



FERC Policy on Natural Gas Gathering System Ownership Since 1992

Description

The physical facilities that accumulate and transport natural gas from a well to an acceptance point of a transportation pipeline are called a gathering system. Prior to FERC Order 636 in 1992, many interstate pipeline companies had a completely integrated supply system that was capable of delivering natural gas from the wellhead to the ultimate retail gas consumer. But, following Order 636, which separated gathering, marketing, and transmission operations, many pipeline companies reorganized and broke up this system into discrete parts and assigned them to affiliated companies. The facilities, functions, and services required for gathering, processing, and transportation were placed in affiliated companies or were spun off or sold to other companies. Since most gas prices were no longer regulated, gas gathering service charges became subject to market forces and were a function of buyer/seller negotiation, isolated from the transmission charges imposed by the pipeline transporter.

Impact

The corporate reorganizations brought about under the influence of FERC Order 636 caused a shift in the jurisdictional entities regulating the various facilities and services. The Federal Energy Regulatory Commission (FERC) had once regulated the entire integrated interstate pipeline system, but after the reorganizations, FERC became the regulating entity for only the interstate pipeline transportation and processing facilities and services. The spun-off or affiliated gathering facilities and services generally fell under state jurisdiction or other Federal agencies, such as the Department of the Interior, but in some cases FERC maintained jurisdiction. Especially unclear, and still contested in 2004, is the jurisdictional status of some Gulf of Mexico gathering systems.

These cases involve FERC's reclassification of portions of a pipeline's system operating on the Outer Continental Shelf (OCS) as non-jurisdictional gathering facilities and FERC's determination that a pipeline company can transfer those facilities to its non-jurisdictional gathering affiliate. The key consideration in these, and similar onshore cases, is that FERC retains rate jurisdiction over those reclassified facilities that the pipeline retains and thus may regulate rates charged for transportation on the pipeline's own gathering facilities performed in connection with jurisdictional transportation. Rates on non-jurisdictional facilities are market based and not subject to FERC oversight or review. Consequently, some shippers have raised complaints that rates on non-jurisdictional facilities may exceed a reasonable rate by an undue degree.

As a result of FERC's decision in Order 636 to promote competition by requiring interstate pipelines to "unbundle" their previously bundled sales and transportation into separate services and to transport natural gas for all qualified shippers, some such pipelines have sought to shed OCS facilities that primarily perform a gathering function. Accordingly, those pipelines have asked FERC to reclassify OCS facilities that were previously classified as transportation, and to authorize "spin-downs" of OCS gathering facilities to affiliates.

To differentiate jurisdictional transportation and non-jurisdictional gathering for pipelines, FERC for many years has employed two principal tests. Under the "behind-the-plant" test, facilities upstream of compressors and processing plants (i.e., toward the wellhead where the gas comes out of the ground) were presumptively gathering facilities, while facilities downstream of the plants (i.e., toward the consumer) were presumptively transportation facilities. For gas that requires no processing, FERC employed a "central-point-in-the-field" test, under which lateral lines that collect and transport gas from separate wells that then converge into a single large line were classified as gathering facilities, while facilities downstream of the collection point in a field were

classified as transportation. Since 1983, FERC has subsumed those two tests into a "primary function" test that focuses on a number of physical factors (e.g., length, diameter, and configuration of a pipeline) and certain other criteria, to determine whether facilities are primarily devoted to gathering or transportation. Under the primary function measure, no one factor is determinative, nor do all factors apply in every situation.

FERC developed its primary function test in the context of onshore gathering patterns. For natural gas produced on the Outer Continental Shelf (OCS), pipelines generally are configured differently and typically do not gather gas at a local, centralized point within a field as they would onshore to prepare it for traditional transportation. As stated in *EP Operating Co. v. FERC* (5th Circuit, 1989), "Rather, on the OCS, relatively long lines are constructed to carry the raw gas from offshore platforms where 'only the most rudimentary separation and dehydration operations' are conducted, to the shore or a point closer to shore, where it can be processed into 'pipeline quality' gas." It also notes that pipelines on the OCS must construct large pipes to carry (often over a 100 miles away) the raw gas from offshore rigs to the shore for processing. In response to the practical and physical differences between onshore and offshore pipeline configurations, FERC modified its primary function test for the OCS to allow for the increasing length and diameter of OCS gathering lines, and later announced that it would "presume facilities located in deep water [over 200 feet] are primarily engaged in gathering or production."

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