

11 FERC ¶ 61,267

Seagull Pipeline Corporation, Docket No. CP79-240

Declaratory Order

(Issued June 4, 1980)

Before Commissioners: Charles B. Curtis, Chairman; Georgiana Sheldon and George R. Hall.

On March 16, 1979, Seagull Pipeline Corporation (Seagull) filed in Docket No. CP79-240 a petition for declaratory order pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR §1.7). Seagull requests that the Commission declare: (1) that with respect to the pipeline facility and proposed transportation service more fully described below, Seagull is an "intrastate pipeline" within the meaning of Section 2(16) of the Natural Gas Policy Act of 1978 (NGPA) and that under Section 311(a)(2) of the NGPA Seagull is eligible to provide the transportation service through such facility for an interstate pipeline; or, alternatively, (2) that under the gathering exemption of Section 1(b) of the Natural Gas Act the Commission does not have jurisdiction over Seagull with respect to either the pipeline facility or the service rendered therewith. For the reasons set forth below, the Commission finds that with respect to the referenced pipeline facility Seagull remains an intrastate pipeline eligible to provide transportation service under NGPA Section 311(a)(2).

Factual Background

Seagull is a Texas corporation which is wholly owned by Houston Oil & Minerals Corporation (HO&M), an independent oil and gas producer. Seagull operates numerous gathering and transportation facilities in intrastate commerce throughout the State of Texas and is classified and regulated as a gas utility by the Texas Railroad Commission.

HO&M holds oil and gas leases (the Cavallo Field leases) issued by the State of Texas covering Tracts Numbers NW/4 526-L, SW/4 526-L, NE/4 525-L, NW/4 557-L, SW/4 484-L, SW/4 524-L and NW/4 559-L in the Cavallo Field in the Matagorda Island Area of the Texas offshore domain. HO&M gathers the gas produced under these leases to its offshore platform on State Tract 526 for initial separation.

In September of 1979 HO&M committed to sell 50% of the reserves from the Cavallo Field leases to Valley Pipe Lines Offshore Division, a Division of Valley Pipe Lines, Inc. (Valley), an intrastate pipeline subsidiary of Houston Natural Gas Corporation. Valley accepts delivery of the gas from the Cavallo Field leases at HO&M's platform on State Tract 526. For a fee Seagull then transports and delivers Valley's gas to Houston Pipe Line Company's (HPC) existing intrastate pipeline facilities at Corpus Christi Oil and Gas Corporation's platform on State Tract 520. HPC, in turn, delivers Valley's gas to an onshore redelivery point. To transport Valley's gas from HO&M's platform on State Tract 526 to the point of interconnection with the HPC facilities on State Tract 520, Seagull constructed approximately 15.5 miles of 16 inch pipeline (the Cavallo line). The Cavallo line is not physically connected to any other pipeline facilities included in Seagull's existing intrastate pipeline system.

HO&M is considering committing the remaining gas produced under its Cavallo

Field leases to Texas Gas Transmission Corporation (Texas Gas), an interstate pipeline. Under the proposed contract, Texas Gas would purchase the HO&M gas at a point of delivery on HO&M's platform. The parties contemplate that Texas Gas and Seagull will enter into an agreement for the transportation by Seagull of Texas Gas volumes through the Cavallo line for delivery to HPC's existing intrastate facility. In its petition for declaratory order, Seagull states that the parties' obligations under this transportation agreement will be explicitly conditioned upon Seagull's receiving approval from the Commission (1) that Seagull's Cavallo line is an "intrastate pipeline", (2) that Seagull may transport the Texas Gas volumes pursuant to NGPA Section 311(a)(2) and (3) that the rate Seagull proposes to charge Texas Gas for this transportation service is fair and equitable.¹

Seagull further indicates that if the Commission determines that Seagull may not transport the Texas Gas volumes through the Cavallo line under NGPA Section 311(a)(2), or if the Commission approves only a transportation rate less than that which Seagull proposes to charge Texas Gas, Seagull would be permitted to refuse to provide the transportation service. Seagull also avers that if Seagull is unable to transport the purchased volumes through its Cavallo line to the HPC facility, Texas Gas would be permitted to terminate the agreement.

Discussion

To facilitate the integration of existing interstate and intrastate transportation systems, the Commission adopted precise eligibility requirements under NGPA Section 311 to permit pipeline participation on a self-executing basis where the service is contemplated to be for no more than two years. Filings for jurisdictional or eligibility determinations in advance of a pipeline's participation in the program, therefore, are discouraged.² However, the Commission's decision in *Sea Rim*, which stated a policy disfavoring advance jurisdictional determinations, was issued prior to the date Seagull filed its petition in this docket. Moreover, good reason exists to issue a declaratory order in these circumstances.

Seagull's proposed transportation service on behalf of Texas Gas presents a question never specifically addressed by the Commission in implementing NGPA Section 311³ and which requires clarification, *i.e.*, whether a new facility constructed by an intrastate pipeline, separate from its existing facilities or system, and for the purpose, in part, of providing NGPA Section 311(a)(2) transportation, changes the intrastate status of the existing facilities or system or is other than an intrastate facility. We find that the construction of such a new facility by an existing intrastate company does not change the intrastate status of the existing facilities or system and that the new facility is itself an intrastate facility.

¹ The appropriateness of the transportation rate will be considered separately at such time as Seagull files the information required by Section 284.123 of the Commission's Regulations.

² *Texas Sea Rim Pipeline, Inc.*, Declaratory Order, Docket No. CP79-117, 6 FERC ¶ - (February 16, 1979) (*Sea Rim*.)

³ See Order No. 46, Docket No. RM79-75, *FERC Statutes and Regulations* ¶ 30,081 (August 30, 1979).

Section 2(16) of the NGPA defines "intrastate pipeline" as follows:

The term "intrastate pipeline" means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act (other than any such pipeline which is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act).

The definition applies to the person or corporate entity engaged in natural gas transportation and does not apply to each discrete facility of or operation by the pipeline company. Seagull is currently an intrastate pipeline because it engages in transportation which is not regulated by the Commission. In *Sea Rim*, we recognized that the attachment of new facilities to an existing intrastate pipeline did not affect the pipeline's status because the Section 2(16) definition is framed in terms of persons (and hence corporate entities) rather than discrete pipeline facilities. Similarly, because the definition does not distinguish between discrete systems of facilities, the same reasoning applies to a new facility which is not attached to an existing pipeline system, but which is owned by a single intrastate company.⁴ In both cases, the corporate entity will be engaging in transportation which is not subject to the Commission's Natural Gas Act jurisdiction, by reason of NGPA Section 601(a)(2). It follows that the proposed construction and operation by Seagull of the facility at issue will not affect Seagull's intrastate status. Its petition for declaratory order, therefore, should be granted.

Interventions

After due notice by publication in the *Federal Register* on April 23, 1979 (44 F.R. 23927), no petitions to intervene, notices of intervention or protests to the granting of the petition for declaratory order were filed.

The Commission orders:

The construction and operation of the proposed facilities under NGPA Section 311(a)(2) does not affect Seagull's status as an intrastate pipeline within the meaning of NGPA Section 2(16).

⁴ The addition of a discrete pipeline system by an existing intrastate corporate entity is distinguishable from the creation of a new intrastate pipeline company for the sole purpose of transporting natural gas under NGPA Section 311(a)(2). See Order No. 46, mimeo at 7.