

155 FERC ¶ 61,184
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

City of Clarksville, Tennessee

Docket No. CP13-508-001

ORDER DENYING REHEARING

(Issued May 19, 2016)

1. On February 7, 2014, the Commission issued an order granting, among other things, the City of Clarksville, Tennessee (Clarksville), service area determinations, pursuant to section 7(f) of the Natural Gas Act (NGA),¹ for distribution facilities that extend across the Tennessee/Kentucky border into Kentucky.² On February 28, 2014, Clarksville filed a request for rehearing of the February 7 Order. We will deny the request for rehearing, as discussed below.

I. Background and the February 7 Order

2. Clarksville, a Tennessee municipality, is located in Montgomery County, Tennessee. Clarksville owns and operates a natural gas distribution system that serves a “significant geographical area” in Montgomery County, as well as smaller, discrete areas of contiguous Cheatham and Robertson Counties, Tennessee.

3. Clarksville also operates the gas distribution facilities that provide service to the United States Army base at Fort Campbell. Fort Campbell occupies 105,000 acres of land in Montgomery and Stewart Counties, Tennessee, and Christian and Trigg Counties, Kentucky. In addition, Clarksville provides gas service to 16 commercial customers through a pipeline, known as the Kentucky Service Line, which extends from the Clarksville municipal system in Montgomery County, Tennessee, 2,400 feet into Christian County, Kentucky.

¹ 15 U.S.C. § 717f(f)(1)-(2) 2012.

² *City of Clarksville, Tennessee*, 146 FERC ¶ 61,074 (2014) (February 7 Order).

4. The February 7 Order granted Clarksville NGA section 7(f) service area determinations covering the portion of Fort Campbell Army base in Kentucky and the Kentucky Service Line that extends into Christian County, Kentucky. Within such designated section 7(f) service areas, the natural gas company “may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization.” In addition, “transportation to ultimate consumers in such service area by the holder of such service area determination, even if across State lines, shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed.”³

5. Todd County, Kentucky, an intervenor, had argued that because Clarksville also sells gas to the City of Guthrie, Kentucky (Guthrie), for resale and local distribution in Guthrie, Clarksville did not qualify for a section 7(f) determination under the Commission’s criteria.⁴ Clarksville responded, explaining that it only sold about 10,675 Mcf of gas to Guthrie during a recent twelve-month period and that it delivered the gas to Guthrie at a meter in Tennessee owned by Clarksville and located approximately 20 feet south of the Tennessee/Kentucky border. Clarksville stated that Guthrie received the gas into pipeline facilities that cross the state line and that Clarksville assumed that the pipeline facilities leading from the meter and crossing the state line are owned and operated by Guthrie. Clarksville also stated that it assumed that Guthrie likely sells the gas to retail customers in Kentucky.⁵

6. The Commission concluded in its February 7 Order that Clarksville’s sales of gas to Guthrie for resale do not alter the primarily distribution nature of Clarksville’s operations or preclude issuance to Clarksville of its requested service area determinations. After making this finding, the Commission stated the following in

³ 15 U.S.C. § 717f(f)(1)-(2) (2012).

⁴ The Commission has consistently recognized that a service area determination under NGA section 7(f) is appropriate for a company primarily engaged in the business of local distribution of natural gas, but subject to the Commission’s NGA jurisdiction because its facilities cross state lines. *See, e.g., City of Toccoa, GA*, 125 FERC ¶ 61,048 (2008). Among the factors considered by the Commission in determining if a company qualifies for a service area determination is the extent to which a company makes sales of natural gas for resale in addition to delivering gas directly to end users in the proposed section 7(f) service area. *See* February 7 Order, 146 FERC ¶ 61,074 at P 11.

⁵ Clarksville’s response (filed September 16, 2013) and Clarksville’s data response No. 2 (filed November 22, 2013).

footnote 15, regarding Clarksville's transportation and sales for resale of gas in interstate commerce for consumption outside the approved service areas:

Clarksville's sales to Guthrie are covered under the blanket marketing certificate granted by 18 C.F.R. § 284.402 (2013). Should Clarksville desire to transport natural gas in interstate commerce in the same manner as an intrastate pipeline may under section 311 of the [Natural Gas Policy Act of 1978], it must first obtain a [blanket] certificate under section 284.224 of the Commission's regulations.

II. Clarksville's Rehearing Request

7. On rehearing, Clarksville contends that it does not need authorization under section 7 of the NGA to transport and sell gas to Guthrie for resale and consumption in Kentucky because Clarksville is a municipality as defined by the NGA,⁶ and the Commission has found that "the plain language of the [Natural Gas] Act, found in Section 2, subsections (1), (2), (3), and (6) expressly exclude municipalities from the ambit of Commission jurisdiction."⁷ Clarksville argues that the NGA's municipal exemption applies to its transportation and sales of gas to Guthrie because, although the gas is resold and distributed by Guthrie in Kentucky, Clarksville makes the sale for resale in its own state, Tennessee, and it only transports the gas in Tennessee. Clarksville therefore asserts it does not need to apply for a blanket certificate under section 284.224 of the regulations to authorize its transportation of Guthrie's gas, and claims that none of the gas it sells to Guthrie for resale can be subject to NGA section 7 certificate requirements.

⁶ NGA section 2(3) defines "municipality" as a "city, county, or other political subdivision or agency of a State."

⁷ Clarksville's Rehearing Request at p. 4 (quoting *Panhandle Eastern Pipe Line Co. v. City of Rolla, Kansas*, 26 FPC 736, 737 (1961) (*City of Rolla*) (dismissing for lack of jurisdiction an interstate pipeline's complaint against a municipality that increased its sales price for gas produced from acreage owned by the municipality.) Clarksville also cites *Somerset Gas Service*, 59 FERC ¶ 61,012 (1992) (*Somerset*) (disclaiming jurisdiction under the NGA and the Natural Gas Policy Act over a municipality's transportation service for an interstate pipeline); and *Northwest Alabama Gas District*, 42 FERC ¶ 61,371 (1988) (*Northwest Alabama*) (disclaiming NGA jurisdiction over an Alabama municipality's backhaul service for an interstate pipeline).

III. Discussion

8. Under section 1(b) of the NGA, the Commission regulates the “transportation of natural gas in interstate commerce,” the “sale in interstate commerce of natural gas for resale for ultimate public consumption,” and the “natural gas companies engaged in such transportation or sale.”⁸ “Natural gas company” is defined in section 2(6) of the NGA as a “person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.”⁹ Section 2(1) of the NGA defines “person” to include an individual or “corporation.”¹⁰ Section 2(2) of the NGA states that a “Corporation” ... “shall not include municipalities”.¹¹

9. As noted, Clarksville cites *City of Rolla*, *Somerset*, and *Northwest Alabama* to support its position that its sales and transportation of gas for Guthrie, Kentucky, are exempt from NGA jurisdiction by operation of the NGA’s exclusion of municipalities from the definition of corporation. Clarksville also emphasizes that the Commission stated in Order No. 319 that municipalities did not need the authorization provided by a section 284.224 blanket certificate to local distribution companies (LDCs) and Hinshaw pipeline companies because the NGA’s municipal exemption allowed municipal gas utilities to engage in the same types of transactions without certificate authority.¹²

10. Clarksville is correct that the Commission disclaimed jurisdiction in *City of Rolla* over that municipality’s sales for resale of gas that would be transported by an interstate pipeline to other states. The Commission reasoned in that order that a municipality was not a “person” for purposes of the NGA because “person” is defined to include an individual or corporation, and “corporation” is defined to exclude a municipality and other political subdivisions of a state.¹³ In the *Somerset* and *Northwest Alabama* orders cited by Clarksville, the Commission relied on *City of Rolla*’s reasoning to find that it

⁸ 15 U.S. C. § 717(1)(b) (2012).

⁹ 15 U.S.C. § 717a(2)(6) (2012).

¹⁰ 15 U.S.C. § 717a(2)(1) (2012).

¹¹ 15 U.S.C. § 717a(2)(2) (2012).

¹² *Sales and Transportation by Interstate Pipelines and Distributors; Expansion of Categories of Activities Authorized Under Blanket Certificate*, Order No. 319, FERC Stats. & Regs. ¶ 30,477, at 30,621 (1983).

¹³ *City of Rolla*, 26 FPC 737-738.

could not assert jurisdiction over the municipalities involved in those proceedings.¹⁴ Order No. 319 also cited *City of Rolla* for the conclusion that municipalities could engage in the types of activities authorized by a section 284.224 blanket certificate without Commission authorization.

11. However, our reconsideration of the cited precedents leads us to conclude that those orders' interpretation of the municipal exemption created by operation of the NGA's definitions was overly expansive, at least to the extent it would allow municipal gas utilities to avoid NGA jurisdiction over the transportation and sale of gas for consumption in *other states*, because such an interpretation would create a regulatory gap.

12. Federal Power Act (FPA) precedent informs our reconsideration of the municipal exemption. While the NGA was enacted after the FPA, both statutes include similar definitions of "person" and "municipality." Section 3 of the FPA defines "person" to mean an individual or corporation, and defines "corporation" to "not include 'municipalities.'"¹⁵ Nevertheless, the United States Supreme Court has found a municipality to be a "person" under the FPA.¹⁶ *US v. California PUC* involved the Commission's jurisdiction over sales to a municipality pursuant to FPA section 201(d), which states that "the term 'sale of electric energy at wholesale' when used in this Part means a sale of electric energy to any *person* for resale."¹⁷ The Court acknowledged that for purposes of the Commission's jurisdiction under section 201 of the FPA, FPA section 3(4) states that "person means an individual or corporation," which is defined to not include a municipality, county, or other state subdivision. However, the Court found that there was sufficient ambiguity for it to hold that Mineral County, Nevada, was a "person" for purposes of the Act, and that the Commission therefore had jurisdiction over the electric company's sales of electricity to the county for resale.¹⁸

¹⁴ *Somerset*, 59 FERC at 61,027 and n.9; *Northwest Alabama*, 42 FERC at 62,086.

¹⁵ 16 U.S. Code § 796(3) (definition of "corporation") and § 796(4) (definition of "person").

¹⁶ *United States v. Public Utilities Commission of California (US v. California PUC)*, 345 U. S. 295, 316 (1953).

¹⁷ 18 U.S.C. § 824(d) (2012) (*emphasis added*).

¹⁸ *US v. California PUC*, 345 U. S. at 315-16.

13. The NGA's provisions, including its definitions, were modeled substantively after the FPA's provisions, and are typically read *in pari materia*.¹⁹ Applying here the same reasoning that the Supreme Court used in interpreting the FPA's definition of "person" in *US v. California PUC*, we find that a municipality can be a jurisdictional "person" and, therefore, a "natural gas company" under the NGA.

14. Even if we were to accept Clarksville's argument that, as a municipality, it cannot be a natural gas company for purposes of NGA jurisdiction, we note the court's reasoning in *Public Service Company of North Carolina v. FERC*.²⁰ That decision involved gas produced on Texas state-owned land that had been leased by a Texas agency to a

¹⁹ *Pioneer Transmission, LLC*, 130 FERC ¶ 61,044, n.75 (2010) (citing *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348,353 (1956)); and *Interpretation of Authority to Suspend Initial Rate Schedule*, 24 FERC ¶ 61,205, at 61,489 (1983) (citing *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 n.7 (1981)). We note, however, while the language of FPA section 3(4) stating that "Person means an individual or corporation" (emphasis added) is similar to that in NGA section 2(1) which states that "Person includes an individual or a corporation" (emphasis added), the choice of verb can make a difference for purposes of statutory construction. See, e.g., *Federal Power Commission v. Corporation Commission of the State of Oklahoma*, 362 F. Supp. 522 (1973), summarily affirmed, 415 U.S. 961 (1974) (affirming with no written opinion). Seeking to establish minimum prices for Oklahoma gas production, the Oklahoma Commission argued that it was not a "person" as defined in the NGA because it was neither an "individual" or "corporation," and that it therefore was immune from the Federal Power Commission's NGA section 7 jurisdiction over the prices charged by a "person" for gas in sales for resale in interstate commerce. The lower court explained that when used in definitions, the verbs "means" and "includes" are neither identical nor equivalent in meaning, and that "includes" is a verb of enlargement. In holding that the Oklahoma Commission was a jurisdictional "person," the court considered the legislative environment when the NGA was enacted based on Congressional recognition of the need to provide the Federal Power Commission with jurisdiction to "underwrite just and reasonable rates to consumers of natural gas" (*id.* at 544 (quoting *Atlantic Refining Co. v. Public Service Commission of New York*, 360 U.S. 378, at 388 (1959))). Thus, while the court acknowledged that the Oklahoma Commission was not an "individual" and was excluded from the definition of "corporation," the court reasoned that NGA section 2(1)'s definition of "person" included but was not limited to an individual or a corporation, and the Commission had jurisdiction over the Oklahoma Commission as a "non-individual person" to prevent it from unduly burdening sales for resale in interstate commerce.

²⁰ 587 F.2d 716 (5th Cir. 1979) (*North Carolina v. FERC*).

producer which had received a certificate from the Commission to sell the gas to an interstate pipeline for resale. In deciding that Texas needed prior abandonment authorization by the Commission before it could terminate its gas sales and begin taking its royalty share in kind instead of money, the *North Carolina v. FERC* court cited the Supreme Court's conclusion in *California v. Southland Royalty Company*, 436 U.S. 519, 529 (1978), that "whether or not the owners were 'natural gas companies' was 'somewhat beside the point'" when gas has already been dedicated to the interstate market. Thus, while the court emphasized in *North Carolina v. FERC* that its holding was limited to the particular facts before it, it concluded "the fact that Texas can never become a 'natural gas company' is irrelevant once Texas has allowed its gas to be dedicated to interstate service."²¹ Here, Clarksville's gas service for Guthrie, Kentucky, constitutes transportation of natural gas in interstate commerce under section 1(b) of the NGA.

15. In exercising our jurisdiction over Clarksville, the Commission is seeking to avoid a regulatory gap in our jurisdiction over natural gas pipelines. As explained in *United Distribution Cos. v. FERC*, "[t]he NGA was intended to fill the regulatory gap left by a series of Supreme Court decisions that interpreted the dormant Commerce Clause to preclude state regulation of interstate transportation and of wholesale gas sales."²² Interpreting the NGA as requested by Clarksville would perpetuate this regulatory gap with respect to certain interstate transactions undertaken by municipalities.

16. While the legislative history of the NGA sheds little light on Congressional intent, it is reasonable to infer from the fact that NGA section 2(3)'s definition of "municipality" includes a "city, county, or other political subdivision or agency of a state," that Congress believed these entities' activities and facilities, like exempted local distribution services and facilities, are matters primarily of local concern which states can choose to regulate and Federal regulation, therefore, was not necessary to protect the public interest. It is not reasonable to infer that Congress intended that a municipality's status as a political subdivision of its state make it exempt from NGA section 7 jurisdiction if the municipality transports or sells gas for resale and consumption in another state, since the state cannot assert jurisdiction over such transportation or sales by the municipality.²³

²¹ 587 F.2d at 720.

²² 88 F.3d 1105, 1122 (D.C. Cir. 1996), (citing *Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n*, 461 U.S. 375, 377–80 (1983)).

²³ See, e.g., *Northern Natural Gas Company v. State Corp. Commission of Kansas*, 372 U.S. 84 (1963) (*Northern Natural v. Kansas Commission*). *Northern Natural v. Kansas Commission* involved the Kansas Commission's orders requiring an interstate

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17. As the Commission explained in *Intermountain Municipal Gas Agency (Intermountain)*:²⁴

It seems axiomatic that a state government can only create a governmental entity in its own state. One state cannot create an entity with powers in another state. Therefore, the Commission believes that under the NGA a municipal entity that is created under an individual state's law is only authorized to exist as a municipal entity within that state.

18. A municipality operating local gas distribution facilities transports and sells natural gas for consumption within its municipal service area.²⁵ Although a state can exempt municipalities from regulation, as Tennessee has exempted Clarksville, a state nevertheless has jurisdiction to regulate municipal gas utilities' services and rates to end users within the state. However, a state cannot authorize or regulate a municipal gas utility's sales for resale and deliveries of gas that will be transported to another state for consumption. Further, a state does not have jurisdiction to regulate a pipeline that crosses its state border or to authorize the transportation of gas by a pipeline located entirely

pipeline company to purchase gas ratably from all wells connecting with its pipeline system in each gas field in Kansas. The Court held that the state's orders invalidly encroached upon the Federal Power Commission's exclusive NGA jurisdiction in that "[t]he federal regulatory scheme leaves no room either for direct state regulation of the prices of interstate wholesales of natural gas or for state regulations which would indirectly achieve the same result," and the Kansas Commission's "orders necessarily deal with matters which directly affect the ability of the Federal Power Commission to regulate comprehensively and effectively the transportation and sale of natural gas, and to achieve the uniformity of regulation which was an objective of the Natural Gas Act. They therefore invalidly invade the federal agency's exclusive domain." *Id.* at 91-92.

²⁴ 97 FERC ¶ 61,359, at P 29 (2001), *reh'g denied*, 98 FERC ¶ 61,216 (2002).

²⁵ We note that the Commission has acknowledged that "the NGA's exception on its face applies to municipalities as entities, not to municipal distribution," and that the NGA's municipal exemption can extend to transportation and facilities that do not qualify as local distribution. *Tennessee Gas Pipeline Co.*, 70 FERC ¶ 61,329, at 62,012 (1995). In that same order, the Commission found while the construction and operation of a 37-mile-long, high pressure lateral in Alabama by the City of Decatur, Alabama, would not qualify as local distribution, it would be exempt from the Commission's NGA jurisdiction because it was being constructed by a municipality entirely within its own state to access gas supplies for distribution in its municipal service area. *Id.*

within that state if the gas will leave that state.²⁶ Thus, the Commission believes a reasonable interpretation of congressional intent is that Congress included the municipal exemption to avoid occupying a field in which the states could and were already acting when Congress enacted the NGA to fill the regulatory gap left by the Supreme Court decisions finding that states could not regulate interstate transportation of gas or wholesale gas sales in interstate commerce.²⁷

19. Finally, Clarksville is incorrect that the Commission's decision in *Intermountain* supports its position that it does not need any section 7 certificate authority to provide its service for Guthrie, Kentucky, because Clarksville's "sale of natural gas to Guthrie occurs *entirely* in Tennessee, Clarksville's state of origin."²⁸ Clarksville emphasizes the Commission's finding in *Intermountain* that "[u]nder the NGA, a municipal entity that is created under an individual state law is only authorized to exist as a municipal entity within that state."²⁹ However, the question under consideration by the Commission in *Intermountain* was whether the municipal exemption would extend to a pipeline constructed and operated by an entity created by a group of Utah and Arizona municipalities which would cross the Utah-Arizona state line. The Commission found that a municipally-owned pipeline that crossed a state line would not be exempt from Commission jurisdiction. On the question at issue here, i.e., a municipality's transportation and sales for resale of gas in interstate commerce for consumption outside the state in which it exists, the Commission only noted as background that it "has not

²⁶ Clarksville acknowledged that the NGA's municipal exemption does not extend to its construction and operation of local distribution facilities in another state when it filed its application under section 7(f) of the NGA requesting approval of the designated service areas in Kentucky authorized by the February 7 Order. Clarksville also acknowledged the limits of its municipal exemption when it requested an NGA section 7 certificate conveying the right to eminent domain to construct an approximately 20-mile-long pipeline in Kentucky to access an interstate pipeline over the objections raised by residents and elected representatives in Kentucky. *City of Clarksville, Tennessee*, 149 FERC ¶ 61,022, at P 21 (2014).

²⁷ In *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, 682-83 (1954), the Court stated "[t]here can be no dispute that the overriding congressional purpose [in enacting the NGA] was to plug the 'gap' in regulation of natural-gas companies resulting from judicial decisions prohibiting, on federal constitutional grounds, state regulation of many of the interstate commerce aspects of the natural-gas business.

²⁸ Clarksville's Rehearing Request at p. 3 (emphasis in original).

²⁹ *Id.* (quoting *Intermountain*, 97 FERC ¶ 61,359 at P 29).

invoked its transportation jurisdiction over municipalities,” citing *Tennessee Gas Pipeline Co., Northwest Alabama*, and *City of Rolla*.³⁰ However, the Commission in *Intermountain* also stated that it “believes that a reasonable interpretation of congressional intent in excluding municipalities from the NGA was because they are governmental entities created by a state government and the purpose of the NGA was not to occupy a field in which the states were already acting.”³¹ Here, while Clarksville’s sale and delivery to Guthrie take place in Tennessee where Clarksville is a municipality, Tennessee does not have jurisdiction to approve Clarksville’s bundled sales service to Guthrie or Clarksville’s charges for that service.³² Indeed, *Intermountain*, which was issued after the other cases cited by Clarksville, persuades us that Guthrie also needs authorization, perhaps by establishment of a section 7(f) service area, to continue operating its pipeline that crosses the state line from Kentucky into Tennessee to receive gas from Clarksville.³³

20. As discussed above, we believe the Commission’s holdings in *City of Rolla*, *Somerset*, and *Northwest Alabama* relied on an interpretation and application of the

³⁰ *Intermountain*, 97 FERC ¶ 61,359 at P 28.

³¹ *Id.*

³² The Commission also noted in *Intermountain* (*Id.* at n.13) that in *United Distribution Cos. v. FERC*, 88 F.3d 1105 at 1153-54 and n.64, the court stated that the Commission’s NGA Section 1(b) jurisdiction extends not only over “natural gas companies” but also the interstate transportation of gas. The Commission further noted that the court in pointing out that the Commission has rejected the suggestion that it should invoke its transportation jurisdiction over municipalities, stated its “opinion should not be read to either approve or disapprove the Commission’s reading of the Natural Gas Act in this regard.” On appeal in *Intermountain Municipal Gas Agency v. FERC*, 326 F.3d 1281 (D.C. Cir. 2003), the court again cautioned that its “opinion should not be read to either approve or disapprove the Commission's reading of the Natural Gas Act,” which had led the Commission on prior occasions to reject the suggestion that it should invoke its transportation jurisdiction over municipalities. *Id.* at n.9.

³³ *See, e.g., City of Toccoa, GA*, 125 FERC ¶ 61,048. Toccoa, a municipal corporation created by the laws of Georgia, operated its own municipal gas utility in Georgia and was providing local distribution service in a contiguous area of North Carolina without the requisite Commission authorization. The Commission’s designation of a service area under section NGA 7(f) provided the necessary authorization for Toccoa to continue its local distribution activities in North Carolina.

NGA's exemption for municipalities that was too expansive to the extent they would support Clarksville's position that its status as a municipality in Tennessee allows it to set its own rates for service for customers in another state.³⁴ However, we also recognize that it appears that Clarksville has been providing service for Guthrie for some time and that the current arrangement provides necessary gas supplies for Guthrie's local distribution system in Kentucky. In view of these considerations, we find that Clarksville is able to properly provide continued service for Guthrie in conformance with the provisions of the NGA, and that the public convenience and necessity require issuance of certificate authority for Clarksville to maintain this service in order to avoid the interruption of gas supplies for Guthrie's residential and commercial customers. There have been similar situations where the Commission has found that companies were acting in good faith but had not filed applications for certificates to authorize the gas services they were already providing.³⁵ Since "[i]t is beyond question that we cannot decline to

³⁴ We note that in Order No. 319, which cited *City of Rolla* for the Commission's finding that a municipality would not need section 284.224 blanket certificate authority to engage in interstate transportation and sales for resale, the Commission also stated that "[t]his does not preclude the possibility that the Commission may nevertheless assert its Natural Gas Act jurisdiction in other types of transactions." Order No. 319, FERC Stats. & Regs. ¶ 30,477 at n.26 (citing *Public Service Company of North Carolina v. FERC*, 587 F.2d 716) (affirming the Commission's orders finding that although the NGA's section 2 definitions operated to prevent either Texas or its gas leasing agency from being a "natural gas company," Texas could not cease sales of state production already dedicated to interstate commerce without prior authorization by the Commission under section 7(b) of the NGA).

³⁵ See, e.g., *Boston Gas Co.*, 57 FERC ¶ 61,054 (1991) (*Boston Gas*). The Commission found that although Boston Gas was an otherwise NGA-exempt Hinshaw pipeline company, the service at issue did not qualify as an exempt Hinshaw service since the gas would be consumed outside Massachusetts. Although Boston Gas had not filed an application for certificate authority, the Commission granted it a certificate to prevent the interruption of supplies to its customers. *Id.* at 61,217. On rehearing, 58 FERC ¶ 61,180 (1992), the Commission affirmed its assertion of jurisdiction over Boston Gas's service, but granted rehearing and reversed its assertion of jurisdiction over Boston Gas's 637 feet of pipeline located entirely in Massachusetts that were used to provide the jurisdictional service. See also *Algonquin LNG, Inc.*, 19 FERC ¶ 61,265 (1992) (*Algonquin*). The *Algonquin* proceeding involved an exchange gas arrangement involving Providence Gas, a Rhode Island Hinshaw pipeline company. The Commission found that Providence Gas's participation in the arrangement constituted the jurisdictional transportation of gas in interstate commerce by displacement. Although

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exercise authority over a matter within our jurisdiction,”³⁶ the Commission has granted the requisite certificate authority when appropriate to avoid the potential interruption of gas service. Similarly, we will grant Clarksville a case-specific certificate of limited jurisdiction to authorize its existing transportation service for Guthrie without affecting its otherwise non-jurisdictional activities and facilities.³⁷ We also will approve and direct Clarksville to file the agreed-upon rate with Guthrie for the transportation component of the service. As stated in the February 7 Order, any certificate authority that Clarksville needs to authorize its sales to Guthrie for resale is provided by the automatic blanket marketing certificate authority granted under section 284.402 of the regulations.³⁸

Providence Gas had not filed a certificate application, the Commission granted it limited-jurisdiction certificate authority to continue its part of the transaction.

³⁶ *Boston Gas*, 57 FERC at 61,216 (citing *Brooklyn Union Gas Company v. FERC*, 627 F.2d 462 (D.C. Cir. 1980), and *Mountain Fuel Supply Company*, 24 FERC ¶ 61,120, at 61,297 (1983)).

³⁷ Except for the service for Guthrie, all of the services provided by Clarksville’s facilities qualify as local distribution services, including the services provided in Kentucky within the two service area approved by our February 7 Order. When the Commission has found such action to be in the public interest, it has granted certificates of limited jurisdiction to authorize otherwise non-jurisdictional entities to provide NGA jurisdictional services without affecting the otherwise non-jurisdictional status of their facilities and services. See, e.g., *Straight Creek Gathering, L.P.*, 117 FERC ¶ 61,005, at P 31 (2006) (finding that Straight Creek’s planned facilities would have an exempt primary gathering function and granting a certificate of limited jurisdiction for Straight Creek to use the gathering facilities to also provide a single jurisdictional transportation service.)

³⁸ As explained in *Shell U.S. Gas & Power, LLC*, 148 FERC ¶ 61,163, at P 36 (2014), following the legislative decontrol of prices for most gas sales, the Commission determined there was no longer a need to exercise its jurisdiction over sales other than those by interstate pipelines. Therefore, the Commission adopted section 284.402 of the regulations to provide for the automatic issuance of section 7 blanket marketing certificates to authorize any persons who are not interstate pipelines to make sales for resale of gas remaining subject to section 7 jurisdiction and to charge negotiated rates. Thus, if any of Clarksville’s sales for resale are still subject to section 7 certification requirements, it will not need to apply for certificate authority to make the sales as they will be authorized under the automatic blanket certificate provided by section 284.402 of the regulations. We note that section 284.402 provides that a blanket certificate issued

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21. Guthrie is not a party and has not participated in this proceeding, and the record contains limited information regarding the pipeline facility that crosses the state line to deliver gas from Clarksville's meter in Tennessee to Guthrie's gas distribution system in Kentucky. Therefore, we will direct staff to contact Guthrie within seven days of the issuance of this order and offer guidance regarding the information that will be needed to process an application for approval of a section 7(f) service area (or other authorization if it chooses) to operate the portion of this supply line that lies in Tennessee.³⁹

The Commission orders:

(A) Clarksville's request for rehearing is denied.

(B) Clarksville is granted a certificate of limited jurisdiction under Part 157, subpart A of the Commission's regulations to continue natural gas deliveries for Guthrie, Kentucky.

under that section is a certificate of limited jurisdiction which will not subject the certificate holder to any other NGA regulations other than the Part 284, Subpart L blanket marketing certificate regulations.

³⁹ See, e.g., *New England Gas Company*, 106 FERC ¶ 62,045 (2004) (designating a section 7(f) service area in Connecticut for an LDC in Rhode Island so that it could construct a pipeline into Connecticut to receive gas supplies from a Connecticut LDC which contemporaneously filed for a section 284.225 blanket certificate to provide transportation service for the Rhode Island LDC).

Section 7(f)(1) states that "[w]ithin such service area as determined by the Commission a *natural-gas company* may enlarge or extend its facilities for the purpose of supply increased market demands in such service area without further authorization." (Emphasis added.) Thus, as the Commission explained in *Arkansas Oklahoma Gas Corporation*, 47 FERC ¶ 61,333, at 62,150-51 (1989), "[s]ection 7(f) does not change the regulatory status of the holder of a service area determination, i.e., the company remains a natural gas company within the meaning of the Natural Gas Act. Section 7(f) is applicable only to the construction of facilities and transportation to ultimate consumers which otherwise would require advance certificate authorization." However, section 7(f) provides that services within a designated service area "shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed." Thus, "[s]ection 7(f)(2) of the NGA does not abrogate the legal authority under which interstate services may be performed, but merely transfers it to the exclusive jurisdiction of the states." *Ohio River Pipeline Corp.*, 55 FERC ¶ 61,365, at 62,108.

(C) The certificate granted by Ordering Paragraph (B) shall be void unless accepted by Clarksville in accordance with section 157.20(a) of the regulations.

(D) Within 60 days of this order, Clarksville shall comply with section 4 of the NGA by filing the mutually agreed-upon rate for the transportation component of Clarksville's service for Guthrie.

(E) The Commission's Office of Energy Projects – Pipeline Certificates is directed to contact Guthrie within seven days of the issuance of this order to offer guidance regarding the submission of an application for approval of a section 7(f) service area including the portion of Guthrie's gas supply pipeline that lies between Clarksville's meter in Tennessee and the Tennessee-Kentucky state border.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.