

146 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

City of Clarksville, Tennessee

Docket No. CP13-508-000

ORDER GRANTING SERVICE AREA DETERMINATIONS

(Issued February 7, 2014)

1. On June 26, 2013, the City of Clarksville, Tennessee (Clarksville) filed an application, as amended,¹ requesting that the Commission designate, pursuant to section 7(f) of the Natural Gas Act (NGA),² service areas within which Clarksville may construct, enlarge, and expand its natural gas distribution facilities without further Commission authorization. Clarksville also requests that it be considered a local distribution company (LDC) for purposes of section 311 of the Natural Gas Policy Act of 1978 (NGPA).³ Further, Clarksville requests a waiver of reporting and accounting requirements, as well as other regulatory requirements, primarily applicable to natural gas companies under the NGA and NGPA. Clarksville's requests are granted as discussed in the body of this order.

Background and Proposal

2. Clarksville is a municipal corporation located in Montgomery County, Tennessee. Since 1952, Clarksville has owned and operated a natural gas distribution system that serves a "significant geographic area" in Montgomery County, as well as smaller discrete areas of contiguous Cheatham and Robertson Counties, Tennessee (Clarksville municipal system). The Clarksville municipal system consists of 904 miles of pipeline with diameters ranging from two to twelve inches. Its major high pressure facilities have a maximum allowable operating pressure (MAOP) of 300 to 500 pounds per square inch (psig). The Clarksville municipal system serves approximately 24,500 customers with an annual throughput of 3.7 billion cubic feet (Bcf).

¹ Clarksville filed supplemental information supporting its initial application on September 4, 2013.

² 15 U.S.C. § 717f(f)(1)-(2) (2012).

³ 15 U.S.C. § 3301, *et seq.* (2006).

3. Clarksville also owns and operates distribution facilities that provide service to the United States Army base at Fort Campbell. Fort Campbell occupies 105,000 acres of land in Montgomery and Stewart Counties, Tennessee and Christian and Trigg Counties, Kentucky. Clarksville's Fort Campbell distribution system originates at an interconnection with the Clarksville municipal system in Montgomery County and extends across the Tennessee/Kentucky border into Christian County. Natural gas is delivered to the Fort Campbell city-gate in Tennessee and distributed within portions of Fort Campbell's property in Tennessee and Kentucky. Clarksville's facilities inside Fort Campbell consist of two ten-inch diameter pipelines with an MAOP of 60 psig. They provide all of Fort Campbell's natural gas service, approximately 900,000 million cubic feet (Mcf) annually.⁴

4. In addition, Clarksville currently provides retail gas heating service to 16 commercial customers through a 2-inch diameter pipeline extending from the Clarksville municipal system in Montgomery County across the Tennessee/Kentucky border 2,400 feet into Christian County (Kentucky Service Line). The Kentucky Service Line has a MAOP of 60 psig, and delivers approximately 3,200 Mcf of natural gas per year to the 16 commercial customers.

5. Clarksville requests a service area determination that would include all of Fort Campbell's 105,000 acres and would allow for future distribution service expansion within Fort Campbell's boundaries.⁵ Clarksville also requests a second service area determination that would include distribution service to Clarksville's existing 16 commercial customers in Kentucky through the Kentucky Service Line. The service area for the Kentucky Service Line, including land occupied by its existing 16 commercial customers, would consist of approximately 15.3 acres.

6. Clarksville contends that it does not currently make sales for resale in the proposed service areas and does not plan to do so in the future, that it does not and will not operate a Commission-regulated transmission system in the proposed service areas, and that no other company provides retail gas service in the requested service areas. Clarksville represents that it has been advised by the Kentucky Public Service Commission (Kentucky PSC) that the Kentucky PSC has no rate jurisdiction over Clarksville's service to the portion of Fort Campbell located in Kentucky and that it

⁴ Clarksville acquired the Fort Campbell distribution facilities in 2003. Fort Campbell reimburses Clarksville for the cost of operation, capital improvements, and maintenance of the Fort Campbell gas distribution facilities.

⁵ There are currently no distribution facilities serving large portions of Fort Campbell's property in Christian County, Kentucky, and Montgomery County, Tennessee, and no service to the Fort Campbell property in Trigg County, Kentucky, or Stewart County, Tennessee.

would not assert rate jurisdiction over Clarksville's service to the 16 commercial customers on the Kentucky Service Line, unless Clarksville expands its service beyond the existing 16 customers in Kentucky.⁶ Clarksville states that the rates it charges to the 16 customers in Kentucky are stated in a rate schedule approved by the Clarksville City Council and that they are the same as the rates charged to Tennessee customers served under that rate schedule. Clarksville also states that the rates and conditions of service to Fort Campbell were included in a contract negotiated between Fort Campbell and Clarksville and approved by the city council as a negotiated rate in 2003.⁷

7. Clarksville also requests a determination that it will be treated as a local distribution company for purposes of qualifying for transportation service under section 311 of the NGPA. Finally, Clarksville requests a waiver of all reporting, accounting, and other rules and regulations under the NGA and NGPA that otherwise would apply to natural gas companies.

Interventions

8. Notice of Clarksville's application was published in the *Federal Register* on July 16, 2013 (78 Fed. Reg. 42,514), with comments, protests, and interventions due on or before July 31, 2013. Atmos Energy Corporation (Atmos) and Todd County, Kentucky (Todd County)⁸ filed timely, unopposed motions to intervene.⁹

9. Atmos's motion to intervene included comments. On September 9, 2013, Todd County supplemented its motion to intervene with comments, contending that Clarksville's application was incomplete and inaccurate on important points relevant to the Commission's determination. On September 16, 2013, Clarksville filed a response to Todd County's comments. Atmos's and Todd County's comments, as well as Clarksville's response, are discussed below.

⁶ Clarksville's September 4, 2013 Amendment at 2.

⁷ Clarksville states that the Kentucky PSC will inspect the distribution facilities serving the portion of Fort Campbell in Kentucky and the 16 commercial customers for safety purposes.

⁸ Todd County is contiguous with and north of Montgomery County, Tennessee.

⁹ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013).

Discussion

10. Section 7(f)(1) of the NGA provides:

The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization.

11. The Commission has consistently recognized that a service area determination under NGA section 7(f) is appropriate for a company primarily engaged in the business of local distribution of natural gas, but subject to the Commission's NGA jurisdiction because its facilities cross state lines.¹⁰ The purpose of section 7(f) is to enable a company to enlarge or extend its facilities to supply market demand without prior Commission approval. Among the factors considered in determining if a company qualifies for a service area determination are whether:

- (1) state or local agencies regulate the company's rates;
- (2) the company has an extensive transmission system;
- (3) authorizing the service area will have a significant effect on neighboring distribution companies; and
- (4) the company makes sales of natural gas for resale in the designated service area.

State and Local Rate Regulation

12. The Kentucky PSC has no jurisdiction over the rates Clarksville charges in Kentucky for service to Fort Campbell and does not currently exercise its authority to review the rates and service for customers on the Kentucky Service Line, but reserves the right to do so if Clarksville adds more customers. While section 7(f) provides that "transportation to ultimate consumers in such service area by the holder of such service area determination . . . shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed," it does not specifically require that the State commission actually exercise regulation over such rates and services in

¹⁰ *E.g.*, *City of Toccoa*, 125 FERC ¶ 61,048 (2008); *Kinder Morgan Interstate Gas Transmission LLC*, 94 FERC ¶ 61,078 (2001); *Northern Lights, Inc.*, 84 FERC ¶ 61,117 (1998).

order for that company to obtain a determination from the Commission.¹¹ Thus, the fact that Clarksville's rates will not be regulated by the Kentucky PSC is not an impediment to Clarksville's obtaining a service area determination. Here, the Clarksville City Council approved the rates for service to Fort Campbell and to Clarksville's 16 commercial customers on the Kentucky Service Line.

An Extensive Transmission System

13. Todd County contends that Clarksville provides transportation-only service to Fort Campbell and has pending or tentative arrangements to provide transportation-only services to one or more major industrial manufacturing plants. In addition, Todd County states that Clarksville will have an extensive transmission system because it plans to construct and operate approximately 20 miles of pipeline across Todd County into Tennessee.¹²

14. Clarksville states that it has no pending or tentative arrangements to provide transportation-only services to any major industrial manufacturing plants. Clarksville also contends that the to-be-proposed 20-mile pipeline will serve as a feeder line to supply gas to its distribution customers.

15. We find that Clarksville is engaged in the local distribution of gas to its customers. The construction and operation of a 20-mile-long pipeline to supply gas to its distribution

¹¹ S. Rep. 486, 100th Cong., 2nd Sess. (1988), *reprinted in* 1988 U.S.C.C.A.N. 2692 (stating, in a Senate report accompanying the 1988 amendment to section 7(f), that:

transportation of natural gas to consumers through companies subject to section 7(f) of the [NGA] is a matter within state jurisdiction and to state regulatory commissions [C]ompanies that sell gas and provide appurtenant service to retail customers are local distribution companies and *generally* regulated by individual state public utility commissions.) (Emphasis added).

See also Northern Lights, Inc., 84 FERC ¶ 61,117 n.5 (where the Commission issued a service area determination encompassing areas in the States of Idaho and Washington to Northern Lights, a natural gas distribution cooperative, notwithstanding the fact that Northern Lights had represented that staff of the Washington Utilities and Transportation Commission had indicated that the state of Washington would likely not seek to regulate Northern Lights' rates for natural gas distribution service.)

¹² On August 26, 2013, in Docket No. PF13-17-000, the Director of the Office of Energy Projects approved Clarksville's request to use the Commission's pre-filing process for the contemplated 20-mile-long pipeline.

system would not constitute an “extensive transmission system.” Any transmission facilities Clarksville currently operates are used to provide its local distribution services. Thus, the Commission finds that Clarksville does not have an extensive transmission system.

Effect on Neighboring Distribution Companies

16. Todd County contends that there are several other companies that sell natural gas at retail to industrial customers in Clarksville’s requested service areas. Todd County’s assertion is factually incorrect, and that Clarksville is the only company that provides natural gas distribution services in the proposed service areas. In addition, no other distribution company operating in Tennessee or Kentucky opposes the requested service area determinations.¹³ Thus, we find that granting the service area determinations will not have a significant effect on any other natural gas distribution company in or near the requested service areas.

Sales for Resale

17. Todd County contends that Clarksville used to make sales for resale to Fort Campbell and currently makes sales for resale to the City of Guthrie, Kentucky (Guthrie).

18. Currently, Clarksville does not sell gas to Fort Campbell for resale. Clarksville’s previous sales to Fort Campbell in Tennessee are not relevant to this proceeding. At present, Clarksville transports and delivers gas to Fort Campbell’s meter in Tennessee and distributes gas on Fort Campbell’s property.

19. Clarksville states that it sold an estimated 10,675 Mcf of gas during the last twelve months to Guthrie. Clarksville also states that its meter with Guthrie is located in Tennessee, approximately 20 feet south of the Tennessee/Kentucky border. Clarksville states it assumes that Guthrie owns and operates the pipeline that crosses the border and delivers the gas to Guthrie and states that it has no knowledge of the specific uses by Guthrie of the sales gas but assumes that Guthrie resells the gas to retail customers in Kentucky.¹⁴

¹³ Atmos, a distribution company providing service in several states, including Kentucky and Tennessee, does not oppose the proposed service area determinations. However, Atmos asserts that its operations in Kentucky would be negatively impacted if Clarksville were to construct additional facilities in Kentucky to serve customers outside the confines of Fort Campbell or it were to serve additional customers on the Kentucky Service Line.

¹⁴ Clarksville November 22, 2013 Response to Data Request No. 2.

20. Clarksville is engaged in the local distribution of gas to its customers. The sales to Guthrie do not alter the primarily distribution nature of Clarksville's operations. Thus, the sales to Guthrie do not preclude the issuance of service area determinations in this proceeding.¹⁵

Conclusion

21. For the reason stated above, the Commission will grant Clarksville's service area determinations covering the Fort Campbell base in Kentucky and the 16 commercial customers served through the Kentucky Service Line.

Other Requests

22. Clarksville requests to be treated as an LDC for the purposes of section 311 of the NGPA. The Commission has previously held that section 7(f) companies should be treated as such. Although Clarksville owns pipeline facilities that cross the Tennessee/Kentucky border, it will operate as an LDC within its service areas.

23. Clarksville also requests a waiver of the Commission's accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the NGA and the NGPA. The requested waivers are consistent with those previously granted in similar circumstances and are granted in this proceeding.¹⁶ Review of Clarksville's proposal indicates that there are no accounting, environmental, gas supply, or rate issues involved.

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

The Commission orders:

(A) Clarksville is granted service area determinations under section 7(f) of the NGA, as described herein and more fully in the application.

¹⁵ Clarksville's sales to Guthrie are covered under the blanket marketing certificate granted by 18 C.F.R. § 284.402 (2013). Should Clarksville desire to transport natural gas in interstate commerce in the same manner as an intrastate pipeline may under section 311 of the NGPA, it must first obtain a certificate under section 284.224 of the Commission's regulations.

¹⁶ *City of Toccoa*, 125 FERC ¶ 61,048 (2008); *Kinder Morgan Interstate Gas Transmission LLC*, 94 FERC ¶ 61,078 (2001).

(B) Clarksville is determined to be an LDC for purposes of section 311 of the NGPA.

(C) Clarksville is granted a waiver of reporting and accounting requirements, as well as other rules and regulations under the NGA and NGPA that are ordinarily applicable to natural gas companies, with respect to actions taken pursuant to the authorizations issued herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.