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126 FERC ¶ 61,015
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Pecan Pipeline (North Dakota), Inc. Docket No. CP08-475-000

ORDER DETERMINING JURISDICTIONAL STATUS OF FACILITIES

(Issued January 9, 2009)

1. On September 18, 2008, Pecan Pipeline (North Dakota), Inc. (Pecan) filed a petition for a declaratory order finding that Pecan's planned Prairie Rose line and compression facilities will perform a gathering function exempt from the Commission's jurisdiction under the Natural Gas Act (NGA) section l(b).[1] As discussed below, we grant the petition.

I. Background and Proposal

2. Pecan, a corporation organized and existing under the laws of the State of Delaware, owns and operates a natural gas and natural gas liquids (NGLs) gathering system near Stanley in Montrail County, North Dakota. Pecan is not a natural gas company under the NGA. At present, Pecan's system includes 6-inch to 8-inch diameter gathering lines totaling approximately 140 miles of pipe.

3. Pecan is a wholly-owned subsidiary of EOG Resources, Inc. (EOG), an independent oil and natural gas company engaged in the development and production of natural gas, natural gas liquids, and crude oil. Pecan states that in 2008 and 2009 EOG expects to drill approximately 170 wells in the North Dakota portion of the Bakken Shale, a very prolific crude oil formation which includes, as well, substantial reserves of associated natural gas and NGLs.

[1] 15 U.S.C. § 717(b) (2008).

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4. Pecan further states there is a shortage of gathering infrastructure to move the associated gas and NGL supplies from the rapidly developing Bakken Shale formation to the interstate pipeline grid. Therefore, Pecan plans to construct and operate approximately 75 miles of 12-inch diameter pipeline (the Prairie Rose line) that will extend eastward from its existing gathering system near Stanley, North Dakota to an interconnection with Alliance Pipeline, LP (Alliance) near Towner, North Dakota. The gas in Alliance's system also is "wet," non-pipeline quality gas. Alliance will provide downstream transportation to the processing complex owned by Aux Sable Liquid Products, LP (Aux Sable) near Chicago, Illinois.[2] At the beginning of the Prairie Rose line, Pecan will construct a compressor station with two primary 2,500 horsepower (hp) compressor units and one standby unit. Pecan will also construct an oil condensate recovery plant at Stanley to separate oil condensates from the dense phase natural gas/NGLs vapor stream going into the Prairie Rose line.[3]

5. Pecan explains that the Prairie Rose line will transport an extraordinarily high Btu, high-pressure "dense phase" natural gas/NGLs stream. Therefore, the Prairie Rose line has been designed to operate at a maximum pressure of 2,100 pounds per square inch gauge (psig) and will typically operate at pressures at or above 1,750 psig to ensure that NGLs remain in the dense vapor phase during transportation. Pressures below 1,600 psig would result in heavier hydrocarbons liquefying and dropping out of the dense phase stream.

6. Due primarily to the very high Btu content of the liquefiable hydrocarbons in the dense phase gas stream (approximately 1,500 Btu per standard cubic foot), the gas transported by the Prairie Rose line will not meet the gas quality specifications of any

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[2] The Commission granted Alliance a certificate in 1998 to construct its interstate pipeline facilities. *Alliance Pipeline L.P.*, 84 FERC ¶ 61,239 (1998).

[3] Pecan has installed a temporary, skid-mounted cryogenic processing facility near Stanley. However, Pecan explains this facility's ability to process natural gas and NGLs is limited to 20,000 Mcf/d. Further, Pecan's natural gas deliveries are presently limited to 14,000 Mcf/d due to capacity constraints on the only presently accessible interstate pipeline. In addition, Pecan states that delivery options for NGLs are very limited as nearby rail facilities are heavily constrained and transportation by truck would require a dedicated 40-vehicle fleet operating on a 24-hour per day basis. Thus, the temporary cryogenic processing facility will be replaced by the planned oil condensate recovery plant when the Prairie Rose line is ready to start service.

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interstate pipeline, including Alliance.[4] As a result, Pecan has requested that Alliance waive the hydrocarbon dewpoint specification in its tariff to permit up to 80,000 Mcf per day of deliveries by Pecan's Prairie Rose line into Alliance's system.[5] Pecan states that the waiver is operationally feasible since the 80,000 Mcf/d volume is relatively small in relation to Alliance's mainline throughput of approximately 1.5 Bcf/d. Pecan anticipates that Alliance will grant its waiver because of Alliance's ability to blend the gas without impacting the safety or reliability of its pipeline operations.[6] A heater would be required at the interconnection with Alliance to prevent the liquids from falling out at the interconnection. Pecan emphasizes that the gas to be transported by the Prairie Rose line could not be used directly for any end use without full scale processing to remove the liquefiable hydrocarbons content. Thus, the gas transported by the Prairie Rose line will not constitute merchantable natural gas until it has been blended with the gas in Alliance's system and processed at Aux Sable's plant to recover the NGLs content and bring the gas down to an acceptable Btu content and hydrocarbon dewpoint.

II. Notice, Interventions, and Protests

7. Public notice of Pecan's application was published in the *Federal Register* on October 7, 2008.[7] Timely motions to intervene were filed by Alliance, Aux Sable, and Constellation Energy Commodities Group, Inc. These timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice

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[4] The gas stream entering the Prairie Rose line will not have been processed. However, because crude oil production from the Bakken Shale formation is laden with water, oil condenstates, NGLs and associated natural gas, each well site has equipment to separate water and crude oil from the oil condensates, NGLs, and natural gas collected by Pecan's existing gathering facilities.

[5] Pecan states that the Prairie Rose line's maximum capacity for transporting the dense phase gas, natural gas/NGLs vapor stream will be 120,000 Mcf/d, but the line's expected operations during its initial years, as well as its economic justification, are based on a projected 80,000 Mcf/d throughput level.

[6] Alliance made a filing in Docket No. RP08-624-000 to revise its tariff to provide for waivers of its hydrocarbon dewpoint specification on a non-discriminatory basis. By order issued October 28, 2008, the Commission accepted the tariff sheets and approved the nonconforming firm transportation agreement Alliance plans to execute with Pecan. *Alliance Pipeline L.P.*, 125 FERC ¶ 61,109 (2008).

[7] 73 Fed. Reg. 58,579.

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and Procedure.[8] In addition, the State of North Dakota, Whiting Oil and Gas Corporation, and the North Dakota Pipeline Authority filed comments in support of Pecan's petition.

III. Discussion

A. Primary Function Test

8. Under NGA section 1(b), the Commission's jurisdiction does not extend to facilities used for the production or gathering of natural gas or to gathering services.[9] The NGA itself, however, does not define the term "gathering." As a result, over the years the Commission has developed criteria to determine which facilities are non-jurisdictional gathering facilities.[10] The Commission presently relies on the modified "primary function test," which includes consideration of physical and geographical factors including: (1) the length and diameter of the pipelines; (2) the extension of 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 facilities; and (6) the operating pressures of the pipelines. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.[11]

1. Length and Diameter of the Lines

9. While the 12-inch diameter of the Prairie Rose line is not inconsistent with a gathering function, the 75-mile length will be longer than typical onshore lines that the Commission has found to be gathering. However, the Commission has found, based on a balancing of criteria, that other relatively long pipelines were nevertheless gathering

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[8] 18 C.F.R. § 385.214(c)(1) (2008).

[9] The courts have narrowly construed the NGA section 1(b) exemption to "the physical act of drawing gas from the earth and preparing it for the first stages of distribution." *See, e.g., Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board*, 474 U.S. 409, 418 (1986) (*quoting Northern Natural Gas Co. v. State Corp. Comm'n of Kansas*, 372 U.S. 84 (1963)).

[10] *See Amerada Hess Corp*., 52 FERC ¶ 61,268 (1990); and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

[11] *See, e.g., Columbia Gas Transmission Corp.*, 93 FERC ¶ 61,278, at 61,913 (2000).

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facilities.[12] Here, the 75-mile length of the Prairie Rose line will be a function of the distance between Pecan's existing oil field gathering system and its only feasible outlet, the interconnection with Alliance, which will transport the gas to Aux Sable's plant where the gas will be processed to pipeline quality.[13]

10. Although Pecan plans to construct a plant to recover oil condensates before the natural gas/NGLs vapor stream enters the Prairie Rose line, the gas in the Prairie Rose line will still be unprocessed, non-pipeline quality gas such that Alliance will not be able to accept the gas without granting a waiver of its hydrocarbon dewpoint specification in its tariff. The gas transported by Pecan will not be acceptable for any end use until it has been processed. As stated above, Pecan will deliver its gas into Alliance's line, which also transports non-pipeline quality gas to Aux Sable's plant for processing. Other factors discussed below also support a finding that gathering will be the primary function of the Prairie Rose line.

2. Central Point in the Field

11. The Commission also looks to the extension of facilities beyond the central point in the field. The central point in the field test is based on the idea that gathering involves the collection and movement of natural gas through various smaller lines to a central point where gas is delivered into a single large line for transmission.[14] Here, the central

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[12] *Northern Natural Gas Company, PVR Midstream, LLC*, 123 FERC ¶ 61,325 (2008) (finding that a 60-mile-long line of 10-inch diameter pipe and a 28-mile long line of 12-inch diameter pipe primarily performed a gathering function); *EXCO Resources, Inc., TGG Pipeline, Ltd.*, 119 FERC ¶ 61,121, at P 12 (2007) (finding that the planned expansion of an existing gathering system by the addition of a line more than 64 miles long (including 46 miles of 20-inch diameter pipe, 16.6 miles of 12-inch diameter pipe, and 2.02 miles of 6-inch diameter pipe) would not render the system jurisdictional); *Straight Creek Gathering, LP*, 117 FERC ¶ 61,005, at P 13 (2006) (finding 60 miles of 20-inch diameter backbone pipeline and several 4- to 12-inch diameter lateral lines extending off the backbone to constitute a non-jurisdictional gathering system).

[13] Pecan states that the Prairie Rose line route will cross Williston Basin Interstate Pipeline Company's (Williston Basin) facilities but there will be no interconnection with Williston Basin because, among other reasons, the dense phase gas stream transported by the Prairie Rose line will greatly exceed Williston Basin's gas quality specifications and Williston Basin's line doesn't have the capacity to accommodate the Pecan volumes.

[14] *Arkla Gathering Services Co.*, 67 FERC ¶ 61,257 (1994).

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point would be the Stanley oil condensate recovery plant at the upstream end of Pecan. After the oil condensate is removed from the stream, the remaining associated gas/NGL mixture remains to be moved in a dense phase state to Alliance. Nevertheless, we find that the central point in the field criterion has little applicability in the unusual circumstances of this case, where the subject facilities will be used to transport a dense phase, natural gas/NGLs stream.

3. Geographic Configuration

12. Gathering systems typically comprise one of two types of geographic configuration: the web-like configuration or the spine-type (or backbone) configuration. The Commission has held that longer pipelines connected to smaller feeder lines are indicative of a gathering function.[15] The Prairie Rose line will not be within a web-like configuration of gathering facilities or be a backbone receiving production from gathering facilities along its length. However, as discussed above, the Prairie Rose line will not simply be transporting unprocessed gas; it will be transporting a dense phase, natural gas/NGLs stream that could not be transported absent the specific design of these facilities. Further, the Commission has also found that the location of a system within a single state may be a geographic factor relevant to a gathering determination.[16] As noted above, the entirety of Pecan's Prairie Rose line will be located within North Dakota; the gas/NGLs it transports will be collected by Pecan's existing upstream gathering facilities located entirely within North Dakota; and all of the gas transported by the Prairie Rose line will be produced in North Dakota. In view of these considerations, we find the geographical configuration of the planned Prairie Rose line in relation to Pecan's existing gathering facilities is not inconsistent with a gathering function for the Prairie Rose line.

4. The Location of Compressors and Processing Plants

13. Pecan states that it will deliver only raw, untreated gas/NGLs to Alliance for redelivery to Aux Sable's plant for processing. The removal of oil condensates at the recovery plant to be located at Stanley cannot be considered "processing" because the removal of oil condensates will not serve to bring the gas stream up to pipeline quality specifications. The plant serves to maximize the quantity of NGLs that can be entrained in the dense phase vapor state because there is no other economic outlet for the NGLs from the oil field.

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[15] *Straight Creek*, 117 FERC ¶ 61,005 at P 13.

[16] *See, e.g., Mahue Construction Co.*, 94 FERC ¶ 61,118, at 61,449 (2001).

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14. As described above, there will be two primary 2,500 hp compressor units and one standby unit located at the upstream Stanley oil condensate plant that are necessary for the Prairie Rose line to be operated at relatively high pressure (typically at or above 1,750 psig) to ensure that NGLs, which comprise over 40 percent of the stream, remain in the vapor phase during transportation. Pressures below 1,600 psig would result in heavier hydrocarbons liquefying and dropping out of the dense phase stream. Further, the Commission has found that where compression facilities are located upstream of processing facilities and serve to prepare raw gas for processing, such compression facilities serve a gathering function.[17] In view of these considerations, we find that the planned compression facilities on the Prairie Rose line will serve a gathering function.

5. Location of Wells

15. The location of wells along the length of a line is indicative of gathering.[18] While Pecan anticipates expanding its existing gathering system upstream of the planned Prairie Rose line, it does not plan to locate wells along the Prairie Rose line. However, under the unusual circumstances in this case where the subject facilities will be used to transport a dense phase, natural gas/NGLs stream, the absence of wells along the Prairie Rose line is not an impediment to finding that the line nevertheless will serve a gathering function.

6. Operating Pressures of the Line

16. As discussed above, the operating pressure of 1,750 psig is necessary to ensure that the NGLs in the stream do not liquefy and drop out. Thus, in this case, the purpose of adding compression and operating the pipeline at high pressure is not to transport pipeline quality gas but to ensure that the heavily liquid content of the stream remains in a vapor state. Therefore, Pecan's use of compression and the operating pressure will be consistent with a gathering function.

7. Additional Considerations

17. In addition, the Commission also weighs any and all other relevant facts and circumstances of a particular case, including non-physical criteria.[19] The Commission also may consider the purpose, location, and operation of facilities, the general business

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[17] *Gulf South Pipeline Company, LP*, 106 FERC ¶ 61,323, at P 24 (2004).

[18] *See, e.g., Ozark Gas Transmission, LLC,* 101 FERC ¶ 61,205, at P 21 (2002) and *ANR Pipeline Co.,* 77 FERC ¶ 61,230, at 61,936 (1996).

[19] *Id.*; *see also Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990).

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activity of the owner of the facilities, and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978.[20] Although non-physical factors may be relevant considerations for determining the demarcation point between transmission and gathering facilities, the United States Court of Appeals for the Fifth Circuit stated in *Sea Robin Pipeline Company* that such non-physical factors are secondary to the physical factors.[21]

18. The purpose of Pecan's planned facilities is to facilitate oil production activities in the Bakken Shale by providing a means to deliver the capacity constrained associated natural gas and NGLs that are produced along with the oil from the region. The line is not intended to provide interstate transportation of pipeline quality gas. Therefore, the purpose of the facilities is consistent with a gathering function.

19. The Commission also considers the business activities of the owner in applying the primary function test.[22] Pecan is not a natural gas company as defined by the NGA and owns no jurisdictional facilities, intrastate pipelines, or local distribution facilities. Pecan operates exclusively as a gatherer and provider of other midstream services. Pecan does not transport natural gas in interstate commerce or engage in any other NGA-jurisdictional business activities. Upon completion of the subject facilities, Pecan will operate them as a part of its non-jurisdictional raw oil and gas/NGLs gathering activities.

20. Based on the analysis above, the Commission is satisfied that the proposed facilities will perform a gathering function. Accordingly, the Commission concludes that it is appropriate to grant Pecan the declaratory relief it seeks.

21. The Commission, on its own motion, received and made a part of the record all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

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[20] *Sea Robin Pipeline Co.*, 127 F.3d 365, at 371 (5th Cir. 2003).

[21] *Id.*

[22] *Bitter Creek Pipelines, LLC*, 94 FERC ¶ 61,391, at 62,470 (2001) ("In the past, we have considered the activities of the owner of facilities as relevant to the question of their jurisdictional status.").

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The Commission orders:

Upon completion, Pecan's Prairie Rose line and compression facilities, as described in the text of this order, will be gathering facilities exempt from the Commission's jurisdiction pursuant to NGA section 1(b).

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

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