
FEDERAL ENERGY REGULATORY COMMISSION



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NEWS RELEASE

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COMMISSION CLARIFIES POLICY ON JURISDICTION OVER NATURAL GAS GATHERING FACILITIES

The Federal Energy Regulatory Commission today clarified its policy regarding when the Commission may invoke its jurisdiction to guard against potential abusive practices by offshore gathering affiliates of interstate natural gas companies.

In a separate order, the Commission accepted Transcontinental Gas Pipe Line Corp.'s revised compliance filing, removing tariff sheets related to services provided from Transco's offshore North Padre Island gathering facilities. The Commission also denied rehearing of orders addressing a complaint filed against Transco by Shell Offshore Inc. The result is a denial of Shell Offshore's complaint.

Commission Chairman Joseph T. Kelliher observed: "The Commission has tried a number of times to assert jurisdiction over offshore gathering facilities to protect against undue preference and the exercise of monopoly power, but has been repeatedly rebuffed by the courts. We must accept the judgment of the courts. Under current law, offshore gathering is an unregulated monopoly. That will remain the case unless and until the law changes."

The Commission's policy statement responds to public comments in a September 2005 Notice Of Inquiry which explored the criteria, established in an 1994 order on a case involving Arkla Gathering Service Co., under which the Commission may invoke its "in connection with" jurisdiction under the Natural Gas Act to protect against potential abuses by unregulated gathering affiliates of Commission-regulated pipeline companies.

That notice stemmed from a U.S. appeals court ruling vacating and remanding orders in which the Commission had sought to reassert jurisdiction over certain affiliated gathering activities under the standards set forth in the Arkla proceeding. The Commission asked whether the test should be modified.

After a careful review of the comments, the Commission today determined not to change its current policies for affiliated gatherers and will clarify the existing Arkla test under which it may reassert jurisdiction over certain offshore gathering facilities.

Gathering facilities beyond state waters are unregulated, and the Commission generally lacks express statutory authority to oversee their costs and rates. While the gathering affiliates of interstate pipelines are generally exempt from Commission jurisdiction, the Commission's policy expressed in the Arkla case holds that "if an affiliated gatherer acts in concert with its pipeline affiliate in connection with the transportation of gas in interstate commerce and in a manner that frustrates the Commission's effective regulation of the interstate pipeline, then the Commission may look through, or disregard, the separate corporate structures and treat the pipeline and gatherer as a single entity."

Once the Commission determines that its effective regulation of the pipeline has been circumvented or frustrated, it would then reassert jurisdiction over the gathering services, "in connection with" interstate rates subject to the Commission's oversight under the Natural Gas Act.

Consistent with the existing Arkla test, the Commission today clarified the type of conduct that would frustrate the Natural Gas Act's statutory purposes that would justify reassertion of jurisdiction.

The Commission will reassert jurisdiction over a gathering affiliate of an interstate pipeline when (1) The gatherer has used its market power over gathering to benefit the pipeline in its performance of jurisdictional transportation or sales service; and (2) that benefit is contrary to the Commission's policies concerning jurisdictional service adopted pursuant to the NGA.

If the Commission concludes a gatherer is involved in the type of conduct that warrants reassertion of jurisdiction, the Commission need not make a determination of 'concerted action' between the pipeline and the gathering affiliate.

In a separate order, the Commission approved revised tariff sheets filed by Transco that reflect the removal of the North Padre Island gathering rate, rate schedule and form of service agreement. The revised tariff sheets are effective November 1, 2005.

The Commission also denied Shell Offshore's appeal of the Commission's September 15, 2005 Order Denying Rehearing in the Shell v. Transco proceeding. Shell had argued the Commission erred by terminating the proceeding in which it protested Transco's tariff. Shell further argued the Commission should have held the proceeding in abeyance pending any final action in response to the NOI.

Today's policy does not make any change to the Commission's decision not to assert jurisdiction over Transco's gathering affiliate, Williams Gas Processing, the Commission said. "The evidence..., as the court has already held in Williams Gas Processing, shows only that WFS charged higher prices and imposed onerous conditions in order to benefit its own gathering business. It did not take actions in order to benefit Transco in the performance of Transco's jurisdictional business," the Commission concluded. "...Shell has failed to show that WFS engaged in the type of conduct such that an assertion of jurisdiction is necessary to prevent frustration of the statutory purpose of the NGA."

The Commission noted that the North Padre Island gathering facilities are located offshore and are subject to regulation under the Outer Continental Shelf Lands Act and suggested Shell seek remedy, if any, for excess charges by a non-natural gas company from the U.S. Department of Interior, not FERC.

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