

142 FERC ¶ 61,036  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

The Gas Company, LLC

Docket No. CP12-498-000

ORDER DISMISSING REQUEST FOR SECTION 3 AUTHORIZATION

(Issued January 17, 2013)

1. On August 9, 2012, The Gas Company, LLC filed an application under section 3 of the Natural Gas Act (NGA)<sup>1</sup> requesting authorization to operate facilities to receive and vaporize domestic liquefied natural gas (LNG) transported from the Continental U.S., for distribution to end use customers in Hawaii. For the reasons discussed below, the Commission will dismiss the request for authorization, finding that the proposed project does not constitute an LNG terminal as envisioned under NGA section 3 and does not require any other authorization from the Commission.

**I. Background and Proposal**

2. The Gas Company is a limited liability company with its primary place of business in Honolulu, Hawaii.<sup>2</sup> The Gas Company is Hawaii's only government-franchised gas company. Its rates and terms and conditions of service are regulated by the Hawaii Public Utilities Commission. The Gas Company currently obtains synthetic natural gas (SNG), derived from naphtha-based feedstock (a by-product of petroleum refining), which it distributes to commercial and residential consumers on Oahu through approximately 965 miles of pipeline. The Gas Company also distributes propane throughout the state by pipeline, truck, and tank, and operates approximately 116 miles of pipeline on Maui, Hawaii, Kauai, Molokai, and Lanai for this purpose.

---

<sup>1</sup> 15 U.S.C. §§ 717f(b) and (c) (2006).

<sup>2</sup> The Gas Company also does business as Hawai'i Gas for select products and services and is a wholly-owned indirect subsidiary of Macquarie Infrastructure Company, LLC, a Delaware limited liability company.

3. Hawaii has no hydrocarbon reserves, and The Gas Company contends that even with the development of biofuel, geothermal, solar photovoltaic, kinetic, and other renewable sources, Hawaii relies on out-of-state supplies for over 90 percent of its energy needs. Although Hawaii has among the lowest per capita energy use in the U.S. (attributable in large part to its mild climate), it has the highest electric prices in the U.S. (approximately three times the national average). In view of this, The Gas Company argues its proposal to bring in natural gas as an additional energy source is in the public interest.

4. The Gas Company relies on a single source for its SNG: the Tesoro oil refinery in Kapolei, located just west of Honolulu. A 22-mile-long Gas Company pipeline extends from the SNG plant to Pier 38 in Honolulu Harbor, a point of interconnection with eight of The Gas Company's SNG distribution systems. The Gas Company explains that in response to concerns about the future reliability of its single SNG source – and in view of the typically high cost of the naphtha-based feedstock used to make SNG and the decline in the cost of natural gas – it has decided to supplement its SNG supplies by introducing LNG supplies to Hawaii. The Gas Company declares it “already has in place the necessary infrastructure and experienced workforce” and “already operates within the legal and regulatory framework necessary for delivering gas to business and residential customers throughout the state.”<sup>3</sup>

5. The Gas Company plans to purchase up to 20 International Shipping Organization (ISO) containers, each with a 12,000-gallon capacity, which would be filled on the Continental U.S. with LNG from domestic sources and transported via container ship to The Gas Company's existing Pier 38 facilities in Honolulu Harbor, where The Gas Company's SNG supplies currently enter its pipeline distribution system.<sup>4</sup> Upon arrival, ISO containers would be attached to a mobile regasification unit<sup>5</sup> which would inject revaporized volumes into The Gas Company's existing pipeline facilities at Pier 38, or would be moved by truck and/or inter-island barge to various locations on The Gas

---

<sup>3</sup> The Gas Company's *Application* at p. 17. Although The Gas Company states it is contemplating future efforts to increase LNG supplies, those potential projects are beyond the scope of this proceeding. Here our consideration is limited to the proposed activities described in the application.

<sup>4</sup> Standard ISO containers have a 12,000-gallon capacity, however, The Gas Company states that due to load limits on road transport, its containers will be filled with no more than 8,600 gallons (approximately 710 Mcf) of LNG.

<sup>5</sup> Although The Gas Company expects to use a single regasification unit, it plans to hold a second unit in reserve as a backup.

Company's existing system, where the LNG containers would be similarly attached to a mobile regasification unit with revaporized volumes fed into existing Gas Company facilities for distribution. The Gas Company anticipates bypassing its own pipelines on occasion and making deliveries directly to an end user by attaching the revaporization unit to an end user's facilities.<sup>6</sup>

6. Although initial LNG deliveries are expected to be offloaded at Pier 38, because the same equipment is used to offload ISO container tanks as is used to handle other standard freight containers, The Gas Company observes that it may also take delivery of LNG by ISO container at Hawaiian ports other than Honolulu. In addition, depending on the ultimate injection locations, the ISO containers may be stored at secured locations anywhere along The Gas Company's distribution system. The Gas Company states that because all the planned transportation and distribution equipment is mobile, storage of the ISO containers and regasification units will not require the construction of any new facilities or structures, the modification of existing facilities or structures, or any land disturbances.

7. In this proceeding, The Gas Company is seeking authorization only to "operate" an LNG terminal. It asserts that because the facilities needed would "not require the disturbance of any land or modification of any existing structures, the [Gas] Company is not requesting authorization in this Application to site, construct or expand an LNG terminal."<sup>7</sup>

## **II. Notice and Interventions**

8. Notice of The Gas Company's request for NGA section 3 authorization for its proposed project was published in the *Federal Register* on October 5, 2012.<sup>8</sup> Timely, unopposed motions to intervene were filed by the Blue Planet Foundation, the Hawaii Public Utilities Commission, Life of the Land, and the Sierra Club.<sup>9</sup> The Blue Planet Foundation, the Hawaii Department of Transportation, the Hawaii Public Utilities Commission, Henry Curtis, and the Sierra Club filed comments. The Gas Company

---

<sup>6</sup> The Gas Company explains that no compressor facilities will be required for its proposed project, because the ISO containers will provide sufficient pressure.

<sup>7</sup> The Gas Company's *Application* at p. 18.

<sup>8</sup> 77 FR 60972 (2012).

<sup>9</sup> Timely, unopposed motions to intervene are automatically granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214 (2012).

submitted an answer to certain comments, to which the Blue Planet Foundation and the Sierra Club submitted answers. Generally, the comments and answers discuss the merits of the proposed project. Given our determination that no Commission authorization is required for The Gas Company to implement its project as described, we find no cause to address the comments or answers.

### III. Discussion

9. Historically, NGA section 3 has only come into play when gas is transported between the U.S. and another country, not when gas is transported within the U.S. To date, *foreign* commerce, i.e., gas imports and exports and the facilities used to import or export gas, has been subject to section 3,<sup>10</sup> whereas *interstate* commerce, gas transported across state lines and the facilities used to do so, has been subject to section 7. Thus, The Gas Company's request for section 3 authorization – heretofore applicable only to projects importing or exporting gas – for a project that will depend on domestic supplies and not on foreign gas, constitutes a case of first impression.

10. The Gas Company maintains that its proposed project is subject to section 3 as a result of amendments to the NGA put in place by the Energy Policy Act of 2005 (EPAAct 2005).<sup>11</sup> Prior to EPAAct 2005, the Commission's section 3 jurisdiction was clearly limited to facilities, including LNG terminals, used to import gas from or export gas to a foreign country. EPAAct 2005 added a definition of "LNG terminal" which includes all proposed LNG facilities that would receive or send out domestic gas supplies under certain circumstances.<sup>12</sup> This new definition, added as NGA section 2(11), reads as follows:

"LNG terminal" includes all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign

---

<sup>10</sup> NGA section 3 jurisdiction is shared: the Department of Energy (DOE) has jurisdiction over the commodity and authorizes the import and export of natural gas volumes (*see* 10 C.F.R. Part 590 of DOE's regulations); the Commission has jurisdiction over the facilities and authorizes the siting, construction, expansion, and operation of facilities used for the import or export of natural gas (*see* 18 C.F.R. Part 153 of the Commission's regulations).

<sup>11</sup> Pub. L. No. 109-58, 119 Stat. 594 (2005).

<sup>12</sup> Prior to EPAAct 2005, section 3 was titled: "Exportation or Importation of Natural Gas" – to which EPAAct 2005 added the term "LNG Terminals."

country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel, but does not include –

(A) waterborne vessels used to deliver natural gas to or from any such facilities; or

(B) any pipeline or storage facility subject to the jurisdiction of the Commission under section 7.

This definition does not delimit an “LNG terminal” to a facility used to import gas from or export gas to a foreign country, but also encompasses facilities handling solely domestic gas, if the gas has been or will be “transported in interstate commerce by waterborne vessel.” The Gas Company relies on this section 2(11) definition to conclude that its proposed project constitutes an “LNG terminal” subject to the Commission’s section 3 jurisdiction.

11. We reach a different conclusion. For the reasons discussed below, based on the circumstances presented here, we do not believe the described facilities and operations constitute an LNG terminal as defined in section 2(11). Accordingly, we find no cause to assert jurisdiction under section 3 over the operation of the proposed project.

12. Further, although the proposed project would involve the transportation of gas in interstate commerce, we find that The Gas Company’s described facilities and operations would be exempt from our section 7 jurisdiction by either NGA section 1(b), which exempts a company that provides only local distribution services, or section 1(c) (known as the “Hinshaw” exemption), which exempts a company if it receives all of its interstate gas supplies within its own state, all of the gas it receives is consumed in that state, and the company is subject to regulation by a state commission. Having determined that The Gas Company will neither be operating an LNG terminal subject to NGA section 3 nor engaged in the transportation of natural gas in interstate commerce subject to NGA section 7, we dismiss the application.

13. As described above, the proposed project will be limited to the shipment of ISO containers from the Continental U.S. to Hawaii. The Gas Company plans to initially take delivery of LNG containers at Pier 38 in Honolulu Harbor, at which point The Gas Company will (1) revaporize the LNG using a mobile regasification unit and inject it into The Gas Company’s existing pipeline distribution system or (2) transport the LNG in the ISO containers away from the pier by truck and/or barge to various other points in Hawaii where The Gas Company will attach the containers to a mobile regasification unit in order to inject the revaporized gas into The Gas Company’s existing pipeline system or directly into end users’ facilities. The Gas Company asserts that these described operations should be viewed as constituting operation of an “LNG terminal” as contemplated by the section 2(11) definition. We disagree.

14. The existing pier facilities which will receive, load, and unload the vessels carrying the ISO containers of LNG are the same facilities currently receiving, loading, and unloading containers filled with other products.<sup>13</sup> We do not believe that these pier facilities constitute “natural gas facilities” as that term is used in the section 2(11) definition.

15. Further, we find that The Gas Company’s proposed operations – specifically its use of regasification units to revaporize LNG from the ISO containers for injection into its pipeline distribution system or end users’ facilities and its unloading, loading, and transportation of ISO containers – will be exempt from the Commission’s NGA jurisdiction because The Gas Company qualifies as either an exempt local distribution company under section 1(b) or an exempt Hinshaw company under section 1(c). We do not agree with The Gas Company’s contention that its operations would not qualify for section 1(c) Hinshaw status because “the Hinshaw exemption only applies ... if the gas is injected into a transportation system, as opposed to a local distribution system.”<sup>14</sup> NGA section 1(c) does not make a distinction regarding the type of downstream in-state entity or facility which receives the natural gas. Thus, the criteria for the Hinshaw exemption can be satisfied regardless of whether the in-state pipeline system qualifies as an intrastate transmission system or a local distribution system. Moreover, to the extent the in-state entity and facilities are involved solely in the local distribution of gas, the Commission has no jurisdiction over them by virtue of section 1(b).

16. The Gas Company argues that a decision by the Commission to decline to assert jurisdiction “would be contrary to the intent of Congress to have the Commission provide uniform environmental and safety review of LNG terminals in the U.S.”<sup>15</sup> The Gas Company further contends that the legislative history of EAct 2005 supports the need for federal jurisdiction over siting and safety with respect to LNG terminals, and comments that state jurisdiction over LNG terminals would not be based on the overall energy needs of the nation.

17. We acknowledge that EAct 2005 explicitly provides the Commission with exclusive authority over LNG terminals subject to our section 3 jurisdiction. However,

---

<sup>13</sup> The Gas Company indicates such interchangeability in noting its plans to move ISO containers from ship to truck and then from truck to ship “via standard cargo unloading procedures,” which it states it may do at locations other than Honolulu. *Application* at p. 19.

<sup>14</sup> The Gas Company’s *Application*, p. 31.

<sup>15</sup> *Id.* at p. 32.

as discussed above, based on the circumstances presented in this case, we have concluded that the proposed project would not constitute an LNG terminal as contemplated by Congress. Therefore, in this case we find no basis for asserting section 3 authority over the described facilities or operations. Moreover, uniform federal environmental and safety standards are already in effect and would apply to the proposed project. The Gas Company's existing facilities are subject to Department of Transportation standards, including Pipeline and Hazardous Materials Safety Administration safety standards.<sup>16</sup> In addition, ships bringing LNG or any other cargo to Hawaii would be subject to regulation by the Coast Guard. Because we find that the project would not fulfill the section 2(11) definition of an LNG terminal, we conclude we would have no jurisdiction over the project as an LNG terminal. We further find that although the project would involve the transportation of gas in interstate commerce, The Gas Company's proposed facilities and operations would be exempt from our NGA jurisdiction pursuant to either NGA section 1(b) or 1(c). Finally, we conclude that there is no call for the Commission to fill any regulatory gap, since the facilities and operations would be subject to safety and environmental provisions of other federal entities, principally the Department of Transportation and the Coast Guard. Accordingly, we dismiss The Gas Company's application.

18. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, as supplemented, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

The Gas Company's application for NGA section 3 authorization for its proposed project is dismissed for the reasons discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

---

<sup>16</sup> See 49 C.F.R. Parts 190-193 (2012).