FERC at 61,914.

³⁸ See, e.g., *El Paso Natural Gas Co.*, 116 FERC at 62,275; *Southern Star*, 116 FERC ¶ 61,288 at P 33.

³⁹ See, e.g., *Southern Star*, 116 FERC ¶ 61,288 at P 41.

⁴⁰ East from the interconnection of the Hemphill System with Northern's KB mainline, there is 3.4 MMcf/day of production in Ochiltree County, Texas, 5.3 MMcf/day of production in Roberts County, Texas, 10.9 MMcf/day of production in Hemphill County, Texas, and 59 MMcf/day of production in Roger Mills County, Oklahoma.

is acquired and integrated into its system, PVR plans to compete for existing and new reserves along the Hemphill System corridor. PVR believes it can increase the throughput of the Hemphill System from 1-2 MMcf/day to approximately 30 MMcf/day.⁴¹ The Commission finds that the location of the facilities among gathering and production resources, as well as the prospect of the attachment of production reserves along the Hemphill System, to be consistent with a gathering function.

6. Operating Pressure of Lines

31. Lower operating pressures are consistent with a gathering function; however, the Commission has acknowledged that gathering lines may have higher operating pressures that occur as a result of higher wellhead pressures in the field.⁴² Compression used to stimulate additional production by raising the outlet pressure as necessary to deliver a gathered stream into a downstream transmission or processing facility can be considered part of gathering.⁴³ Applicants state that PVR is obtaining all of the compression facilities on the Hemphill System, and none of the acquired compressors will later be shared with or used by Northern to maintain pressures on the Retained Hemphill System. PVR anticipates using the acquired compressors, as needed, to maintain an operating pressure in the pipelines of approximately 550 psig. This pressure level will facilitate the efficient gathering and subsequent processing of gas by enabling PVR both to lower field gathering pressures and to boost the delivered gas pressure at the inlets of PVR's Beaver and Spearman processing plants. The Commission finds that the operating pressures are not inconsistent with a gathering function.⁴⁴

⁴¹ With additional compression, PVR asserts that it can increase the capacity of the Hemphill System to approximately 70 MMcf/day.

⁴² See, e.g., *ANR Pipeline*, 76 FERC at 61,914.

⁴³ See *Equitrans, L.P.*, 109 FERC ¶ 61,209, at 62,004 (2004).

⁴⁴ *ANR Pipeline*, 76 FERC at 61,914 (The Commission determined that operating pressures of 780 to 1,050 psig were indicative of a gathering function since the operating pressures were a result of higher wellhead pressures in the field and the operating pressures of interconnected third party gathering systems); *El Paso Natural Gas Co.*, 116 FERC at 64,274 (“The operating pressure of the system – approximately 850 psig – will be driven by production pressures in the area and, as such, is not inconsistent with a gathering function”); *El Paso Natural Gas Co.*, 72 FERC ¶ 61,220, at 62,012 (1995) (“The six gathering systems in the Anadarko Basin range anywhere from 300 to 1,000 psig because of the higher gathering system pressures resulting from the high pressure reservoirs underlying the Anadarko Basin. Under these circumstances, the high operating pressures are not inconsistent with a gathering determination.”).

7. Additional Considerations

32. The Commission has held that other factors may be considered in conjunction with the primary function test. In *Amerada I*,⁴⁵ the Commission adopted the “Modified Primary Function” test, which, in addition to physical factors enumerated in *Farmland*, considers other appropriate non-physical criteria including: (1) the purpose, location, and operation of the facility; (2) the general business activity of the owner of the facility; and, (3) whether the jurisdictional determination is consistent with the objective of the NGA and the Natural Gas Policy Act (NGPA).

33. Applicants state that virtually all of the gas that currently is gathered through the Hemphill System is wet gas that requires processing due to the presence of water and/or liquid hydrocarbons in the gas stream in order to make such gas suitable for transportation on typical interstate residue gas lines. Once integrated into PVR’s existing Beaver/Perryton gathering complex, these facilities will continue to gather for delivery and/or processing almost exclusively wet gas, consistent with the gathering function. The Commission finds that when the certificated facilities are analyzed individually or as part of the larger configuration under the Modified Primary Function test, the purpose, location, and operation of the Hemphill System will be consistent with a gathering function.

34. As previously stated, PVR is an independent oil and gas exploration and production company engaged in the production and marketing of natural gas. PVR is not affiliated with Northern. Upon the Commission’s approval of the abandonment and confirmation of nonjurisdictional status as requested by the parties, PVR will acquire and operate the Hemphill System which will aid in the gathering of natural gas production from these production areas. The acquisition of Northern’s Hemphill System will not change PVR’s business as an unregulated gatherer of natural gas. The Commission has declared numerous certificated facilities to be nonjurisdictional gathering once conveyed to third parties.⁴⁶ As noted, Northern proposes to close, lock, and tag the block valves in order to separate its facilities from PVR’s Hemphill System. As a result, no interstate gas will enter the Hemphill System. Therefore, PVR’s delivery of gathered gas to Northern’s former customers through the Hemphill System is nonjurisdictional. The Commission finds that the general business activities of PVR are not inconsistent with a determination

⁴⁵ 52 FERC ¶ 61,268 at 61,988.

⁴⁶ *Trunkline*, 95 FERC ¶ 61,337 at 62,233 (“We find it probative to look to the nature of the company that owns and operates those facilities. In this case, that company is Trunkline, an interstate gas transporter that has undergone a restructuring to segregate previously bundled services”).

that the Hemphill System should be exempt from the Commission's jurisdiction under the NGA.

35. When establishing whether a jurisdictional determination is consistent with the objectives of the NGA and the NGPA, the Commission considers improving infrastructure, enhancing competition, and providing additional supplies of gas.⁴⁷ PVR states that it will rapidly integrate the Hemphill System into its existing, nonjurisdictional Beaver/Perryton gathering system, providing PVR with access to approximately 80 MMcf/day of raw gas production, as well as the capability to interconnect with PVR's Spearman processing plant. PVR asserts that operating the Hemphill System as a nonjurisdictional facility will facilitate additional competition within the gas gathering and processing community and place previously essentially idle facilities into efficient and productive new use. The Commission finds that the integration of the Hemphill System into PVR's current gathering system will promote gathering activities consistent with the objectives of the NGA and the NGPA.

V. Engineering Analysis

36. The Commission staff reviewed and analyzed the flow diagrams and flow information submitted with the application. The Commission finds, based on our analysis, that the sale of the Hemphill System to PVR, when completed, will not adversely impact or degrade transportation services provided by Northern to its existing customers.

VI. Environment

37. The Hemphill System would be abandoned in place and disconnected from the facilities that Northern would retain. Northern would close, lock, and tag the block valves in order to separate its facilities from PVR's facilities. No facilities will be physically abandoned as a result of the proposal. Accordingly, the Commission finds that Northern's proposal qualifies for a categorical exclusion under section 380.4(a)(31) of the Commission's regulations as an abandonment involving only minor or no ground disturbance and therefore, no further environmental review is necessary.⁴⁸

⁴⁷ See, e.g., *Straight Creek*, 117 FERC ¶ 61,005 at P 18 and *Columbia Gas Transmission Corp.*, 116 FERC ¶ 61,191, at P 44 (2006).

⁴⁸ 18 C.F.R. § 380.4(a)(31).

VII. Conclusion

38. The Commission finds that the public convenience and necessity permits the abandonment of facilities and services by Northern on its Hemphill System. Further, the Commission finds that PVR is engaged primarily in the business of gathering and will continue to do so once it acquires and integrates the Hemphill System into its Beaver/Perryton gathering system. Accordingly, the Commission declares the Hemphill System to be exempt from its jurisdiction pursuant to section 1(b) of the NGA.

39. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) Northern is granted permission for and approval under section 7(b) of the NGA to abandon, by sale to Saleco and subsequently to PVR, the Hemphill System with appurtenant facilities located in Ochiltree, Roberts, and Hemphill Counties, Texas, and Roger Mills County, Oklahoma, and its certificated services through such facilities, as described in this order and in Northern's application.

(B) A determination is made that upon their acquisition by PVR, the Hemphill System proposed to be abandoned will be exempt from the Commission's jurisdiction as gathering under section 1(b) of the NGA.

(C) Northern shall notify the Commission within 10 days of the date of abandonment of the facilities described above.

(D) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.