

145 FERC ¶ 61,184
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Keys Energy Center, LLC

Docket No. CP13-522-000

ORDER DETERMINING JURISDICTIONAL STATUS OF FACILITIES

(Issued November 27, 2013)

1. On July 17, 2013, Keys Energy Center, LLC (Keys), filed a petition for a declaratory order, requesting a determination from the Commission that its proposed pipeline will not be subject to the Commission's jurisdiction under the Natural Gas Act (NGA). For the reasons discussed below, we will grant the petition.

Background

2. Keys is a Delaware company established as a special purpose entity to develop, build, and operate a natural gas-fired electric generating plant (the Keys Plant) in Prince George's County, Maryland. The Keys Plant will produce a proposed 735 megawatts of electricity. To transport the necessary natural gas fuel, Keys proposes to construct, own, and operate 7.5 miles of 20-inch pipeline (the Keys Pipeline) originating at its plant and extending south into Charles County, Maryland, to an interconnection with an existing interstate gas pipeline owned by Dominion Cove Point LNG, LP (Dominion). This interstate pipeline is subject to Commission regulation under the NGA.

3. Keys asserts that its pipeline will be dedicated and used solely for purposes of delivering natural gas to the Keys Plant with no deliveries to other end users. Keys states that it will have full ownership and control of the pipeline though Keys has not decided whether to perform operation and maintenance itself or to contract with a third party, possibly an interstate pipeline company, to perform these services. Keys further states that any such contract will include provisions to retain Keys' authority over all activities outside of routine or emergency operations and maintenance. If Dominion becomes the contracted party, Keys intends to include provisions that prohibit Dominion from using the Keys Pipeline to enhance or supplement the operation of Dominion's jurisdictional interstate pipeline system.

The Request for Jurisdictional Determination

4. In its petition, Keys requests that the Commission find that the proposed 7.5-mile, 20-inch diameter Keys Pipeline, when constructed between Dominion's interstate pipeline and the Keys Plant, would constitute a nonjurisdictional plant inlet pipeline.

Discussion

5. It is well settled in Commission precedent that pipeline facilities constructed within a single state by a plant owner solely for the purpose of moving natural gas for use in its own plant are an integral part of the plant and are therefore nonjurisdictional under the NGA.¹ Transportation of this kind does not involve interstate commerce because the interstate journey of the gas effectively ends at the point of delivery into the plant inlet pipeline.² Jurisdiction under the NGA does not apply to plant line facilities that: (1) will be located entirely within one state; (2) will be constructed for the purpose of receiving supplies of natural gas solely for use by a plant owned by the same entity; and (3) will not be used by the owner to transport natural gas for, or sell natural gas to, any third party.

6. We conclude that the Keys Pipeline will be a necessary and integral part of the Keys Plant. To the extent that the proposed facility: (1) will sit entirely within the State of Maryland; (2) will be used solely to provide fuel for use and consumption within the Keys Plant to generate electricity; and (3) will not be used by Keys, or by any entity contracting with Keys, to transport natural gas for, or sell natural gas to, any third party, the proposed facility will be nonjurisdictional.

¹ See, e.g., *Canal Elec. Co. and Montaup Elec. Co.*, 71 FERC ¶ 61,073, at 61,251 (1995) (holding nonjurisdictional approximately one mile of 18-inch diameter pipeline proposed for the sole purpose of supplying natural gas to fuel an electric generator). See also *Jersey C. Power & Light Co.*, 9 FPC 717, 718 (1950) (dismissing application for lack of jurisdiction where company proposed to construct and operate approximately seven miles of pipeline facilities to transport gas supplies to its electric generating plant for use as boiler fuel); *Transcon. Gas Pipe Line Corp.*, 33 FPC 818, at 819 (1965) (holding that the proposed construction of approximately 4½ miles of a lead-in line was nonjurisdictional because it would be used to transport natural gas only for the pipeline owner's refinery operations, not for public consumption); *Natural Gas Pipeline Co. of America*, 40 FERC ¶ 61,119, at 61,325 (1987) (determining that a 36-mile pipeline and a 39-mile pipeline were nonjurisdictional extensions of a company's existing pulp and paper mill facilities because they would be located entirely within one state and would be used solely to transport gas supplies for the company's end-use at plant facilities).

² *Canal Elec. Co.*, 71 FERC at 61,251; *Tex. E. Transmission Corp.*, 71 FERC ¶ 61,020, at 61,089 to 61,090 (1995), *vacated on other grounds*, 75 FERC ¶ 61,236 (1996); *Natural Gas Pipeline Co. of America*, 40 FERC at 61,325.

7. However to remain nonjurisdictional, plant facilities must be owned and controlled by an entity separate from the interstate pipeline and must not be integrated into the interstate pipeline system.³ Keys must retain ownership and control of the Keys Pipeline as well as its Keys Plant and must prevent any manipulation of the Keys Pipeline to supplement or benefit Dominion's interstate system. Keys should, as it proposes, include provisions to this effect in any future contract under which a third party would provide operation and maintenance services.

The Commission orders:

The facilities described by Keys do not require a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³ See, e.g., *Williams Natural Gas Co.*, 59 FERC ¶ 61,306, at 62,117 to 62,118 (1992) (holding a lateral pipeline to be jurisdictional on the alternate, sufficient grounds that an interstate pipeline company owned the lateral and that the interstate pipeline company used the lateral to improve the balance, flows, economies of scale, and other aspects of its interstate system).