

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Western Gas Resources, Inc., and
Pioneer Natural Resources (USA), Inc.

Docket Nos. CP06-385-000
CP06-385-001

ORDER DENYING REQUEST FOR CLARIFICATION
AND ISSUING CERTIFICATE

(Issued June 22, 2007)

1. On May 26, 2006, Western Gas Resources, Inc. (WGR) filed a petition pursuant to sections 385.204 and 385.207 of the Commission's regulations for clarification that the 10.9-mile long Midkiff Line in Upton and Reagan Counties, Texas retains non-jurisdictional status under section 1(b) of the Natural Gas Act (NGA) as a gathering facility. Alternatively, WGR requests, pursuant to section 7(c) of the Natural Gas Act (NGA), issuance of a limited jurisdiction certificate authorizing continued operation of the Midkiff Line and waiving certain regulatory requirements. On April 9, 2007, WGR and Pioneer Natural Resources (USA), Inc. (Pioneer) filed, as co-owners of the Midkiff Line, to make Pioneer a joint applicant with WGR, together referred to herein as Applicants.

2. The Commission finds that the Midkiff Line serves a jurisdictional transportation function. Therefore, this order denies the request for clarification that the Midkiff Line retains non-jurisdictional gathering status. The order issues a certificate to WGR and Pioneer, jointly, to operate and maintain the Midkiff Line and waives regulatory requirements, as discussed below.

I. Background

3. WGR, the successor to Western Gas Processors, Ltd. (WGP), is a corporation organized under the laws of the State of Delaware and explores for, produces, gathers, transports and markets natural gas. WGR owns and operates gathering, processing and treating facilities in the Rocky Mountain, Mid-Continent and West Texas regions.

4. Pioneer is an independent oil and gas exploration and production company organized under the laws of the State of Delaware. In November 1992, Parker & Parsley,

now Pioneer, purchased a 27.2 percent interest in WGR's Midkiff System, which is a gathering system. WGR has continued to operate the Midkiff System following Pioneer's acquisition of an interest in the system.

5. On September 17, 1990, the Commission issued *Amerada Hess Corporation et al. (Amerada Hess I)*, a "batch" order resolving jurisdictional issues in multiple proceedings, including the proceeding on a request by WGR's predecessor, WGP, for a declaratory order on the jurisdictional status of the Midkiff System.¹ The Midkiff System contained a variety of field lines and compression that gathered gas to the Pembroke and Midkiff processing plants. This system included, among other facilities, approximately 12.8 miles of 12-inch line to gather gas to WGP's Pembroke Plant² (Upton-to-Pembroke Line) and approximately 7.5 miles of 10-inch line to gather gas from the Pembroke Plant to the Midkiff Plant (Pembroke-to-Midkiff Line).

6. When the Commission issued *Amerada Hess I* in September 1990, none of the Midkiff System's pipeline facilities were used to transport gas downstream of the Midkiff Plant. However, a few months later, WGR, as successor to WGP, changed the direction of flow on 3.4 miles of the Upton-to-Pembroke Line and on the entire 7.5-mile length of the Pembroke-to-Midkiff Line (together the Midkiff Line) in order to connect the Midkiff Plant to the interstate pipeline facilities of Northern Natural Gas Pipeline Company (Northern Natural). Thereafter, and continuing to the current time, the Midkiff Line has delivered residue gas from the tailgate of the Midkiff Plant to an interconnection with Northern Natural.

7. On May 27, 1994, in *Amerada Hess Corporation et al. (Amerada Hess II)*³ and *Superior Offshore Pipeline Company (SOPCO)*,⁴ the Commission issued orders adopting new policies regarding the application of the modified primary function test to pipeline facilities located downstream from processing plants. Those orders found that the modification of the primary function test in *Amerada Hess I* in 1990 led to ever increasing size and length of lines extending beyond the outlet of a processing plant being found to function as gathering facilities. The orders clarified that, in general, the

¹ 52 FERC ¶ 61,268 (1990).

² The Pembroke Plant is no longer in service.

³ 67 FERC ¶ 61,254 (1994).

⁴ 67 FERC ¶ 61,253 (1994).

Commission will find that facilities located beyond the outlet of a processing plant, other than incidental extensions such as stub lines, are jurisdictional transmission facilities.⁵

8. Subsequently, on July 27, 2005, the Commission issued an order declaring a 20.8-mile, 20-inch line downstream of a processing plant to be subject to the Commission's jurisdiction (*Rendezvous*).⁶ Because Mountain Gas Resources, Inc., a wholly owned affiliate of WGR, held an interest in *Rendezvous*, WGR states that the order prompted it to conduct an internal compliance audit of its gathering facilities. As a result of the audit, WGR identified the Midkiff Line as also delivering residue gas to an interstate pipeline downstream from the Midkiff Plant, prompting WGR to file its petition in this proceeding.

II. Proposal

A. Request for Clarification

9. Applicants request clarification that (1) the Commission's 1990 jurisdictional findings in *Amerada Hess I* regarding the Midkiff System were unaffected by the change in the direction of flow in 1991 of the pipeline facilities that now constitute the 10.9 mile long Midkiff Line, and (2) the change in the Commission's policy in *Amerada Hess II* and *SOPCO* in 1994, with respect to application of the primary function test to facilities located downstream from a processing plant, did not revoke the Commission's previous determination of non-jurisdictional status for these particular pipeline facilities.

B. Alternative Request for a Limited Jurisdiction Certificate and Waivers

10. Applicants alternatively request that the Commission (1) issue a limited jurisdiction certificate authorizing transportation of gas through the Midkiff Line solely on behalf of WGR and Pioneer, as co-owners, without payment of any additional charge for such service, and (2) waive otherwise applicable regulatory requirements. Applicants state that all gas flowing through the Midkiff Line is owned by WGR and Pioneer, who are co-owners of both the Midkiff Plant and the Midkiff Line. Applicants explain that

⁵ The Commission's decisions following *Amerada Hess II* and *SOPCO* have generally declined to extend the stub line exception beyond the five miles approved in *SOPCO*.

⁶ *Rendezvous Gas Services, LLC (Rendezvous)*, 112 FERC ¶ 61,141 (2005), *reh'g denied*, 113 FERC ¶ 61,169 (2005).

WGR and Pioneer either produce the gas or purchase the gas from producers whose wells are located behind the plant.

III. Notice and Interventions

11. Notice of WGR's application was published in the *Federal Register* on June 22, 2006 (71 Fed. Reg. 35,884). No motions to intervene or protests were filed. Notice of WGR's and Pioneer's amended application to make them co-applicants was published in the *Federal Register* on April 26, 2007 (72 Fed. Reg. 20,842). No motions to intervene, comments or protests were filed.

IV. Discussion

A. Request for Clarification

12. In support of the request for clarification that the pipeline facilities constituting the Midkiff Line retain non-jurisdictional status, Applicants emphasize that the change in direction of flow through these pipeline facilities occurred before the Commission announced a more restrictive policy in *Amerada Hess II* and *SOPCO* toward treating facilities downstream from a processing plant as non-jurisdictional gathering lines. Applicants assert that *Amerada Hess II* and *SOPCO* should not be given retroactive effect and assert that under the Commission's less restrictive policy at the time flow was reversed on the Midkiff Line, the Midkiff Line would have been found to perform a non-jurisdictional gathering function. They emphasize that *Amerada Hess II* and *SOPCO* did not expressly revoke previous Commission determinations of non-jurisdictional status regarding similarly sized pipelines located downstream of plants even though the Commission recognized the inconsistency of the prior cases with its new policy.⁷

13. It is immaterial whether the Commission might have found that the Midkiff Line retained non-jurisdictional status if such clarification had been sought at the time the direction of gas flow on that line was reversed prior to issuance of *Amerada Hess II* and *SOPCO*, which adopted a more restrictive policy regarding facilities downstream of plants. While *Amerada Hess II* and *SOPCO* did not specifically reverse any prior jurisdictional determinations regarding plant residue lines, those orders made clear that facilities located beyond the outlet of a processing plant are, with very limited exceptions, jurisdictional transmission facilities. Therefore, when *Amerada Hess II* and *SOPCO* were issued in 1994 after WGR had reversed the flow of gas on the Midkiff Line, WGR could no longer reasonably rely on the Commission's prior determination of non-

⁷ *Amerada Hess II*, 67 FERC at 61,845 n.32; *SOPCO*, 67 FERC at 61,834 n. 22.

jurisdictional gathering status for the pipeline facilities constituting the Midkiff Line. When the direction of gas flow on those facilities was reversed so that gas started being transported downstream of the Midkiff Plant, there was a material change in the facts upon which the Commission's prior findings had been based.

14. We find that the Midkiff Line performs a jurisdictional transportation function because it delivers residue gas from the Midkiff Plant to Northern Natural's interstate pipeline system and, being 10.9 miles in length, does not qualify as an incidental extension or stub line. In view of this finding, the Commission denies Applicants' request for clarification that the Midkiff Line retains non-jurisdictional gathering status.

B. Alternative Request for a Limited Jurisdiction Certificate

15. Applicants alternatively request that the Commission issue a limited jurisdiction certificate authorizing transportation of gas through the Midkiff Line under section 7(c) of the NGA. Since the Commission has found that the Midkiff Line performs a jurisdictional transportation function, the Commission will grant Applicants a certificate to continue operation of the line.

16. There is no evidence of any change in facts and circumstances concerning the remaining gathering facilities of the Midkiff System that would result in those facilities being subject to Commission's jurisdiction. Therefore, we will issue a certificate to WGR and Pioneer, jointly, to operate and maintain the Midkiff Line without subjecting the remaining Midkiff System facilities or any other gathering facilities the Applicants' may own to the Commission's jurisdiction.

C. Waiver of Regulatory Requirements

17. In the event the Commission denies the requested clarification and grants a certificate for the Midkiff Line, Applicants request that the Commission waive otherwise applicable regulatory requirements as gas will be transported solely on behalf of WGR and Pioneer, co-owners of the Midkiff Line and Midkiff Plant, without payment of any additional charge for such service.⁸ Applicants explain that all gas flowing through the Midkiff Line is owned by WGR and Pioneer, stating that WGR and Pioneer either

⁸ Citing *Continental Natural Gas Co.*, 83 FERC ¶ 61,065 (1998) (*Continental*) and *Western Gas Resources, Inc.*, 85 FERC ¶ 61,087 (1998) (*Western Gas*) as similar cases where the Commission has granted limited-jurisdiction certificates, with waivers of certain reporting and filing requirements, for residue lines downstream from processing plants where the owners transport only their own gas.

produce the gas or purchase the gas from producers whose wells are located behind the plant.

18. Applicants do not request a Part 284 blanket certificate and request waiver of open-access requirements generally as transportation will be solely on their own behalf. Specifically, Applicants request (1) waiver of the Commission's rate schedule and tariff filing requirements under Part 154 of the Commission's regulations, as no charge for transportation is proposed, (2) waiver of accounting and reporting requirements under Parts 158, 201 (including the Uniform System of Accounts), 225, 250, and 260 (including Form 2), as these requirements are inappropriate for the limited service proposed, and (3) waiver of sections 157.6 (Application), 157.7 (Abbreviated Application), 157.13 (Form of Exhibits), and 157.14 (Exhibits), as the Midkiff Line is already in existence and no new construction authorization is sought.

19. Applicants also request confirmation that the Commission's energy affiliate rules under Part 358 of the Commission's regulations shall not apply to the Midkiff Line, and that sections 284.4 (Reporting), 284.7 (Firm Transportation Service), 284.8 (Capacity Release), 284.9 (Interruptible Transportation), 284.10 (Rates), 284.12 (Standards for Business Practices), 284.13 (Reporting), and Subpart G of Part 284 do not apply to the Midkiff Line, as these regulatory requirements are limited to open-access transporters and, thus, are inapplicable to the limited operations of the Midkiff Line.

20. Applicants do not intend to transport third-party gas; therefore, consistent with *Continental* and *Western Gas* where certificates were issued to otherwise non-jurisdictional companies engaged in comparatively minor jurisdictional activities,⁹ we find that the public interest would not be served by subjecting Applicants to all of the regulatory requirements applicable to conventional natural gas pipeline companies. Accordingly, we will grant Applicants' request for waiver of the Commission's otherwise applicable regulatory requirements, as requested. However, should Applicants in the future apply for blanket transportation authority under Part 284, Subpart G of the Commission's regulations, Applicants will have to comply with the applicable regulations and file tariff sheets and rate schedules for the services being provided.

D. Environment

21. This order's issuance of a certificate authorizing Applicants' continued operation of the Midkiff Line qualifies under section 380.4(a)(27) of the Commission's regulations

⁹ *Id.*

for a categorical exclusion for environmental review purposes since the certificate authorizes transportation services that do not involve any construction activity.

22. The Commission on its own motion, received and made a part of the record all evidence, including the application, as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued under section 7(c) of the NGA authorizing WGR and Pioneer to operate and maintain the Midkiff Line for limited jurisdictional activities as described more fully in the body of this order and in the application, as amended.

(B) The certificate authorization issued in Ordering Paragraph (A) above will not otherwise affect the non-jurisdictional status of any other operation in which WGR or Pioneer are currently engaged.

(C) The certificate issued in ordering paragraph (A) above is conditioned upon Applicants' compliance with paragraphs (a), (e), and (f) of section 157.20 of the Commission's regulations and all other applicable regulations not waived pursuant to Ordering Paragraph (D) below.

(D) Applicants' request for waiver of all other filing, reporting, accounting and compliance requirements, as described in the order and in the application as amended, is granted.

(E) Applicants' request for clarification is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.