

119 FERC ¶ 61,243
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.

Williston Basin Interstate Pipeline Company

Docket No. CP07-159-000

ORDER DETERMINING JURISDICTIONAL STATUS OF FACILITIES

(Issued June 6, 2007)

1. On April 16, 2007, Williston Basin Interstate Pipeline Company (Williston Basin) filed an application under section 7 of the Natural Gas Act to reclassify natural gas facilities in Montana from transmission to gathering. As discussed below, we will grant Williston Basin's request.

I. Background/Proposal

2. Williston Basin is a natural gas company engaged in the gathering, transportation, and storage of natural gas. Williston Basin operates underground storage reservoirs in Montana and Wyoming.

3. Williston Basin requests authority to reclassify from transmission to gathering approximately six miles of pipeline at the southern end of its 10.5-mile long, 12-inch diameter No. 3 storage line. The portion of the No. 3 storage line proposed for reclassification extends downstream of the tie-in with Storage Well No. 342 to the Little Beaver compressor station in Fallon County, Montana. It has an operating pressure of approximately 50 to 100 psi.

4. Williston Basin states that its No. 3 storage line was originally constructed by Montana-Dakota Utilities Co. (Montana-Dakota) in the 1930's to serve as a gathering line.¹ As part of a general upgrade required to handle higher injection pressures associated with storage in the Baker Storage Field, we authorized Williston Basin in 1985 to convert the No. 3 storage line from gathering to transmission.²

¹ In 1985, we authorized Williston Basin to acquire and operate the interstate pipeline facilities previously owned and operated by Montana-Dakota, as well as to provide the certificated services previously provided by Montana-Dakota. *Williston Basin Interstate Pipeline Co.*, 30 FERC ¶ 61,143 (1985).

² *Williston Basin Interstate Pipeline Co.*, 32 FERC ¶ 62,563 (1985).

5. Now, Williston Basin states that the operation of the Baker Storage Field has changed. Specifically, Williston Basin contends that the southern portion of the No. 3 storage line no longer operates primarily to transport storage gas, since the last storage well tied into that portion of the line was abandoned in September 2006. Williston Basin states that except for an occasional incident of displacement, no storage gas currently moves through the southern portion of the No. 3 storage line. Williston Basin asserts that once authority to reclassify is received, it will sever the southern portion of the No. 3 storage line from the remaining portion of the line and from the inlet to the Little Beaver compressor station. When this occurs, Williston Basin states that the northern portion of the No. 3 storage line will continue to perform a jurisdictional transmission function and that the southern portion of the line, to be renamed the Mud Creek line, will no longer transport storage gas even by displacement.³ Williston Basin states that all production received into the Mud Creek line will move into new or existing gathering lines as part of the gathering services it provides.

II. Interventions

6. Notice of Williston Basin's application was published in the *Federal Register* on April 25, 2007 (72 Fed. Reg. 20,522). No protests, motions to intervene, or notices of intervention were filed.

III. Discussion

7. Under section 1(b) of the Natural Gas Act, our jurisdiction does not extend to facilities used for "the production or gathering of natural gas" or to gathering services.⁴ Over the years, we developed a number of legal tests to determine which facilities are

³ Williston Basin will report the severing of the No. 3 storage line in its Annual Report of Activities under Blanket Certificate.

⁴ The courts have narrowly construed the section 1(b) exemption to "the physical act 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 & Gas Board*, 474 U.S. 409, 418 (1986) (quoting *Northern Natural Gas Co. v. State Corporation Commission of Kansas*, 372 U.S. 84 (1963)). However, while section 1(b) provides a general exemption for gathering, we do have jurisdiction under section 4(a) of the Natural Gas Act over gathering service rates charged by interstate pipelines "in connection with" jurisdictional transportation. Further, if the facilities were certificated, regardless of the current function, the owner and/or operator of the gathering facilities must seek abandonment authority from the Commission under section 7(b) of the Natural Gas Act before the facilities can be transferred to another entity. *See Equitrans, L.P.*, 109 FERC ¶ 61,209 at n. 1 (2004).

non-jurisdictional gathering facilities.⁵ We presently rely on the modified “primary function test,” which includes consideration of several physical and geographical factors, including (1) the length and diameter of the pipeline; (2) the location of the compressors and processing plants; (3) the geographic configuration of the facility; (4) the location of wells along all or part of the facilities; (5) the extension of the facility beyond the central point in the field; and (6) the operating pressure of the pipelines. We do not consider any one factor to be determinative and recognize that not all factors necessarily apply in all situations.⁶ In addition to the factors enumerated above, we also weigh any and all other relevant facts and circumstances of a particular case, including non-physical criteria.⁷

8. Once severed, the Mud Creek line will consist of six miles of 12-inch diameter pipeline. Longer and larger diameter pipelines have been found to be gathering. For example, in *Eastern America Gathering Corp.*, we found a 56-mile long, 12-inch diameter line to be gathering.⁸ In *Duke Energy Field Services, Inc.*, we found a 16.31-mile long, 16-inch diameter pipeline to be gathering.⁹ Thus, Williston Basin’s Mud Creek line is neither longer nor of a larger diameter than other pipelines found to be gathering.

9. The Mud Creek line will move only unprocessed gas. After reclassification authorization has been received, Williston Basin will sever the Mud Creek line from the northern portion of the No. 3 storage line and from the inlet to the Little Beaver compressor station. As a result, compression and dehydration will occur downstream of the Mud Creek line as part of Williston Basin’s gathering services. Thus, the location of compressors and processing plants also indicate a gathering function.

10. The Mud Creek Line is in a prolific gas production region. The line forms a spine-like or backbone configuration with multiple wells, receipt points, and feeding laterals

⁵ See *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990); and *Farmland Industries, Inc.*, 23 FERC ¶ 61,062 (1983).

⁶ See, e.g., *TOMCAT*, 59 FERC ¶ 61,340 at 62,239 (1992).

⁷ *Id.* See also *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990) and *Northern Natural Gas Company*, 116 FERC ¶ 61,238 at P 53 (2006).

⁸ 67 FERC ¶ 61,258 (1994).

⁹ 82 FERC ¶ 61,266 (1998).

that collect gas along the entire length of the line, rather than to a central point where gas is delivered into a single line. This type of configuration is indicative of gathering facilities.¹⁰

11. Finally, the Mud Creek line will operate at a pressure between 50 and 100 psi which is indicative of a gathering function.¹¹

12. Based on the above considerations, we find that upon reclassification the primary function of the Mud Creek line will be gathering. Thus, we will authorize Williston Basin's request to reclassify the subject facilities to gathering.¹²

IV. Environment

13. We find that approval of Williston Basin's request to reclassify the subject facilities to gathering does not constitute a major federal action significantly affecting the quality of the human environment. Williston Basin is not proposing to abandon the facilities at this time. Williston Basin will continue to use the facilities to provide gathering services in connection with its jurisdictional storage and transmission services. Thus, for environmental review purposes, we find that approval of the requested reclassification qualifies as a categorical exclusion under section 380.4(a)(27).

¹⁰ The central point in the field criterion does not always apply to a spine-like or backbone structure. *Arkla Gathering Services Co.*, 67 FERC ¶ 61,257, *order on reh'g*, 69 FERC ¶ 61,280 (1994).

¹¹ *Gulf South Pipeline Company*, 106 FERC ¶ 61,323 (2004).

¹² If Williston Basin desires in the future to transfer any of the subject facilities with the result that any of the gathering services using those facilities would be terminated, Williston Basin will need to make a filing under section 4 and in compliance with Part 154 of the Commission's regulations at least 30 days prior to terminating such services. *Dominion Transmission, Inc.*, 117 FERC ¶ 61,233 (2006); *CNG Transmission Corporation*, 86 FERC ¶ 61,138 (1999), *order on rehearing*, 90 FERC ¶ 61,290 (2000).

The Commission orders:

Williston Basin is authorized to reclassify the facilities described in its application and in the body of this order from transmission to gathering.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.