

**6 FERC ¶ 61,151**

**Texas Sea Rim Pipeline, Inc., Docket No. CP79-117**

**Declaratory Order**

**(Issued February 16, 1979)**

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

Texas Sea Rim Pipeline, Inc. (Sea Rim) has requested an order of the Commission declaring (1) that Sea Rim is an "intrastate pipeline" within the meaning of Section 2(16) of the Natural Gas Policy Act of 1978 (NGPA) and (2) that Sea Rim's proposed transportation service for Natural Gas Pipeline Company of America (Natural) is authorized under Section 311(a)(2) of the NGPA. For the reasons set forth below, the requested order will be issued.

### **FACTUAL BACKGROUND**

Sea Rim, a wholly-owned subsidiary of The Superior Oil Company (Superior), is a newly formed pipeline company which has not yet commenced operations. The company was formed to own and operate two parallel pipelines connecting a production platform in offshore-Texas state waters with an onshore-Texas condensate reseparation facility.<sup>1</sup> Upon completion, one line will be used exclusively to transport gas sold in interstate commerce; the other line will be used exclusively to transport gas sold in intrastate commerce. The intrastate facilities are currently in place, but the interstate facilities have not yet been certificated.<sup>2</sup>

Production from the offshore platform was scheduled to commence on January 1, 1979. Superior has contracted to sell its portion of the production to Natural and has applied for a certificate of sale in Docket No. CI78-1030. The State of Texas has contracted to sell its royalty share of the production to an intrastate pipeline, United Texas Transmission Company (UTTCO). The volumes sold to Natural will eventually be transported through the interstate portion of Sea Rim's facilities and the volumes sold to UTTCO will be transported through the separate intrastate portion of those facilities.

Although Sea Rim's intrastate facilities are in place, the State's royalty gas cannot be transported to the intrastate purchaser at this time because the facilities necessary to transport the gas from the reseparation plant to UTTCO have not been completed. Pending completion of the UTTCO facilities, all platform production could be sold to Natural,<sup>3</sup> but

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<sup>1</sup> The reseparation facilities will also be owned by Sea Rim. Each pipeline will be approximately 15 miles in length in order to connect the production platform to the reseparation facilities.

<sup>2</sup> By application filed in Docket No. CI78-1030, Superior has requested authority to construct the requisite pipeline facilities and to transfer ownership thereof to Sea Rim.

<sup>3</sup> The State of Texas has entered into a balancing agreement with Superior under

there are no interstate facilities available for the transportation.

To permit production to flow from the platform pending completion of the necessary facilities, Sea Rim has agreed to transport the additional volumes to Natural through the intrastate portion of its facilities if it is assured that the transportation will not subject those facilities to the Commission's jurisdiction under the Natural Gas Act (NGA). Although its facilities have never been used to transport gas in intrastate commerce, Sea Rim contends that it is an "intrastate pipeline" within the meaning of Section 2(16) of the NGPA and is qualified to transport gas for an interstate pipeline under Section 311(a)(2) of the NGPA without becoming subject to the Commission's jurisdiction under the NGA. Because of the unusual factual situation in this case, we will make the requested findings.

### SECTION 2(16) OF THE NGPA

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).

To fall within this definition, Sea Rim must be: (1) engaged in transportation rather than gathering; (2) engaged in transportation which is not subject to NGA jurisdiction; and (3) not be exempted from NGA jurisdiction solely by reason of Section 1(c) of the NGA. The third criterion is not an issue in this case.

### TRANSPORTATION VS. GATHERING

Although the Commission has not developed a definitive rule of demarcation between transportation and gathering, certain basic tests have been applied to differentiate the two services. Two of these tests, the behind-the-plant test and the primary function test, are applicable to the facts of the Sea Rim case.

#### *Behind-the-plant*

The behind-the-plant test is essentially a presumption that gathering takes place until the gas is cleaned and made to be of pipeline quality. Generally, those facilities located behind the gas processing plant are deemed to be gathering facilities, while those located beyond the plant are deemed to be transportation facilities.<sup>4</sup> In actual practice, the general

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which all of the gas produced from the platform will be attributed to Superior's interest pending completion of the onshore facilities necessary for delivery to UTTCO.

<sup>4</sup> The behind-the-plant test may be traced back to a report of Commissioners Smith and Wemberly in *Natural Gas Investigation*, Docket No. G-580 (1948):

In general practice \* \* \* a gathering system would usually be regarded as extending to a point beyond the gasoline extraction plant and field compressor station, prior to receipt into the transmission system. *Cf. Brooks Gas Corp. v. F.P.C.*, 383 F. 2d 503 (D.C. Cir. 1967); *Phillips Petroleum Co.*, 10 FPC 246, 277 (1951), rev'd other grounds, *Phillips Petroleum Co. v. Wisconsin*, 347

rule has been modified significantly.

When the behind-the-plant test has been used to exclude Commission jurisdiction over all facilities located behind the plant, it has been applied where the facilities were operated by the parties who sold the gas flowing through the facilities.<sup>5 5</sup> In those cases where the facilities were operated by a party other than the seller, as in the Sea Rim case, the facilities were found to be jurisdictional transportation facilities.<sup>6 6</sup>

#### *Primary function*

The primary function test was introduced in *Ben Bolt Gathering Co.*, 26 FPC 825 (1961), *aff'd*, 323 F. 2d 610, 827-8 (5th Cir. 1963):

[T]o draw the line between companies engaged in the pipeline function, and other companies, depends upon a factual determination of whether a company's primary function consists of the interstate transportation of gas or some other function \* \* \*. It is true that Ben Bolt and other companies similarly situated have been referred to as "gatherers". But their primary function is that of transporting gas for sale to pipeline companies. Their facilities are in substance, extensions of the major pipeline systems.

This test departs from the mechanical, application of the behind-the-plant test and examines, instead, the primary use which is made of the facilities. If the facilities are used primarily to perform a gathering function, they are gathering facilities. If they are used primarily to perform a transportation service, they are transportation facilities.<sup>7</sup>

#### *Sea Rim*

Although Sea Rim's intrastate line is located behind the reseparation plant, it is not a gathering line. The primary function of the 15-mile line is the transportation of natural gas from the offshore platform to the onshore reseparation plant.<sup>8</sup> Since it is not engaged in

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U.S. 672 (1954).

<sup>5</sup> See, e.g., *Phillips Petroleum Company*, Docket No. CI73-736, letter-order issued July 17, 1973.

<sup>6</sup> See, e.g., *Panhandle Eastern Pipe Line Company*, Opinion No. 617, 47 FPC 1088 (1972). Compare *Panhandle* with *Carnegie Natural Gas Company*, Docket No. CP77-535 (September 29, 1978, 4 FERC ¶ 61,360). In that case the Commission noted, without specifically finding, that Carnegie appeared to be performing a gathering service for Ramco Oil. It then disclaimed any type jurisdiction over the rate charged for the service.

<sup>7</sup> See, e.g., *Marathon Oil Company*, Opinion No. 735, 53 FPC 2164, 2172 (1975); *Northern Natural Gas Pipeline Company*, Opinion No. 538, 39 FPC 362 (1968).

<sup>8</sup> This conclusion is supported by an order denying rehearing issued November 3, 1977, 1 FERC ¶ 61,089, in *Gulf Oil Corporation*, Docket No. CI77-635, in which the Commission found that similar behind-the-plant operations constituted transportation because "the primary function of these facilities is clearly to transport the gas from the offshore area to an onshore point."

gathering, Sea Rim meets the first criterion of an intrastate pipeline Under Section 2(16) of the NGPA.

### **TRANSPORTATION WHICH IS NOT SUBJECT TO NGA JURISDICTION**

Although Sea Rim has never transported gas in intrastate commerce, it clearly intends to use its existing facilities for intrastate transportation upon completion of all necessary facilities construction. Several factors are indicative of this intent: (1) the existence of a contract between an intrastate seller and an intrastate purchaser; (2) the intended transportation of the intrastate sales volumes through the existing pipeline facilities; and (3) the pending application to construct a separate line for permanent transportation of Natural's gas. Thus, because it will be engaged in transportation which is not subject to NGA jurisdiction upon completion of all facilities construction, we find Sea Rim to be an intrastate pipeline within the meaning of Section 2(16) of the NGPA. This finding is made solely for the purpose of determining Sea Rim's eligibility to transport natural gas pursuant to Section 311(a)(2) of the NGPA. The Commission does not make any determination as to Sea Rim's intrastate pipeline status for any other purpose.

### **TRANSPORTATION UNDER SECTION 311(a)(2) OF THE NGPA**

Having found Sea Rim to be an intrastate pipeline within the meaning of Section 2(16) of the NPGA, it is automatically eligible to transport gas for an interstate pipeline pursuant to Section 311(a)(2) of the NGPA and Subpart B of Part 284 of the Commission's interim Regulations implementing the NGPA.<sup>9</sup> Such transportations do not affect the exempt status of any party to the transaction under the NGA.<sup>10</sup> Therefore, Sea Rim will be able to perform the temporary transportation service for Natural without becoming subject to the Commission's jurisdiction under the NGA.

Part 284 of the Commission's interim Regulations clearly indicates that Section 311 is intended to be self-executing for transactions not exceeding two years duration. Consequently, filings for advance approval will not normally be entertained by the Commission. The unusual status of Sea Rim as a new pipeline not yet operating in interstate or intrastate commerce warrants an exception to the rule in this case. However, future

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<sup>9</sup> Section 311(a)(2) of the NGPA provides in pertinent part: "The Commission may \* \* authorize any intrastate pipeline to transport natural gas on behalf of (i) any interstate pipeline." Part 284 of the Commission's interim Regulations implementing this section permits 311(a)(2) transportations to commence without prior authorization if the proposed term does not exceed two years. The transporting pipeline is required under certain circumstances outlined in Section 284.123 to file for a Commission determination that the rates and charges proposed for the service are fair and equitable. In addition, initial, subsequent, and final reports must be filed with the Commission.

Sea Rim is, of course, required to comply with these Regulations as a condition to its authority to transport gas for Natural.

<sup>10</sup> "Joint Explanatory Statement of the Committee on Conference" Report No. 95-1126, 95th Cong. p. 107 (1978).

advance approvals should not be anticipated.

### INTERVENTIONS

After due notice by publication in the Federal Register on December 22, 1978 (43 F.R. 59897), timely petitions to intervene were filed by Natural and UTTCO. On January 4, 1979, Tejas Gas Corporation (Tejas) filed a motion to extend the time to file and a petition to intervene. In its petition, Tejas states that it is interested in the proceeding because it has agreed to transport the Texas royalty gas from the reseparation plant to UTTCO and that it was unable to file its petition within the allotted time because it only recently learned of the Sea Rim filing. We find that participation by all of the petitioners to intervene may be in the public interest and that good cause exists to grant the motion of Tejas for late filing of its petition.

*The Commission orders:*

(A) Texas Sea Rim Pipeline, Inc. is hereby declared to be (1) an intrastate pipeline within the meaning of Section 2(16) of the NGPA and (2) eligible to perform the proposed transportation service for Natural under Section 311(a)(2) of the NGPA, subject to the requirements of Part 284 of the Commission's interim Regulations.

(B) The petitioners to intervene are permitted to intervene subject to the Rules and Regulations of the Commission: *Provided, however*, that participation of the interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and *Provided, further*, that admission of the interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.