

42 FERC ¶ 61,397

**Volkswagen of America, Inc., Docket No. GP88-8-000
Declaratory Order**

(Issued March 31, 1988)

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On December 23, 1987, Volkswagen of America, Inc. (Volkswagen) filed a petition pursuant to the Commission's Rule 207(b) (18 C.F.R. §385.207 (b)) for an order declaring that its subsidiary, Westmoreland Pipeline Company (Westmoreland), is not subject to the jurisdiction of the Commission on the theory that it qualifies as an intrastate pipeline within the meaning of section 2(16) of the Natural Gas Policy Act of 1978 (NGPA). Volkswagen seeks a further declaration that, pursuant to section 311(a)(1) of the NGPA, Texas Eastern Transmission Corporation (Texas Eastern) may transport natural gas as an interstate pipeline on behalf of Westmoreland without prior Commission authorization.

For the reasons set forth below, we find that Westmoreland is not an intrastate pipeline within the scope of section 2(16) of the NGPA. Consequently, Texas Eastern may not transport natural gas in interstate commerce on a self-implementing basis on behalf of Westmoreland pursuant to section 311(a)(1) of the NGPA.

Proposal

Volkswagen, an industrial end-user, has executed a sales contract for natural gas with The Resource Group (TRG),¹ an independent broker that buys and resells gas. Volkswagen indicates that Texas Eastern would transport the gas from Texas and Louisiana to Pennsylvania.² The Westmoreland pipeline, a recently constructed facility which has not been placed in operation, would transport the gas from an interconnection with Texas Eastern to the Volkswagen plant.³ The Westmoreland pipeline is six miles long and six

¹ TRG, which has its principal place of business in New Orleans, Louisiana, buys, resells, brokers and arranges transportation of natural gas supplies to various customers nationally on a spot and long-term basis.

² Westmoreland would construct a tap at an undisclosed location on the mainline transmission facilities of Texas Eastern where it will accept the gas.

³ Volkswagen takes the position that a certificate under section 7 of the Natural Gas Act is not required for construction of the Westmoreland pipeline, based on section 284.3(c) of the Commission's regulations, 18 C.F.R. §284.3(c), which states, "The Natural Gas Act shall not apply to facilities utilized solely for transportation authorized by section 311(a) of the NGPA."

inches in diameter, and is located entirely within the state of Pennsylvania.⁴ It would be used exclusively to transport natural gas for the Volkswagen plant, at no charge; the pipeline would not perform any other services, for anyone.

Interventions

After due notice by publication in the *Federal Register*, on January 26, 1988 (53 Fed. Reg. 2073), timely motions to intervene⁵ were filed by The Algonquin Customer Group,⁶ Equitable Gas Company, T.W. Phillips Gas and Oil Company, National Fuel Gas Distribution Company and UGI Corporation. Protests were filed by American Public Gas Association, Peoples Natural Gas Company, United Distribution Company and jointly by New Jersey Natural Gas Company and Public Service Electric and Gas Company. On February 26, 1988, Volkswagen filed an answer in response to the motions to intervene and protests. An untimely motion to intervene was filed by the Pennsylvania Public Utility Commission (PaPUC). We will grant the PaPUC's motion to intervene since the intervention will not delay or disrupt the proceedings and or prejudice any party to it.

Most of the intervenors and protestors are local distribution companies or associations representing such companies. They challenge Volkswagen's request for a declaration that Westmoreland is an intrastate facility under the NGPA. In sum, the protestors argue that Volkswagen, by an attenuated claim that Westmoreland is an intrastate facility, is attempting to avoid any regulatory oversight. In its motion to intervene, Peoples Natural Gas Company, which indicates that it is the local distribution company currently supplying natural gas to Volkswagen, requests that the Commission stay a determination in the instant docket until a decision has been rendered by the PaPUC in a pending case pertaining to the state's jurisdiction over Westmoreland.

Discussion

We find that Westmoreland would be engaged in the transportation of natural gas in interstate commerce as contemplated by section 1(b) and as defined in section 2(7) of the Natural Gas Act (NGA).⁷ Westmoreland would be transporting gas as the last link in a

⁴ Volkswagen states that Westmoreland is not regulated by the Pennsylvania Public Utility Commission and is not subject to its jurisdiction.

⁵ Timely motions to intervene are granted by operation of Rule 214.

⁶ The Algonquin Customer Group includes: Bay State Gas Company; Boston Gas Company; Bristol and Warren Gas Company; Colonial Gas Company; Commonwealth Gas Company; The Connecticut Light and Power Company; Connecticut Natural Gas Corporation; Fall River Gas Company; Granite State Gas Transmission, Inc.; Town of Middleborough, Municipal Gas and Electric Department; City of Norwich, Department of Public Utilities; Pequot Gas Company; The Providence Gas Company; South County Gas Company; and The Southern Connecticut Gas Company.

⁷ Section 1(b) of the NGA states, "The provisions of this act shall apply to the transportation of natural gas in interstate commerce . . ." Section 2(7) of the NGA states,

stream of interstate commerce originating in Louisiana and Texas. Westmoreland would not be exempt from the NGA on the basis that it transports interstate gas solely within the Commonwealth of Pennsylvania⁸ where it is consumed.⁹ Westmoreland is not engaged in any intrastate business. Its sole purpose, and the only service it would render, is transportation of natural gas in interstate commerce, notably without a fee, on behalf of a sole end-user, Volkswagen. Consequently, the Westmoreland facility would not be included within the meaning of an "intrastate" pipeline as that term is defined by section 2(16) of the NGPA, which specifically excludes facilities which are subject to the jurisdiction of the Commission under the NGA.¹⁰ Accordingly, Texas Eastern may not transport natural gas in interstate commerce for Westmoreland under section 311(a)(1) of the NGPA.¹¹

"Interstate commerce' means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States."

⁸ In *Federal Power Commission v. East Ohio Gas Co. et al.*, 338 U.S. 464, 467 (1949), the Court stated, "The gas does not cease its interstate journey the instant it crosses the Ohio boundary or enters East Ohio's pipe, even though that company operates completely within the state where the gas is finally consumed."

⁹ We find no reason to grant Peoples' request that the Commission stay a determination in the instant proceeding pending a decision by the PaPUC regarding the Commonwealth of Pennsylvania's jurisdiction to regulate Westmoreland. If the state should determine to exercise jurisdiction over Westmoreland, it is possible that Westmoreland could become exempt from Commission jurisdiction by virtue of section 1(c) of the Natural Gas Act (the Hinshaw exemption), if all the requirements for such an exemption were satisfied. Under those circumstances, Westmoreland might well become eligible for transportation on its behalf under NGPA § 311. *See, e.g., Natural Gas Pipeline Company*, 20 FERC ¶ 61,324 at page 61,673 (1982).

¹⁰ Section 2(16) of the NGPA states, "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)." *See also* Order No. 46, Sales and Transportation of Natural Gas, *FERC Statutes and Regulations, Regulations Preambles 1977-1981* ¶ 30,081 (1979).

¹¹ Section 311(a)(1) of the NGPA permits the Commission by rule or order to authorize any interstate pipeline to transport natural gas on behalf of an intrastate pipeline or any local distribution company. Section 284.3(a) of the Commission's regulations, 18 C.F.R. § 284.3(a), provides that section 1(b) of the NGA and the jurisdiction of the Commission shall not apply to the transportation in interstate commerce of natural gas authorized pursuant to section 311(a) of the NGPA.

The Commission orders:

(A) The Commission finds that Westmoreland is not an intrastate pipeline within the meaning of section 2(16) of the NGPA and, accordingly, that Texas Eastern may not transport natural gas on behalf of Westmoreland pursuant to section 311(a) of the NGPA.

(B) The untimely motion to intervene filed by the PaPUC is granted.