

126 FERC ¶ 61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

SWEPI LP
EnCana Oil & Gas (USA) Inc.

Docket No. CP09-32-000

DECLARATORY ORDER ON JURISDICTION

(Issued February 6, 2009)

1. On December 10, 2008, SWEPI LP (SWEPI) and EnCana Oil & Gas (USA) Inc. (EnCana) (referred to jointly as Petitioners) filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure¹ for a declaratory order determining that facilities they intend to construct in northwestern Louisiana will perform a gathering function exempt from the Commission's jurisdiction under section 1(b) of the Natural Gas Act (NGA).² As discussed below, the Commission grants the petition because the facilities will perform a gathering function exempt from the Commission's jurisdiction.

I. Background and Proposal

2. SWEPI is a limited partnership located in Houston, Texas and is primarily engaged in oil and natural gas exploration and production. SWEPI owns gathering facilities in Texas. Neither SWEPI, nor any of its affiliates, owns any interstate or intrastate pipelines. EnCana is a corporation located in Denver, Colorado and is primarily engaged in natural gas exploration and production. EnCana owns gathering facilities in a number of states. Neither EnCana, nor any of its affiliates, owns any interstate or intrastate pipelines.

3. SWEPI and EnCana jointly own (on a 50/50 basis) exploration and production properties overlying the Bossier/Haynesville shale formation in Red River, Desoto, Natchitoches, and Sabine Parishes, in northwest Louisiana. The Petitioners plan to construct two non-integrated pipeline systems (the East and West Magnolia Systems) to gather and deliver natural gas from the jointly owned production properties into intrastate

¹ 18 C.F.R. § 385.207 (2008).

² 15 U.S.C. § 717, *et seq.* (2006).

and interstate pipelines in the vicinity. All of the gas that will be gathered will be production from wells owned by SWEPI and EnCana.

4. The Petitioners state that some wells are already producing gas and that they are currently drilling other wells. The wells that are already producing are connected to nearby interstate, intrastate, and gathering pipeline outlets. The Petitioners state that the wells that are already producing, in addition to other wells that are drilled and brought online, will be connected to the East and West Magnolia Systems.

A. The East Magnolia System to be constructed by EnCana

5. EnCana will construct the East Magnolia System, which consists of the East and North Line Segments, east of the Red River. Petitioners indicate that they anticipate that SWEPI will assume a one-half ownership interest in the East Magnolia System in the future as part of the overall plan of field development.

1. East Line Segment

6. The East Line Segment will consist of approximately seven miles of pipeline, ranging in diameter from 12 to 24 inches and extending from the Baker temporary treating plant east to an interconnection with a 24-inch diameter interstate pipeline owned by Gulf South Pipeline Co., LP (Gulf South). Specifically, the East Line Segment will consist of approximately 1.5 miles of 24-inch diameter pipeline at the west end, telescoping down to six miles of 12-inch pipeline on the east end where it connects with Gulf South. There will be producing wells connected along the length of the East Line Segment.

7. The initial gas flow on the East Line Segment will be west to east toward the Gulf South pipeline. Once the North Line Segment described below is constructed, Petitioners state that they will close off the Gulf South interconnection on the east end and reverse the gas flow in order to flow the gas from east to west. When the gas flows west, the East Line Segment will be used to gather untreated gas from multiple wells, and deliver that gas into the new 24-inch diameter North Line segment for treatment at the downstream Magnolia processing plant. Once the flow reverses, which is currently estimated to take place in two to three years, deliveries at the interconnection with Gulf South will be permanently discontinued. The Petitioners state that at no time will gas be received into the East Line Segment from the interconnection with Gulf South; thus, no interstate gas will be delivered into the East Line Segment.

8. The East Line Segment is designed to gather and deliver up to 150 million cubic feet per day (MMcf/d) into Gulf South and, after the flow reverses, the East Line Segment capacity will be used to gather and deliver gas into the North Line Segment. The Petitioners state that EnCana has elected to proceed with construction of the East

Line Segment, which is in progress, based upon EnCana's belief that the East and West Magnolia Systems will function as gathering, both initially and in the future.

2. North Line Segment

9. The North Line Segment will consist of nine miles of 24-inch diameter pipeline, gathering natural gas from: (1) wells in the area of the temporary Baker treating plant where the East Line and North Line Segments will interconnect; (2) wells connected to the East Line Segment; and (3) future wells to be located along the North Line Segment and upstream of the temporary Baker treating plant. The North Line Segment will deliver gas to the Magnolia processing plant to be constructed at the north end of the segment. There will be “stub” pipelines downstream of the Magnolia plant carrying pipeline quality gas, each of which are projected to be no greater than two miles in length and no greater than 24 inches in diameter, connecting to various interstate and intrastate pipelines. No wells will be connected to any of these stub lines. The Petitioners' intent is to place the North Line Segment into service on the same date as the start-up of the Magnolia plant. Under this plan, the North Line Segment will not gather treated gas, since the gas will be treated at the Magnolia plant. No interstate gas will be delivered into the North Line Segment.

10. In the short term, no compression is needed for either the East Line or North Line Segments. However, in the long term, compression may be located in the wellhead areas or near the Magnolia plant, or both. The operating pressure of the East Line Segment may vary from 700 to 1,200 pounds per square inch gauge (psig), while the North Line Segment may vary from 700 psig to 1,400 psig as a result of natural wellhead pressure. In the future, some wellhead area compression may be needed to maintain well production rates.

11. The Petitioners state that they will design all pipelines with a maximum allowable operating pressure (MAOP) of 1,440 psig. The anticipated maximum flow rate will depend on the well development, but the initial flow rate is anticipated to be up to 500 MMcf/d.

B. The West Magnolia System to be constructed by SWEPI

12. SWEPI will construct the West Magnolia System west of the Red River. The West Magnolia System will consist of approximately 35 to 40 miles of 24- to 30-inch diameter pipeline, gathering natural gas from various wells along the line, extending from temporary treating plants to various interstate and intrastate pipelines. In the initial phases, the Petitioners state that the gas will be treated at or near the wellhead and/or at numerous temporary treating locations. However, the long-term plan is to treat all of the gas at a permanent treating plant, known as the Bolan plant, at the north end of the system. “Stub” pipelines, each less than five miles in length and with a diameter up to 30 inches, will be located downstream of the Bolan plant and will carry pipeline quality

gas to various interstate and intrastate pipelines. No wells will interconnect to these stub lines.

13. Until the Bolan plant is operational, which is estimated to be in two to three years, gas treated at the wellhead will enter the pipeline throughout its entire length. However, when the Bolan plant is placed into service, the West Magnolia System will not gather processed gas.

14. In the short term, no compression is needed. However, in the long term, compression may be needed in the wellhead areas and/or at, or near, the Bolan plant. The operating pressure of the main trunkline may vary from 500 psig to 1,400 psig, as a result of wellhead pressures. The Petitioners state that they will design all pipelines with a MAOP of 1,440 psig. The maximum flow rate will depend on the well development, but is anticipated to be up to 800 to 1,000 MMcf/d. No interstate gas will be delivered into the West Magnolia System.

II. Procedural Matters

15. The Commission published a notice of the petition for declaratory order in the *Federal Register* on December 16, 2008.³ No motions to intervene, notices of intervention, or protests were filed in this proceeding.

III. Discussion

A. Primary Function Test

16. 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.⁴ The NGA itself, however, does not define the term "gathering." As a result, the Commission has developed a legal test to determine which facilities are non-jurisdictional gathering facilities and which facilities are jurisdictional transmission facilities. To determine a facility's function, the Commission relies on the "primary function test," which considers the physical and geographical attributes of a facility, including: (1) the length and diameter of pipelines; (2) the extension of the facility

³ 73 Fed. Reg. 78,780 (2008).

⁴ 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)).

beyond the central point in the field; (3) the facility's geographical configuration; (4) the location of compressors and processing plants; (5) the location of the wells along all or part of a facility; and (6) the operating pressures of the pipelines.⁵

17. 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 facility; and whether the jurisdictional determination is consistent with the NGA. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.⁶ The Commission weighs any and all other relevant facts and circumstances of a particular case, including the non-physical criteria.⁷

1. Length and Diameter of the Pipelines

18. On the East Magnolia System, the East Line Segment will consist of seven miles of primarily 12-inch diameter pipeline with a future outlet diameter on the west end of 24 inches in order to connect into the 24-inch diameter North Line Segment. The North Line Segment will consist of approximately nine miles of 24-inch diameter pipeline. The West Magnolia System will consist of approximately 35 to 40 miles of 24- to 30-inch diameter pipeline. We find that these diameters and lengths are consistent with a system performing a gathering function.⁸

2. Central Point in the Field

19. On the East Magnolia System, the East Line Segment will initially deliver gas east into Gulf South but, in the long term, the flow will be reversed and the East Line Segment will deliver gas west into the North Line Segment. Numerous wells will be connected along the length of the East Line Segment throughout its service life including

⁵ See, e.g., *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990); and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

⁶ See, e.g., *NorAm Gas Transmission Co.*, 75 FERC ¶ 61,127, at 61,429 (1996).

⁷ See *ANR Pipeline Co.*, 76 FERC ¶ 61,153 (1996).

⁸ See *EXCO Resources, Inc.*, 119 FERC ¶ 61,121, at P 12 (2007) (finding the addition of up to 64 miles of mostly 20-inch pipeline to a system of 53 miles of 12- to 16-inch pipeline was gathering); *CNG Transmission Corp.*, 86 FERC ¶ 61,138, at 61,486 (1999), *order on reh'g*, 90 FERC ¶ 61,290 (2000) (finding 24-inch pipeline facilities were gathering); and *Columbia Gas Transmission Corp.*, 79 FERC ¶ 61,045, at 61,210 (1997) (finding 34.1 miles of 26-inch pipeline was gathering).

at the start-up of operation. Such production will continue after the flow reverses; thus, the East Line Segment will function as a backbone-type system in both the initial and final phases of the project. The North Line Segment will be a backbone-type system with wells connected along its length. This segment will feed into the Magnolia plant.

20. On the West Magnolia System, the main trunkline both in the initial and final stages of development will be a backbone-type pipeline connecting wells by laterals all along its length. When the West Magnolia System is completed, these facilities will feed into the Bolan treating plant.

21. The central-point-in-the-field test is not applicable to either the East or West Magnolia Systems. 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.⁹ Any facilities located upstream of the central point are generally considered non-jurisdictional gathering facilities, while those downstream are considered jurisdictional transmission facilities.¹⁰ The central-point-in-the-field test is typically applied in situations where there is no processing plant. In contrast, the East and West Magnolia Systems are both backbone-type structures that will initially be behind the Magnolia and Bolan processing plants. The Commission has determined that such backbone-type structures do not lend themselves to the central-point-in-the-field analysis.¹¹

3. Geographic Configuration

22. The Commission has recognized that there are three basic gathering pipeline configurations: 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.¹²

23. On the East Magnolia System, the East Line Segment is a seven mile pipeline that will gather gas from multiple wells and then deliver that gas into the North Line Segment, for eventual treatment at the Magnolia processing plant. The North Line segment will also gather gas from connected wells, delivering all gathered gas to the Magnolia processing plant. The North Line Segment will be located in the vicinity of other

⁹ *Arkla Gathering Services Co.*, 67 FERC ¶ 61,257, at 61,867 *order on reh'g*, 69 FERC ¶ 61,280 (1994).

¹⁰ *El Paso Natural Gas Co.*, 57 FERC ¶ 61,186, at 61,648 (1991).

¹¹ *Citrus Energy Services Inc.*, 75 FERC ¶ 61,289 (1996).

¹² *DCP Midstream, LP*, 123 FERC ¶ 61,237, at P 40 (2008). *See, e.g., Arkla Gathering Services Co.*, 67 FERC at 61,868.

gathering facilities in the center of natural gas production fields. The West Magnolia System will similarly be located in the vicinity of other gathering pipelines (e.g., Converse Gathering Company, Inc.), in the center of natural gas production fields, and connected to producing wells. The configuration of the East and West Magnolia Systems is consistent with gathering.

24. Further, the location of a system within a single state may be a geographic factor relevant to a gathering determination.¹³ In the case of the East and West Magnolia Systems, all facilities are in Louisiana.

4. Location of Compressors and Processing Plants

25. Initially, for both the East and West Magnolia Systems, there will be no compression. On the East Magnolia System, the gas will be collected and delivered by means of wellhead pressures into Gulf South and eventually into the North Line Segment. On both systems, any future compression, if needed, will be in the wellhead area to maintain production rates, or will be at or near, the Magnolia plant on the East Magnolia System or the Bolan plant on the West Magnolia System to deliver the gas into the downstream pipelines. Minimal compression for purposes of boosting gas from low-pressure wells through gathering lines to transmission facilities is consistent with a primary function of gathering.¹⁴

26. Initially also, there will be no processing plants. The gas entering the East Line Segment of the East Magnolia System at or upstream of the temporary Baker treating plant will be treated at the Baker plant located at the west terminal of the East Line Segment. In addition, before the flow is permanently reversed, there will be two to four laterals connecting wells along the length of the East Line Segment downstream of the Baker plant, and that gas will be treated at those individual well sites for delivery into Gulf South. Thus, for an estimated two to three year period until the North Line Segment is constructed, the gas flowing on the East Line Segment into Gulf South will be pipeline quality.

27. Similarly, the gas from the producing wells will similarly be treated at or near the wellheads and delivered into other pipelines in the area until the West Magnolia System and the Bolan plant are constructed. Once it is constructed and prior to operation of the

¹³ See, e.g., *Mahue Construction Co.*, 94 FERC ¶ 61,118, at 61,449 (2001).

¹⁴ *KN Energy, Inc.*, 65 FERC ¶ 61,168, at 61,852 (1993). See *Associated Natural Gas, Inc.*, 71 FERC ¶ 61,048, at 61,189-90 (1995) (upstream compression is not inconsistent with a gathering function if the compression is necessary to move gas through a system's gathering lines).

Bolan plant, the West Magnolia System will be gathering treated gas, which will be entering the pipeline at various points along its route. However, once the Bolan plant is operational, the gas will continue to feed into the West Magnolia System, but will not be treated until reaching Bolan plant.

28. The fact that treated gas will be gathered on the main trunklines in the initial stage of development does not alter the conclusion that the East and West Magnolia Systems will perform a gathering function. The length, diameter, location of wells along the lines, pressure, and lack of compression are all characteristic of the gathering function these facilities will perform. Further, upon final completion of both the East and West Magnolia Systems, the gas will be raw until it reaches the Magnolia and Bolan processing plants, respectively, which is typical of a gathering function.

29. On both systems, there will be “stub” lines contemplated to be less than five miles in length downstream of the Magnolia and Bolan plants delivering the treated gas into interstate and intrastate pipelines. In *Superior Offshore Pipeline Co. (SOPCO)*, the Commission found that a five-mile line extending from an onshore processing plant to an interstate pipeline to be a “stub” line exempt from the Commission’s NGA jurisdiction.¹⁵ The “stub” lines described here for the East and West Magnolia Systems will be equal to or shorter than the “stub” line the Commission considered in *SOPCO* and, like the *SOPCO* line, will be merely an extension of processing plant operations. Thus, we find that these stub lines are exempt from the Commission’s jurisdiction.

5. Location of the Wells

30. On the East Magnolia System, several wells will be connected along the East Line Segment at two or three locations on the initial date of operations, and Petitioners anticipate that additional wells will be connected along the length of the East Line Segment via two to four laterals. The Petitioners anticipate that numerous wells will be connected to the North Line Segment. Likewise, wells will be connected all along the length of the West Magnolia System. The Commission has found that pipelines with well connections along their length, such as the East and West Magnolia Systems, are typical of a gathering line.¹⁶

¹⁵ 67 FERC ¶ 61,253 (1994). *E.g. Quicksilver Resources, Inc.*, 122 FERC ¶ 61,115, *reh’g denied and clarification granted*, 124 FERC ¶ 61,017 (2008).

¹⁶ *Straight Creek Gathering, L.P.*, 117 FERC ¶ 61,005, at P 17 (2006) (finding that the location of wells along the Straight Creek system was indicative of a gathering function).

6. Operating Pressures of the Line

31. On the East Magnolia System, the line pressures of the East Line Segment and North Line Segment will be between 700 to 1,200 psig, and 700 to 1,400 psig, respectively, and in both cases the pressure will be driven by natural wellhead pressures. The West Magnolia System will operate at a pressure varying from 500 to 1,400 psig, and the pressure will likewise be wellhead driven. While these pressures are high, the fact that they are wellhead driven is consistent with a gathering function.¹⁷

7. Additional Considerations

32. There will be no direct sales off of any of the two systems. Only production from wells owned by SWEPI and EnCana will be gathered, and SWEPI and EnCana will share the costs of operating the facilities. The general business activities of SWEPI and EnCana are exploration, production, and gathering of natural gas.¹⁸ Neither entity, nor any affiliate of either entity, owns an interstate or intrastate gas pipeline. The Commission has found such business activities to be consistent with gathering.¹⁹

33. Finally, a finding that these facilities perform a gathering function would be consistent with the NGA. When establishing whether a jurisdictional determination is consistent with the NGA, the Commission considers improving infrastructure, enhancing competition, and providing additional supplies of gas.²⁰ There is no regulatory purpose that would be achieved in regulating the East or West Magnolia Systems as there would be no shippers to protect. Rather, both systems will be owned jointly by SWEPI and EnCana as an integral part of their exploration and production process in order to develop their jointly owned properties and to deliver the production into downstream interstate and intrastate pipelines.

B. Conclusion

34. In conclusion, the Commission finds that the East and West Magnolia Systems, as described in the petition, qualify for gathering under the primary function test. As such,

¹⁷ See, e.g., *ANR Pipeline*, 76 FERC ¶ at 61,914 (1996).

¹⁸ See *Bitter Creek Pipelines, LLC*, 94 FERC ¶ 61,391, at 62,470 (2001) (“In the past, we have considered the activities of the owner of facilities as relevant to the question of their jurisdictional status.”).

¹⁹ *EXCO Resources et al.*, 119 FERC ¶ 61,121, at P 19 (2007).

²⁰ 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).

these facilities are exempt from the Commission's jurisdiction under section 1(b) of the NGA.

The Commission orders:

The Commission declares that, absent any changes in the representations provided by Petitioners in their petition for declaratory order, the East Magnolia System and the West Magnolia System facilities are non-jurisdictional gathering facilities and exempt from the Commission's jurisdiction under section 1(b) of the NGA.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.