

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Bluestem Pipeline, L.C.C.

Docket No. CP06-52-000

DECLARATORY ORDER

(Issued June 22, 2006)

1. On January 19, 2006, Bluestem Pipeline, L.L.C. (Bluestem) filed a petition for a declaratory order, requesting that the Commission find that upon its acquisition of certain facilities from Southern Star Central Gas Pipeline, Inc. (Southern Star), Bluestem's ownership and use of the subject facilities will be exempt from Commission jurisdiction under section 1(b) of the Natural Gas Act (NGA) because the facilities will be used to gather natural gas. For the reasons discussed below, the Commission grants Bluestem's petition and makes the requested finding.

**Background**

2. Bluestem is a limited liability company organized under the laws of the State of Delaware and authorized to do business in Kansas and Oklahoma. Bluestem is a wholly-owned subsidiary of Quest Cherokee, LLC (Quest Cherokee), a producer of coalbed methane gas in the Cherokee Basin area in southeast Kansas. Bluestem states that it intends to construct and operate gathering systems in Allen County, Kansas, that would connect with the acquired facilities currently owned by Southern Star, an interstate pipeline subject to the Commission's jurisdiction. The newly constructed and acquired facilities would comprise Bluestem's gathering system.

3. Bluestem explains that Quest Cherokee owns a large block of oil and gas leases, south of the subject facilities, on which it has drilled or acquired 13 coalbed methane gas wells. Bluestem indicates that the gas from these wells is currently shut in due to a lack of gathering facilities which are necessary to collect the gas and transport it to pipelines that can move the gas to markets. Bluestem notes that that Quest Cherokee has other wells under lease in the area of the subject facilities that have not been developed yet and that Quest Cherokee intends to acquire and develop additional oil and gas leases north of its current leasehold in order to develop other coalbed methane wells. Bluestem states that it would gather gas from Quest Cherokee's active wells and from those that come on line at a later date.

4. According to Bluestem, in addition to the wells on Quest Cherokee's current leasehold and on the leaseholds it hopes to acquire, there are wells operated by other producers from which coalbed methane gas could be obtained; however, most of this gas is stranded because of a lack of gathering capacity. Bluestem indicates that the limited amount of the coalbed methane gas currently produced from other producers' wells in the area is being delivered into Southern Star's Petrolia-Ft. Scott Pipeline and ultimately transported to downstream markets. Bluestem asserts that it will offer these producers an alternative market for their gas through the subject facilities during periods when the markets served by the Petrolia-Ft. Scott Pipeline cannot consume all of the gas that could be produced and available for delivery.

5. The facilities Bluestem will acquire include: (1) Line DI, a 12-inch diameter, 2.0873-mile long pipeline connected on its western end to Southern Star's 30-inch diameter Grabham-Welda Pipeline; (2) Line YC, an 8-inch diameter, 10.173-mile segment of Southern Star's Petrolia-Ft. Scott Pipeline; and (3) Line YBA, a 2-inch diameter, 0.4839-mile long pipeline. Line DI is located just west of the Petrolia-Ft. Scott Pipeline's Line YC. Bluestem proposes to connect Line DI to Line YC to form a contiguous pipeline. Line YBA will be connected to Line YC to form a short branch off of Line YC. The current flow of gas on Lines DI and Line YC is west to east, but Bluestem proposes to flow gas on its pipeline from east to west to the interconnection with Southern Star's Grabham-Welda Pipeline. Bluestem has an interconnection agreement with Southern Star. Bluestem indicates that the pipeline would have a maximum allowable pressure of 200 psig, but the working pressure would be between 100 and 200 psig. Bluestem also intends to install 900 horsepower of compression at or near the western end of its pipeline in order to facilitate delivery of gas into Southern Star's 30-inch diameter, higher pressure Grabham-Welda Pipeline.

6. Bluestem states that the operation of Lines DI, YC and YBA by Southern Star has provided little operational or commercial benefits to Southern Star's system. In the past Southern Star has served customers off of these pipeline segments at 12 taps. However, Bluestem explains that eight of those taps were converted to propane service at Southern Star's expense, two were relocated to a parallel line on which the customers had taprights, and the customers taking service from the two remaining taps have consented to service by Bluestem instead of Southern Star. Thus, according to Bluestem, there are no continuity of service issues related to this acquisition. Southern Star intends to abandon the subject facilities pursuant to its automatic authority under its Part 157, subpart F, blanket certificate.<sup>1</sup>

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<sup>1</sup> See *Cities Service Company*, 20 FERC ¶ 62,592 (1982) (the company's predecessor in interest was issued a blanket certificate pursuant to Part 157, subpart F).

7. Bluestem contends that when all of the acquired segments are connected and operated as proposed by Bluestem, they will constitute gathering facilities under the Commission's *Farmland* test.<sup>2</sup> Specifically, Bluestem asserts that the 12.7442 miles length of the pipeline, once the segments are connected, and the diameters of the pipeline, approximately 80 percent of which are 8 inches, are consistent with other facilities found to perform a gathering function. Bluestem cites various cases purporting to demonstrate that pipelines substantially longer and larger in diameter than the subject facilities have been functionalized as gathering.

8. Bluestem maintains that the central point-in-the-field prong of the *Farmland* test may not apply here, but to the extent it does, Bluestem urges the Commission to focus on the fact that the pipeline is located within an area of producing and soon-to-be developed coalbed methane gas wells, which are located along the entire length of the pipeline. Thus, according to Bluestem, this segment of its gathering system will form a backbone or spine to which other gathering lines will be attached. Bluestem posits that the same characteristics lead to the conclusion that the pipeline will function as a gathering spine when the geographic configuration and location of wells aspects of the *Farmland* test are considered. In this regard, Bluestem points out that in *Equitrans, L.P.*, the Commission found that a non-reticulated line ranging from 16 to 20 inches in diameter was nonetheless classified as gathering because the facilities were located among other gathering facilities.<sup>3</sup> Further, Bluestem states that in *Williams Natural Gas Co.*, the Commission found that the absence of wells directly connected to a pipeline would not necessarily prohibit a gathering determination where the facilities were located in a production area and operated along with existing gathering sub-systems.<sup>4</sup> Bluestem also notes that the subject facilities will be located wholly within Kansas.

9. With regard to the location of compressors and processing plants, another consideration under the *Farmland* test, Bluestem explains that it will install compression at the westernmost end of the system to enable the gathered gas to enter Southern Star's Grabham-Welda Pipeline which operates at significantly higher pressures. Bluestem states that it will not process the gas other than to dehydrate it when necessary. Thus, Bluestem concludes that the location of compression is consistent with a gathering function. Further, with respect to the operating pressure aspect of the *Farmland* test, Bluestem asserts that the Commission has classified as gathering pipelines operating with pressures higher than the 100 to 200 psig operating pressure of the subject facilities.

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<sup>2</sup>The *Farmland* test was initially articulated in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983) (*Farmland*), and modified in *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990).

<sup>3</sup>111 FERC ¶ 61,091 (2005).

<sup>4</sup>72 FERC ¶ 61,101 (1995).

10. As to the purpose, location and operation of the facilities, Bluestem maintains that the subject pipeline will perform a gathering function under the *Farmland* test because it will operate as an integrated part of Bluestem's overall gathering system, which it will construct in production fields along the pipeline. Bluestem contends that it will be exclusively in the gathering and related businesses. Bluestem points out that initially it will gather gas that is shut-in due to a lack of gathering capacity. Further, Bluestem notes that its gathering system will operate as an extension of existing gathering systems that currently deliver gas into Southern Star's Petrolia-Ft. Scott Pipeline for transportation in an easterly direction by delivering gas gathered by those systems to Southern Star's Grabham Welda Pipeline. As explained, Bluestem's gathering system will enable existing producers to access alternative markets that cannot be reached by Southern Star's Petrolia-Ft. Scott Pipeline. For these reasons, Bluestem asserts that a finding by the Commission that the facilities, once acquired and operated by Bluestem, are nonjurisdictional gathering facilities, will be consistent with the NGA and the Natural Gas Policy Act of 1978.

### **Interventions**

11. Notice of Bluestem's petition for a declaratory order was published in the *Federal Register* on February 28, 2006 (71 *Fed. Reg.* 11597). No motions to intervene, notices of intervention or protests were filed in this proceeding.

### **Discussion**

12. Since the facilities that Bluestem intends to acquire are currently owned and operated by Southern Star, an interstate pipeline, and are used to transport gas in interstate commerce, the facilities are subject to the Commission's jurisdiction under NGA. Therefore, it is within the Commission's jurisdiction to determine whether the subject facilities, if they are owned and operated by Bluestem in the manner described herein, will cease to perform a transmission function and, instead, perform a gathering function.

13. Section 1(b) of the NGA governs the "transportation of natural gas in interstate commerce."<sup>5</sup> In this section, Congress "not only prescribed the intended reach of the Commission's power, but also specified the areas into which this power was not to extend."<sup>6</sup> This section expressly exempts from the Commission's jurisdiction the

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<sup>5</sup> See 15 U.S.C. § 717(b) (2006).

<sup>6</sup> See, e.g., *Northwest Central Pipeline v. State*, 489 U.S. 493 (1989).

production or gathering of natural gas. The courts have strictly construed exemptions to the grant of jurisdiction in this section and have stated that the terms “production” and “gathering” are to be narrowly confined to the physical act of drawing gas from the earth and preparing for the first stages of distribution.<sup>7</sup>

14. As Bluestem points out, over the years, the Commission has developed a number of legal tests to determine which facilities are nonjurisdictional gathering facilities and which facilities are jurisdictional transmission facilities.<sup>8</sup> The Commission presently relies on its modified primary function test, commonly referred to as the *Farmland* 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 pipelines(s).<sup>9</sup>

15. In addition, the Commission also considers the purpose, location and operation of the facilities, the general business activities of the buyer or operator, and whether the jurisdictional determination is consistent with the NGA. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.<sup>10</sup> Additionally, the Commission weighs any and all other relevant facts and circumstances of a particular case, including non-physical criteria.<sup>11</sup>

16. The Commission agrees with Bluestem’s conclusions regarding the function of the subject facilities. The lengths of the three pipeline segments that Bluestem will acquire, 10.173, 0.4839 and 2.0873 miles, as well as the total length of the segments when viewed

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<sup>7</sup> See, e.g., *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board*, 474 U.S. 409, at 418 (1986) (quoting *Northern Natural Gas Co. v. State Corp. Comm’n of Kansas*, 372 U.S. 84 (1963) ).

<sup>8</sup> See *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990) and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

<sup>9</sup> The Commission has further modified the primary function test as it applies to facilities located offshore. These modifications are immaterial here, since all the facilities at issue are located in Kansas.

<sup>10</sup> See, e.g., *TOMCAT*, 59 FERC ¶ 61,340 (1992).

<sup>11</sup> *Id.*

as one pipeline, 12.7442 miles, are consistent with a finding that the pipeline will perform a gathering function. In addition, the small diameters of the segments, 2, 8 and 12 inches, are comparable to the diameters of other gathering pipelines.

17. An analysis of the geographical configuration of the subject facilities, when the segments are connected, and the location of the resulting contiguous pipeline in a production area where gas from existing wells is shut-in due to the lack of gathering facilities or capacity, leads to the conclusion that the subject facilities will function as the spine or backbone of a gathering system to be constructed and operated by Bluestem. Further, as explained, Bluestem intends to pick up gas from other gatherers in the area in order to deliver gas to a pipeline on Southern Star's interstate system that can transport that gas to alternative markets. Thus, in these instances, Bluestem's spine will function as an extension of existing gathering facilities.<sup>12</sup> In this regard, the refunctionalization of the facilities as described is consistent with the Commission's policies to promote access to additional gas supplies to meet consumers' energy needs.

18. Further, the subject pipeline will operate at pressures between 100 and 200 psig, which is a relatively low pressure for natural gas pipelines and consistent with the pressures of other gathering systems. The only compression on the system will be at its western end where Bluestem will install 900 horsepower of compression. This compression is necessary to increase the pressure of the gathered gas to the point where it can enter Southern Star's significantly higher pressure Grabham-Welder Pipeline. In *Equitrans, L.P.*,<sup>13</sup> we explained that compression for this purpose is appropriately identified with the gathering function. In addition, there are no continuity of services issues associated with the abandonment of these facilities by an interstate pipeline because all of the tap customers have found alternatives for their energy needs, have agreed to relocate their taps to another pipeline, or have agreed to be served by Bluestem. We note that there were no interventions, protests or comments filed in this proceeding opposing Bluestem's proposed acquisition of the facilities or a change in their jurisdictional status, which further indicates that Bluestem's proposal is not inconsistent with the public interest.

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<sup>12</sup> The Commission has previously stated that the central point-in-the-field prong of the *Farmland* test does not apply to backbone-type gathering facilities. See, e.g., *Citrus Energy Services, Inc.*, 75 FERC ¶ 61,289 (1996).

<sup>13</sup> 109 FERC ¶61,209 at P 97 (2004), *order on reh'g and clarifying order*, 111 FERC ¶ 61,091 at P 29 (2005).

**Conclusion**

19. For all of the above stated reasons, the Commission finds that the subject facilities, once they are acquired by Bluestem and operated in the manner described herein, will perform a gathering function and, therefore, the facilities and their operation by Bluestem will be exempt from the Commission's jurisdiction under section 1(b) of the NGA.

**The Commission orders:**

Bluestem's petition for a declaratory order is granted.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.