

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Southern Star Central Gas Pipeline, Inc.

Docket No. CP05-371-001

ORDER DENYING REHEARING

(Issued September 25, 2006)

1. On April 17, 2006, the Commission issued an order in this proceeding approving Southern Star Central Gas Pipeline, Inc.'s (Southern Star) request to abandon by sale to Keystone Gas Corporation (Keystone), an unaffiliated gatherer of natural gas, certain natural gas facilities (the Mulhall Line) located in Oklahoma and finding that, upon abandonment, the Mulhall Line will be a non-jurisdictional gathering facility.¹ The April 17 Order also denied the protest to Southern Star's proposal filed by Tag Petroleum, Inc. (TAG), a gathering company whose facilities are connected to the Mulhall Line. On May 11, 2006, TAG filed a request for rehearing of the April 17 Order. For the reasons discussed below, we will deny TAG's request for rehearing.

I. Background

2. Southern Star is a Delaware corporation and jurisdictional pipeline that offers open access transportation services pursuant to its Part 284, Subpart G blanket certificate and section 311 of the Natural Gas Policy Act (NGPA) in Arkansas, Colorado, Kansas, Kentucky, Missouri, Nebraska, and Oklahoma.

3. Keystone, a corporation organized and existing under the laws of Oklahoma, is a non-jurisdictional natural gas gathering company that currently owns and operates gathering systems in five counties in central and northeast Oklahoma.

¹ *Southern Star Central Gas Pipeline, Inc.*, 115 FERC ¶ 61,057 (2006) (*Southern Star*).

4. The Mulhall Line is a 46.4-mile supply lateral line located in Logan, Payne, and Creek Counties in Oklahoma extending between two mainline segments of Southern Star's pipeline system. Keystone is purchasing the Mulhall Line to integrate its fourteen subsystems of gathering laterals, all within the state of Oklahoma, into one gathering system to allow for more efficient gas flow to the interstate market. The subsystems span five counties in several oil and gas fields in the central and northeast sections of the state. 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 and oil wells producing casinghead 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.

5. Keystone plans to add a refrigerated natural gas processing unit on the west end of the Mulhall Line near the interconnection with Southern Star's 20-inch Line V and to add compression at two locations, one at each end of the line, to 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.

6. There are twenty-nine domestic customers attached to the Mulhall Line 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, all of whom have agreed to use the service provided by Keystone, or in the case of the City of Yale, Oklahoma, Keystone and ONG.

7. TAG owns a gathering system which connects to the Mulhall Line at two locations in Payne County, Oklahoma. TAG does not have a transportation contract with Southern Star but sells its gas to third parties for delivery on the Southern Star pipeline system through arrangements with ONEOK Energy Services, a Southern Star shipper. TAG filed its protest to Southern Star's proposed abandonment because, TAG states, it was unable to reach an agreement with Keystone to transport gas on the Mulhall Line at what TAG considers to be reasonable rates and terms and conditions.

II. The April 17 Order

8. The April 17 Order approved Southern Star's proposal to abandon by sale to Keystone the Mulhall Line and determined that application of the primary function test criteria to the Mulhall Line supports a finding that its primary function will be gathering when integrated with Keystone's existing and proposed facilities. Specifically, the order found that the Mulhall Line's 46.4-mile length, 12- and 16-inch diameter, 100 to 200 psig

operating pressures, and backbone or spine configuration, along with Keystone's planned integration with its gathering facilities and 1,200 horsepower compressor station and refrigerated gas processing facility to be located at the delivery end of line, were consistent with a gathering function. The order found that, although there are no wells directly connected to the spine itself, numerous wells are attached indirectly through the various subsystems that are connected to the spine and that, once integrated with Keystone's subsystems, the Mulhall Line will collect gas from approximately 6,000 wells.

9. The April 17 Order also noted that Keystone is exclusively in the natural gas gathering and related businesses and that, 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's interstate pipeline. Accordingly, the April 17 Order found that, 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).

10. Finally, the April 17 Order denied TAG's protest which raised essentially the same arguments TAG raises on rehearing.

III. TAG's Request for Rehearing

11. TAG argues (1) that Southern Star has demonstrated no benefits of the abandonment of the Mulhall Line that would outweigh its adverse impacts to TAG and, therefore, the Commission must not approve the abandonment and (2) that the Mulhall Line will not serve a gathering function upon its proposed transfer to Keystone since, TAG contends, all gas will already be processed to pipeline quality before it enters the Mulhall Line, the line will continue to transport gas directly to customers, no wells are connected directly to the line, and the goals of the NGA and NGPA would be disserved by the requested disclaimer of jurisdiction.

IV. Discussion

A. Abandonment

12. TAG maintains that Commission precedent requires the Commission to deny approval of a proposed abandonment unless the benefits of the abandonment outweigh its

detriments.² Further, TAG contends, the Commission must consider the detrimental effects of the abandonment on TAG even though it is not a firm shipper on Southern Star's system.³ TAG asserts that abandonment of the Mulhall Line would impact it adversely since the volumes of gas now transported on the Mulhall line from TAG's gathering system would not be guaranteed access to the interstate market and there is no assurance that Keystone would provide service to TAG or that the service would be provided at reasonable rates and terms and conditions. TAG contends there are no countervailing benefits to Southern Star and Keystone that would outweigh the detriments to TAG and, therefore, the Commission should not have approved the abandonment.

13. We disagree that Commission precedent requires consideration of effects on TAG in determining whether to grant abandonment of the Mulhall Line. The Commission has repeatedly stated in abandonment of facilities cases that it will construe the absence of protests by the pipeline's existing shippers to be evidence that they are satisfied with their ability to continue to receive service.⁴ Accordingly, the Commission generally will not deny abandonment authority based on protests to the proposal by parties, such as TAG, that are not existing shippers on the facilities to be abandoned. TAG, the only party to file a protest in this proceeding, has never had a contract for firm or interruptible service on the Mulhall Line. Instead, TAG's gas enters the interstate market through arrangements with ONEOK Energy Services, a shipper on Southern Star. TAG itself states that it could have become a shipper on Southern Star but it never chose to do so.⁵ Under these circumstances, the Commission is not required to take into account the detriments to TAG that it claims would result upon abandonment of the Mulhall Line.

² Citing *Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,118 at P 14 (*Transco I*) (vacating previous decision in the proceeding at 102 FERC ¶ 61,074 (2003)) and *Transcontinental Gas Pipe Line Corp.*, 110 FERC ¶ 61,337 at P 70 (2005) (*Transco II*).

³ Citing *Transco II* at P 17.

⁴ See, e.g., *Gulf South Pipeline Co.*, 106 FERC ¶ 61,323 at P 18 (2004); *Colorado Interstate Gas Co.*, 101 FERC ¶ 61,377 at P 13 (2002); *Transwestern Pipeline Co.*, 85 FERC ¶ 61,416 (1998); *Williams Natural Gas Co.*, 67 FERC ¶ 61,252 at 61,828 (1994).

⁵ See Protest at p. 3.

14. TAG asserts that, in *Transco II*, the Commission took into account the detrimental effect on all entities, even those that were not firm shippers, to deny Transco's request for abandonment authority for its South Texas Pipeline Facilities. TAG is correct in that the Commission considered the effects of the abandonment on Transco's interruptible shippers. However, as the Commission noted, although the numerous shippers who protested the proposal were interruptible rather than firm shippers, they had not had the option of becoming firm shippers under Transco's IT Feeder System and the costs of the facilities at issue had been largely recovered through the interruptible rates paid by these shippers.⁶ The Commission did not take into account detrimental effects on any party that was not a customer on the line to be abandoned. The Commission specifically stated that the proposal lacked evidence of benefits sufficient to outweigh potential adverse impacts of forcing customers currently receiving service pursuant to NGA section 7 to discontinue service from Transco and accept service from an intrastate pipeline.⁷ Since TAG, the only party to file a protest in this proceeding has never had a contract for firm or interruptible service on the Mulhall Line, the Commission's decision in *Transco II* does not support TAG's argument.

15. TAG also cites *Tarpon Transmission Company (Tarpon)* to argue that, when a facility proposed to be abandoned provides the only access to the interstate grid as does the Mulhall Line for TAG, the Commission will protect not only existing shippers but other affected entities such as TAG.⁸ TAG specifically refers to the Commission's concerns in *Tarpon* that since *Tarpon's* facilities were the only interconnect with Trunkline Gas Company's (Trunkline) interstate offshore facilities, "[d]isclaiming jurisdiction over *Tarpon's* system ... could provide *Tarpon* with monopoly power which could impede access by offshore producers and shippers to Trunkline's system."⁹

16. The *Tarpon* case is inapposite. In *Tarpon*, the Commission was not addressing a request to abandon facilities as stated by TAG but *Tarpon's* request that the Commission find that its offshore pipeline performed a non-jurisdictional gathering function. The Commission concluded that the facilities performed primarily a transportation function and therefore were subject to the Commission's jurisdiction. In so doing, the

⁶ See *Transco II* at P 33.

⁷ See *Transco II* at P 2 and P 70.

⁸ 60 FERC ¶ 61,041 at 61,150, *reh'g denied*, 61 FERC ¶ 61,249 (1992), *order on reconsideration*, 78 FERC ¶ 61,278 (1997).

⁹ *Tarpon*, 60 FERC at 61,150.

Commission noted that Tarpon's system was a link between Trunkline's upstream and downstream segments. The Commission's concern was that a non-jurisdictional entity bifurcating Trunkline's jurisdictional pipeline in that manner could impede access to Trunkline's downstream facilities by offshore producers and shippers connected to Trunkline's upstream facilities, their first link to the interstate system.

17. More apt to the circumstances in this proceeding, the Commission subsequently reconsidered its position in *Tarpon* after Tarpon and Trunkline agreed that Tarpon, not Trunkline, owned the upstream facilities thus eliminating the Commission's concern with non-jurisdictional facilities being located between jurisdictional facilities. The Commission therefore found that Tarpon's facilities performed primarily a gathering function since, in the previous orders in the *Tarpon* proceeding, "the main bar to finding that Tarpon's facilities were gathering was that the facilities appeared to be situated between upstream and downstream interstate transmission facilities....and therefore could not reasonably be found to perform a gathering function."¹⁰ With no intervening jurisdictional facilities between Tarpon and the upstream gathering facilities, there was no longer any bar to finding that Tarpon's facilities performed a gathering function. Similarly, there are no jurisdictional facilities upstream of Keystone's gathering system that would preclude a finding that the facilities will perform a gathering function.

18. TAG cites the Commission's statement in *Arkla Gathering Services Co. (Arkla)* that "[c]ontinuity and stability of service are the primary considerations in assessing the public convenience and necessity of a permanent cessation of service under section 7(b) of the NGA"¹¹ in its argument that the Commission must take into account continuation of service to TAG in considering whether to grant abandonment of the Mulhall Line. However, in *Arkla*, the Commission was considering continuity of service to shippers with contracts for service on the facilities to be abandoned, not the customers of those shippers such as TAG.¹² Furthermore, the Commission's requirement in that case that the non-jurisdictional company acquiring the abandoned facilities must provide contract protection to the abandoning pipeline's existing customers during a two-year transition period to ensure continuity of service was rejected in *Conoco v. FERC*.¹³ In so doing, the court observed that the Commission had not explained why the states would be unable to

¹⁰ *Tarpon*, 78 FERC at 62,165.

¹¹ *Arkla*, 69 FERC ¶ 61,280 at 62,083 (1994).

¹² *Id.* at 62,082-083.

¹³ 90 F.3d 536 (D.C. Cir. 1996).

protect the expectations of the existing customers.¹⁴ Putting aside the fact that TAG is not an existing customer of Southern Star, the Commission, as discussed below, has every expectation that under the circumstances in this case the Oklahoma Corporation Commission (OCC) is able to protect TAG, if necessary, by requiring Keystone to provide service to TAG at reasonable rates and terms and conditions of service.

19. Citing *Bowman v. Columbia Gas Transmission Corporation*, (*Bowman*),¹⁵ TAG argues that the Commission has the obligation under NGA section 7(b) to ensure continuity of service and to analyze all factors relating to Southern Star's proposed abandonment including the adverse impacts the abandonment would have on TAG.

20. TAG's attempt to analogize its situation to that in *Bowman* is unavailing. In *Bowman*, there was no issue with respect to transporting gathered gas to the interstate grid but of delivering interstate gas to local consumers. The Commission granted abandonment of a 4.7-mile pipeline operated by Columbia Gas Transmission Corporation (Columbia) even though Columbia had been delivering gas to fourteen farm taps along the line. The Commission balanced the needs of Columbia and the fourteen consumers to determine whether abandonment was in the public convenience and necessity. Because Columbia could not continue to operate the line for safety reasons and replacement of the line was not economically feasible, the Commission approved the abandonment but required Columbia to pay for the conversion of all consumers on the line to propane service since, without the line, there was no alternative available to those consumers for the receipt of natural gas.

21. Unlike the circumstances in *Bowman*, there is no issue in this proceeding with respect to the continuity of service to consumers along the Mulhall Line since Keystone and the consumers have agreed that Keystone will provide delivery service to them. Nor is there an issue with respect to continuity of service to TAG since Keystone states that it is committed to providing TAG with access to the marketplace on terms and conditions consistent with Oklahoma law and commits that it will not argue before the OCC that TAG has no right to an order by the OCC requiring Keystone to provide transportation service to TAG.¹⁶ Keystone further states that it will provide transportation service to

¹⁴ *Id.* at 553.

¹⁵ 31 FERC ¶ 61,185, *reh'g denied*, 32 FERC ¶ 61,075 (1985), *appeal denied*, *Office of Consumers' Counsel v. FERC*, 808 F.2d 125 (D.C. Cir. 1987).

¹⁶ See January 10, 2006 Affidavit by Richard A. Sellers, Keystone's president *citing* OKLA STAT. tit. 52, § 24.5 (2005).

TAG on an interim basis with rates subject to ultimate adjustment by the OCC if the parties cannot negotiate an acceptable agreement pending consideration by the OCC.¹⁷

22. TAG argues that Keystone's statements neither guarantee that the OCC will require transportation nor preclude Keystone from proposing arrangements that do not resemble in any form the current transportation provided on the Mulhall Line or transportation the Commission would deem reasonable. TAG points to the Oklahoma gas gathering statute which states that the OCC may deny a request for transportation for "such other good cause as the [OCC] may determine in a particular case."¹⁸ TAG further argues that the Commission does not know and has no basis to predict the burdens that might be imposed on TAG by the rates and terms and conditions of an OCC-required service to TAG.

23. TAG's prediction of monopolistic or discriminatory behavior on Keystone's part is speculative. While TAG contends that such behavior is likely, it has not convinced us that it is unavoidable particularly in light of Keystone's statements that it will provide service and will accede to any OCC decision in the matter.

24. We believe that TAG's concerns with respect to the OCC are unfounded. Oklahoma law provides that "[n]o gatherer shall refuse to provide open access natural gas gathering, including the redelivery of such natural gas to existing redelivery points, for a fee for any person seeking such gathering for natural gas which is connected to the gatherer's pipeline" subject to certain exceptions which depend upon whether the natural gas is already connected to the gatherer's pipeline as is TAG's.¹⁹ It provides further that gatherers such as Keystone are prohibited from imposing "unfair, unjust, unreasonable, or unduly discriminatory" fees and terms of service.²⁰ It also provides for interim service pending resolution of any complaint that a gatherer has denied access to its facilities.

¹⁷ *Id.*

¹⁸ OKLA. STAT. tit. 52, § 24.5 (2005).

¹⁹ *Id.*

²⁰ *Id.*

Further, the OCC does not set rates arbitrarily but takes evidence from the parties' expert witnesses to set a reasonable fee.²¹

25. TAG also argues that granting abandonment would contravene the goal of Order No. 636 "to ensure that all shippers have meaningful access to the pipeline transportation grid so that willing buyers and sellers can meet in a competitive, national market to transact the most efficient deals possible."²² We disagree. By "meaningful access to the pipeline grid," the Commission was not guaranteeing direct interconnection to the pipeline grid for all gas sellers as TAG implies, but ensuring that interstate pipelines provide all transportation services on a basis that is equal in quality for all gas supplies whether purchased from the pipeline or from any other gas supplier.

26. TAG argues that Southern Star's claim that Keystone's proposed use of the Mulhall Line will result in additional natural gas supplies to the interstate market is the type of speculative assertion of a benefit the Commission rejected in *Transco II*²³ and, therefore, the April 17 Order's acceptance of this claim is not reasoned decision-making. We disagree that this assertion is speculative. Southern Star states that, prior to natural gas deregulation, many of the fourteen subsystems in Keystone's gathering system were connected to the Mulhall Line but subsequently ceased delivering gas into the interstate market. By reintegrating these subsystems with the Mulhall Line, additional supplies of natural gas will again be able to be delivered to the interstate market.²⁴ Keystone anticipates that the initial incremental volumes gathered by the Mulhall Line will be approximately 3,600 Mcf per day.²⁵ We believe that this increase in the natural gas supply to the interstate market is in the public interest and should be taken into account when determining whether to grant abandonment of the Mulhall Line.

²¹ See, e.g., *Prairie Exploration v. Tri-Star Energy*, 84 P.3d 788 at P 15 (Okla. Ct. App. 2002) ("[t]he testimony of Prairie's expert witness established the reasonableness of the gathering fee").

²² Order No. 636, FERC Stats. & Regs. Preambles (1991-1996) ¶ 30,939 at 30,393.

²³ Citing *Transco II* at P 65.

²⁴ Southern Star's application at p. 6.

²⁵ See Southern Star's response to staff's July 7, 2006 data request.

27. Another benefit asserted by Southern Star is that abandonment of the Mulhall Line will enable Southern Star to streamline its transmission operations by eliminating a line which is not a vital part of its mainline system and which does not provide sufficient revenue to support its associated operating and maintenance costs. Southern Star also states that Keystone's acquisition of the Mulhall Line will enable it to unify its existing reticulated lateral facilities into a single gathering system by connecting directly with five of Keystone's fourteen gathering systems and linking the remainder indirectly.

28. TAG argues that the Commission must balance any benefits against the detriments to TAG in determining whether abandonment of the Mulhall Line is in the public interest. Even if we agreed with TAG on this point, we would not find that the speculative detriments to TAG discussed above outweigh the benefits to Southern Star, Keystone, and the public interest that granting the abandonment would provide.

29. For all of these reasons, we will deny TAG's rehearing request that the Commission should deny abandonment authority for the Mulhall Line.

B. The Primary Function Test

30. TAG argues that the ruling of the April 17 Order that the Mulhall line will be a gathering facility upon acquisition by Keystone is not factually or legally well founded, is inconsistent with Commission precedent, and does not constitute reasoned decision making. We disagree.

31. In our April 17 Order we applied the modified "primary function test"²⁶ to the facilities at issue and discussed our reasons for holding that, after acquisition by Keystone, the Mulhall line's primary purpose will be to carry natural gas purchased by Keystone to the interstate market through the interconnection with Southern Star at the western or Mulhall end of the line.²⁷ Based on our determination that the primary

²⁶ The Commission relies on its modified "primary function test" which includes consideration of several physical and geographical factors in determining the function of facilities 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). 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..

²⁷ See *Southern Star*, 115 FERC ¶ 61,057 at P 16-21.

purpose of the facilities at issue would be gathering, we found that the facilities will be exempt from Commission jurisdiction under NGA section 1(b).²⁸

32. TAG cites *Rendezvous Gas Services, L.L.C.*²⁹ (*Rendezvous*) as a particularly relevant example of a recent Commission decision finding that a pipeline similar to the Mulhall Line performs a transmission function. Since, according to TAG, both the *Rendezvous* and the Mulhall lines have no significant differentiating characteristics and both transport processed gas to the interstate system, the Commission must find that the Mulhall Line, like that in *Rendezvous*, performs a transmission function.

33. In *Rendezvous* the Commission stated that “the critical overriding factors in our determination of the line’s primary function [as jurisdictional transmission] are the location of the proposed line downstream of the processing plant, the configuration of the proposed line as a single line from the plant to a jurisdictional interstate pipeline, and the absence of any specific plans for the construction of feeder gathering lines to interconnect with the proposed line.”³⁰ In contrast, the Mulhall Line, as discussed below, is upstream of the processing plant. Further, it already has feeder gathering lines located along its length and Keystone has specific plans to connect five of its existing sub-gathering systems to the line. It is not a single line with no attached gathering lines as was the case in *Rendezvous*.

34. The April 17 Order states that the gas on the Mulhall Line will be processed at facilities located at the delivery end of the line and that the location of processing facilities at the delivery end of a system is typical of the gathering function.³¹ TAG argues that the Commission failed to address the fact that the gas will be processed before it enters the Mulhall Line as demonstrated by Keystone’s plans to continue to serve Yale and the 29 local customers directly from the Mulhall Line. TAG points specifically to the statement in *Rendezvous* that “in the absence of countervailing factors, pipeline facilities located downstream of a processing plant may be considered exempt from NGA

²⁸ *Id.* at P 22.

²⁹ See 112 FERC ¶ 61,141, *reh’g denied*, 113 FERC ¶ 61,169 (2005).

³⁰ *Rendezvous*, 113 FERC ¶ 61,169 at P 18.

³¹ *Southern Star* at P 20 and 32.

regulation only when they are incidental extensions of the processing plant or of the behind-the-plant gathering system.”³²

35. In order to clarify any misunderstanding about the processing of gas on the Mulhall Line, Commission staff sent data requests to Southern Star on July 6 and July 26, 2006 seeking specific information with respect to both any processing in the field and the need for additional processing at the delivery end of the Mulhall Line.

36. Southern Star responded to staff’s requests on July 10 and July 31, stating, *inter alia*, that the gas entering the Mulhall Line will have been pre-processed in the field to remove C5+ heavy liquids that inhibit the movement of natural gas through a pipeline. Southern Star states that this pre-processing is a relatively inexpensive process that prepares the gas that is delivered locally to meet the standards required by the local recipients. Southern Star states that this pre-processed gas needs further processing, as well as compression, at the western end of the Mulhall line to bring it up to the standards necessary to enter Southern Star’s interstate pipeline.

37. We do not find it dispositive of the jurisdictional status of the Mulhall Line that the gas entering the line will have been processed in the field since the processing is not sufficient to bring the gas to pipeline quality. The gas must be further processed before it is delivered to Southern Star’s system.

38. TAG states that the Commission gives “short shrift” to the fact that the Mulhall Line would continue to serve end-users directly. It argues further that, by transporting and delivering pipeline quality gas to end-users, the Mulhall Line will serve a transportation function.

39. The Commission has held that the fact that gathering facilities are used to deliver local production to local distribution companies or local customers is an incidental use of gathering facilities and does not alter the overall non-jurisdictional gathering function of the facilities, nor does it constitute the transportation of natural gas in interstate commerce under NGA section 1(b).³³ Thus, Keystone’s delivery of gas to local customers does not negate our finding that the Mulhall Line will perform primarily a

³² *Rendezvous*, 112 FERC ¶ 61,141 at P 15 citing *Amerada Hess Corp.*, 67 FERC ¶ 61,254 at 61,834 (1994).

³³ See *Columbia Gas Transmission Corp.*, 90 FERC ¶ 61,211 at 61,686 (2000); *El Paso Natural Gas Co.*, 72 FERC ¶ 61,220 at 62,010 (1995); and *CNG Transmission Corp.*, 69 FERC ¶ 61,363 at 62,374 (1994).

gathering function. Further, as we discussed above, the gas that the Mulhall Line will deliver to the local customers, although processed to a certain extent that will allow delivery to the local customers, will not be pipeline quality gas but will need further processing prior to delivery into Southern Star's system.

40. TAG states that the April 17 Order does not respond to its argument that the fact that there are no wells directly connected to the Mulhall line supports the conclusion that the line would not be a gathering facility. The April 17 Order states that the Mulhall Line is a backbone or spine facility that traverses a production area and serves as a collector of gas through various lateral connections.³⁴ It also states that "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."³⁵

41. The Commission has found the absence of wells directly connected to a pipeline would not necessarily prohibit a gathering determination where the facilities are located in a production area and operated along existing gathering sub-systems.³⁶ The Mulhall line is located in a production area, is currently connected to gathering facilities, and will be directly connected to five of Keystone's gathering subsystems and indirectly connected to the remaining subsystems after Keystone's acquisition of the line. Therefore, Commission precedent supports the finding in the April 17 Order that the absence of wells directly connected to the Mulhall Line does not bar a finding that the line will perform a gathering function.

42. Citing *Equitrans, L.P* and *Williams Natural Gas Co. (Williams)*, TAG states that, when the Commission has found a line to be gathering even though there were no wells directly connected to it, it has found that the facilities transported unprocessed gas, were upstream of the processing plant, and were similar to nearby gathering facilities.³⁷ TAG contends that the Mulhall Line fails all of these tests. TAG also argues that the April 17 Order did not demonstrate that the Mulhall Line is similar to Keystone's gathering

³⁴ *Southern Star* at P 19.

³⁵ *Id.*

³⁶ See *Bluestem Pipeline, L.L.C.*, 115 FERC ¶ 61,365 at P 8 (2005); *Equitrans, L.P.*, 109 FERC ¶ 61,209 at P 87 (2004); *Williams Natural Gas Co.*, 72 FERC ¶ 61,101 (1995).

³⁷ *Equitrans, L. P.*, 111 FERC ¶ 61,091 at P 14 (2005); *Williams Natural Gas Co.*, 72 FERC ¶ 61,101 at 61,522 (1995).

facilities because such an analysis would confirm that the facilities will perform distinctively different functions. TAG argues that the Keystone subgathering systems will perform a gathering function by completing the aggregation of gas, processing the gas, and delivering pipeline quality gas to the Mulhall Line. In contrast, TAG maintains, the Mulhall Line will continue its transmission function of delivering pipeline ready gas directly to customers and into Southern Star's transportation system.

43. As discussed above, the Mulhall Line will be upstream of a processing plant and all of the gas delivered into the line must be processed in that plant to pipeline quality before it can be delivered into Southern Star's system. TAG argues that the gas it delivers into the Mulhall Line is pipeline quality. However, its gas will be commingled with much larger quantities of gas that are not pipeline quality so that all of the gas must be processed at the delivery end of the Mulhall Line before it enters Southern Star's system. With respect to TAG's assertion that the Mulhall Line will continue to perform a transmission function since it will deliver gas to local customers, as discussed above, such deliveries of local production to local distribution companies or local customers is an incidental use of gathering facilities and does not alter the overall non-jurisdictional gathering function of the facilities and is not transportation of natural gas in interstate commerce.

44. TAG argues that a finding that the Mulhall Line will perform a gathering function is counter to the goals of the NGA and NGPA since the line is its sole access to the interstate market. We have found that the abandonment of the Mulhall Line is in the public interest and that TAG's interests are not among those that need to be protected in making that determination. Having determined that the abandonment is in the public interest and that those interests will be adequately protected by the OCC, we analyzed the Mulhall Line as it will function when integrated into Keystone's gathering system using the primary function test and found that it will perform a gathering function and thus will no longer be within our jurisdiction. When analysis of the physical characteristics of facilities under the primary function test unambiguously demonstrate that their function will be primarily gathering, as we have found with respect to the Mulhall Line, the Commission has no jurisdiction under the NGA to continue to regulate those facilities.

45. Citing *Jupiter Energy Corporation*, TAG argues that the Commission should not even consider the general claim that the Mulhall Line will be integrated into Keystone's gathering facilities to determine its primary function if application of the physical factors

of the primary function test show that the process of aggregation would be complete before the gas reaches the Mulhall Line.³⁸

46. TAG's argument is misplaced. In *Jupiter*, the Commission denied Jupiter's requests that the Commission find that certain of its offshore facilities performed a gathering function and, if the Commission made such a finding, grant abandonment authority for the pipeline. Jupiter stated that upon abandonment its facilities would be integrated with its parent company's offshore gathering system. Unlike the circumstances in this proceeding, Jupiter did not propose that the operation of its system would change after abandonment and integration with the gathering system. The integration of Jupiter's system with its parent's gathering system would not have changed the function of Jupiter's system. Therefore, the Commission analyzed the existing operation of the system to determine its function. In this proceeding, we analyzed the primary function of the system as Keystone proposes to operate it upon its acquisition of the system. Contrary to TAG's argument, the Commission does take into account the future operation of pipeline facilities when determining their primary function.³⁹

47. Finally, TAG repeatedly questions as inadequate the information filed by Southern Star and Keystone in this proceeding. When the Commission receives an application it is examined by our technical staff and rejected if it does not meet our standards. Section 157.8 of the Commission's regulations states that an application may be rejected if it fails to comply with applicable statutory requirements or regulations.⁴⁰ Furthermore, the Commission has the discretion to determine whether any deficiencies in an application can be remedied by requiring the applicant to file additional information.⁴¹ In this case, the Commission issued several data requests to Southern Star to clarify various issues, and we conclude that we have the information necessary to make a determination that the

³⁸ *Jupiter Energy Corp.*, 103 FERC ¶ 61,184 at P 9, *order on reh'g*, 105 FERC ¶ 61,243 (2003), *reh'g denied*, 106 FERC ¶ 61,170 (2004), *remanded*, 407 F.3d 346 (5th Cir. 2005) (*Jupiter*).

³⁹ *See, e.g., El Paso Natural Gas Co.*, 116 FERC ¶ 62,081 (2006); *Southern Natural Gas Co.*, 108 FERC ¶ 62,129 (2004); and *Sid Richardson Energy Services, Ltd.*, 104 FERC ¶ 61,024 (2003).

⁴⁰ *See* 18 C.F.R. § 157.8 (2006).

⁴¹ *See, e.g., Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 524-25 (1978) (agencies have broad discretion over their procedures).

Mulhall Line will perform primarily a gathering function upon its integration into Keystone's system as proposed.⁴²

48. For the reasons discussed above, we will deny TAG's rehearing request.

The Commission orders:

TAG's request for rehearing of the April 16 Order is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁴² See, e.g., *Equitrans, L.P.*, 111 FERC ¶ 61,091 at P 6-7 (2005).