

126 FERC ¶ 61,092
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Eagle Rock DeSoto Pipeline, L.P.

Docket No. CP09-9-000

DECLARATORY ORDER ON JURISDICTION

(Issued February 5, 2009)

1. On October 14, 2008, Eagle Rock DeSoto Pipeline, L.P. (DeSoto)¹ filed a petition, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,² for a declaratory order stating that DeSoto's East Texas system performs a gathering function and therefore is not subject to the Commission's Natural Gas Act (NGA)³ jurisdiction and that it has no further rate or reporting obligations with respect to the East Texas system.

2. For the reasons discussed below, the Commission determines that DeSoto's facilities perform a gathering function. Accordingly, pursuant to NGA section 1(b),⁴ these facilities are not subject to the Commission's jurisdiction.

I. Background and Proposal

3. DeSoto states that its pipeline assets were owned by Millennium Midstream Partners, L.P. (Millennium Midstream) until October 1, 2008 when Energy Rock Energy Partners, L.P. (Eagle Rock) acquired Millennium Midstream. DeSoto states that Eagle

¹ DeSoto originally filed this petition under the name MMP DeSoto Pipeline, L.P., which it corrected by a filing on October 27, 2008, to MME DeSoto Pipeline, L.P. On December 24, 2008, in Docket No. PR09-1-000, DeSoto informed the Commission that it had changed its name to Eagle Rock DeSoto Pipeline, L.P. to reflect that its owner, Millennium Midstream Partners, L.P., was acquired by Eagle Rock Energy Partners, L.P., effective October 1, 2008.

² 18 C.F.R. § 385.207 (2008).

³ 15 U.S.C. §§ 717-717z (2006).

⁴ 15 U.S.C. § 717(b) (2006).

Rock is an independent energy company principally engaged in the same midstream businesses as Millennium Midstream had been, i.e., providing gathering and processing services to producers of natural gas, and that Eagle Rock also owns and operates production and exploration assets. In addition to the DeSoto pipeline assets, Eagle Rock acquired Millennium Midstream's onshore and offshore facilities in Texas and Louisiana.

4. DeSoto states that Millennium Midstream purchased DeSoto's facilities, which included three pipeline systems, the East Texas, Central, and North systems, from CLECO Energy, LLC in November 2004 to operate them as gathering, adding numerous wellhead connections. Prior to the purchase of the system by Millennium Midstream, the Commission reviewed and approved transportation rates, pursuant to the Natural Gas Policy Act (NGPA) section 311, for the East Texas system.⁵ As part of the settlement, DeSoto was required to file for rate approval in May 2007, in addition to filing annual reports. However, following the purchase of the facilities, DeSoto states that Millennium Midstream neglected to make the required filings.⁶

5. According to DeSoto, the East Texas system consists of approximately 217 miles of 1- to 10-inch pipeline and is configured in a backbone-type system with laterals connecting to wellheads.⁷ DeSoto states the backbone is approximately 123 miles in length, running from Tyler to Seven Oaks, Texas. According to DeSoto, the East Texas system does not receive gas from any pipeline and currently delivers gas primarily to Gulf South Pipeline Company, Natural Gas Pipeline Company, and Houston Pipeline. DeSoto states that since March 2007 it no longer transports gas under NGPA section 311 on the East Texas system.

6. DeSoto states that the East Texas system has operating pressures ranging from 50 to 1,000 pounds per square inch gauge (psig). Except for the interconnections with pipelines, where gas is compressed to pipeline pressure for delivery, DeSoto states that

⁵ See *DeSoto Pipeline Co., Inc.*, 108 FERC ¶ 61,314 (2004).

⁶ As a result, DeSoto states that Millennium Midstream attempted to determine the information required under the Commission's reporting requirements for intrastate pipelines transporting gas in interstate commerce pursuant to 18 C.F.R. § 284.126 and filed those reports for the years 2004 to 2007. In a separate submission, Millennium Midstream also filed a revised Statement of Operating Conditions and a Notice of Rate Election requesting the Commission approve the continued use of the now-effective rate for the Central and North systems, which is based on a city-gate transportation rate approved by the Texas Railroad Commission. The issues related to the Central and North systems will be addressed in a separate proceeding in Docket Number PR09-1-000.

⁷ There are also direct wellheads interconnected along the entire length of the backbone.

compression is used to lower line pressure to enhance producers' ability to get gas into the line.

II. Notice, Interventions, and Protests

7. Public notice of DeSoto's petition was published in the *Federal Register* on October 28, 2008 (73 Fed. Reg. 63,968). No interventions, comments or protests were filed.

III. Discussion

A. Primary Function Test

8. 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.⁸ The NGA itself, however, does not define the term "gathering." As a result, over the years the Commission has developed a legal test to determine which facilities are non-jurisdictional gathering facilities and which are jurisdictional transmission facilities. To determine a facility's function the Commission presently relies on the modified "primary function test," which considers the physical and geographical attributes of a system including: (1) the length and diameter of pipelines; (2) the extension of the facilities beyond the central point in the field; (3) the facilities' geographical configuration; (4) the location of compressors and processing plants; (5) the location of the wells along all or part of a system; and (6) the operating pressures of the pipelines.⁹

9. In addition to the physical and geographical factors, the Commission also considers the purpose, location, and operation of the facilities, the general business activities of the owner of the facilities, and whether the jurisdictional determination is consistent with the NGA and the NGPA. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.¹⁰ Nor are these factors applied mechanically. A facility that fails to meet all

⁸ The courts have narrowly construed the NGA section 1(b) 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)).

⁹ *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983), as modified by *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990).

¹⁰ *Northern Natural Gas Co.*, 74 FERC ¶ 61,100, at 61,303 (1996).

the criteria may nonetheless qualify as an exempt facility.¹¹ The Commission weighs any and all other relevant facts and circumstances of a particular case, including the non-physical criteria.¹²

10. Applying the primary function test criteria to DeSoto's East Texas system, the Commission finds that the primary function of the facilities is gathering.

1. Length and Diameter of the Pipelines

11. DeSoto's backbone pipeline runs 123 miles and consists of 8- and 10-inch pipeline. The Commission has found similar length and diameter lines to be gathering. In *Colorado Interstate Gas Company*, we found a 102-mile backbone-type system with up to a 24-inch diameter, to be consistent with a gathering function.¹³ Additionally, in *Straight Creek Gathering, LP*, we found 60 miles of 20-inch diameter backbone pipeline with several 4- to 12-inch lateral lines extending from the backbone to be a non-jurisdictional gathering system.¹⁴ Lastly, in *DCP Midstream, L.P.*, we found approximately 38 miles of 10-inch diameter pipeline and 41 miles of 14-inch diameter pipeline to be gathering.¹⁵ Therefore, we find that the length and diameter of DeSoto's facilities are consistent with a gathering function.

2. Central Point in the Field

12. We find that the central-point-in-the-field test is not applicable to the East Texas system. 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 the gas is delivered into a single line for transmission.¹⁶ Any facilities located upstream of the central point are generally considered non-jurisdictional gathering facilities, while those downstream are considered jurisdictional transmission facilities.¹⁷

¹¹ *Mississippi River Transmission Corp.*, 87 FERC ¶ 61,334, at 62,296, n.18 (1999).

¹² *Amerada Hess Corp.*, 52 FERC at 61,987.

¹³ 101 FERC ¶ 61,377, at 62,569, n.2 (2002).

¹⁴ 117 FERC ¶ 61,005, at P 13 (2006).

¹⁵ 123 FERC ¶ 61,237, at P 13 (2008).

¹⁶ *Arkla Gathering Services Co.*, 67 FERC ¶ 61,257, at 61,867, *order on reh'g*, 69 FERC ¶ 61,280 (1994).

¹⁷ *El Paso Natural Gas Co.*, 57 FERC ¶ 61,186, at 61,648 (1991).

The central-point-in-the-field test is typically applied in situations where there is no processing plant. Although there is no processing plant along the East Texas system, the Commission has determined that backbone-type structures similar to DeSoto's do not lend themselves to the central-point-in-the-field analysis.¹⁸

3. Geographic Configuration and Location of Wells

13. The Commission has recognized that there are three basic gathering pipeline configurations, including the web-like-type system, the backbone-type system, and a short, small diameter pipe that connects a few wells directly into a transmission system.¹⁹ The East Texas system exhibits a backbone-, or spine-, type configuration, in which various small-diameter lines move gas production to a larger-diameter system backbone for delivery to transmission pipelines. There are wells located throughout the entire system, including connections downstream of DeSoto's Highway 7 compressor station, which compresses gas for delivery into the interstate pipeline systems. The East Texas system's backbone-type configuration and the location of wells along the entire system are consistent with a gathering function.

14. In addition, the Commission has found that the location of a system all within a single state may be a geographic factor relevant to a gathering determination²⁰ and that a facility located in a production area surrounded by other gathering lines supports a non-jurisdictional finding.²¹ In this case, the East Texas system is located entirely in Texas and is surrounded by gathering lines, consistent with a gathering function.

4. Location of Compressors and Processing Plants

15. We find that the compression as configured on the East Texas system is consistent with a gathering function. The East Texas system has compression at a number of points on its system. The compression is used primarily to allow producers to get their gas into the pipeline for movement through the system. Compression is positioned to allow the lowest possible wellhead pressure while optimizing the gathering system's capacity to satisfy producer volume requirements. Specifically, at the upstream end of the pipeline, compression facilities are used to drop suction pressure to 50 psig. Suction pressure along the pipeline rises to approximately 300 psig, but is kept as low as possible. At the downstream end of the pipeline, just prior to delivery, pressure rises to approximately

¹⁸ *Citrus Energy Services Inc.*, 75 FERC ¶ 61,289 (1996).

¹⁹ *DCP Midstream, LP*, 123 FERC ¶ 61,237, at P 40 (2008). *See, e.g., Arkla Gathering Services Co.*, 67 FERC at 61,868.

²⁰ *Northern Natural Gas Company*, 123 FERC ¶ 61,325 (2008).

²¹ *Quicksilver Resources, Inc.*, 122 FERC ¶ 61,115, at P 18 (2008).

1,000 psig to allow for delivery into the interstate pipelines. The Commission has found that upstream compression is not inconsistent with a gathering function if the compression is necessary to move gas through a system's gathering lines.²² Further, the Commission has held that compression which operates to boost the pressure of gas so that it can enter a processing plant or transmission system may be properly viewed as the last step in gathering or production.²³ In this case the East Texas system uses compression primarily for these two reasons. Therefore, the location of compression on the East Texas system is consistent with gathering.

5. Operating Pressures of the Line

16. As stated above, the East Texas system operates at pressures ranging from 50 to 1,000 psig. DeSoto emphasizes that operating pressures are a function of the field compression necessary to allow producers to inject gas into the facilities at low pressure and to allow for delivery into interstate transmission lines.

17. Generally, lower operating pressures are consistent with a gathering function. The Commission has acknowledged that gathering lines may have higher operating pressures that occur as a result of higher pressures in the field.²⁴ Here, the East Texas system operates at 50 to 1,000 psig. The only reason the operating pressure increases to 1,000 psig is to allow for delivery into the interstate pipelines. As stated above, the Commission finds that this type of configuration is properly viewed as the last step in gathering or production. Therefore, the Commission finds that the operating pressure of the backbone is not necessarily inconsistent with a gathering function.

6. Additional Considerations

18. In addition to the primary function test, the Commission also considers relevant non-physical factors such as the purpose, location, and operation of the facilities, the general business activities of the owner of the facilities, and whether the jurisdictional determination is consistent with the NGA and the NGPA.²⁵ Eagle Rock, owner of DeSoto's East Texas system, is a non-jurisdictional natural gas gathering company principally engaged in the production, gathering and processing of natural gas. Eagle Rock does not own any assets that are subject to the Commission's jurisdiction. The Commission finds that the general business activities of Eagle Rock are consistent with a

²² See, e.g., *id.* P 16.

²³ *Equitrans, L.P.*, 109 FERC ¶ 61,209, at P 97 (2004), *order on reh'g*, 111 FERC ¶ 61,091 (2005).

²⁴ See, e.g., *ANR Pipeline Co.*, 76 FERC ¶ 61,153, at 61,914 (1996).

²⁵ *Amerada Hess Corp.*, 52 FERC at 61,988.

gathering function. Further, determining that the East Texas facilities are gathering is consistent with the NGA. Eagle Rock's predecessor, Millennium Midstream, expanded the facilities by investing in new infrastructure in order to gather production from existing wells in the area. As a result, during Millennium Midstream's ownership of the facilities, throughput on the East Texas system increased by a factor of nine. Such enhancement is in accord with the objectives of the NGA.

19. Determining the primary function of a facility requires weighing all relevant factors. After considering these factors, the Commission concludes that the East Texas system qualifies as gathering under the primary function test. As such, these facilities are exempt from Commission jurisdiction under section 1(b) of the NGA.

B. Reporting Requirements

20. DeSoto states that when Millennium Midstream acquired the East Texas system from CLECO in late 2004, CLECO was in the process of obtaining NGPA section 311 rate authorization from the Commission. That proceeding was ultimately settled and we approved rates for the East Texas, North, and Central systems.²⁶ In that settlement, DeSoto agreed to, among other things, file for rate approval again in May 2007. DeSoto did not make that filing. In addition, DeSoto failed to comply with the Commission's annual reporting requirements for intrastate pipelines that transport natural gas in interstate commerce pursuant to NGPA section 311.²⁷

21. Along with its application in this docket, DeSoto filed the missing required filings. Based on a staff review of the late filings, we find that DeSoto has complied with our reporting requirements, albeit belatedly. Because, since March 2007, DeSoto no longer transports natural gas in interstate commerce on the East Texas system pursuant to NGPA section 311, it has no additional rate or reporting obligations to the Commission with respect to the East Texas system.

IV. Environmental Review

22. DeSoto's request for a declaratory order qualifies as a categorical exclusion under section 380.4(a)(27) of the Commission's regulations.

V. Conclusion

23. For the reasons discussed above, the Commission finds that under the primary function test, DeSoto's facilities perform a non-jurisdictional gathering function.

²⁶ *DeSoto Pipeline Co.*, 108 FERC ¶ 61,314.

²⁷ 18 C.F.R. § 284.126 (2008).

The Commission orders:

(A) The Commission declares the primary function of DeSoto's existing facilities to be gathering, and thus are exempt from the Commission's jurisdiction under NGA section 1(b).

(B) DeSoto has no further rate or reporting obligations with respect to the East Texas system.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.