

143 FERC ¶ 61,043  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Atlas Pipeline Mid-Continent WestTex, LLC  
Pioneer Natural Resources USA, Inc.

Docket No. CP12-468-001

ORDER DENYING REQUEST FOR CLARIFICATION AND GRANTING  
ALTERNATIVE REQUEST FOR REHEARING

(Issued April 18, 2013)

1. Atlas Pipeline Mid-Continent WestTex, LLC (Atlas) and Pioneer Natural Resources USA, Inc. (Pioneer) have filed a request for clarification or, in the alternative, rehearing of a September 28, 2012 delegated order<sup>1</sup> granting Atlas and Pioneer a certificate under section 7(c) of the Natural Gas Act (NGA)<sup>2</sup> to construct and operate a 10.2-mile long, 16-inch diameter pipeline (the Driver Residue Pipeline) in Midland County, Texas. The order granted in part Atlas' and Pioneer's request for waiver of filing, reporting, accounting and compliance requirements otherwise applicable to interstate pipelines. However, the order did not grant Atlas and Pioneer a waiver of the regulations requiring the filing of FERC Form No. 2-A used by the Commission to assess FERC annual charges.<sup>3</sup>

2. Atlas and Pioneer request clarification that the certificate granted by the September 2012 Order is a certificate of limited jurisdiction which exempts them from annual charges or, in the alternative, rehearing of the issue regarding the application of annual charges. As discussed below, we will deny Atlas' and Pioneer's request for

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<sup>1</sup> *Atlas Pipeline Mid-Continent WestTex, LLC*, 140 FERC ¶ 62,238 (2012) (September 2012 Order).

<sup>2</sup> 15 U.S.C. § 717f(c) (2006).

<sup>3</sup> 18 C.F.R. § 260.2 (2012).

clarification that the certificate granted by the September 2012 Order is a certificate of limited jurisdiction and grant their alternative request for rehearing to waive annual charges and related filing requirements.

### **Background**

3. On May 30, 2012, Atlas and Pioneer filed a joint application pursuant to NGA section 7(c) for a certificate authorizing Atlas and Pioneer to construct and operate the Driver Residue Pipeline, as described above. The pipeline would be used to transport natural gas in interstate commerce from a non-jurisdictional natural gas processing plant, the Driver Plant, which Atlas and Pioneer are planning to construct, to interconnections with three gas transmission pipeline systems, including an interstate pipeline and two intrastate pipelines.
4. Atlas is primarily a gas gathering and processing company that operates solely within the State of Texas. Pioneer is an independent oil and gas exploration company and is actively engaged in the production of natural gas in the area of Texas in which the Driver Plant and Driver Residue Pipeline will be located.
5. The Driver Residue Pipeline will be operated as an integral part of Atlas' and Pioneer's natural gas operations in the Permian Basin, which include the Driver Plant and extensive gathering facilities. Atlas and Pioneer will acquire all of the raw natural gas to be processed at the Driver Plant and will own the pipeline-quality natural gas to be transported from the plant tailgate via the Driver Residue Pipeline. They, therefore, will be the only shippers of natural gas on the pipeline. Although the Driver Residue Pipeline will be used for the sole purpose of transporting gas from a processing plant to downstream transmission pipelines, including an interstate natural gas pipeline, it does not qualify as a non-jurisdictional "stub line" under Commission precedent because its length exceeds the criterion for such a designation.<sup>4</sup> Given this, Atlas and Pioneer requested that the Commission issue them a limited jurisdiction certificate to construct and operate the 10.2-mile long Driver Residue Pipeline for the limited purpose of

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<sup>4</sup> The Commission has found that residue pipelines transporting pipeline-quality gas beyond the outlet of processing plants are jurisdictional transmission facilities unless they are short enough to qualify as incidental extensions of the residue pipeline's upstream non-jurisdictional gathering and processing facilities. The Commission has been unwilling to expand this "stub line" exemption to include residue lines that exceed five miles in length. *See, e.g., Quicksilver Resources Inc. and BreitBurn Operating L.P.*, 124 FERC ¶ 61,017, at P 10 (2008), and *Superior Offshore Pipeline Company*, 67 FERC ¶ 61,253, at 61,836 (1994).

transporting Atlas' and Pioneer's natural gas from their processing plant to the planned interconnections with interstate and intrastate pipeline systems. Also, because all of the natural gas transported via the proposed pipeline will be owned by Atlas and Pioneer, they sought general waivers of the Commission's tariff and rate regulations.

6. As noted above, the Commission's Office of Energy Projects issued the September 2012 Order granting Atlas' and Pioneer's request for a certificate to construct and operate the Driver Residue Pipeline. Because Atlas and Pioneer do not intend to transport third-party gas, the order also granted Atlas and Pioneer a waiver of most regulatory requirements. However, the order did not grant them a waiver of the requirement to file pages 1 and 520 of FERC Form No. 2-A so that the Commission could determine whether the Driver Residue Pipeline's projected annual throughput level meets the threshold for assessing annual charges.<sup>5</sup>

7. On October 25, 2012, Atlas and Pioneer filed a joint request for clarification or, in the alternative, rehearing of the September 2012 Order. Because the ordering paragraphs do not indicate that the certificate granted to Atlas and Pioneer is a certificate of limited jurisdiction, they ask that the Commission clarify that the order was intended to grant a certificate of limited jurisdiction. In the alternative, they request that the Commission state specifically that, as holders of a limited jurisdiction certificate, they qualify for an exemption from FERC annual charges.

### **Discussion**

8. The issue on rehearing is whether the Commission intended to grant a certificate of limited jurisdiction to Atlas and Pioneer, which would exempt them from the assessment of annual charges based on the Driver Residue Pipeline's transportation volumes and thus obviate the need for them to file portions of FERC Form No. 2-A.<sup>6</sup> Although the September 2012 Order granted Atlas' and Pioneer's request for waiver of other regulatory requirements, Atlas and Pioneer did not provide evidence of financial

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<sup>5</sup> Atlas and Pioneer filed the required information on October 12, 2012.

<sup>6</sup> Section 382.102(a)(4) of Part 382, Subpart G, *Annual Charges*, 18 C.F.R. § 382.102(a)(4) (2012), reads:

§ 382.102 Definitions.

For purposes of this part:

(a) *Natural gas pipeline company* means any person:

\* \* \*

(4) Not holding a limited jurisdiction certificate.

hardship that would support a waiver of annual charges.<sup>7</sup> Therefore, the September 2012 Order did not grant Atlas and Pioneer a waiver of the requirement that they file the information that the Commission relies on to determine whether a pipeline company's annual throughput level meets the 200,000 million cubic feet (Mcf) threshold in section 382.102(a) of the regulations and, if so, the applicable annual charges.<sup>8</sup>

9. In their request for rehearing, Atlas and Pioneer argue that the Office of Energy Projects erred in failing explicitly to provide that the certificate granted to Atlas and Pioneer to construct and operate the Driver Residue Pipeline is a certificate of "limited jurisdiction," which would exempt them by operation of section 382.102(a)(4) of the regulations from being subject to the Commission's annual charges. Atlas and Pioneer assert that requiring them to pay annual charges based on the Driver Residue Pipeline's annual throughput levels would be inconsistent with the Commission's treatment of other similarly-situated special-purpose pipelines.

10. We will deny Atlas' and Pioneer's request for clarification that the certificate issued by the September 2012 Order is a certificate of limited jurisdiction. While the order exempted Atlas and Pioneer from most regulatory requirements because they will use the Driver Residue Pipeline solely to transport their own gas, the Driver Residue Pipeline nevertheless is a fully jurisdictional facility. Therefore, while Atlas' and Pioneer's acceptance of the September 2012 Order's certificate to construct and operate the Driver Residue Pipeline will not affect the non-jurisdictional status of Atlas' and Pioneer's upstream gathering and processing facilities and activities, the certificate for the Driver Residue Pipeline is not a certificate of limited jurisdiction and Atlas and Pioneer are not exempt from annual charge assessments on that basis.

11. The regulatory history of the annual charge regulations demonstrates that the annual charge exemption for companies holding certificates of "limited jurisdiction" was adopted to exempt companies, such as Hinshaw pipelines and local distribution companies (LDC), that use their non-jurisdictional facilities to provide limited services in

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<sup>7</sup> Section 382.105 of the regulations, 18 C.F.R. § 382.105 (2012), provides for companies to file petitions for waiver of annual charges based on financial hardship.

<sup>8</sup> FERC Form No. 2 must be filed by a "major" natural gas company, defined as a company whose annual transportation volumes, including storage volumes, exceed 50 million Dth. FERC Form No. 2-A must be filed by a "nonmajor" company, defined as a company whose annual transportation volumes exceed 200,000 Dth but are less than 50 million Dth. See 18 C.F.R. §§ 260.1(b) and 260.2(b), respectively.

interstate commerce authorized by the Commission.<sup>9</sup> However, there is no indication that the Commission intended to exempt otherwise non-jurisdictional companies like Atlas and Pioneer that operate certificated facilities which are fully subject to the jurisdiction of the Commission, such as the Driver Residue Pipeline, to provide jurisdictional services.

12. The orders granting waivers in previous cases involving jurisdictional residue pipelines that allowed the certificate holders to avoid filing information relating to annual charges did not take into account the distinction between a “certificate of limited jurisdiction” as contemplated by section 382.102(a)(4) of the regulations -- i.e., a certificate authorizing an otherwise non-jurisdictional company to use its non-jurisdictional facilities to provide a jurisdictional service -- and a certificate authorizing such a company to construct, operate, and provide service on a jurisdictional facility such as a pipeline to transport pipeline-quality gas from the outlet of a non-jurisdictional processing plant. In the latter instance, the certificated facility and all transportation provided on it are fully subject to the jurisdiction of the Commission, notwithstanding the fact that the certificate holder will use the authorized facility solely to transport its own gas or the fact that the certificate holder’s operation of the authorized facility may seem comparatively minor compared to its non-jurisdictional facilities and services.<sup>10</sup>

13. Given that a certificate to construct and operate a facility fully subject to the jurisdiction of the Commission is not a “limited jurisdiction” certificate, as contemplated by section 382.102(a)(4) of the regulations, the Commission clarifies that its policy in future proceedings will be to deny requests by otherwise non-jurisdictional applicants

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<sup>9</sup> See *Annual Charges Under The Omnibus Budget Reconciliation Act of 1986*, Order No. 472, FERC Stats. & Regs., ¶ 30,746 at 30,626-27 (1987). See also *Energy Corp. of America*, 141 FERC ¶ 62,151 (2012). In *Energy Corp.*, the Office of Energy Projects granted a gatherer a limited jurisdiction certificate to receive gas from an interstate pipeline and deliver it to an LDC at times when local production transported by the gatherer was insufficient to meet the LDC’s needs. Since the gatherer would be using its non-jurisdictional facilities to provide the certificated service, the order appropriately described the certificate as a “limited jurisdiction certificate” and did not require the gatherer to file the FERC Form No. 2-A information that the Commission would have needed if it intended to assess annual charges based on the amount of jurisdictional transportation service provided on the gathering facilities.

<sup>10</sup> See, e.g., *DCP Midstream, LP*, 138 FERC ¶ 62,080, at 64,305 (2012); *Western Gas Resources, Inc.*, 119 FERC ¶ 61,308, at P 20 (2007); *Western Gas Resources, Inc.*, 85 FERC ¶ 61,087 (1998); *Continental Natural Gas, Inc.*, 83 FERC ¶ 61,065 (1998).

seeking certificates to construct and/or operate jurisdictional facilities, including residue pipelines from the outlets of non-jurisdictional processing plants, for waivers to exempt them from the Commission's annual charge assessments and related filing requirements, if the certificated facilities' transportation volumes meet the thresholds for assessing annual charges. However, in light of the lack of clarity on this issue in the past, the Commission will grant Atlas' and Pioneer's alternative request for rehearing of the September 2012 Order to grant them a waiver of the otherwise applicable requirement to file portions of FERC Form No. 2-A and an exemption from the assessment of annual charges.

The Commission orders:

(A) Atlas' and Pioneer's request for clarification that the certificate granted by the September 2012 Order is a certificate of limited jurisdiction is denied.

(B) Atlas' and Pioneer's alternative request for rehearing of the September 2012 Order to waive the requirement that they make FERC Form No. 2-A filings and to exempt them from annual charges based on the throughput of the Driver Residue Pipeline is granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.