

130 FERC ¶ 61,162
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Laser Marcellus Gathering Company, LLC

Docket No. CP10-35-000

ORDER DETERMINING JURISDICTIONAL STATUS OF FACILITIES

(Issued March 5, 2010)

1. On December 23, 2009, Laser Marcellus Gathering Company, LLC (Laser Marcellus) filed a petition for a declaratory order requesting that the Commission determine that pipeline facilities it intends to construct from Pennsylvania into New York (Marcellus Facilities) will perform a gathering function exempt from the Commission's jurisdiction under section 1(b) of the Natural Gas Act (NGA).¹ As discussed below, we will grant the petition.

I. Background

2. Laser Marcellus is a limited liability company organized and existing under the laws of Delaware whose sole member is Laser Midstream Energy, LP. At present, Laser Marcellus is affiliated with entities that own and operate eight gas gathering systems in Texas with approximately 590 miles of pipeline. Neither Laser Marcellus, nor any of its affiliates, owns any interstate or intrastate pipelines.

3. Laser Marcellus states that recent years have seen significant gas exploration and development in the Marcellus Shale Formation in northeast Pennsylvania and southwest New York, with substantial additional drilling planned for the future. Laser Marcellus states that it intends to construct a gathering system, the Marcellus Facilities, to gather gas from wells that have been and will be drilled in Pennsylvania and New York. Laser Marcellus has entered into a gathering agreement with an unaffiliated producer with existing wells.² Further, Laser Marcellus anticipates that the presence of the Marcellus

¹ 15 U.S.C. § 717(b) (2006).

² The unaffiliated producer has an option to purchase a minority interest in the Marcellus Facilities.

Facilities will enhance drilling activity in the area, and that it will gather gas from other producers desiring that service. The Marcellus Facilities will deliver gas from the Marcellus Shale wells to interstate pipelines for redelivery to markets in the northeastern United States.

4. Laser Marcellus states that it plans a phased construction program because the Marcellus Shale gas supply is still in development. The first phase, consisting of a “core” gathering system, will be followed, where appropriate, by additional phases that connect additional facilities to newly drilled wells. Laser Marcellus expects wells to be attached along the entire length of the Marcellus Facilities in both Pennsylvania and New York.

5. The initial construction phase will consist of approximately 30 miles (21 miles in Pennsylvania and 9 miles in New York) of 12- or 16-inch diameter pipe running from Susquehanna County, Pennsylvania to an interconnection with Millennium Pipeline Company, LLC (Millennium) in Broome County, New York. In addition to the initial six existing wells in Susquehanna County, Pennsylvania, Laser Marcellus states that it anticipates an additional 40 wells may be connected to the system in Pennsylvania. As for the New York segment of the line, Laser Marcellus states that it expects to connect with 80 to 100 wells along the nine-mile length at such time as New York allows wells to be drilled into the Marcellus Shale Formation.³

6. The main, spine-like pipeline will have an initial operating pressure of 100 to 500 pounds per square inch gauge (psig) with an estimated flow capability of 60 MMcf per day. Additional smaller diameter pipe will connect wells to the main pipeline. Laser Marcellus states that it does not yet know whether Laser Marcellus, producers, or a third-party would own such lines.

7. Approximately 2,500 feet upstream from the delivery point at Millennium, Laser Marcellus states that it will install a compressor facility consisting of three 1,380 horsepower (hp) compressors in order to meet the line pressure and gas quality specifications of Millennium. To meet gas quality specifications, the compressor facility will also include a pig receiver, various gas/liquid separators, scrubbers, liquid tanks, and dehydration equipment. Laser Marcellus states that it does not have plans to install further gas treatment or natural gas liquids processing facilities on the Marcellus Facilities.

8. In the event of continued development in the Marcellus Shale and interest from producers in using its gathering services, Laser Marcellus intends to expand the

³ Laser Marcellus explains that regulatory procedures that would allow drilling to take place in New York have yet to be finalized by the State.

Marcellus Facilities to accommodate increased deliveries from an estimated 100 additional wells by adding compression units at field receipt points. Specifically, Laser Marcellus anticipates establishing up to six field receipt points with 1,380 hp of compression and a dehydration unit at each point, with the potential for some dehydration equipment to remain in use at the Millennium delivery point. If this additional development occurs, the system operating pressure would increase to approximately 600 to 1,440 psig to accommodate the additional volumes and to meet the Millennium line pressure at the delivery point. The estimated flow capability of the expanded system would be 230 MMcf per day for a 12-inch line or 500 MMcf per day for a 16-inch line.

9. With further development of the Marcellus Shale Formation and continued interest in Laser Marcellus' services, Laser Marcellus asserts that its facilities could be extended in a third phase of construction by adding a delivery point into either Tennessee Gas Pipeline Company (Tennessee) or the Stagecoach Natural Gas Storage Facility (Stagecoach) in Pennsylvania. This expansion would involve 13 miles of the same diameter pipe already in place, and would run from the southern end of the existing system, southwest to one of the potential delivery points. Laser Marcellus contends that an additional compressor facility with dehydration equipment would be installed at the new delivery point to meet Tennessee's and Stagecoach's gas quality and pressure specifications. Laser Marcellus believes that the extended portion of the pipeline may connect with approximately 100 additional wells. This third phase expansion would result in an operating line pressure of 600 to 1,440 psig, with the system capable of delivering gas to either the Millennium or Tennessee/Stagecoach delivery points, or to both points simultaneously. Laser Marcellus estimates that the flow capability will be 500 MMcf per day for a 12-inch line or 800 MMcf per day for a 16-inch line. Laser Marcellus notes that interconnects between Laser Marcellus and the interstate pipelines will allow flow only one way, i.e., to Millennium or to Tennessee/Stagecoach, but that the Marcellus Facilities will not be a conduit for movement of interstate gas between Millennium and Tennessee/Stagecoach.

II. Procedural Matters

10. The Commission published public notice of Laser Marcellus' petition for declaratory order in the *Federal Register* on January 5, 2010.⁴ Timely, unopposed motions to intervene were filed by Cabot Oil and Gas Corporation, Central New York Oil and Gas Company, LLC, New York State Electric and Gas Corporation, and Statoil

⁴ 75 FR 360 (2010).

Natural Gas LLC. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁵ No parties filed protests or adverse comments.

III. Discussion

A. Primary Function Test

11. Under NGA section 1(b), the Commission's jurisdiction does not extend to facilities used for the production or gathering of natural gas, or to gathering services.⁶ The NGA itself, however, does not define the term "gathering." As a result, the Commission has developed criteria to determine which facilities are non-jurisdictional gathering facilities.⁷ To determine a facility's function, the Commission relies on the modified "primary function test," which includes consideration of physical and geographical factors including: (1) the length and diameter of the pipelines; (2) the extension of facilities beyond the central point in the field; (3) the facilities' geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facilities; and (6) the operating pressures of the pipelines.⁸

12. 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

⁵ 18 C.F.R. § 385.214(c)(1) (2009).

⁶ The courts have narrowly construed the NGA section 1(b) exemption to "the physical act 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 & Gas Board*, 474 U.S. 409, 418 (1986) (quoting *Northern Natural Gas Co. v. State Corp. Comm'n of Kansas*, 372 U.S. 84 (1963)).

⁷ *See Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990); and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

⁸ *See, e.g., Columbia Gas Transmission Corp.*, 93 FERC ¶ 61,278, at 61,913 (2000).

determinative and recognizes that all factors do not necessarily apply to all situations.⁹ The Commission weighs any and all other relevant facts and circumstances of a particular case, including the non-physical criteria.¹⁰

1. Length and Diameter of the Lines

13. During the initial phase, Laser Marcellus will construct 30 miles of 12- or 16-inch diameter pipeline. Laser Marcellus also anticipates that it may construct a 13-mile extension of the same diameter pipe in a later phase. In certain situations such as the one proposed here by Laser Marcellus, we have found that these diameters and lengths are consistent with a system performing a gathering function.¹¹

2. Central Point in the Field

14. The Marcellus Facilities will initially deliver Marcellus Shale gas northeast into Millennium, but in the long term, could deliver gas southwest into Stagecoach or Tennessee. The spine-like, backbone configuration will collect gas from numerous wells connected along the length of the pipe in both the initial and later phases of the project. There is no “central point in the field” where the gas is collected to a central point and then delivered into a single line for transmission. We have held that the “central point in the field” criterion does not apply to a spine-like, backbone system.¹²

3. Geographic Configuration

15. We have 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

⁹ See, e.g., *NorAm Gas Transmission Co.*, 75 FERC ¶ 61,127, at 61,429 (1996).

¹⁰ See *ANR Pipeline Co.*, 76 FERC ¶ 61,153 (1996).

¹¹ 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).

¹² See, e.g., *Citrus Energy, Inc.*, 75 FERC ¶ 61,289, at 61,932 (1996); and *ANR Pipeline Co.*, 77 FERC ¶ 61,396 (1996).

connects a few wells directly into a transmission system.¹³ The Marcellus Facilities will be located in a region with both existing wells and active development of a major new source of gas supply expected to be produced from the Marcellus Shale Formation. As noted above, the Marcellus Facilities have a backbone-type configuration that gathers gas from multiple wells along its length for delivery to an interstate pipeline. The configuration of this system is consistent with gathering.

16. Further, although the Marcellus Facilities cross the New York-Pennsylvania border, this fact does not keep the facilities from being classified as gathering. As we have discussed,

As to the jurisdictional consequences of the subject facilities crossing a state line, we do not believe the Section 1(b) exemption is affected ... The history of Commission and court interpretation of Section 1(b), ... makes clear that there is a distinction between gathering and transportation, such that the two functions are mutually exclusive. Consequently, otherwise non-jurisdictional production or gathering does not become jurisdictional on the basis that the facilities employed therefor cross a state line.¹⁴

4. Location of Compressors and Processing Plants

17. Compression and dehydration equipment will be located near the interconnection with Millennium during the initial phase and, if a future expansion takes place, at the interconnection with Tennessee/Stagecoach, in order to meet the line pressures and gas quality specifications of the interconnecting pipelines. In the event of a future expansion, field compression and dehydration will be added at or near receipt point(s) into the Marcellus system's spine to increase production into the spine and ultimate deliveries into the downstream interstate pipeline(s). In the event of such an expansion, Laser Marcellus will maintain compression and dehydration capability at the delivery point(s) with the interstate pipeline(s) to ensure that the line pressure requirements and gas quality specifications for delivery are met. This type of compression and treatment is consistent

¹³ *DCP Midstream, LP*, 123 FERC ¶ 61,237, at P 40 (2008). See, e.g., *Arkla Gathering Services Co.*, 67 FERC ¶ 61,257, at 61,868, *order on reh'g*, 69 FERC ¶ 61,280 (1994).

¹⁴ *Columbia Gas Transmission Corp.*, 85 FERC ¶ 61,191, at 61,769 (1998), *order on reh'g*, 86 FERC ¶ 61,137 (1999). See also *Panhandle Eastern Pipe Line Co.*, 68 FERC ¶ 61,209, at 62,101 (1994).

with a gathering function.¹⁵ There is no plan for a natural gas liquids processing plant on the Marcellus Facilities, in any of the potential construction phases, as the anticipated gas composition and operating conditions do not necessitate the removal of liquefiable hydrocarbons.

5. Location of Wells

18. The location of wells along the length of a line is indicative of gathering.¹⁶ Laser Marcellus plans to initially connect approximately six existing wells in Pennsylvania. Numerous additional wells are expected to be added along the length of the system in the initial and expansion phases of the project. Laser Marcellus anticipates that ultimately there could be between 250 and 500 wells connected to its system along the entire length of the line in both Pennsylvania and New York. We have found that pipelines with well connections along the length are consistent with a gathering function.¹⁷

6. Operating Pressures

19. The 100 to 500 psig operating pressure for the Marcellus Facilities will be driven initially by wellhead pressures. If the system is expanded, compression facilities will be added to field receipt points resulting in increased flow rates and increased operating pressures on the spine in the range of 600 to 1,440 psig. The Marcellus Facilities will have a maximum allowable operating pressure of 1,440 psig. While operating at 1,440 psig is not generally indicative of gathering, we have found similar high pressures to be consistent with gathering where they are driven by wellhead pressures.¹⁸ In this instance, Laser Marcellus contends that the higher operating pressures, to be maintained through field compression, might be necessary to increase production and flow higher volumes to the delivery point(s). However, future operation at such high pressure is not necessarily certain, thus, Laser Marcellus will maintain compression at the delivery

¹⁵ See *KN Energy, Inc.*, 65 FERC ¶ 61,168, at 61,852 (1993) (compression needed to maintain pressure to deliver into downstream pipelines is typical of gathering). See also *SWEPI LP.*, 126 FERC ¶ 61,098 (2009).

¹⁶ See, e.g., *Ozark Gas Transmission, LLC*, 101 FERC ¶ 61,205, at P 21 (2002) and *ANR Pipeline Co.*, 77 FERC ¶ 61,230, at 61,936 (1996).

¹⁷ *Straight Creek Gathering, L.P.*, 117 FERC ¶ 61,005, at P 13 and 17 (2006).

¹⁸ *SWEPI LP*, 126 FERC ¶ 61,098 at P 31 (2009) (finding that operating pressures up to 1,400 psig, while high, are wellhead driven and, thus, consistent with a gathering function).

point(s) to meet interstate pipeline in-take pressure requirements. While we do not find the potentially high pressures to be generally consistent with gathering, we note that our determination of the primary function of the Marcellus Facilities does not rest on a single factor, but on a weighing of relevant facts and circumstances.

7. Additional Considerations

20. The purpose of the planned Marcellus Facilities is to gather gas produced from the Marcellus Shale Formation for delivery to interstate markets in the eastern and northeastern United States. Construction of the Marcellus Facilities is expected to facilitate the development of new gas supplies from the Marcellus Shale Formation. There will be no direct sales off the Marcellus Facilities prior to delivery into any interstate facilities, nor will the Marcellus Facilities be used to move gas between Millennium and Tennessee/Stagecoach. Laser Marcellus' sole business will be gathering and delivering gas. Laser Marcellus will not hold title to the gas moved through its facilities nor will the company engage in the marketing of gas for others, although the initial production will be owned by a producer who has an option to purchase a minority interest in the facilities. Further, neither Laser Marcellus, nor any affiliate, owns an interstate or intrastate gas pipeline. We have found such business activities to be consistent with gathering.¹⁹

21. 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 Construction of the Marcellus Facilities will provide pipeline facilities necessary to promote development of additional gas supplies sourced in the Marcellus Shale Formation, which is in accord with the objectives of the NGA.

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

²⁰ See, e.g., *Straight Creek Gathering*, 117 FERC ¶ 61,005 at P 18; and *Columbia Gas Transmission Corp.*, 116 FERC ¶ 61,191, at P 44 (2006).

B. Conclusion

22. In conclusion, we find that the Marcellus Facilities, as described in the petition, qualify as gathering under the primary function test. As such, these facilities are exempt from our jurisdiction under section 1(b) of the NGA.

The Commission orders:

The Commission declares that, absent any changes in the representations provided by Laser Marcellus, the Marcellus Facilities are gathering facilities and are exempt from the Commission's jurisdiction under NGA section 1(b).

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.