

131 FERC ¶ 61,116
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Riviera Drilling and Exploration Company,
Complainant

Docket No. CP09-445-000

v.

SG Interests I, Ltd. and Gunnison Energy Corporation,
Respondents

ORDER DENYING COMPLAINT

(Issued May 6, 2010)

1. On July 16, 2009, Riviera Drilling and Exploration Company (Riviera) filed a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure¹ against SG Interests I, Ltd. and Gunnison Energy Corporation (SG Interests and Gunnison, together, "the Respondents") as owners of the Bull Mountain Pipeline in Colorado. Riviera's complaint requests a finding that the Bull Mountain Pipeline is subject to the Commission's jurisdiction. Specifically, Riviera contends that SG Interests and Gunnison should have obtained a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act (NGA)² prior to beginning construction of the pipeline facility.

2. For the reasons discussed below, the Commission will deny the complaint.

I. Background

3. The Bull Mountain Unit is a 19,645.1 acre Federal Unit in the Piceance Basin in Gunnison County, Colorado that SG Interests has targeted for coalbed methane extraction. SG Interests acquired its first lease in the Bull Mountain Unit in 2000 and production from its first well started in 2006. As of the summer of 2009, SG Interests has drilled 10 wells in the Bull Mountain Unit.

¹ 18 C.F.R. § 385.206 (2009).

² 15 U.S.C. § 717f (2006).

4. When SG Interests acquired its first lease in the Bull Mountain Unit, the only existing pipeline in the area was the Ragged Mountain Pipeline and associated gathering system owned by Piute Pipeline, an affiliate of BDS International. The Ragged Mountain Pipeline is a 6-inch diameter, 18-mile long line that connects to Rocky Mountain Natural Gas Pipeline LLC (RMNG), a Colorado intrastate pipeline. SG Interests purchased the Ragged Mountain Pipeline in 2005 and contracted with RMNG for firm capacity on its system. SG Interests believed that the Ragged Mountain Pipeline and firm capacity on RMNG would be sufficient to transport initial production, but that RMNG capacity would not be sufficient to transport anticipated future production from the Bull Mountain Unit and surrounding areas.

5. On June 10, 2004, SG Interests filed an application with the Bureau of Land Management (BLM) and the United States Forest Service under the Mineral Leasing Act of 1920³ to construct, operate, and maintain a pipeline, known as the Bull Mountain Pipeline⁴ and for a right-of-way on public lands administered by the BLM and on National Forest System lands administered by the Gunnison, Uncompahgre, Grand Mesa, and White River National Forests.⁵ BLM, as lead agency for permitting purposes under the Mineral Leasing Act and as lead agency for purposes of compliance with the requirements of the National Environmental Policy Act of 1969, granted the Bull Mountain Pipeline a right-of-way across federal lands.⁶ Construction on the pipeline began in 2008 and is nearing completion.

6. The Bull Mountain Pipeline consists of approximately 25.5 miles of 20-inch diameter pipeline⁷ extending from Gunnison County northward through Delta and Mesa Counties to Garfield County near the terminus of Questar Pipeline Company's (Questar) Main Line 68.⁸ The Bull Mountain Pipeline is designed to transport up to 80 million

³ 30 U.S.C. §§ 181, *et seq.* (2006).

⁴ Although the plan for development was filed solely by SG Interests, Gunnison is a 50 percent owner of the Bull Mountain Pipeline.

⁵ The Mineral Leasing Act of 1920, as amended, gives BLM the authority to issue right-of-way permits for natural gas pipelines through certain lands held by the United States.

⁶ The BLM's record of decision was issued in January 2008.

⁷ SG Interests states that it sized the line to accommodate more than the original anticipated production because of the potential future cost of looping the line if production levels exceed projections. The Respondents' Answer at 17-18.

⁸ Questar is an interstate pipeline subject to the Commission's jurisdiction.

standard cubic feet per day of natural gas. The pipeline runs parallel to the existing Ragged Mountain Pipeline for 14.5 miles, and the remaining 11 miles will be constructed on newly created rights-of-way. Approximately five miles of the pipeline will be on private land.

A. Riviera's Complaint

7. On July 16, 2009, Riviera, a producer in the area of the Bull Mountain Pipeline, filed a complaint asking the Commission to find that the Bull Mountain Pipeline is subject to the Commission's jurisdiction. Riviera alleges that SG Interests and Gunnison violated the NGA by failing to file for a certificate of public convenience and necessity prior to constructing the Bull Mountain Pipeline.

8. Riviera contends that the Bull Mountain Pipeline, as proposed in the 2004 BLM right-of-way application proceeding, qualifies as an interstate pipeline subject to the Commission's jurisdiction under the modified primary function test. Specifically, Riviera states that the Bull Mountain Pipeline has a length and diameter that is consistent with pipelines found to be jurisdictional.⁹ Riviera further states that gas will be processed and compressed at a station located at the south end, or beginning, of the Bull Mountain Pipeline, and that gas will then be transported northward for approximately 25 miles to an interconnect with Questar's interstate system.¹⁰ Riviera states that due to the location of the compression and processing facilities near the beginning of the Bull Mountain Pipeline, it is unlikely that individual wells will be connected along the length of the pipeline.¹¹ Riviera contends that, as proposed, the pipeline will not qualify as a non-jurisdictional stub line extension of the processing plant under the Commission's policy adopted in *Superior Offshore Pipeline Company (SOPCO)*.¹²

9. Riviera asserts that in SG Interests' application to the BLM and Forest Service, SG Interests proposed to construct processing and compression facilities at the beginning of the Bull Mountain Pipeline and to interconnect the end of the pipeline to Questar's Main Line 68. Riviera contends that the BLM's record of decision approved the design of the pipeline proposed in SG Interests' application. Further, Riviera maintains that when the Respondents began construction, they still intended to connect to Questar and construct a processing and compressor station at the beginning of the Bull Mountain Pipeline. Thus, as planned, at that time, Riviera asserts that the Bull Mountain Pipeline met all of

⁹ Complaint at 5.

¹⁰ Id. at 4.

¹¹ Id. at 5.

¹² *SOPCO*, 67 FERC ¶ 61,253 (1994).

the requirements for being a jurisdictional pipeline under the NGA and that the Respondents failed to apply for and obtain a certificate of public convenience and necessity under section 7. Riviera asserts that after it filed its complaint, and in order to avoid NGA jurisdiction, the Respondents announced that they would change the location of the processing and compressor station to a point near the terminus of the Bull Mountain Pipeline, or more likely would not install processing and compression facilities, and announced they were considering another interconnection option, rather than interconnecting with Questar. Riviera contends that the Respondents cannot change the design of the Bull Mountain Pipeline without approval from the BLM and Forest Service, as well as local governments. Since the Respondents started constructing the pipeline as approved by the BLM and Forest Service and have not obtained approval to change the design of the pipeline, Riviera concludes that the Commission's jurisdiction should be based on the project design that was approved before construction commenced. Riviera cites *Texas Sea Rim Pipeline, Inc.* to support its position.¹³

10. Further, Riviera claims that Buccaneer Energy (USA) Inc. (Buccaneer) requested transportation service on the Bull Mountain Pipeline. Riviera asserts that SG Interests required Buccaneer to show that it has the “financial ability to comply with transportation commitments such as a demand charge for capacity on the Bull Mountain Pipeline.” Riviera contends that a demand charge is inconsistent with operating the Bull Mountain Pipeline as a gathering system, but is consistent with operating it as a jurisdictional line.¹⁴ Riviera also contends that the Bull Mountain Pipeline will be operated in a different manner than the Ragged Mountain Pipeline. Specifically, Riviera asserts that when the Respondents acquired the Ragged Mountain Pipeline, they moved the compression and processing facilities to the beginning of the line for operational purposes, while the Respondents have now revised their plans so that the processing and compression facilities for the Bull Mountain Pipeline will be at the end of the line, even though the two pipelines will operate in the same physical environment.¹⁵

11. Finally, Riviera contends that the Respondents have refused to provide Riviera access to the Ragged Mountain Pipeline on reasonable and non-discriminatory terms as required by their special use permit with the Forest Service.¹⁶ Riviera also alleges that the Respondents have refused to provide any terms of access to the Bull Mountain

¹³ 17 FERC ¶ 61,302 (1981) (ordering Texas Sea Rim Pipeline and Superior Oil Company to cease and desist from commencing construction of jurisdictional facilities without having obtained prior certificate authorization).

¹⁴ Riviera's January 11, 2010 Amendment at 1.

¹⁵ Riviera's January 6, 2010 Motion to Respond at 9-11.

¹⁶ Riviera has filed an anti-trust lawsuit against the Respondents.

Pipeline and that, even if it is allowed to transport gas through the Bull Mountain line, it will be required to pay significantly greater charges to use the pipeline to transport gas if the pipeline is not found to be jurisdictional.¹⁷

B. Respondents' Answer

12. The Respondents argue that they are not currently in violation of the NGA and request that the complaint be dismissed. The Respondents assert that the Bull Mountain Pipeline qualifies as a gathering facility under the primary function test. Specifically, the Respondents contend that the length and diameter of the line are consistent with a gathering function, that the central-point-in-the-field test does not apply, and that wells could be located along the length of the line.

13. In addition, the Respondents state that Riviera has misconstrued the details of the plan submitted to the BLM in 2004 as requiring the pipeline to be connected to Questar's Main Line 68, when the plan actually provided that the pipeline would be constructed to a location near the terminus of Questar's Main Line 68.¹⁸ The Respondents explain that at this time they are exploring two non-jurisdictional options: (1) interconnecting and delivering unprocessed gas to an extension of Energy Transfer Partners' (ETP) gathering facilities in western Colorado, and (2) interconnecting and delivering processed gas to Questar's Main Line 68.¹⁹ These interconnections have not yet been constructed.

14. If gas is delivered to ETP's gathering facilities, the Respondents contend that they will not need to construct processing and compression facilities and that the Bull Mountain Pipeline will be non-jurisdictional because it will be located upstream of Enterprise Products Partners LP's (Enterprise) Meeker processing plant in Rio Blanco, Colorado.²⁰ The only compression will be field compression located at the beginning of the Bull Mountain Pipeline. Further, under this option, the operating pressure of the Bull Mountain Pipeline will only be 200 pounds per square inch gauge (psig).

15. If gas is delivered to Questar's system, the Respondents state that an amine treating facility will need to be constructed to meet Questar's quality specifications for CO₂. The Respondents also state that over time it may become necessary to process gas to meet Questar's gas quality specifications for BTU content and liquids and/or liquefiabiles. Also, under this option, compressors will be constructed at the amine

¹⁷ Riviera notes that SG Interests doubled the gathering rate on the Ragged Mountain Pipeline in 2007 and doubled it again in 2008.

¹⁸ The Respondents' August 10, 2009 Answer at 11.

¹⁹ The Respondents' December 18, 2009 Response to a Staff Data Request at 4.

²⁰ Enterprise is an intrastate pipeline.

treating facility to enable gas to move through the facility and enter Questar's system, which is operated at 950 psig. The Respondents assert that they have acquired private land at milepost 21.6 for the processing and compression facilities, which is only 3.9 miles from the line's termination point and within the *SOPCO* exemption.

16. As to Riviera's concerns that the Respondents have changed the BLM approved location of the processing plant and compressors, the Respondents assert that it only needs to notify the BLM if there is a "substantial deviation." Here, the Respondents claim that there is no substantial deviation, since they do not need federal right-of-way authorization for the original or changed location of the processing and compressor facilities due to the fact that both proposals locate the facilities on private land. In any event, the Respondents claim that this is an issue for the Department of Interior to address, not the Commission.²¹ Further, the Respondents contend that assuming that the construction of the Bull Mountain Pipeline commenced on the basis of a mistaken, but good faith, belief that the pipeline, as proposed to the BLM, would be a non-jurisdictional facility, a modification of the plans to assure compliance with the requirements for exemption from jurisdiction under the NGA does not provide the basis for imposition of jurisdiction based on what was planned but was not constructed or placed in service.²²

II. Interventions

17. The Commission published public notice of Riviera's complaint in the *Federal Register* on July 29, 2009.²³ There were no motions to intervene, notices of intervention, or protests to the complaint.

18. SG Interests and Gunnison filed a timely answer to the complaint and a motion to dismiss the complaint. Although Riviera filed pleadings styled as a response to the motion to dismiss (September 1, 2009) and an amendment to the response (September 28, 2009), the Commission will consider these pleadings as answers to the Respondents' answer to the complaint. On October 1, 2009, and January 13, 2010, the Respondents filed answers to Riviera's answers. Riviera's answers to the Respondents' answer and the Respondents' answers to Riviera's answers are not allowed under our rules.²⁴ Nevertheless, the Commission will accept the answers in this case because the pleadings provided information that assisted us in our decision making.

²¹ The Respondents October 1, 2009 Answer at 4-5.

²² The Respondents January 13, 2010 Answer at 4.

²³ 74 Fed. Reg. 37669.

²⁴ 18 C.F.R. § 385.213(a)(2) (2009).

III. Discussion

A. Primary Function Test

19. 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. 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.²⁵ 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 pipelines; (2) the facility's geographical configuration; (3) the extension of the facility beyond the central point in the field; (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.²⁶

20. 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 facility's owner; 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.²⁷ The Commission weighs any and all other relevant facts and circumstances of a particular case, including the non-physical criteria.²⁸

21. In reply to Commission staff's data request, the Respondents clarified that there are two gas delivery options under active consideration: (1) delivery of unprocessed gas to an extension of ETP's low pressure gathering system, and (2) delivery of processed gas to Questar's Main Line 68. The primary function test is applied below for both delivery options.

1. Length and Diameter of the Pipelines

22. The Bull Mountain Pipeline is 20 inches in diameter and approximately 25.5 miles in length. Respondents state that significant quantities of natural gas are likely to be produced in the area and note the unlikelihood of looping the pipeline in the future on

²⁵ See *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990); and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

²⁶ See, e.g., *Columbia Gas Transmission Corp.*, 93 FERC ¶ 61,278, at 61,913 (2000).

²⁷ See, e.g., *NorAm Gas Transmission Co.*, 75 FERC ¶ 61,127, at 61,429 (1996).

²⁸ See *ANR Pipeline Co.*, 76 FERC ¶ 61,153 (1996).

environmentally sensitive federal lands and roadless areas.²⁹ Under these circumstances, the Commission finds that these diameters and lengths are consistent with a system performing a gathering function where the length of the pipeline is dictated by the distance of the Bull Mountain Unit and surrounding production acreage from existing transportation systems and other gathering systems, and where the diameter is a function of the natural gas production anticipated and the unlikelihood of looping the pipeline in the future.³⁰

2. Geographic Configuration

23. The Commission has recognized that there are three basic gathering pipeline configurations: the web-like system, the backbone system, and a relatively short, small diameter pipe that connects a few wells directly into a transmission system.³¹

24. Riviera contends that the Bull Mountain Pipeline will not be a backbone-type system because the leases along the route of the pipeline are in Forest Service lands. Riviera asserts that producers and gatherers will not be able to obtain permits to access potential well sites.

25. The Respondents contend that the Bull Mountain Pipeline traverses an extensive production area with existing oil and gas leases owned by the Respondents and third parties along nearly the entire length. The Respondents state that they contemplate receipt points from wells at mile markers .75 and 14, with additional receipt points likely.³²

26. Since the length of the Bull Mountain Pipeline will lie within an area of potential production, the pipeline may ultimately reflect a backbone-type configuration typical of a gathering system, notwithstanding that it indeed may prove difficult for parties to get

²⁹ The Respondents' December 18, 2009 Response to a Staff Data Request at 5.

³⁰ 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).

³¹ *DCP Midstream, LP*, 123 FERC ¶ 61,237, at P 40 (2008); *Arkla Gathering Services Co.*, 67 FERC ¶ 61,257, at 61,868 (1994).

³² The Respondents' December 18, 2009 Response to a Staff Data Request at 6.

permits for necessary roads to potential well sites, as claimed by Riviera.³³ Under these circumstances, the Commission finds that well connections along the length of the pipe are unlikely, at least for the near to mid-term future. However, other factors allow the Commission to find that the Bull Mountain Pipeline can qualify as a gathering facility, as discussed in this order.

3. Central Point in the Field

27. The central-point-in-the-field test is not applicable here. 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 line for transmission.³⁴ Any facilities located upstream of the central point are generally considered non-jurisdictional gathering facilities, while those downstream are considered jurisdictional transmission facilities.³⁵ However, the central-point-in-the-field test is typically applied in situations where there is no processing plant. Here, the Respondents assert that the Bull Mountain Pipeline will be used either (1) to transport gas that will be delivered as unprocessed gas into another company's gathering system, or (2) to transport gas that will not be processed until near the end of the pipeline before entering Questar's interstate system. Under these circumstances, the Commission finds that the central point in the field will not be a relevant factor.

4. Location of Compressors and Processing Plants

28. If the pipeline delivers gas to an extension of ETP's existing low-pressure gathering system, the pipeline will be upstream from Enterprise's Meeker processing plant. In that event, the entire pipeline will be located upstream of the processing plant, which is consistent with gathering. Under this scenario, compression will be limited to field compression located upstream from the interconnection.³⁶ Field compression is

³³ See *North American Resources Co.(NARCO)*, 75 FERC ¶ 61,286 (1996) (where NARCO planned to construct an 18.75-mile long pipeline that would not be connected to any wells during its initial phase, but where NARCO stated that the pipeline would traverse an extensive production area and, as new wells were developed, NARCO expected to connect those wells to its line.).

³⁴ *Arkla Gathering Services Co.*, 67 FERC ¶ 61,257, at 61,867, *order on reh'g*, 69 FERC ¶ 61,280 (1994).

³⁵ *El Paso Natural Gas Co.*, 57 FERC ¶ 61,186, at 61,648 (1991).

³⁶ The Respondents note that it is possible compression may not be necessary at all under this option. Respondents' December 18, 2009 Response to a Staff Data Request at 10.

consistent with a gathering function if it is simply needed to create enough pressure to move gas through the gathering line or to enter a downstream system, as opposed to reaching the higher operating pressures associated with long transmission facilities.³⁷

29. In the alternative, if delivery to Questar's Main Line 68 at mile marker 25.5 is the option selected, construction of an amine treatment facility would be required to meet Questar's gas quality specifications. The Respondents state that they have acquired land adjacent to the pipeline right-of-way at mile marker 21.6, where they plan to install the amine treating facility.³⁸ In addition, if further gas processing is required in the future to recover liquid and liquefiable hydrocarbons, the Respondents state that an additional processing plant will be located with the amine treating facility and compression. Thus, the Bull Mountain Pipeline will be upstream of processing, which is consistent with gathering.

30. Under this alternative, the Respondents also plan to install at mile marker 21.6 the compression facilities needed to move the gas through the treating facility and into Questar's interstate line, which is operated at 950 psig. The compression used to enable gas to enter a transmission system may be properly viewed as the last step in gathering.³⁹

31. In *SOPCO*, the Commission found a five-mile line extending from a processing plant to an interstate pipeline to be a stub line exempt from the Commission's NGA jurisdiction.⁴⁰ The stub line described here 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. The Commission also considers the length of a line beyond a processing plant in relation to how extensive the upstream gathering system is.⁴¹ The Respondents note that they own several networks of small diameter gathering

³⁷ See, e.g., *GPM Gas Corp. v. El Paso Natural Gas Co.*, 82 FERC ¶ 61,336, at 62,326 (1998) (*GPM*).

³⁸ *Id.*

³⁹ *Eagle Rock DeSoto Pipeline, L.P.*, 126 FERC ¶ 61,092, at P 15 (2009) (*Eagle Rock*) (finding compression used to enable gas to enter a transmission system may be properly viewed as the last step in gathering). In addition, the Commission has found that the location of processing and compression facilities at the same site suggests a gathering function. *GPM*, 82 FERC at 62,326.

⁴⁰ *SOPCO*, 67 FERC ¶ 61,253.

⁴¹ *Id.* (73 miles of gathering upstream from a five-mile stub line). See also, *Northwest Pipeline GP*, 127 FERC ¶ 61,261, at P 23 (2009) (noting, "the 4.99-mile line is a relatively short 'stub' when compared to the 37.6 mile length of the lateral upstream" of the processing plant).

lines connected to the upstream portion of the Bull Mountain Pipeline receipt point, including the Ragged Mountain Gathering System, the Hotchkiss Gathering System, and the Allen Gathering System. These systems, together with the Bull Mountain Pipeline, comprise over 68.9 miles of upstream gathering. In this case, the relationship between miles of upstream gathering and the stub line length is consistent with a gathering function.

5. Location of the Wells

32. As discussed above, the Respondents state that there are several networks of gathering lines connecting to wells upstream of the Bull Mountain Pipeline. The Respondents further explain that they contemplate receipt points at mile markers .75 and 14, with additional receipt points likely as third-party lease-development in the area proceeds. The Commission has found that pipelines with well connections along their length are typical of a gathering line.⁴² While Riviera contends that it may be difficult for producers to obtain permits to drill wells on the federal lands traversed by the pipeline, Riviera does not dispute the production potential of the area or the Respondents' assertion that they and others have oil and gas leases along the pipeline route.

6. Operating Pressures of the Line

33. The option of delivering unprocessed gas to ETP's existing low-pressure gathering system would result in an operating pressure for the Bull Mountain Pipeline of approximately 200 psig. This pressure is consistent with gathering.

34. In the event that the Bull Mountain Pipeline delivers gas to Questar's Main Line 68, the only additional facilities that would be required is a compressor station near the terminus of the pipeline. The facilities upstream of the additional compressor will operate at 200 psig. However, the facilities downstream of the additional compression are required to operate at approximately 950 psig in order to deliver gas into Questar's interstate system. Although the operating pressure of the downstream facilities is high, the Commission has previously found that this type of configuration is properly viewed as the last step in gathering or production.⁴³ Thus, as described above, the pressures are consistent with the gathering function.

⁴² *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).

⁴³ *Eagle Rock*, 126 FERC ¶ 61,092 at P 17 (finding that an operating pressure of 1,000 psig to deliver gas into an interstate pipeline is consistent with gathering).

7. Additional Considerations

35. The Respondents state that they are independent producers who developed the Bull Mountain Pipeline in order to move their gas supplies from remote producing areas. However, Riviera claims that SG Interests has no wells or leases in its name in the vicinity of the Bull Mountain Pipeline, that SG Interests was established solely to own interests in the Ragged Mountain and Bull Mountain Pipelines, and that SG Interests purchases and transports gas for independent producers and shippers. As a consequence, Riviera contends that SG Interests' primary business activity is not consistent with the Bull Mountain Pipeline performing a gathering function.⁴⁴

36. Riviera's assertions that SG Interests is affiliated with other companies, was created to own interests in pipelines, and purchases and transports gas for others do not alter the overall purpose or function of the Bull Mountain Pipeline which, as discussed above, is the gathering of gas into the interstate market. The Respondent's primary business activity is consistent with the Bull Mountain Pipeline performing a gathering function. Further, there is no allegation that the Respondents own or operate any jurisdictional interstate pipeline facilities.

B. Other Issues

37. Riviera contends that Commission jurisdiction should be based on the project design that the BLM took into account in deciding to grant a permit for the pipeline to be placed on federal lands. The Commission disagrees. As discussed above, the Bull Mountain Pipeline, as the Respondents have constructed it, will be non-jurisdictional. The Commission must base its jurisdictional determination on the Respondents' current plans and construction. Otherwise, the Commission would be asserting jurisdiction over a pipeline that existed only on paper.

38. Riviera claims that the Respondents cannot change the design of the Bull Mountain Pipeline without approval of the BLM and Forest Service. An examination of whether the Respondents can change the design of the Bull Mountain Pipeline is not relevant to a decision in this proceeding. It is up to the BLM, not the Commission, to decide if this is a substantial deviation to the permit the BLM granted.

39. As discussed above, although it is unclear if it is feasible to drill and attach wells along the length of the pipeline traversing federal lands, the area is a potential production area. Therefore, and in view of the relatively short length of the Bull Mountain Pipeline, the Respondents have the option in this instance of changing the location of their processing facilities (i.e., placing the processing facilities near the end of the pipeline, rather than near the beginning). A company is free to change its plans to avoid the

⁴⁴ Riviera's January 6, 2010 Motion to Respond at 12-13.

Commission's jurisdiction. However, the Commission cautions the Respondents that if they need to return to their original plans to locate the processing facilities at the beginning of the pipeline, they will need to obtain certificate authority for their entire project and they could be subject to significant penalties for having undertaken jurisdictional construction without appropriate authorization.⁴⁵ Further, the Commission could undertake an environmental review of the already constructed pipeline.⁴⁶ Finally, there is no guarantee that certificate authority would be granted.

40. Riviera contends that the Bull Mountain Pipeline should be considered jurisdictional because (1) the Respondents intend to require customers to pay a demand charge for service on the pipeline and that a demand charge is indicative of an interstate pipeline; (2) the Respondents are operating the Bull Mountain Pipeline in a different manner than the Ragged Mountain Pipeline in an attempt to avoid NGA jurisdiction; and (3) the Respondents have refused to provide access to the Ragged Mountain Pipeline on reasonable and non-discriminatory terms and refused to provide any terms of access to the Bull Mountain Pipeline. 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. The focus of an NGA section 1(b) inquiry using the primary function test is on the physical characteristics of the subject facilities. While the Commission gives some weight to non-physical factors, the Commission under the primary function test does not examine the charges a gatherer assesses for transporting gas on the gathering facilities,⁴⁷ the way the owner of a gathering pipeline operates the pipeline in relation to other facilities that the gatherer may own, or the anti-competitive activities of the gatherer. As to the allegation of anti-competitive behavior, Riviera must seek recourse before the appropriate federal or state agency or in federal or state court, rather than the Commission.

IV. Conclusion

41. The Commission finds that the Bull Mountain Pipeline is a gathering line under the primary function test and exempt from the Commission's jurisdiction under section 1(b) of the NGA. Thus, Riviera's complaint is denied.

⁴⁵ *Baltimore Gas and Electric Co. v. FERC*, 252 F.3d 456, 459 (2001). See also *Sequent Energy Management, L.P.*, 127 FERC ¶ 61,320, at P 16 (2009).

⁴⁶ See, e.g., *Collbran Valley Gas Gathering, LLC*, 128 FERC ¶ 61,186, at P 20 (2009).

⁴⁷ In any event, a demand charge is not necessarily inconsistent with gathering facilities.

The Commission orders:

Riviera's complaint is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.