148 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulf Oil Limited Partnership | Docket No. CP14-132-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued July 17, 2014)

1. On April 1, 2014, Gulf Oil Limited Partnership (Gulf Oil) filed a petition for a declaratory order under section 207 of the Commission's Rules of Practice and Procedure.[1] Gulf Oil requests the Commission declare that the planned construction and operation of a liquefied natural gas (LNG) production facility in northeastern Pennsylvania that would convert natural gas produced in the Marcellus Shale play into LNG to be marketed as vehicular fuel, high horsepower engine fuel, and as a source of supply for certain local distribution company (LDC) peak shaving facilities will not subject it to the Commission's jurisdiction under section 7 of the Natural Gas Act (NGA),[2] and will not make the owner or operator of that LNG facility, by virtue of its role as the facility's owner or operator, a "natural-gas company" within the meaning of section 1(b) of the NGA.[3] For the reasons discussed below, we will grant Gulf Oil's request for a declaratory order.

Background

2. Gulf Oil is a branded marketer of energy products and distributor of motor fuels and other petroleum products headquartered in Framingham, Massachusetts and operating in 30 states and the Caribbean. Gulf Oil's activities include: (1) retail distribution of motor fuels, both gasoline and diesel; (2) supply of heating oil, lubricants, and bio-fuels; (3) sourcing and blending of motor fuels, and (4) providing electricity to residential customers in Connecticut, Maine, and Massachusetts. Within its 30-state footprint, Gulf Oil owns and operates 12 proprietary terminals, supplies product at wholesale through 75 terminals, and owns and dispatches a fleet of almost 200 trucks.

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[1] 18 C.F.R. § 385.207 (2013).

[2] 15 U.S.C. § 717, *et seq*. (2012).

[3] *Id*., § 1(b), 15 U.S.C. § 717(b) (2012).

3. Gulf Oil states that it recently announced the expansion of its energy offerings to include the development of transportation and distribution capability for natural gas-based transportation fuels, including LNG. As part of this expansion, Gulf Oil states that it plans to construct and operate a natural gas liquefaction facility to be located in Great Bend, Susquehanna County, in northeastern Pennsylvania (the Gulf Oil LNG Project). The contemplated liquefaction facility would convert natural gas produced and gathered in Pennsylvania's Marcellus Shale play into LNG that would be distributed via tanker truck to various markets in Pennsylvania and the northeast United States.

4. Specifically, the liquefaction facility would receive natural gas from Williams Windsor-Montrose-Washington's natural gas gathering pipeline system, liquefy it, and deliver the LNG (or have the LNG delivered) by truck to end users (drilling rig operators and truck fleet operators, among others) and to local distribution companies for storage in their LNG peak shaving facilities for later use to supplement flowing natural gas supplies. According to Gulf Oil, the contemplated facilities would (i) provide Marcellus gas producers, other operators of high horsepower engines, and truck fleet operators with convenient access to a fuel that will cost less and will produce lower air emissions than the diesel they currently must use, and (ii) offer LDCs, particularly those operating in New England, with a new, cost-effective, and reliable source of LNG for use in their peak shaving applications. Gulf Oil estimates that its project would produce, utilizing electric compression, between 100,000 and 300,000 gallons of LNG per day (requiring between 8,333 and 25,000 dekatherms of natural gas per day), depending on the markets to be served, and would store between 600,000 and 3,000,000 gallons of LNG storage on site. The cost of the Gulf Oil LNG Project is anticipated to be approximately $45 million.

Notice and Interventions

5. Notice of Gulf Oil's petition was published in the *Federal Register* on April 15, 2014.[4] UGI LNG, Inc. and Distrigas of Massachusetts LLC filed timely, unopposed motions to intervene.[5]

Gulf Oil's Request for a Declaratory Order

6. Gulf Oil asks that the Commission declare that an NGA section 7 certificate is not required for the construction and operation of the liquefaction facility, and that the owner and operator of the facility will not, by virtue of its role as the facility's owner or operator, be a "natural-gas company" within the meaning of NGA section 1(b). According to Gulf Oil, the proposed project responds to an emerging demand for LNG as

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[4] 79 FR 21,232 (April 15, 2014).

[5] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2013).

a vehicular fuel, and could also provide LDCs a new alternative source of LNG to supplement their LNG inventories maintained for peak shaving purposes. Gulf Oil states that its proposal is "based on a desire to reach markets that can only be served by truck,"[6] and would neither displace interstate pipeline deliveries of natural gas nor circumvent the Commission's section 7 NGA jurisdiction.

Commission Response

7. We conclude that the planned facilities in the Gulf Oil LNG Project, as depicted in Gulf Oil's petition for declaratory order, will not be engaged in jurisdictional transportation of natural gas in interstate commerce so as to render the facilities subject to the certification and rate filing and review requirements of NGA section 7. Since the liquefaction and truck-loading operations performed by the Gulf Oil LNG Project's facilities will not be jurisdictional transportation activities under the NGA, we further conclude that the owner or operator of the proposed Gulf Oil LNG Project would not be a "natural-gas company," as that term is defined in section 2(6) and used in section 1(b) of NGA, by reason of its operation of the facilities.

8. First, we conclude that the liquefaction services to be provided by the project do not, in the circumstances of this case, implicate the Commission's jurisdiction over the transportation of gas in interstate commerce by jurisdictional pipelines. While the Commission makes jurisdictional determinations concerning projects, including LNG projects, on a case-by-case basis,[7] the Commission has never asserted section 7 jurisdiction over facilities that will not be used to liquefy any gas that has already been transported upstream on jurisdictional interstate pipeline facilities.[8] Second, as a general rule, the Commission's jurisdiction over the transportation of gas in either gaseous or liquefied state in interstate commerce is limited to transportation by pipeline, i.e., our jurisdiction does not extend to deliveries of natural gas by truck, train, or barge.[9] While

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[6] Gulf Oil's petition at p. 3 (quoting *Southern LNG Inc*., 131 FERC ¶ 61,155, at P 17 (2010)).

[7] *Marathon Oil Company* (*Marathon*) , 53 FPC 2164, at 2172 (1975).

[8] *See, e.g., Air Products and Chemicals, Inc*. (*Air Products*), 58 FERC ¶ 61,199, at 61,618 (1992) (describing circumstances and citing precedents, all involving transportation of the gas by jurisdictional pipeline facilities at some point, where the Commission found that the liquefaction of gas would constitute "an integral part of the interstate flow" subject to the Commission's jurisdiction under section 7 of the NGA).

[9] *Southern LNG, Inc*., 131 FERC ¶ 61,155, at P 17 (2010) (citing *Exemption of Certain Transport and/or Sales of Liquefied Natural Gas from the Requirements of Section 7(c) of the NGA*, 49 FPC 1078, at 1079 (1973)).

the Commission has explained that the interstate transportation of natural gas by pipeline is a continuum that cannot be "broken" by a party liquefying gas so that it can be delivered as LNG by non-pipeline modes of transportation as a means of circumventing NGA jurisdiction,[10] the gas sold by Gulf Oil as LNG will not be transported at any point by pipeline facilities subject to the Commission's section 7 jurisdiction. Thus, while Gulf Oil's intended markets include LDCs that would revaporize and inject the gas into their local distribution systems, there is nothing to indicate that Gulf Oil's plans to liquefy its gas so that it can be delivered as LNG by trucks is in any way motivated by a desire to circumvent the Commission's section 7 jurisdiction over the transportation of gas by pipeline in interstate commerce. Rather, Gulf Oil's motivation is to sell gas to customers that will use the gas themselves as engine fuel, resell the gas as vehicular fuel, or use the gas to supplement their local distribution supplies. Thus, as the Commission concluded in *Southern LNG, Inc.*,[11] Gulf Oil's plans appear to be based on a desire to market its gas to customers that it can only reach by truck.

9. Gulf Oil expresses concern over whether its liquefaction facilities could become subject to section 7 jurisdiction in the event of the "remote" possibility, and for reasons beyond its control, some of the LNG produced by its project and delivered by truck to an LDC's peak shaving facility is revaporized and delivered in a way that displaces gas supplies being transported on an interstate pipeline. Gulf Oil also acknowledges that for reasons beyond its control, an LDC purchasing LNG from Gulf Oil could deliver some of the gas, under its blanket certificate issued under its section 284.224 of the Commission's regulations,[12] to an interconnected interstate pipeline. As discussed above, a gathering line exempt from section 7 jurisdiction will deliver local gas production to Gulf Oil's liquefaction facilities. None of the gas will have been transported upstream by an interstate pipeline. The Commission has never asserted jurisdiction over liquefaction facilities that only receive gas from non-jurisdictional pipeline facilities. Gulf Oil's petition also represents that its liquefaction facilities will not deliver any gas directly into jurisdictional interstate pipeline facilities; nor will any of the trucks leaving its facilities deliver the LNG deliver to interstate pipeline facilities. Under these circumstances, we find that section 7 jurisdiction would not retroactively attach to Gulf Oil's liquefaction facilities and operations in the event some of the gas leaving Gulf Oil's liquefaction facility by truck and delivered to an LDC is subsequently delivered by the LDC to an interstate pipeline or used in a manner that displaces gas being transported on an interstate pipeline.

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[10] *See Air Products*, 58 FERC at 61,619.

[11] 131 FERC ¶ 61,155, at P 17 (2010).

[12] 18 C.F.R. § 284.224 (2013).

10. Finally, Gulf Oil requests confirmation that it will not need to apply for section 7 certificate authority to make any of its sales of LNG. To the extent its sale are direct sales to customers that will not resell the gas, section 7 jurisdiction has never applied to such sales. Further, as discussed by the U.S. Supreme Court in *FPC v. Hope Natural Gas Co.*,[13] the "primary aim" of the NGA was to "protect consumers against exploitation" by interstate pipeline companies, which at the time were also the merchants of the gas they transported, and Gulf Oil does not intend to sell any gas that will be transported at any point by jurisdictional interstate pipeline facilities. In any event, Gulf Oil's sales of LNG to LDCs for resale and local distribution likewise would not be subject to section 7 jurisdiction over sales for resale because they would qualify as "first sales" within the meaning of section 2(21)(A) of the NGPA. Under the general rule, a "first sale" as defined in section 2(21) of the NGPA and thereby exempted from NGA section 7 jurisdiction includes any sale *to* an LDC, interstate pipeline, intrastate pipeline, or retail customer, and any other sale in the chain of transactions so long as the sale occurs *prior* to a sale to one of those entities.[14] Thus, Gulf Oil's sales for resale to an LDC would still qualify as exempt first sales if the "remote" possibility described by Gulf Oil should occur and some of the gas it sells to an LDC is resold and delivered by the LDC to an interstate pipeline or in a manner that displaces gas being transported on an interstate pipeline.[15]

<u>The Commission orders</u>:

Gulf Oil's request for a declaratory order that the construction and operation of the Gulf Oil LNG Project will not subject it to the Commission's jurisdiction under NGA section 7 and that an owner or operator of the project's facilities, by virtue of its role as

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[13] 320 U.S. 591, 610 (1944).

[14] *See In the Matter of Amendments to Blanket Sales Certificates*, 107 FERC ¶ 61,174, at PP 19 – 28 (2004) (*order denying reh'g* of Final Rule, Order No. 644).

[15] We also note that sales of gas for resale by a non-interstate pipeline that do not qualify as first sales are automatically authorized under the blanket market certificate authority provided by section 284.402 of the regulations. 18 C.F.R. § 284.402 (2013).

owner or operator, will not become a “natural-gas company” as defined in the NGA is granted for the reasons discussed herein.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.