

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Southern Star Central Gas Pipeline, Inc.

Docket No. CP05-371-000

ORDER APPROVING ABANDONMENT AND DISCLAIMING JURISDICTION

(Issued April 17, 2006)

1. On June 6, 2005, Southern Star Central Gas Pipeline, Inc. (Southern Star) filed an abbreviated application under section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations seeking: (1) authorization for Southern Star to abandon by sale to Keystone Gas Corporation (Keystone), an unaffiliated gatherer, certain certificated natural gas facilities located in Creek, Payne, and Logan Counties, Oklahoma and the related jurisdictional services; and (2) a determination under NGA section 1(b) that upon abandonment, the subject facilities will be considered non-jurisdictional gathering facilities.
2. As discussed below, we will approve Southern Star's request for authorization to abandon facilities and services. We also find that upon abandonment and completion of the proposed modifications, the facilities will primarily perform a gathering function exempt from the Commission's jurisdiction.

**Background**

3. Southern Star is a Delaware corporation authorized to do business in Arkansas, Colorado, Kansas, Kentucky, Missouri, Nebraska and Oklahoma. Southern Star offers transportation services under rate schedules and tariffs authorized by the Commission. Such services are provided on an open-access basis pursuant to Southern Star's blanket certificate authority under Subpart G of Part 284 of the Commission's regulations and section 311 of the Natural Gas Policy Act (NGPA).
4. Keystone is a corporation organized and existing under the laws of Oklahoma. It is a non-jurisdictional entity engaged in the natural gas gathering and related businesses and currently owns and operates gathering systems in five counties in central and northeast Oklahoma.

### **Southern Star's Proposal**

5. Southern Star proposes to abandon by sale to Keystone a pipeline consisting of 12- and 16-inch diameter steel pipe and related appurtenances extending from Southern Star's existing Oklahoma City 20-inch Line V pipeline in Logan County, continuing for approximately 46.4 miles, through Payne County, and terminating at Southern Star's existing Drumright Compressor Station in Creek County.<sup>1</sup> This line is referred to as the Mulhall-Drumright pipeline (Mulhall line). Keystone would acquire all of Southern Star's interest in the facilities for \$250,000. Southern Star also seeks a determination that Keystone's ownership and operation of the conveyed facilities will be exempt from Commission jurisdiction under NGA section 1(b).

6. Southern Star states that the Mulhall line facilities proposed for sale and transfer to Keystone are not strategic or integral to its primary business of transporting natural gas in interstate commerce and are not needed to perform its service obligations. Southern Star asserts that revenues from this facility do not currently support the operating costs associated with its maintenance and this transfer will allow Southern Star to eliminate these costs. Southern Star also states that the transfer of the Mulhall Line will not adversely affect any of the customers currently served by this line.

7. Twenty-nine domestic customers are served solely by Southern Star or by a combination of Southern Star and the area local distribution company, Oklahoma Natural Gas (ONG). Southern Star and ONG have agreed to transfer the facilities that are necessary for Keystone to maintain service to these customers. The City of Yale, Oklahoma (Yale) will continue to receive gas service through the Mulhall line from Keystone and through an additional connection with ONG. In addition, the line segment also collects gas at two points from TAG Petroleum, Inc. (TAG), a local gatherer of gas.

8. Presently the Mulhall line receives approximately 750 Mcf per day (Mcf/d) from points attached and has a maximum allowable operating pressure of 240 pounds per square inch gauge (psig) but routinely operates at working pressures between 100 and 200 psig.<sup>2</sup>

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<sup>1</sup> See *Cities Service Gas Co.*, 6 FPC 270, as modified at 6 FPC 279 (1947).

<sup>2</sup> The gas in the Mulhall Line presently flows from Mulhall to Drumright in a west to east direction. After the pipeline is abandoned and integrated into Keystone's gathering system, gas flow will be reversed and move from Drumright to Mulhall in an east to west direction.

9. Keystone is purchasing the Mulhall line in order to integrate its fourteen subsystems of gathering laterals into one system to allow for more efficient gas flow to the interstate market. The Mulhall line and all the subsystems are within the state of Oklahoma. The subsystems span five counties in several oil and gas fields in the central and northeast sections of the state.

10. Southern Star states that the Mulhall Line will connect directly with five of Keystone's gathering subsystems and will link with the remainder indirectly. The subsystems comprise approximately 1,106 miles of highly reticulated pipeline, ranging in size from two to twelve inches in diameter, with 6,000 natural gas wells and oil wells producing casing head natural gas widely dispersed throughout. These pipelines operate at pressures not greater than 250 psig, with most of the lines operating at pressures well below that level.

11. Southern Star proposes to disconnect the Mulhall Line on the east end of the segment by cutting and capping the line within its Drumright compressor station yard so that Keystone will not use any of Southern Star's compression facilities.

12. Keystone plans to add a refrigerated natural gas processing unit on the west end of the segment near the interconnection with Southern Star's 20-inch Line V and compression at two locations—one near Drumright, and the other at the west end of the Mulhall line. Southern Star states that this will allow the lower pressure gathering lines to be compressed in stages from the fields to the interstate connection with Southern Star, which operates at 594 psig. The Mulhall line will continue to operate at 100-200 psig.

### **Notices and Interventions**

13. After notice by publication in the *Federal Register* on June 17, 2005 (70 *Fed. Reg.* 35241), motions to intervene were filed by Atmos Energy Corporation and Keystone.<sup>3</sup> TAG filed a motion to intervene out of time and subsequently, a protest. The Commission finds that granting this late filed motion to intervene will not disrupt the proceeding or place additional burdens on the parties. Consequently, for good cause shown, we will grant TAG's motion.

14. Southern Star and Keystone and TAG filed various answers and responses. Although the Commission's Rules of Practice and Procedure do not permit answers to

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<sup>3</sup> Unopposed motions to intervene are granted by operation of Rule 114 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2005).

protests or to answers, the Commission finds good cause to waive Rule 213(a) to admit these pleadings because they have provided information that assisted us in our decision making process.<sup>4</sup>

### **Discussion**

15. Since the facilities and services Southern Star proposes to abandon involve the transportation of natural gas in interstate commerce, the proposal is subject to the jurisdiction of the Commission and the requirements of NGA section 7(b).

#### **Primary Function Test**

16. 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. The Commission has, over the years, developed a number of legal tests to determine which facilities are nonjurisdictional gathering facilities and which facilities are jurisdictional transmission facilities.<sup>5</sup> The Commission presently relies on its modified "primary function test" which includes consideration of several physical and geographical factors including: (1) the length and diameter of the line; (2) the extension of the facility beyond the central point-in-the-field; (3) the facility's geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facility; and (6) the operating pressure of the pipeline(s).<sup>6</sup>

17. In addition, 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. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.<sup>7</sup> Additionally, the Commission weighs any and all other relevant facts and circumstances of a particular case, including non-physical criteria.<sup>8</sup>

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<sup>4</sup> See 18 C.F.R. § 385.213(a)(2) (2005).

<sup>5</sup> See *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990) and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

<sup>6</sup> The Commission has further modified the primary function test as applied to facilities located offshore. These modifications are immaterial here, since all the facilities at issue are located in Oklahoma.

<sup>7</sup> See, e.g., *TOMCAT*, 59 FERC ¶ 61,340 at 62,239 (1992).

<sup>8</sup> See, e.g., *id.* and *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990).

18. Application of the primary function test criteria to these facilities supports a finding that the primary function of the Mulhall line will be gathering when integrated as described in the application with Keystone's existing and proposed facilities. The Mulhall line consists of 46.4 miles of 12- and 16-inch diameter pipeline that, upon acquisition, will form the backbone of Keystone's gathering facilities, with a series of gathering subsystems connected along its length. Both the length and diameter of the line are consistent with a gathering function.<sup>9</sup>

19. By its nature, a backbone or spine facility traverses a production area and serves as a collector of gas through various lateral connections. Thus, while there may not be wells directly connected to the spine itself, numerous wells are attached indirectly through the various subsystems that are connected to the spine. Once integrated with Keystone's subsystems, the Mulhall line will collect gas from approximately 6,000 wells. A backbone-type configuration is consistent with a gathering determination.

20. The Mulhall line has a 240 psig maximum allowable operating pressure and is expected to operate at between 100 and 200 psig. These pressures are consistent with the gathering function. Keystone plans to add compression at the Drumright (east) end of the line. This will facilitate movement of gathering output to the interstate market. At the Mulhall (west) end of the line, 1,200 horsepower of compression along with a refrigerated gas processing facility will be added. The compression and processing plant will serve to ready the east to west flow of gathered production gas for entry into the Southern Star transmission system. The location of processing facilities at the delivery end of a system is typical of the gathering function.

21. Keystone is exclusively in the natural gas gathering and related businesses. After acquisition by Keystone, the Mulhall line's primary purpose will be to carry natural gas purchased by Keystone from the region's many independent oil and gas producers to the interconnection with Southern Star at the Mulhall end of the line for interstate market transmission and utilization.

22. Accordingly, for the foregoing reasons, and upon its acquisition by Keystone, the Mulhall line will perform primarily a gathering function and thus will be exempt from Commission jurisdiction under NGA section 1(b).

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<sup>9</sup> See, e.g., *Colorado Interstate Gas Co.*, 101 FERC ¶ 61,377 at P 18 (2002).

### **Abandonment of Jurisdictional Facilities**

23. Southern Star asserts that the Mulhall line is no longer needed for it to perform its transportation services and, in fact, is uneconomic for Southern Star to maintain. Further, it states that abandonment will allow Southern Star to streamline its transportation operations by divesting itself of facilities that were constructed in support of its former merchant function.

24. TAG intervened and protested the abandonment and transfer of the Mulhall line raising concerns about the effect such transfer will have on its business. TAG owns a local gathering system which connects to the Mulhall line at two locations in Payne County, Oklahoma. TAG states that for the last 23 years it has sold its gas to third parties for delivery on the Southern Star pipeline system. Although TAG does not have a transportation contract with Southern Star, TAG states that its gas enters the interstate market through arrangements with ONEOK Energy Services, a Southern Star shipper. TAG states that it would not have filed this protest if it had been able to reach a timely agreement with Keystone allowing it to transport gas on the Mulhall line at reasonable rates and conditions.

25. TAG's protest asserts that: (1) the primary function of the facilities to be abandoned is transmission not gathering; (2) the Commission can not disclaim jurisdiction because the application fails to demonstrate that the line would cease to perform a jurisdictional service; (3) the proposed abandonment is not permitted because it does not provide continuity of service and therefore violates a fundamental consideration of section 7 abandonment; and (4) the application is not consistent with the public convenience and necessity because it fails to demonstrate that the abandonment's benefits outweigh its costs.

26. Southern Star and Keystone respond that: the requested abandonment is consistent with the public convenience and necessity; the facilities will clearly operate as a non-jurisdictional gathering facility following Keystone's acquisition of the Mulhall line; and Keystone has a current outstanding offer of transportation service to TAG. Furthermore, they state that whether this offer is consummated or not, Oklahoma Law section 52-24.5 provides that the Oklahoma Corporation Commission (OCC) has authority to mandate open access transportation by Keystone for TAG's benefit at fair, just and reasonable, and not unduly discriminatory rates.

27. TAG asserts that the Commission cannot disclaim jurisdiction because the application fails to demonstrate either that the primary function of the facilities to be abandoned is gathering or that the line would cease to perform a jurisdictional service since it will continue to be used to provide transportation service to existing customers. As stated, *supra*, application of the primary function test to this facility demonstrates that upon its transfer to Keystone, the Mulhall line will perform primarily a gathering function

exempt from the Commission's jurisdiction. The Commission has time and again permitted the abandonment of facilities previously functioning as transmission lines while issuing a jurisdictional determination that the facilities will be classified as gathering as used by the new owners.<sup>10</sup>

28. TAG also argues that another indication that the Mulhall line will continue to perform a transportation function after its transfer to Keystone is that gas delivered to the local customers from the Mulhall line must be processed before it enters the line to make it "pipeline ready" to provide safe deliveries to existing customers and that such processing will have to continue after the transfer.

29. Although the location of processing plants is one of the factors of the primary function test, as noted earlier, no one factor is determinative in the Commission's analysis of the jurisdictional status of a particular pipeline. In this case, as discussed more thoroughly above, we have determined that the primary function of the Mulhall line will be gathering upon its transfer to Keystone and the completion of the modifications to the line. Furthermore, regardless of whether there are processing plants located upstream of the Mulhall line, the gas to be delivered to the existing customers will not enter the interstate grid, but will be produced, transported, and consumed within the state of Oklahoma and regulated by the state of Oklahoma. No interstate transportation of natural gas will occur that would require regulation by the Commission.

30. TAG also contends that the Mulhall line will continue to perform a transportation function because it will continue to be directly connected to the facilities of Southern Star at the line's western (delivery) end and, perhaps, its eastern end. However, the purpose of a gathering line is to gather gas and deliver it into the interstate grid and, to do so, the gathering line must be connected to the interstate grid. Thus the western interconnect with Southern Star's facilities is the endpoint of gathering and is required to allow for the delivery of gathered gas into the interstate grid; it is not an indication that the Mulhall line performs a transportation function. As to TAG's assertion that the eastern end of the Mulhall line will also connect with Southern Star's system, Southern Star states that the existing interconnect at the eastern end of the Mulhall line will be capped so that no interstate gas will enter the line.

31. TAG also asserts that the pressure in the line will be at least equal to its current pressure and there will be new compression at both the eastern and western ends of the line all of which, it contends, indicates that the line will continue to perform a transportation function. As noted above, the Mulhall line will continue to operate at

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<sup>10</sup>See, e.g., *Columbia Gas Transmission Corp.*, 106 FERC ¶ 61,297 at P 26 (2004).

between 100 and 200 psig after its transfer to Keystone. The Commission has found many times that such relatively low pressures are consistent with a gathering function.<sup>11</sup>

32. The new compression at the western end of the line will not be used to increase compression on the Mulhall line but to increase the even lower pressure from the field lines to allow entry into the Mulhall line. Such field compression is often required in gathering systems and is consistent with a gathering function. The planned refrigerated gas processing plant and compression planned at the western interconnection with Southern Star's system are typical of facilities found where gathering facilities interconnect with interstate pipelines and support the finding that the Mulhall line will perform a gathering function upon their transfer to Keystone.

33. TAG also asserts that the Commission should not approve the proposed abandonment because it does not provide continuity of service and therefore violates a fundamental consideration of section 7(b) abandonment. We disagree. Currently Southern Star, or a combination of Southern Star and ONG, the local distribution company, provides firm transportation service to 29 domestic customers. Additionally, Southern Star provides interruptible service to Yale. Southern Star and ONG have agreed to transfer to Keystone the facilities necessary to continue service to existing customers.

34. In cases where a pipeline subject to the Commission's jurisdiction seeks to transfer gathering facilities to a nonjurisdictional entity, the Commission has held that it will presume that there are no continuity of service issues present in a proceeding if there are no protests by shippers with contracts for firm transportation service on the facilities that the interstate pipeline seeks to abandon.<sup>12</sup> Since TAG did not contract with Southern Star for transportation services, it is outside the scope of "continuity and stability of service" contractual interests that this Commission is obligated to protect.

35. Once the Commission concludes that facilities are exempt under section 1(b) as gathering facilities, the operator of the facilities is not "a natural gas company" subject to the NGA and the facilities are no longer regulated by the Commission. In 1989 the Supreme Court observed that Congress "carefully divided up regulatory power over the natural gas industry" so as to "expressly reserve to the states the power to regulate . . . gathering . . . ." <sup>13</sup> The Court held that "to find preemption of [a state's] regulation merely

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<sup>11</sup>*Id.* at P 33.

<sup>12</sup> See, e.g., *Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,118 at P 9 (2003); *Colorado Interstate Gas Co.*, 101 FERC ¶ 61,377 at P 13 (2002).

<sup>13</sup> *Northwest Central Pipeline v. State Corp. Comm'n*, 489 U.S. 493 at 509-514 (1989).

because purchasers' costs and hence rates might be affected would be largely to nullify that part of NGA section 1(b) that leaves to the States control over production."<sup>14</sup>

36. Additionally, there is no obligation to defer the granting of abandonment until producers and shippers have agreed to acceptable arrangements for movement of production gas to the interstate market. The Commission is proscribed in its abilities to impose such contracts, as TAG requests, since the courts have held that once the Commission has concluded that facilities to be transferred are exempt under NGA section 1(b) as gathering facilities, the Commission no longer has authority over the facilities.<sup>15</sup> We note, however, that Oklahoma law provides that the OCC prescribes open access rates and conditions.

37. TAG also asserts that the application does not demonstrate that the abandonment's benefits outweigh its costs. We disagree. Southern Star states that the proposed abandonment will permit it to divest itself of a line segment, originally constructed to support its former merchant function and to provide transportation services, that has most recently served to gather gas from local producers and deliver it to domestic customers. Southern Star asserts that the abandonment will enable it to streamline its transmission operations by eliminating operating and maintenance costs of facilities that are no longer a vital part of its mainline system while continuing to receive gas supplies that will be transported by Keystone through these facilities. Elimination of costs from continued operation of the Mulhall line is a factor which supports a finding that the abandonment proposal is in the public interest. Keystone states that the addition of the Mulhall line will improve its efficiency as a gatherer and that the improvement of the gathering infrastructure has the potential for revitalizing the production capabilities in this region.

38. TAG states that it would not have filed a protest had it been able to reach a timely agreement with Keystone that would have allowed it to ship gas on the Mulhall Line under reasonable terms and conditions. However, Keystone has a current outstanding offer to TAG for transportation and should TAG reject Keystone's offer, the Oklahoma State Statutes specifically provide the OCC with the authority to mandate open access transportation at rates determined to be fair, just and reasonable, and not unduly discriminatory. Accordingly, we find that Southern Star's proposal to abandon the Mulhall line and related services is permitted by the public convenience and necessity.

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<sup>14</sup> *Id.* at 514.

<sup>15</sup> *See, e.g., Columbia Gas Transmission Corp.*, 106 FERC ¶ 61,297 at P 42 (2004).

39. For all of these reasons, we will deny TAG's protest.

**Environmental Considerations**

40. This order authorizes Southern Star to abandon facilities and services. Therefore, the action is categorically excluded under 18 C.F.R. § 380.4(a)(31).

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

The Commission orders:

(A) Permission for and approval of the abandonment by Southern Star of the subject facilities and services as described above and in the application is granted.

(B) Southern Star shall notify the Commission within ten (10) days of the date of abandonment of the facilities.

(C) Upon acquisition by Keystone, the Mulhall line facilities will be gathering facilities exempt from the Commission's jurisdiction pursuant to NGA section 1(b).

(D) TAG's protest is denied.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.