UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Rendezvous Gas Services, L.L.C. Docket Nos. CP05-40-000 and CP05-41-000

ORDER ISSUING CERTIFICATES

(Issued July 27, 2005)

1. On December 27, 2004, Rendezvous Gas Services, L.L.C. (Rendezvous) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting a certificate of public convenience and necessity authorizing Rendezvous to construct and operate a 20.8-mile, 20-inch diameter pipeline to transport natural gas from the outlet of the Blacks Fork natural gas processing plant in Uinta County, Wyoming to an interconnection with facilities of Kern River Gas Transmission Company (Kern River) in Lincoln County, Wyoming. Rendezvous also requests a blanket certificate under Subpart F of Part 157 of the Commission's regulations authorizing certain routine construction activities, and waivers of certain Commission's regulations, including Part 154 (Rate Schedules and Tariffs). Alternatively, Rendezvous suggests that the Commission could reasonably find the proposed pipeline to be a nonjurisdictional gathering facility.

2. We find that Rendezvous' proposed pipeline will be subject to the Commission's jurisdiction because it will transport pipeline quality residue gas from the Blacks Fork processing plant to Kern River's system in interstate commerce. We also find that the Commission's open-access and reporting requirements should apply to Rendezvous' jurisdictional transmission services for other parties. Additionally, we find that market-based rates for services on Rendezvous' proposed pipeline are appropriate.

Background and Proposal

3. Rendezvous is a limited liability gas gathering corporation formed as a joint venture and owned in equal portions by two other gas gathering companies, Questar Gas Management Company (Questar Gas) and Mountain Gas Resources, Inc. (Mountain

Gas).[1] Rendezvous and each of its owners provide gathering service in southwestern Wyoming. Collectively, the three companies own and operate approximately 1,000 miles of gathering lines in this region.

4. Applicant's gathering operations currently extend approximately 105 miles from a point in Sublette County, Wyoming to Questar Gas' Blacks Fork and Mountain Gas' Granger gas processing plants in Uinta and Sweetwater Counties, Wyoming. The two processing plants are connected by two approximately 6-mile long nonjurisdictional pipelines that facilitate efficient processing and blending operations at the plants and enable producers to sell gas into any of the pipelines connected to the two plants. Through coordinated processing and blending with unprocessed gas, the 80,000 Dth per day capacity Blacks Fork plant and the 270,000 Dth per day Granger plant together can deliver up to 450,000 Dth per day of gas directly to four interstate pipelines (Colorado Interstate Gas Company, Northwest Pipeline Corporation, Questar Pipeline Company, and Overthrust Pipeline Company) and two intrastate pipelines (Overland Trail Transmission, LLC and Mountain Gas Transportation, Inc.).

5. Rendezvous proposes here to construct and operate a 20.8-mile, 20-inch diameter pipeline of approximately 330,000 Dth per day capacity that would extend from the outlet of the Blacks Fork processing plant to a point on the Kern River system at Kern River's Muddy Creek Compressor station in the Opal Hub area of Lincoln County, Wyoming. The purpose of the proposed pipeline is to interconnect with the Kern River pipeline system as a new delivery point, for the gathering systems of Rendezvous and its owners, to increase the market options for their gathering customers. Currently, deliveries to Kern River from the Blacks Fork plant require prior transportation through other pipelines downstream of the plant and compliance with those pipelines' attendant rates and procedures. Rendezvous states that this movement through an intervening pipeline inhibits deliveries of gas from the Blacks Fork plant to markets on the Kern River system.

6. Rendezvous states that the proposed pipeline is intended to transport gas gathered only by Rendezvous and its owners as an integrated extension of their gathering systems, and it requests a certificate that limits the Commission's jurisdiction over Rendezvous' operations to the proposed line. Questar Gas and Mountain Gas have contracted for all the firm capacity of the line. Initially, Questar Gas would have 84 percent of the capacity and Mountain Gas would have 16 percent of the capacity of the new line. Rendezvous requests authority to reallocate such capacity among itself and its owners by negotiated agreement as the demands of their respective gathering services evolve. Questar Gas Management and Mountain Gas have agreed to share the $11.3 million estimated cost of constructing the pipeline, as well as the costs of operating the pipeline. Rendezvous proposes to charge negotiated, market-based rates.

[1] Questar Gas Management is a subsidiary of Questar Corporation, and Mountain Gas is a subsidiary of Western Gas Resources, Inc.

7. Service utilizing the proposed pipeline would not be competitive with other gathering services, states Rendezvous, if it is fully subject to the Commission's NGA regulation, including ratemaking and open-access tariff requirements, NAESB and EBB requirements, energy affiliate rules, and reporting requirements. In response to a January 25, 2005 staff data request, Rendezvous states that requiring it to segment its overall service into gathering and transmission components, with Part 284 rules applicable to the proposed pipeline segment, would unnecessarily add complex regulatory and administrative costs that would be borne by shippers and gathering owners alike. For this reason, Rendezvous seeks waiver of applicable filing and reporting requirements including all the Commission's reporting requirements (including Form 2), the Uniform System of Accounts, and requirements for filing and maintaining tariffs and rate schedules which apply to interstate pipelines generally. The Commission, states Rendezvous, has previously waived open-access requirements for pipelines linking a processing plant with an interstate pipeline.[2] If, however, Rendezvous is required to provide open-access service, Rendezvous requests waiver of the Commission's policy that the "shipper must have title."

8. Rendezvous states that its proposal will allow Rendezvous and its owners to provide their gathering customers with a seamless service to Kern River, with a single scheduling process and a single negotiated rate agreement, thereby eliminating costly multiple rates and multiple nomination and scheduling procedures. The ability to offer direct deliveries to Kern River, avers Rendezvous, will create an important market option for gathering customers by enhancing their ability to compete for sales to California and other western states served by Kern River, and at the same time, increase supply choices for consumers in California and the West. Furthermore, says Rendezvous, expanded delivery options will also help Rendezvous and its owners compete more effectively for gathering business, which Rendezvous notes is expanding rapidly in this part of the Central Rocky Mountain region. Finally, Rendezvous states that its proposal has the benefit of avoiding the unnecessary construction of a new and redundant processing plant, located adjacent to Kern River's system, to be fed by a new nonjurisdictional pipeline.

9. Alternatively, Rendezvous suggests that the Commission could reasonably find that the proposed pipeline would be a nonjurisdictional gathering facility. Rendezvous points out, in its data response, that its proposed 20.8-mile pipeline would parallel a gathering line of Williams Field Service, a competitor of Rendezvous, for approximately 15 miles. Rendezvous argues that the only relevant difference between the two lines is that gas on the Rendezvous pipeline will have been processed at the Blacks Fork plant at the beginning of the proposed line, whereas gas on the Williams pipeline is processed at its Opal, Wyoming plant at the end of the Williams line.

[2] *Citing Continental Natural Gas, Inc.*, 83 FERC ¶ 61,065 (1998), and *Western Gas Resources, Inc.*, 85 FERC ¶ 61,087 (1998).

10. Rendezvous asserts that, although the proposed pipeline would be located downstream of the Blacks Fork processing plant from which it would receive its gas, the line will nonetheless not extend beyond the central point in a producing field. Rendezvous states that because there are a number of production fields and gathering lines throughout the general region in which the new pipeline would be located, the Blacks Fork plant is not the only choice as the central point in the field. The Commission could find, it argues, that Opal, or perhaps Kern River's Muddy Creek Compressor Station (the proposed delivery point for the Rendezvous line), rather than the Blacks Fork plant, could be considered the central point in a producing region. Under this theory, because the proposed Rendezvous line would be upstream of these points, the new facilities could be found to be gathering facilities exempt from the Commission's jurisdiction.

Interventions

11. Notice of Rendezvous' application was published in the *Federal Register* on January 12, 2005, 70 Fed. Reg. 2,145. Timely, unopposed motions to intervene in this proceeding were filed by Overthrust Pipeline Company and the Wyoming Natural Gas Pipeline Authority, and are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.[3]

12. No one filed objections to Rendezvous' proposal. The Wyoming Natural Gas Pipeline Authority (Pipeline Authority) supports the project. The Pipeline Authority projects that overall Wyoming production could grow from the current level of 4.4 Bcf per day to 7 Bcf per day over the next five years, and it believes that the proposed pipeline will promote more efficient movement of gas within the Rocky Mountain region and in the greater Opal area.

Discussion

13. For the reasons discussed below, we find that the facilities to be constructed and operated will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation of these facilities is subject to the requirements of section 7(c) of the NGA. We also find that the proposed pipeline facilities are required by the public convenience and necessity. The proposed facilities will provide a direct connection from Rendezvous' Blacks Fork processing plant to the Kern River pipeline system and add much needed transportation capacity from the Central Rocky Mountain region.

[3] 18 C.F.R. § 385.214 (2005).

Jurisdiction

14. We do not agree with Rendezvous that it would be appropriate for the Commission to find the 20.8-mile line proposed here would be an exempt gathering line under section 1(b) of the NGA. The Commission has developed criteria that it uses to determine the primary function of facilities, *i.e.*, whether facilities are nonjurisdictional gathering facilities or jurisdictional transmission facilities.[4]

15. As pertinent here, the Commission has determined that, in the absence of countervailing factors, pipeline facilities located downstream of a processing plant may be considered exempt from NGA regulation only when they are incidental extensions of the processing plant or of the behind-the-plant gathering system.[5] Specifically, the Commission has found that facilities that meet this test are normally short stub pipelines at the tailgate of the processing plant that act to connect the tailgate of the plant with a transmission system.[6]

16. The 20.8-mile line proposed by Rendezvous is not a short stub line that is an incidental extension of the processing plant needed to reach an interstate pipeline, and Rendezvous does not argue that it is. However, Rendezvous does argue that, to the extent the Commission views the Opal plant, and Kern River's Muddy Creek compressor station located in the same vicinity, as a central point in a producing region, then the fact that the proposed residue line is downstream of a processing plant and is not a stub line should not be determinative of the proposed line's jurisdictional status.

17. We do not agree that either the Opal plant, which would not be connected to Rendezvous' proposed line, or Kern River's Muddy Creek compressor station can be considered the central point in the Rendezvous gathering operation such that all

---

[4] The Commission's multi-factor test for determining the primary function of onshore facilities was articulated in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983), and includes consideration of (1) the length and diameter of the pipeline facilities at issue; (2) the extension of the facilities beyond the central point in the field; (3) the facilities' 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 facilities. In addition to these physical and geographic criteria, the Commission also considers the purpose, location, and operation of the facilities, and whether the jurisdictional determination is consistent with the objectives of the NGA and Natural Gas Policy Act (NGPA). The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.

[5] *See Amerada Hess Corporation*, 67 FERC ¶ 61,254 (1994).

[6] *See ONEOK Midstream Pipeline, Inc.*, 93 FERC ¶ 61,042 (2000).

operations upstream of those locations should be considered gathering. No Rendezvous gathering facilities, other than the proposed line, connect to either of these locations. Simply because a pipeline is located in a producing area does not support a finding that such facilities function as gathering facilities outside the Commission's jurisdiction. We find that the function of the proposed line will be to provide jurisdictional transmission service to the Kern River system.

Public Convenience and Necessity

18. On September 15, 1999, the Commission issued its Certificate Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.[7] The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

19. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers.

20. The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

---

[7] *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999); *order clarifying statement of policy*, 90 FERC ¶ 61,128 (2000); *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

21. Rendezvous' proposed project meets the threshold requirement that the pipeline must be prepared to support the project financially without subsidies from existing customers because it will be a new jurisdictional pipeline with no existing customers. No existing pipelines or their customers have objected to the project.

22. Likewise no landowners have objected. Approximately 99 acres will be required for permanent operation of the new facilities. In an April 22, 2005 response to a staff data request, Rendezvous stated that, as of that date, none of the right- of-way had been secured. However, Rendezvous explained that approximately 68 acres are state and federal lands for which easements are expected, easement is imminent for another 13 acres, and negotiations continue for the remaining 18 acres. Additionally, the pipeline will follow an existing pipeline corridor (with overlapping rights-of-way anticipated for much of the pipeline's length). Thus, we find the potential for adverse impact on landowners to be small.

23. The project will benefit the public by enhancing the interstate pipeline grid, offering an additional supply option for markets served by Kern River, providing an additional option for producers in the Central Rocky Mountains to access markets served by Kern River, and by creating much needed additional take away capacity from the expanding Central Rocky Mountain production region. Therefore consistent with the criteria discussed in the Certificate Policy Statement, we find that the benefits of the project will outweigh any potential adverse effects, and that the proposed project is required by the public convenience and necessity.

24. Rendezvous requests that any certificate for its proposed project be a limited-jurisdiction certificate. The Commission issues such certificates to allow nonjurisdictional parties, such as Hinshaw pipelines accepting blanket certificates pursuant to section 284.224 of the regulations,[8] so that facilities used for nonjurisdictional service may also be used for certain jurisdictional activities without affecting the status of their otherwise nonjurisdictional facilities and activities.

25. Here, Rendezvous' proposed pipeline would be constructed and used solely to provide jurisdictional service. Thus, Rendezvous' construction and operation of its proposed pipeline will be subject to the Commission's full jurisdiction, which will be exercised to require that Rendezvous transport gas from the Blacks Fork processing plant on an open-access basis. However, the Commission's jurisdiction pursuant to section 7 of the NGA will not extend to the upstream gathering facilities owned by Rendezvous and its parents.

---

[8] 18 C.F.R. § 284.224 (2005).

Market-Based Rates

26. Rendezvous has requested authority from the Commission to charge market-based rates. Rendezvous provided a market power analysis which it believes demonstrates that its project lacks any market power in the capacity markets moving natural gas from producing areas to the Kern River system. Rendezvous states that the proposed facilities would be a short, supply-area, market-center pipeline that would add capacity to an already competitive transportation market.

27. Rendezvous defines the relevant geographic market as being the four counties in Southwest Wyoming encompassing the producing areas, gas processing plants, and pipelines that would benefit from Rendezvous' services. Within this geographic market, Rendezvous defines the "origin market" as the Blacks Fork and Granger gas processing plants and the producing fields that feed those plants, and the "destination market" as all natural gas capable of moving into the Opal Hub on upstream interstate, intrastate and gathering pipelines.

28. In the origin market, Rendezvous identified four interstate pipelines that can receive delivery directly at the outlet of the gas processing plants; two intrastate pipelines directly connected in the origin market; and two gathering pipelines that are available for shippers in the origin market. In the destination market, Rendezvous included the four existing interstate pipelines with direct interconnections at or near the Opal hub, an intrastate pipeline with a direct connection to the gathering pipelines, and the two gathering pipelines.

29. Rendezvous notes that the Commission's Alternative Rate Policy Statement recognizes that a relatively large market share or high Herfindahl-Hirschman Index (HHI)[9] alone may not be conclusive in considering whether an applicant will be able to exercise market power.[10] Rendezvous maintains that, as a short-haul pipeline feeding a

---

[9] The Commission uses the HHI to measure the likelihood of a pipeline exerting market power in concert with other sources of supply. *See, e.g., Shell Pipeline Company L.P.*, 103 FERC ¶ 61,236 at ¶ 35 and n. 4 (2003). An HHI is derived by squaring the market shares of all the firms competing in a particular geographic market and adding them together. The HHI can range from just above zero, where there are a very large number of small competitors in the market, to 10,000, where the market is served by a single monopolist. A high HHI indicates significant concentration. This means that a pipeline is more likely to be able to exercise market power either unilaterally or through collusion with rival firms in the market.

[10] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076 at 61,235 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996) (Alternative Rate Policy Statement).

supply-area hub, its project is the type of pipeline offering short-haul market center services that the Commission contemplated as lacking market power in the Alternative Rate Policy Statement.[11]

30. Rendezvous emphasizes that its project is within the area designated by a State of Wyoming's map as the Opal Hub. Rendezvous also emphasizes that its 20.8-mile long, 20-inch diameter pipeline will cost an estimated $11 million, substantially less than the $22 million limit under the Commission's Part 157 blanket certificate construction regulations. Rendezvous asserts that the incumbent interstate pipelines in the area could easily expand compression or add some looping to respond to any attempts by Rendezvous to exert market power, without having to make a certificate application before the Commission. Rendezvous further argues that the minimal cost of Rendezvous' pipeline makes it a feasible outlay for competing gatherers in the area to increase capacity. Finally, Rendezvous also states that it is feasible for large producers to opt to construct facilities to connect directly with Kern River. Rendezvous concludes that the ease of entry would prevent Rendezvous from maintaining prices above the competitive level for a significant period of time.

31. Rendezvous emphasizes that a competitive factor considered by the Commission in prior market-based rate applications is whether the applicant will be a new entrant. Rendezvous states that as a new entrant, with no customers that depend upon its proposed pipeline, it must charge rates which attract customers. Rendezvous states that because the ultimate revenues which producers get for their gas is based on net-back pricing, Rendezvous must offer these producers transportation services that will increase their delivered net-back gas prices. Thus, Rendezvous argues that it can charge no more than the prevailing tariff rates for interstate pipeline alternatives.

32. Rendezvous also states that it has no captive customers. Rendezvous maintains that customers can choose to continue having their gas delivered to Kern River or other destination pipelines without using Rendezvous' proposed pipeline. Thus, Rendezvous claims that customers will have alternatives should Rendezvous seek to charge rates higher than the market allows.

Commission Response

33. The Alternative Rates Policy Statement provides that where a natural gas company can establish that it lacks significant market power, market-based rates are a viable option for achieving the flexibility and added efficiency required by the current marketplace. The policy statement's framework for evaluating requests for market-based rates addressed two principal purposes: (1) whether the applicant can withhold or restrict

---

[11] Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,235.

services and, as a result, increase price by a significant amount for a significant period of time, and (2) whether the applicant can discriminate unduly in price or terms and conditions.

34. The Commission uses market shares and HHIs as screens in assessing whether a pipeline has the ability to exercise market power in defined product and geographic markets. However, HHIs are just one factor the Commission may evaluate. The Alternative Policy Statement recognizes that having a large market share in a concentrated market does not constitute market power if ease of entry and other competitive factors can prevent the applicant from exercising significant market power.[12]

35. Based on the information submitted by Rendezvous, it is not clear that the alternatives used by Rendezvous in its market analysis are actually good alternatives to Rendezvous' ability to exercise market power.[13] Further, Rendezvous' own analysis of the origin market shows an HHI of 2,062.[14] However, we find here that other competitive factors relevant to the market power analysis will mitigate Rendezvous' potential market power and prevent Rendezvous from exercising significant market power in providing its proposed hub transportation services. These competitive factors are: (1) the ease of entry of a short-haul, inexpensive pipeline in a market center, and (2) Rendezvous being a new entrant with no captive customers that might subsidize market-based rates.

36. Ease of entry is an important factor in the analysis of the potential exercise of market power by an applicant requesting market-based rates. The profit opportunity that would be created by the applicant attempting to exercise market power would attract other sellers. If the barriers to entry for these other sellers are sufficiently low, then these other sellers could quickly increase capacity and take away customers from the applicant. This loss of customers would make the applicant's attempt to exercise market power futile.

---

[12] *Id.*

[13] A good alternative is defined as one which will be available soon enough, have a price low enough, and have a quality high enough to permit customers to substitute the alternative for the applicant's service. Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,231.

[14] The Commission has accepted an HHI of 1800 as the threshold indicating the potential ability for an applicant to exercise market power. In cases where the HHI was higher than 1800, the Commission has performed further review to determine whether other competitive factors nevertheless will prevent the applicant from being able to exercise market power. *See, e.g., Wolverine Pipe Line Co.*, 92 FERC ¶ 61,277 at 61,928 (2000).

37. The Alternative Rate Policy Statement explains that a conclusion that ease of entry will prevent an applicant from being able to exercise market power "…is most likely to apply to circumstances that do not require the large sunk costs of major construction—for instance, perhaps in offering short-haul market center services."[15] The Alternative Rate Policy Statement further finds that "…entry would probably be relevant for gas pipelines in the case of minor facilities that could be constructed under a blanket certificate."[16] This is exactly the situation presented in this proceeding.

38. Rendezvous is a short, low-capital-cost pipeline projected to be built in the Opal Hub supply area market center. The capital cost to entry for good alternatives to Rendezvous is low. The cost of replication of Rendezvous is far less than the maximum investment allowed under a blanket certificate for interstate pipelines. Further, entry to compete with Rendezvous might occur at even lower cost through expanded compression or added looping on the competing interstate/intrastate pipelines. We find that the entry barriers would be low for the good alternatives to Rendezvous.

39. Although affiliated with interstate pipelines, Rendezvous is a new entrant in that it currently has no facilities that provide jurisdictional transmission service and it will connect to the interstate system of Kern River, which is not an affiliate. As a new entrant, Rendezvous has no existing customers, so Rendezvous must attract new customers without any subsidy from existing customers. Further, since we are requiring Rendezvous to be a Part 284 open-access pipeline, as discussed below, Rendezvous will be unable to withhold or unduly discriminate in the provision of its transportation services.

40. We find that, because Rendezvous will be a short-haul, inexpensive pipeline in a market center, and because Rendezvous will be a new entrant without captive customers, Rendezvous will lack market power in offering its services over its proposed pipeline. Accordingly, we will grant Rendezvous authority to charge market-based rates. Our authorization for Rendezvous to charge market-based rates, however, is subject to the condition that Rendezvous notify the Commission if future circumstances significantly affect its present market power status. The Commission's acceptance of Rendezvous' proposed market-based rates is subject to Rendezvous timely reporting to the Commission any changes in status that would require a reexamination of its market power and its market-based rate authority, including: (1) Rendezvous increasing its capacity; (2) Rendezvous acquiring additional transportation facilities or additional capacity; (3) an affiliate providing transportation services in the same market area or acquiring another interest that can link facilities to the market area; or (4) Rendezvous or an affiliate acquiring an interest in or being acquired by an interstate pipeline.

---

[15] Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,235.

[16] *Id.* at n. 64.

Rendezvous is also directed to file an updated market power analysis within five years of the date of this order, and every five years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

Waiver Requests

Open-Access and Tariff Filing Requirements

41. Rendezvous requests that its proposed services not be subject to the Commission's open-access and tariff filing requirements. Rendezvous states that it intends to operate the new line as an integrated extension of Rendezvous' and its two owners' upstream gathering systems, and it avers that complying with the Commission's Part 284 open-access rules would burden and complicate the gathering customers' access to California and other markets served by Kern River. Rendezvous states that, if it decides in the future to transport gas other than that gathered by Rendezvous or its owners, it would apply to the Commission for further certificate authority, including an open-access transportation certificate. Accordingly, it does not seek a Part 284, Subpart G blanket certificate to provide open-access service.

42. Rendezvous proposes that its owners would have rights to all the capacity on the proposed line initially, with the potential for Rendezvous to acquire some of the capacity in the future through reallocating capacity among Rendezvous and its owners. Under the instant proposal, producers would maintain ownership of the gas being transported on the proposed residue pipeline pursuant to gathering/processing agreements listing Kern River as a delivery point.

43. We will deny Rendezvous' request for waiver of the Commission's open-access and tariff requirements. As stated by Rendezvous, in some circumstances the Commission has allowed otherwise jurisdictional facilities to operate on a proprietary basis, waiving open-access requirements until such time as service is requested by a third party or a decision is made to provide service to third parties. These cases, including the cases cited by Rendezvous, have typically involved pipelines constructed by entities to supply gas only for their own end use, or construction of processing plant residue lines by gatherer/processors to transport only their own gas and not gas for third parties. These situations do not raise discrimination issues or impede the Commission's efforts to effectuate a fair and efficient market through the application of its open-access regulations. Here, however, Rendezvous will be transporting gas owned by third parties, most of whom presumably will be producers. Therefore, Rendezvous' compliance with the Commission's open-access and tariff requirements is necessary to ensure that Rendezvous provides its service in a non-discriminatory manner.

44. Accordingly, we find that Rendezvous' proposal to transport gas for others in interstate commerce is appropriately subject to the Commission's open-access

regulations. We will grant Rendezvous a Part 284, subpart G blanket certificate, and we will require Rendezvous to file an open-access tariff between 60 days and 30 days prior to placing its pipeline in service.

“Shipper Must Have Title” Policy

45. In the event the Commission denies its request for waiver of open-access requirements generally, Rendezvous requests waiver of the Commission’s policy that a shipper transporting gas on an interstate pipeline must hold title to the gas being transported. It seeks waiver to allow its two owners, Questar Gas and Mountain Gas, to ship for delivery to Kern River gas which will be in their custody, but which they will not own. Rendezvous states that the Commission has waived the “shipper must hold title” policy in numerous circumstances, allowing pipelines to hold off-system capacity if the pipeline treats the acquired capacity as though it were part of the acquiring pipeline’s own system, and the acquiring pipeline agrees to be at risk for any unrecovered costs associated with the off-system capacity.[17]

46. Rendezvous’ reliance on the *Texas Eastern* case is misplaced.[18] As noted above, the Commission finds that Rendezvous’ proposed pipeline will provide jurisdictional transportation and must be operated on an open-access basis, pursuant to Part 284 of the regulations. The effect of Rendezvous’ waiver request would allow it to bundle non-jurisdictional gathering agreements on upstream gathering facilities with jurisdictional transportation on an interstate pipeline. This is contrary to Commission policy that requires that these services be unbundled and priced separately.[19] Other than to assert that it is not consistent with its business model, Rendezvous has offered no convincing reason why the producers, who are gathering customers on its owners’ gathering system, cannot separately contract for transportation service on its new pipeline.[20] Accordingly,

[17] *Citing, e.g., Texas Eastern Transmission Corporation*, 93 FERC ¶ 61,273 (2000) (Texas Eastern), and *Alliance Pipeline L.P.*, 105 FERC ¶ 61,170 (2003).

[18] In cases where the Commission has applied the *Texas Eastern* policy, both the upstream and downstream facilities were interstate pipelines subject to the Commission’s open-access regulations. Here, the upstream services are gathering services. Section 1(b) of the NGA exempts gathering from the provisions of that Act and the Commission’s jurisdiction thereunder.

[19] *See, e.g., EPGT Texas Pipeline, L.P.*, 99 FERC ¶ 61,295 at 62,247 (2002).

[20] Rendezvous has not even held an open season to see if producers or other shippers would be interested in contracting for capacity on its proposed pipeline.

the Commission finds that Rendezvous has failed to demonstrate good cause and will deny the requested waiver.

Reporting and Business Practices

47. Rendezvous requests waiver of the Commission's reporting and accounting requirements in Parts 201, 225, 250, and 260 of the Commission's regulations. Additionally, Rendezvous has requested waiver of section 284.8 of the regulations, which requires internet posting of capacity release information, and section 284.13, which requires internet posting of shipper-related information. Specifically, Rendezvous requests waiver of these sections' electronic filing requirements to the extent that any of the required information must be posted in accordance with the conditions in section 284.12 requiring that a pipeline maintain an interactive web site and otherwise comply with North American Energy Standards Board (NAESB) standards. Rendezvous has also requested waiver of section 284.7(d), which requires the offering of segmentation of capacity, to the extent such segmentation is operationally feasible.

48. We find the cost-related information required by the Commission's reporting and accounting requirements in Parts 201, 225, 250, and 260 of the Commission's regulations is not relevant in light of our approval of market-based rates for Rendezvous. Thus, consistent with our findings in previous orders, we will grant Rendezvous' request for waiver.[21] However, we will require Rendezvous to maintain sufficient records consistent with the Uniform System of Accounts should the Commission require Rendezvous to produce these reports in the future.

49. Rendezvous is a small pipeline with only one receipt point. The Commission will grant Rendezvous' request for waiver of the provisions of section 284.12 requiring pipelines to maintain and operate an interactive web site (EDI standards).[22] For the same reasons, the Commission will also grant waiver of the conditions in section 284.12 requiring compliance with NAESB standards relating to the electronic posting of information and use of the internet for pertinent business practice and electronic communications (EDM standards).[23] The waiver of interactive web site and NAESB standards will remain in effect only until a shipper receiving service on Rendezvous' pipeline requests that Rendezvous implement such standards. Upon receiving such a

---

[21] *See Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215 (2004), and *SG Resources Mississippi L.L.C.*, 101 FERC ¶ 61,029 (2002).

[22] *See Pinnacle Pipeline Company*, 105 FERC ¶61,051 (2003), and *USG Pipeline Company*, 89 FERC ¶ 61,121 (1999).

[23] *Id. See also KO Transmission Company*, 83 FERC ¶ 61,229 (1998).

request, Rendezvous must implement an interactive web site and EDI/EDM standards in accordance with NAESB standards within 180 days of the request.

50. The Commission will also grant Rendezvous' request for waiver of the provisions in section 284.8 which require the electronic posting of information relating to shippers' releases of capacity. This waiver will remain in effect until a shipper requests that capacity release information be posted on an interactive web site in accordance with NAESB standards. Upon receipt of such a request, Rendezvous shall implement an interactive web site in accordance with NAESB within 180 days of the request.

51. We agree that the kind of segmentation contemplated by Order No. 637[24] will not be feasible on Rendezvous' proposed pipeline, because for the foreseeable future there will be only one receipt point, at its beginning at the Blacks Fork processing plant, and one delivery point, at its termination at Kern River. Therefore, we grant waiver of section 284.7(d). However, if system expansion and/or reconfiguration makes segmentation on the facilities feasible, the Commission will re-examine the need for segmentation provisions in Rendezvous' tariff. Should Rendezvous add new receipt and delivery connections so that segmentation would be appropriate, Rendezvous shall file a comprehensive segmentation proposal at least 60 days prior to the time it adds additional receipt and delivery points that would expand its segmentation capabilities.[25]

Standards of Conduct

52. Rendezvous requests waiver of the requirements of the Commission's Part 358 Standards of Conduct regulations.[26] At a minimum, states Rendezvous, to the extent the Commission concludes that Questar Gas and Mountain Gas fall within the definition of an energy affiliate, the Commission should at least grant waiver of the independent functioning requirements of section 358.4 and the information disclosure prohibitions in section 358.5(a) and (b).

---

[24] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,091 (February 9, 2000); *order on rehearing*, Order No. 637-A , FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,099 (May 19, 2000); *order on rehearing*, Order No. 637-B, 92 FERC ¶ 61,062 (July 26, 2000); *aff'd in part and remanded in part, Interstate Natural Gas Association of America v. FERC,* 285 F.3d 18 (D.C. Cir. April 5, 2002), *order on remand,* 101 FERC ¶ 61,127 (2002).

[25] *See Natural Gas Pipeline Company*, 105 FERC ¶ 61,383 at P 25 (2003).

[26] 18 C.F.R. § 358.1 *et seq.*

53. The Commission will not rule on this request in the instant proceeding. Rather, Rendezvous may make a request for waiver of Part 358, and the related Standards of Conduct provisions in Part 250, in a “TS” docket. In that filing, Rendezvous shall provide detailed information to support its request for waiver, including, at a minimum, the following: (1) the number of employees it will have, including those engaged in transmission services; (2) the services that Questar Gas and Mountain Gas provide for Rendezvous; (3) whether Questar Gas and/or Mountain Gas are/will be transportation customers on Rendezvous; and (4) whether Questar Gas and/or Mountain Gas participate in any of the activities described in section 358.3(d).

Engineering

54. Commission staff reviewed the flow diagrams, flow information, and computer models submitted by Rendezvous. The analysis confirms that Rendezvous has appropriately designed its project to transport up to 330,000 Dth/d of residue gas from the Blacks Fork gas processing plant to an interconnection with Kern River at its Muddy Creek Compressor Station.

Blanket Construction Certificate

55. Additionally, Rendezvous applied in Docket No. CP05-41-000 for a Part 157, subpart F blanket certificate, which is generally applicable to all interstate pipelines. Part 157, Subpart F blanket certificates accord natural gas pipelines certain automatic NGA section 7 facility and service authorizations and allows them to make several types of simplified prior notice requests for certain minimal section 7 facility and service authorizations. Because Rendezvous will be an interstate pipeline upon issuance of a certificate to construct and operate the proposed pipeline facilities, we will also issue the requested Part 157, subpart F blanket certificate.

Environmental

56. On February 1, 2005, we issued a notice of intent to prepare an environmental assessment for the proposed project in which we requested comments on environmental issues (NOI). We received responses to the NOI from the Bureau of Land Management, Fish and Wildlife Service, and National Park Service, and our staff addressed all substantive comments in the environmental assessment (EA).

57. The EA for Rendezvous' proposal addresses geology, soils, water resources, wetlands, fisheries, vegetation, wildlife, threatened and endangered species, cultural resources, land use, recreation, and alternatives. Based on the discussion in the EA, we conclude that if constructed in accordance with Rendezvous’ application and supplements filed April 6, 22, and 29, and May 2, 2005, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

58. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.[27] Rendezvous shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Rendezvous. Rendezvous shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

59. At a hearing held on July 21, 2005, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Rendezvous pursuant to section 7(c) of the NGA and Part 157 of the Commission’s regulations to construct, own, operate, and maintain natural gas facilities as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority in Ordering paragraph (A) shall be conditioned on the following:

(1) Rendezvous’ completing the authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order pursuant to paragraph (b) of section 157.20 of the Commission’s regulations;

(2) Rendezvous’ compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20;

(3) Rendezvous’ filing actual tariff sheets, between 60 days and 30 days prior to placing the facilities in service; and

---

[27] *See Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(4) Rendezvous' compliance with the environmental conditions listed in the appendix to this order.

(C) In Docket No. CP05-40-000, Rendezvous is issued a blanket transportation certificate under subpart G of Part 284 of the Commission's regulations.

(D) Rendezvous is granted market-based rate authority subject to the condition that Rendezvous notify the Commission if future circumstances significantly affect its present market power status.

(E) Rendezvous is granted certain waivers of the Commission's regulations, as discussed in this order.

(F) Rendezvous must file an updated market power analysis within five years of the date of this order, and every five years thereafter.

(G) In Docket No. CP05-41-000, Rendezvous is issued a blanket construction certificate under subpart F of Part 157 of the Commission's regulations.

By the Commission. Commissioner Brownell dissenting with a separate statement attached.

(S E A L)

Linda Mitry,
Deputy Secretary.

Appendix

Rendezvous Gas Services, L.L.C
Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. Rendezvous shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by this Order. Rendezvous must:

    a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
    b. justify each modification relative to site-specific conditions;
    c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
    d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:

    a. the modification of conditions of this Order; and
    b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation and activities associated with abandonment of facilities.

3. **Prior to any construction**, Rendezvous shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility location shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Rendezvous shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for the facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference, locations designated on these alignment maps/sheets.

5. Rendezvous shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas must be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of the OEP **before construction in or near that area**.

This requirement does not apply to route variations required herein, extra workspace allowed by the Upland Erosion Control, Revegetation, and Maintenance Plan, or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

a. implementation of cultural resource mitigation measures;
b. implementation of endangered, threatened, or special concern species mitigation measures;
c. recommendations by state regulatory authorities; and
d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of this certificate and before construction begins**, Rendezvous shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Rendezvous would implement the mitigation measures required by this Order. Rendezvous must file revisions to the plan as schedules change. The plan shall identify:

a. how Rendezvous would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
b. the number of environmental inspectors assigned per spread, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
c. company personnel, including environmental inspectors and contractors, who would receive copies of the appropriate material;
d. what training and instructions Rendezvous would give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
e. the company personnel (if known) and specific portion of Rendezvous' organization having responsibility for compliance;
f. the procedures (including use of contract penalties) Rendezvous would follow if noncompliance occurs; and
g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:

i. the completion of all required surveys and reports;
ii. the mitigation training of onsite personnel;
iii. the start of construction; and
iv. the start and completion of restoration.

7. Rendezvous shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:

a. responsible for monitoring an ensuring compliance with all mitigative measures required by this Order and other grants, permits, certificates, or other authorizing documents;

b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract and any other authorizing document;
c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
d. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
e. responsible for maintaining status reports.

8. Rendezvous shall file updated status reports prepared by the head environmental inspector with the Secretary on a **biweekly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

a. the current construction status of the project spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies;
c. corrective actions implemented in response to all instances of noncompliance, and their cost;
d. the effectiveness of all corrective actions implemented;
e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
f. copies of any correspondence received by Rendezvous from other federal, state or local permitting agencies concerning instances of noncompliance, and Rendezvous' response.

9. Rendezvous must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

10. **Within 30 days of placing the certificated facilities in service**, Rendezvous shall file an affirmative statement with the Secretary, certified by a senior company official:

a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
b. identifying which of the certificate conditions Rendezvous has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. **Prior to construction,** Rendezvous shall submit a revised site-specific construction diagram for the Blacks Fork River crossing that identifies the location of pipe assembly areas, pull-back area, extra workspaces (including their distance to the water's edge), and all areas to be disturbed or cleared for construction.

12. **Prior to construction,** Rendezvous shall consult with the U.S. Department of the Interior, Bureau of Land Management (BLM) and appropriate county weed control departments to evaluate the need for a noxious weed management plan, and to identify measures that would be implemented by Rendezvous for management of noxious weeds during and after construction. Rendezvous shall file copies of all correspondence with the Secretary.

13 Rendezvous shall not begin construction activities **until**:

a the staff receives comments from the U.S. Department of the Interior, Fish and Wildlife Service (FWS) regarding the proposed action;
b. the staff completes formal consultation with the FWS, if required; and
c. Rendezvous has received written notification from the Director of OEP that construction or use of mitigation may begin.

14. Rendezvous shall consult with the BLM to develop a plan for avoidance of active prairie dog burrows and/or relocation of prairie dogs encountered within the construction ROW. This plan shall be filed with the Secretary **prior to construction**.

15. **Prior to construction,** Rendezvous shall file with the Secretary the results of all BLM-recommended surveys and any BLM comments on the surveys. The survey reports shall include the following information:

a. name(s) and qualifications of the person(s) conducting the survey;
b. method(s) used to conduct the survey;
c. date(s) of the survey;
d. area surveyed (include the mileposts surveyed); and
e. proposed mitigation that would substantially minimize or avoid the potential impacts.

Rendezvous must receive written approval from the Director of OEP **before** implementing any mitigation measures.

16. Rendezvous shall file either: 1) a letter from the Wyoming State Historic Preservation Officer (SHPO) stating that a survey of the Bunning pipe yard is not necessary; or 2) a report documenting a cultural resources survey of the Bunning pipe yard, and the comments of the SHPO on that report.

17. Rendezvous shall defer construction and use of facilities and staging, storage, and temporary work areas and new or to be improved access roads **until**:

a. Rendezvous files with the Secretary any other required cultural resources reports and plans, as appropriate, and the BLM's and SHPO's comments on all reports and plans; and
b. the Director of OEP reviews and approves all reports and notifies Rendezvous in writing that it may proceed.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **"CONTAINS PRIVILEGED INFORMATION -DO NOT RELEASE."**

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Rendezvous Gas Services, L.L.C. Docket Nos. CP05-40-000 and CP05-41-000

(Issued July 27, 2005)

BROWNELL, Commissioner, dissenting:

Rendezvous is a limited liability gas gathering corporation owned by two other gathering companies, Questar Gas and Mountain Gas. The three non-jurisdictional companies own and operate 1,000 miles of gathering lines and two processing plants, Black Forks and Granger, in southwestern Wyoming. The two processing plants are interconnected by two 6-mile non-jurisdictional pipelines that facilitate efficient processing and blending operations at the plants and enable producers to sell gas into any of the pipelines connected to the two plants. At the outlet of the plants, gas can be delivered to four interstate pipelines and two intrastate pipelines.

Rendezvous proposes to construct a 20 mile 20-inch line from the outlet of the Black Forks plant to an interconnection with a fifth interstate pipeline, Kern River. Rendezvous avers that the proposed pipeline will be operated as an integrated extension of the gathering systems of Rendezvous and its owners. Rendezvous states that the sole purpose of the proposed facility is to add a new delivery point to increase the market options for producers and, at the same time, increase supply choices for consumers in California and the West. There is no intention to providing transportation between pipelines or to anyone for whom gathering or processing services are not provided by Rendezvous or its owners. Thus, Rendezvous requests that the Commission find that the proposed line is a non-jurisdictional gathering facility.

The majority determines that the proposed pipeline is transmission, and offers no analysis to support its finding. I disagree because Rendezvous' proposed line satisfies the Commission's established criteria for determining a facility to be gathering.

Our criteria for determining whether the primary function of a facility is gathering or transmission is laid out in *Farmland Industries, Inc.,*[1] In short, we consider six physical and geographic characteristics of the facilities in question. We also weigh the nonphysical factors, such as intended purpose, location and operations of the facilities and the general business activity of the owner of the facility. No one factor is considered

[1] 23 FERC ¶ 61,063 (1983).

to be determinative. A facility may still be determined to be gathering if it fails to meet one or more of the six physical criteria.[2]

Five of the six physical criteria support a finding that Rendezvous' proposed pipeline is non-jurisdictional gathering:
(1) Rendezvous points out that the length of the proposed line (20.8 miles) is short and well within the length of lines that have been deemed to be gathering. Rendezvous also argues that the diameter of the proposed line (20-inch) is also consistent with many facilities deemed by the Commission to be gathering.[3]
(2) Rendezvous asserts that, viewing the producing region as a whole, the "center point" of the field is the Opal Hub, which delivers gas into Kern River just a few miles north of its proposed connection with Kern River. Rendezvous states that large processing plants are operated at Opal to serve Williams Field Services and Jonah Gathering who are non-jurisdictional gatherers and direct competitors. Further, I would note that the Opal Hub is a supply area market center and pricing point.
(3) Rendezvous avers that the proposed line will operate as an integrated extension of the behind-the-plant gathering systems of Rendezvous and its owners.
(4) The proposed pipeline will be located in a production area with gas production along much of the length of the proposed line and, in the future, wells could be connected.
(5) The pressure of the line is simply a function of the outlet pressure of the existing processing plants and the pressure needed to deliver gas into Kern River.

The nonphysical factors also strongly support a finding that the proposed line is non-jurisdictional gathering. Rendezvous and its owners' business activities are gathering and production. Moreover, neither Rendezvous nor its owners own any other jurisdictional facilities. Finally, Rendezvous' commercial and business model will not change because the line simply adds a new delivery point.

Farmland lists the location of compressors and processing plants as an additional physical criterion. In *Amerada Hess Corporation*,[4] the Commission clarified *Farmland* as it applies to facilities downstream of a processing plant. In *Hess*, the Commission expressed the concern that the application of the "behind-the-plant" factor had become totally mechanical, leading to inequitable and illogical results (e.g., cases involving sizable behind-the-plant gathering facilities with relatively short "stub" lines extending beyond the plant). Therefore, the Commission decided that facilities downstream of a processing plant would be deemed jurisdictional in the absence of countervailing factors

---

[2] Id. at 62,010.
[3] Rendezvous cites *El Paso Natural Gas Co.*, 72 FERC ¶ 61,220 (1995).
[4] 67 FERC ¶ 61,254 (1994).

indicating that the facilities are an incidental extension of the plant or the behind-the-plant gathering system. The Commission stated that the new approach would restore substance to the "behind-the-plant" factor and the other *Farmland* factors.[5]

In this case, there are countervailing factors that strongly support a finding that the proposed line is non-jurisdictional gathering, notwithstanding its location downstream of a processing plant. First, Rendezvous points out that Williams Field Services operates a non-jurisdictional gathering line that parallels its proposed line for the last 15 miles. Second, the length of the proposed line in relation to the existing gathering facilities also indicates the purpose is gathering and not a new transmission service. The proposed 20 mile pipeline is only about 0.2 percent of the 1000 miles of gathering facilities operated by Rendezvous and its owners. There is no intention or ability to provide pipeline-to-pipeline transportation. Third, the prevailing commercial arrangement in Wyoming (and used by Rendezvous and its owners) indicates gathering. Rendezvous asserts that the gatherer/processor generally performs a service for a fee, returning to the producer a contractually agreed upon percentage of the residue gas, with the producer responsible for making transportation and marketing arrangements for its own gas. Thus, the sole purpose of the line is to add a delivery point to its existing gathering system in order that it and its owners can better compete with other non-jurisdictional gatherers. Finally, Rendezvous will operate the line solely to support its and its owners' non-jurisdictional gathering and processing businesses and, in that sense, the proposed line will only redeliver gas for those entities. Again, the clear purpose and operation of the purposed line is an extension of the existing gathering system and not an attempt to enter into the transmission business.

Despite the fact that the *Hess* test was developed out of a concern over a mechanical application of the "behind-the-plant" factor, the Commission, in subsequent decisions and today's order, appears to have reverted to just such a simplistic approach. The decision by the majority to assert jurisdiction rests essentially on the statement that a 20 mile pipeline is not a short stub line and, therefore, countervailing factors or nonphysical factors were not analyzed. As discussed above, if we consider these other factors, there is a very strong argument that Rendezvous proposed line is gathering.[6] I believe no regulatory purpose is served by continuing such a mechanical application of the "behind-the-plant" factor. By asserting jurisdiction over the proposed line, we are

[5] Id. at 61,846.

[6] For example, in *Northern Natural Gas Company* 74 FERC ¶61,333 (1976), the Commission found an 18 mile downstream line is gathering because owner/purchaser was an independent gatherer, the facility would be operated as part of an overall gathering system, and no regulatory purpose would be served by regulating it.

subjecting Rendezvous to significant regulatory costs and risks. At best, we are placing Rendezvous at a competitive disadvantage with its non-jurisdictional gathering competitors. At worst, we are jeopardizing the viability of the project. In either scenario, the gas consumer loses because this gathering facility will increase gathering competition which will temper gas prices, increase supply options to California and the West, and enhance supply reliability.

For these reasons, I respectfully dissent.

Nora Mead Brownell
Commissioner