

148 FERC ¶ 61,188  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

KKR NR I Mineral Holdings II L.P.  
KKR NR I-A Mineral Holdings II L.P.  
KFN NR Mineral Holdings II L.P.  
Premier Natural Resources II, LLC

Docket No. CP14-491-000

ORDER DETERMINING JURISDICTIONAL STATUS OF FACILITIES

(Issued September 15, 2014)

1. On May 21, 2014, KKR NR I Mineral Holdings II L.P., KKR NR I-A Mineral Holdings II L.P., KFN NR Mineral Holdings II L.P., and Premier Natural Resources II, LLC (collectively, Petitioners), filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure<sup>1</sup> for a declaratory order determining that the existing Index 301 Pipeline, as operated by Petitioners, is performing a natural gas gathering function exempt from the Commission's jurisdiction under section 1(b) of the Natural Gas Act (NGA).<sup>2</sup> As discussed below, the Commission will grant the petition.

**I. Background**

2. The Index 301 Pipeline is an approximately 5.9-mile long, 16-inch diameter pipeline located in Simpson and Smith Counties, Mississippi. On April 4, 2014, in Docket No. CP14-51-000, the Director of the Commission's Office of Energy Projects, Division of Pipeline Certificates, issued an order pursuant to delegated authority under section 375.308 of the regulations granting Petitioners: (1) a certificate of public

---

<sup>1</sup> 18 C.F.R. § 385.207 (2014).

<sup>2</sup> 15 U.S.C. § 717(b) (2012).

convenience and necessity for Petitioners to acquire and operate the Index 301 Pipeline;<sup>3</sup> (2) a blanket certificate under Subpart F of Part 157 of the Commission's regulations;<sup>4</sup> and (3) waivers of open-access and other regulatory requirements to permit Petitioners' operation of the Index 301 Pipeline on a proprietary basis to transport gas owned by the Petitioners.<sup>5</sup> In their May 21, 2014 petition, the Petitioners submitted additional information, as discussed below, to support a finding that the Index 301 Pipeline is a non-jurisdictional gathering facility. With the exception of the Index 301 Pipeline, none of the Petitioners own or operate any other certificated facilities.

## II. Procedural Matters

3. The Commission published a notice of the petition for declaratory order in the *Federal Register* on June 2, 2014.<sup>6</sup> No motions to intervene, notices of intervention, or protests were filed.

## III. Discussion

### A. Modified Primary Function Test

4. 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.<sup>7</sup> The NGA itself, however, does not define the term "gathering." As a result, the Commission has developed a number of legal tests to determine which facilities are non-jurisdictional gathering facilities and which facilities are jurisdictional transmission

---

<sup>3</sup> Petitioners acquired the Index 301 Pipeline from Gulf South Pipeline Company (Gulf South), which abandoned the pipeline under its Part 157, Subpart F blanket certificate.

<sup>4</sup> 18 C.F.R. § 157.201 et seq. (2014).

<sup>5</sup> *KKR NR I Mineral Holdings II L.P., et al.*, 147 FERC ¶ 62,014 (2014).

<sup>6</sup> 79 Fed. Reg. 31,324 (2014).

<sup>7</sup> The courts have narrowly construed the NGA section 1(b) exemption to "the physical acts 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 and Gas Board*, 474 U.S. 409, 418 (1986) (quoting *Northern Natural Gas Co. v. State Corp. Comm'n of Kansas*, 372 U.S. 84, 90 (1963)).

facilities. The Commission relies on the “modified ‘primary function test,’” which considers the physical and geographical attributes of a facility, including: (1) the length and diameter of the pipelines; (2) the facilities' geographical configuration; (3) the extension of the facilities 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.<sup>8</sup> 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<sup>9</sup> and the Natural Gas Policy Act of 1978 (NGPA).<sup>10</sup> The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.<sup>11</sup> The Commission also weighs any and all other relevant facts and circumstances of a particular case, including the non-physical criteria.<sup>12</sup>

5. Applying these modified primary function test criteria to the Index 301 Pipeline demonstrates that the pipeline has the characteristics of a non-jurisdictional gathering facility.

#### 1. Length and Diameter of the Line

6. The Index 301 Pipeline is 5.9 miles of 16-inch diameter pipeline. We find the diameter and relatively short length of the Index 301 Pipeline to be consistent with gathering.<sup>13</sup>

---

<sup>8</sup> The primary function test was originally formulated in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983) (*Farmland*). In *Amerada Hess Corp. et al.*, 52 FERC ¶ 61,268 (1990), the Commission modified the *Farmland* test for application in the offshore context to take into account the relatively greater pipeline lengths and diameters needed to gather much offshore gas production.

<sup>9</sup> 15 U.S.C. §§ 717-717z (2012).

<sup>10</sup> 15 U.S.C. §§ 3301-3432 (2012).

<sup>11</sup> See, e.g., *NorAm Gas Transmission Co.*, 75 FERC ¶ 61,127, at 61,429 (1996).

<sup>12</sup> See *ANR Pipeline Co.*, 76 FERC ¶ 61,153 (1996).

<sup>13</sup> The Commission has found significantly greater pipeline lengths and diameters to not be inconsistent with a gathering function. See, e.g., *Columbia Gas Transmission*

(continued...)

## 2. Geographical Configuration

7. Gathering facilities generally fall into three types of geographic configurations. One is the web-like configuration commonly found in field gas gathering systems. The second configuration involves the backbone-type structure, which consists of a pipeline that connects to numerous feeding lines along its entire length. The third type of configuration consists of short pipelines that deliver gas from a few wells to generally larger-diameter downstream transmission facilities.<sup>14</sup> As a relatively short pipeline that receives gas from only a few wells and delivers the gas to Gulf South's mainline transmission system, the Index 301 Pipeline configuration is consistent with this third type of gathering configuration.

## 3. Central Point in the Field

8. 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 large line for transmission. Any facilities located upstream of the central point are generally considered non-jurisdictional gathering facilities.<sup>15</sup> However, the Commission has found that the central point in the field test is not applicable in determining the jurisdictional status of a short pipeline attached to one or a few wells.<sup>16</sup> Because the Index 301 Pipeline is a short pipeline that receives gas from only five wells, we find the central point in the field test inapplicable.

---

*Corp.*, 93 FERC ¶ 61,278 (2000) (finding that non-jurisdictional gathering was the primary function of a 16-mile long, 20-inch diameter pipeline); *and EXCO Resources, Inc.*, 119 FERC ¶ 61,121, at P 12 (2007) (*EXCO*) (finding that non-jurisdictional gathering was the primary function of two pipelines that served as the backbones of two spine-type gathering configurations, notwithstanding the 23-mile length and 12-inch diameter of one of the pipelines and the 30-mile length and 16-inch diameter of the other pipeline.).

<sup>14</sup> *Arkla Gathering Services Co.*, 67 FERC ¶ 61,257, at 61,868 (1994).

<sup>15</sup> *See generally Barnes Transportation Co., Inc.*, 18 F.P.C. 369 (1957) (establishing the "central point in the field" test).

<sup>16</sup> *Mississippi River Transmission Corp. & Noram Field Servs. Corp.*, 75 FERC ¶ 61,235, at 61,779 (1996) (*Mississippi River Transmission*).

#### 4. Location of Compressors and Processing Plants

9. The Commission has found minimal compression for purposes of boosting gas from low-pressure wells through gathering lines to transmission facilities is consistent with a primary function of gathering.<sup>17</sup> The Index 301 Pipeline includes a 100 horsepower (HP) compressor unit located at the beginning of the pipeline at the pad site where gas from upstream wells is received via smaller diameter lines. Petitioners state that the compressor is needed to create enough pressure to move gas through the Index 301 Pipeline to Gulf South's downstream transmission line. We find this minimal compression consistent with gathering.

10. Typically, gathering lines are used to move raw gas toward a central processing facility, where the gas undergoes treatment in preparation for transportation on jurisdictional interstate pipeline systems.<sup>18</sup> Thus, the location of processing facilities at the delivery end of a pipeline generally indicates that the pipeline performs a gathering function.<sup>19</sup> Here, there is no central processing facility. Gas produced from the connected wells contains high levels of carbon dioxide as well as various levels of heavier hydrocarbons. Field treating equipment is utilized at the wellhead to remove the corrosive carbon dioxide and reduce the levels of liquids and heavier hydrocarbons. This type of treatment by producers at the wellhead is consistent with a gathering function.<sup>20</sup>

---

<sup>17</sup> See, e.g., *Eagle Rock Desoto Pipeline, L.P.*, 126 FERC ¶ 61,092, at P 15 (2009) (*Eagle Rock Desoto*) (explaining that “upstream compression is not inconsistent with a gathering function if the compression is necessary to move gas through a system's gathering lines”); *Northern Natural Gas Co.*, 89 FERC ¶ 61,317, at 61,980 (1999) (finding compression facilities performed a gathering function since their purpose was to increase very low flowing wellhead pressures so that the gas will flow into downstream facilities); *NorAm Gas Transmission Co.*, 82 FERC ¶ 61,330, at 62,309 (1998) (finding compression provided by single 80 HP reciprocating engine performed gathering to enable lower pressure field supplies to enter downstream transmission pipeline ).

<sup>18</sup> See *Southern Star Central Gas Pipeline, Inc.*, 116 FERC ¶ 61,288 (2006).

<sup>19</sup> *Id.*; see also *TGGT Holdings, LLC*, 132 FERC ¶ 61,039 (2010) (explaining that the “need for processing prior to delivery to a transmission pipeline is indicative of a gathering function”); also *SWEPI LP and EnCana Oil & Gas (USA) Inc.*, 126 FERC ¶ 61,098 (2009).

<sup>20</sup> *Mississippi River Transmission Corp.*, 75 FERC at 61,778-79.

## 5. Location of Wells Along All or Part of a Facility

11. The location of wells along the length of a pipeline is generally indicative of gathering.<sup>21</sup> No wells connect to the Index 301 Pipeline along its relatively short length. Rather, smaller lines bring gas from five upstream wells to the pad site where the Index 301 Pipeline begins. However, in view of the relatively short length (i.e., 5.9 miles) of the Index 301 Pipeline, we find that the absence of wells along its length is not inconsistent with a gathering determination.<sup>22</sup>

## 6. Operating Pressure

12. The operating pressure of the Index 301 Pipeline is 400-423 pounds per square inch absolute (psia). The Commission has found similar operating pressures to be consistent with gathering.<sup>23</sup> Although the pipeline's pressure is maintained with a 100 HP compressor unit, the pressure is needed to move gas through the pipeline.<sup>24</sup> Thus, we find the operating pressure of the Index 301 Pipeline consistent with gathering.

---

<sup>21</sup> See *EXCO*, 119 FERC ¶ 61,121 at P 17.

<sup>22</sup> See *Riviera Drilling and Exploration Co., Complainant v. SG Interests I, Ltd. and Gunnison Energy Corp., Respondents*, 131 FERC ¶ 61,116, at P 22 (2010) (the 25.5-mile length and 20-inch diameter of the Bull Mountain Pipeline did not prevent the Commission from finding that it was a non-jurisdictional gathering facility, notwithstanding that the attachment of any wells along the pipeline's length was unlikely, since "the length of the pipeline [was] dictated by the distance of the Bull Mountain Unit and surrounding production acreage from existing transportation systems and other gathering systems").

<sup>23</sup> See, e.g., *Centerpoint Energy Gas Transmission Co., LLC*, 138 FERC ¶ 62,082 (2012) (finding a 200-450 psia operating pressure range of a pipeline was consistent with gathering).

<sup>24</sup> *Eagle Rock Desoto*, 126 FERC ¶ 61,092 at P 15 (explaining that "upstream compression is not inconsistent with a gathering function if the compression is necessary to move gas through a system's gathering lines").

## 7. Additional Considerations

13. As described above, 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 and the NGPA.

14. The Index 301 Pipeline is located within a gas-producing region of Mississippi and operated for the purpose of gathering natural gas for delivery into Gulf South's transmission system. The pipeline is not intended to provide interstate transportation. Therefore, the pipeline's purpose, location, and operation are consistent with gathering.

15. Petitioners' primary business activity is oil and gas exploration and production. With the exception of the Index 301 Pipeline, Petitioners do not own or operate any pipeline facilities that have been certificated or that are used to provide interstate transportation services that are subject to the Commission's jurisdiction. Thus, we find that the general business activities of Petitioners are consistent with gathering.

## IV. Conclusion

16. Having considered all relevant facts and circumstances, we find that the Index 301 Pipeline, as described in the petition, qualifies as a gathering pipeline. As such, the facility is exempt from the Commission's jurisdiction under section 1(b) of the NGA, and we will therefore vacate the Petitioners' certificate authorization for the Index 301 Pipeline.<sup>25</sup>

17. On July 3, 2014, the Commission issued an Environmental Assessment Report finding that the issuance of this order would result in no environmental impact. As explained in the report, the determination of whether the Index 301 Pipeline is jurisdictional is an administrative decision in which the environment is not involved.

### The Commission orders:

(A) The Petitioners' petition for a declaratory order finding that the Index 301 Pipeline is a non-jurisdictional gathering facility exempt from the Commission's jurisdiction under section 1(b) of the NGA is granted.

---

<sup>25</sup> See, e.g., *Amerada Hess Corp.*, 52 FERC ¶ 61,268, at 62,006 and ordering para. (F) – (H) (1990) (vacating previously granted section 7(c) certificate authorizations based on a finding that non-jurisdictional gathering was the primary function of the subject facilities).

(B) The Petitioners' certificate authorizations previously granted for the Index 301 Pipeline, in Docket No. CP14-51-000, are vacated.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.