

119 FERC ¶61,121
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.

EXCO Resources, Inc.
TGG Pipeline, Ltd

Docket No. CP07-106-000

DECLARATORY ORDER ON JURISDICTION

(Issued May 4, 2007)

1. On March 15, 2007, EXCO Resources, Inc. (EXCO) and TGG Pipeline, Ltd. (TGG) filed a petition, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,¹ for a declaratory order stating that TGG is a natural gas gatherer, and thus not subject to the Commission's Natural Gas Act (NGA)² jurisdiction, and further, that a proposed system expansion will not affect TGG's status as an NGA-exempt gatherer. In addition, the petitioners request the Commission find that TGG, as a consequence of being declared to be an NGA-exempt gatherer, is not required to obtain from the Texas Railroad Commission, and file with the Commission, triennial cost-based rate determinations.³ For the reasons discussed below, the Commission determines that TGG is performing primarily a gathering function and will continue to do so after its proposed expansion. Accordingly, pursuant to the NGA's section 1(b) "production and gathering"

¹ 18 CFR § 385.207 (2006).

² 15 U.S.C. § 717, *et seq.* (2005).

³ The Commission currently classifies TGG as an intrastate pipeline, regulated by the Texas Railroad Commission, permitted to transport gas on behalf of interstate pipeline companies and local distribution companies served by interstate pipeline companies, pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (2005). The Commission currently requires TGG to obtain a cost-based rate determination from the Texas Railroad Commission at least once every three years, and file a copy of that state agency's order with the Commission. *See Texas Gas Gathering Company*, 53 FERC ¶ 62,035 (1990).

exemption, TGG is not subject to the Commission's jurisdiction. As a result, TGG need not make further cost-based rate filings with the Commission.

I. **Background and Proposal**

2. EXCO is an independent energy company principally engaged in the acquisition, exploitation, and development of oil and natural gas properties in the Appalachia, Texas, Louisiana, Mid-Continent, Permian, and Rocky Mountain regions. On October 2, 2006, EXCO acquired Winchester Energy Company, Ltd (Winchester), and its affiliated entities, including TGG, from Progress Energy, Inc. (Progress).

3. EXCO acquired TGG in October 2006. TGG began operation in September 1989 as Texas Gas Gathering Company. On May 14, 2002, the pipeline changed its name to TGG Pipeline, Ltd.⁴ TGG is a 53-mile system consisting of a 23-mile long, 12-inch diameter line and a 30-mile long, 16-inch diameter line. TGG transports approximately 117,000 Mcf per day from over 750 producing wells connected along the entire length of its spine-like system. TGG's operating pressure range of 500 to 650 psi is driven by wellhead pressures; TGG has no compression on its system. TGG transports non-pipeline quality gas directly to the North Prism Processing Plant (North Prism Plant) in Harrison County, Texas, the Duke Carthage Plant (Duke Plant) in Panola County, Texas, the East Prism Processing Plant (East Prism Plant), located at the approximate midpoint between the North Prism Plant and the Duke Plant, or to an interconnection with Gulf States Transmission Corporation (Gulf States), for delivery to its Regency Plant in Caddo Parish, Louisiana.

4. The petitioners state the flow patterns on TGG have undergone significant changes since 1989, when TGG delivered the majority of its gas directly to Natural Gas Pipeline Company of America (NGPL). By the mid-1990s, approximately 60 percent of TGG's gas flowed to NGPL, 35 percent to the East Prism Plant, and 5 percent to the Duke Plant. In December 2000, more stringent gas quality specifications imposed by NGPL prevented TGG from making deliveries to NGPL.⁵ Currently, approximately 88 percent

⁴ TGG is used herein to refer to both TGG Pipeline, Ltd. and Texas Gas Gathering Company.

⁵ Since 2000, EXCO believes that TGG made only one delivery directly to NGPL when, in November 2005, NGPL lifted its quality specifications to enable TGG to deliver 20,000 Mcf of gas in order to correct an imbalance that had accrued prior to December 2000.

of TGG's volumes flow to the East Prism Plant, 2 percent to the Duke Plant, and 10 percent to the Regency Plant.

A. Proposed Expansion Pipeline

5. EXCO plans to construct an additional line from Rusk County, Texas, to an interconnect with TGG's current system north of Meter 968 (Option 1), or alternatively, to a location near the East Prism Plant (Option 2). EXCO anticipates the proposed line will operate at a pressure of between 500 to 650 psi and will carry non-pipeline quality gas. Under Option 1, the proposed line would consist of 33.28 miles of 20-inch diameter pipe, 16.6 miles of 12-inch diameter pipe, and 2.02 miles of 6-inch diameter pipe. Under Option 2, the proposed line would consist of 46 miles of 20-inch diameter pipe, 16.6 miles of 12-inch diameter pipe, and 2.02 miles of 6-inch diameter pipe. EXCO states under either option there will be no compression and the proposed line will be located upstream from the processing plants. EXCO contends that both TGG's existing facilities and the proposed line will be used to provide gathering service to local producers, including Winchester, TGG's largest shipper.

B. Required Rate Filings

6. EXCO states that after it acquired the Winchester assets, it discovered that beginning in 2002, TGG failed to make certain regulatory filings with the Commission as required by an October 11, 1990 order (1990 Order).⁶ When TGG initially began operations, the Texas Railroad Commission considered TGG to be a "gas utility" subject to its jurisdiction, and TGG has a tariff on file with that state agency.⁷ In the 1990 Order, TGG was permitted to use the intrastate transportation rate on file with the Texas Railroad Commission as its NGPA section 311 transportation rate, provided TGG obtained a new cost-based rate determination from the Texas Railroad Commission at least once every three years and file a copy of the state order with the Commission. TGG filed state rate determinations with the Commission on April 13, 1992, December 22, 1995, March 10, 1998, and May 31, 2000. On October 11, 2002, TGG requested the Texas Railroad Commission review its transportation rate. However, the state agency took no action with respect to the rate request, because it determined that TGG was no

⁶ 53 FERC ¶ 62,035 (1990). See note 3.

⁷ See the Texas Railroad Commission's T-4 Permit No. 04009 and Tariff No. TN-0396-TT-9.

longer a gas utility subject to its jurisdiction, but was instead a rural gathering system.⁸ As a result, TGG ceased submitting triennial filings with the Commission as required by its 1990 Order.

7. The petitioners maintain that since at least 2001, TGG has met the criteria for a gathering exemption from the Commission's NGA jurisdiction. EXCO states that granting this petition will not result in any changes to the physical service that TGG provides and will have no effect on TGG's existing customers or their rates. TGG further notes that all of TGG's existing contracts provide for rates substantially below the \$0.1152 per MMBtu rate last approved by the Texas Railroad Commission and on file with the Commission.

II. Procedural Matters

8. Notice of EXCO's and TGG's petition, in Docket CP07-106-000, was published in the *Federal Register* on March 29, 2007.⁹ No motions to intervene, or adverse comments or protests, have been filed.

III. Discussion

A. Primary Function Test

9. Under section 1(b) of the NGA, the Commission's jurisdiction does not extend to facilities used for the production or gathering of natural gas or to gathering services.¹⁰ The Commission has, over the years, developed a number of legal tests to determine which facilities are non-jurisdictional gathering facilities and which facilities are

⁸ See Exhibit B of the Petition for a Declaratory Order (March 15, 2007). The petitioners believe the Texas Railroad Commission's 2002 determination that TGG was a rural gathering system exempt from its jurisdiction was a result of state audits indicating that all volumes along TGG's line were ultimately being delivered to third-party processing plants for further redelivery to interstate pipelines located downstream of the East Prism and Duke Plants.

⁹ 72 Fed. Reg. 14,786 (2007).

¹⁰ The courts have narrowly construed the NGA section 1(b) exemption to "the physical acts 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 and Gas Board*, 474 U.S. 409, 418 (1986) (quoting *Northern Natural Gas Co. v. State Corp. Comm'n of Kansas*, 372 U.S. 84, 90 (1963)).

jurisdictional transmission facilities.¹¹ To determine a facility's jurisdictional status, the Commission presently relies on its modified "primary function test," which includes the consideration of several physical and geographical factors, including: (1) the length and diameter of pipeline(s); (2) the extension of the facility beyond the central point-in-the-field; (3) the facility's geographical configuration; (4) the location of the compressors and processing plants; (5) the location of the wells along all or part of the facility; and, (6) the operating pressure of the pipeline(s).¹²

10. In addition, the Commission also considers the purpose, location, and operation of the facility, the general business activities of the owner of the facility, and whether the jurisdictional determination is consistent with the NGA and NGPA. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.¹³ Additionally, the Commission weighs any and all other relevant facts and circumstances of a particular case, including non-physical criteria.¹⁴ The United States Court of Appeals for the Fifth Circuit stated in *Sea Robin Pipeline Company*,¹⁵ however, that while non-physical factors, such as the business of the owner or prior certification of facilities, may be relevant considerations for distinguishing transmission and gathering facilities, these kinds of non-physical factors are secondary to the physical factors.

11. Applying the criteria of the modified primary function test to evaluate TGG's existing and proposed facilities, the Commission concludes that the subject facilities currently perform primarily a gathering function, and will continue to do so based upon the petitioners' representations regarding the proposed expansion; accordingly, TGG should be classified as a non-jurisdictional gatherer, exempt from Commission jurisdiction under section 1(b) of the NGA.

¹¹ See, e.g., *Amerada Hess Corp. (Amerada Hess)*, 52 FERC ¶ 61,268 (1990) and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

¹² The Commission has further modified the primary function test as applied to facilities located offshore. These modifications are immaterial here, since all facilities are located onshore.

¹³ *TOMCAT*, 59 FERC ¶ 61,340 at 62,239 n.15 (1992).

¹⁴ *Amerada Hess*, 52 FERC ¶ 61,268.

¹⁵ 127 F.3d 365, 371 (5th Cir. 1997).

1. Length and Diameter of the Pipelines

12. TGG's system consists of a 53-mile system laid out in a spine-type configuration, with one 23-mile long, 12-inch diameter line and one 30-mile long, 16-inch diameter line. The Commission has found lines of comparable length and diameter to be gathering.¹⁶ Therefore, the length and diameter of these lines is not necessarily inconsistent with a gathering function. The plans for the proposed line, while not definitive, will roughly double the size of the existing system, adding between 52 and 64 miles of pipe, most of it 20 inches in diameter. Despite this significant proposed expansion, the Commission may nevertheless find the new facilities to be gathering, provided they will perform primarily a gathering function. Petitioners assert that the proposed facilities are sized to gather additional gas in a prolific production area, and will rely on wellhead pressure, without any additional compression, to carry wet gas to the plants that TGG currently supplies. Based on the petitioners' representations, we find that the proposed expansion will also perform a gathering function.

2. Central Point in the Field

13. The second factor of the primary function test considers whether the facilities extend beyond a 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 the gas is delivered into a single large line. Any facilities located upstream of the central point are considered non-jurisdictional gathering facilities, while those facilities located downstream of this point are generally considered interstate transportation facilities subject to Commission jurisdiction.¹⁷ We find this factor to be of little determinative significance here, given that all the facilities at

¹⁶ See, e.g., *Straight Creek Gathering, LP (Straight Creek)*, 117 FERC ¶ 61,005 at P 13 (2006) (finding 60 miles of 20-inch diameter backbone pipeline and several 4- to 12-inch lateral lines extending off the backbone to be a non-jurisdictional gathering system); *CenterPoint Energy Gas Transmission Co. (CenterPoint)*, 116 FERC ¶ 61,293 at P 22 (2006) (noting that it is not inconsistent to grant gathering status to facilities with lines as long as 13 miles and with 16- to 20-inch diameter segments); *ANR Pipeline Co. (ANR Pipeline)*, 76 FERC ¶ 61,153 at 61,913 (1996) (a 92-mile long, 16-inch diameter pipeline was found to be gathering); *El Paso Natural Gas Co. (El Paso)*, 57 FERC ¶ 61,186 (1991) (a 75-mile long pipeline consisting of about 62 miles of 16-inch diameter pipeline and 13 miles of 20-inch diameter pipeline was found to be gathering).

¹⁷ *El Paso*, 57 FERC at 61,648. See also, *Florida Gas Transmission Co. (Florida Gas)*, 75 FERC ¶ 61,289 at 61,931 (1996).

issue are upstream of processing plants.¹⁸ Further, the central point in the field factor generally does not apply to spine-type structures such as TGG's.¹⁹

3. Geographic Configuration

14. Gathering systems typically comprise one of two types of geographic configurations: 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.²⁰ Further, the Commission determined that the location of a system within a single state may be a geographic factor relevant to a gathering determination.²¹ TGG's current system is located within Texas, as its proposed expansion facilities will be. TGG's current system consists of a spine-type configuration with wells and gathering connections along the entire length of the line. The petitioners assert the proposed line will also have a spine-type configuration with interconnected wells and a gathering connection. The Commission finds that the existing geographic configuration of TGG's system, and the petitioners' representation of the configuration of the proposed line, are consistent with a gathering function.

4. Location of Compressors and Processing Plants

15. The petitioners state that the operating pressures of TGG's existing facilities are the result of wellhead pressure alone, as there presently are no compression facilities associated with the TGG system. Further, EXCO states that while compression may be added in the future, it will be field compression behind the plant to enable greater volumes of gas to flow through the system. The Commission finds that the addition of such field compression behind the plant would not be inconsistent with a gathering function.

¹⁸ *CenterPoint*, 116 FERC ¶ 61,293 at P 22. See *Straight Creek*, 117 FERC ¶ 61,005 at P 14 (“The central point in the field test is typically used in the absence of a processing plant. Where there is a processing plant, the plant serves as the central point”).

¹⁹ See *Florida Gas*, 75 FERC at 61,931 (citing *Arkla Gathering Services Co.*, 67 FERC ¶ 61,257 at 61,867 (1994)).

²⁰ *Straight Creek*, 117 FERC ¶ 61,005 at P 13.

²¹ See, e.g., *Mahue Construction Co.*, 94 FERC ¶ 61,118 at 61,449 (2001).

16. The Commission has generally found facilities located upstream of processing plants to be gathering.²² The processing of wet gas to remove impurities, moisture, and liquid to bring the gas up to pipeline quality standards for delivery into an interstate pipeline is characteristic of a gathering function.²³ We find that TGG's existing and proposed pipelines will collect non-pipeline quality wet gas and carry that gas directly to an interconnection with processing plants or to an interconnection with Gulf States for delivery to the Regency Plant. The wet gas flowing on TGG's system does not meet interstate pipelines' gas quality standards; consequently, absent processing, such gas cannot be delivered to interstate pipelines. The Commission finds that TGG's existing and proposed facilities' location upstream of processing plants is consistent with a gathering function.

5. Location of the Wells

17. The location of wells along the length of a line is indicative of gathering.²⁴ The Commission has previously held that the location of a facility in a production area surrounded by other gathering lines supports a non-jurisdictional finding.²⁵ However, the absence of wells directly connected to a pipeline does not necessarily prohibit a gathering determination when facilities are located in a production area and operated along existing gathering sub-systems.²⁶ In the present case, there are 750 producing wells along the

²² See, e.g., *CenterPoint*, 116 FERC ¶ 61,293 at P 22; *Transwestern Pipeline Co.*, 115 FERC ¶ 62,189 at 64,860 (2006); *El Paso*, 81 FERC ¶ 61,209 at 61,892-93 (1997), *reh'g denied*, 82 FERC ¶ 61,377 (1998), *aff'd*, *Williams Field Services Group, Inc. v. FERC*, 194 F.3d 110 (D.C. Cir. 1999); *Koch Gateway Pipeline Co.*, 81 FERC ¶ 61,228 at 61,957 (1997); and *ANR Pipeline*, 77 FERC at 61,936.

²³ *Straight Creek*, 117 FERC ¶ 61,005 at P 15. See also *Southern Star Central Gas Pipeline, Inc. (Southern Star)*, 116 FERC ¶ 61,288 at P 37 (2006) ("We do not find it dispositive of the jurisdictional status of the Mulhall Line that the gas entering the line will have been processed in the field since the processing is not sufficient to bring the gas to pipeline quality. The gas must further be processed before it is delivered to Southern Star's system."); *El Paso*, 116 FERC ¶ 62,081 at 64,274 (2006).

²⁴ See, e.g., *Ozark Gas Transmission, LLC*, 101 FERC ¶ 61,205 at P 21 (2002) and *ANR Pipeline*, 76 FERC at 61,914.

²⁵ See, e.g., *El Paso*, 116 FERC at 62,275; *Southern Star*, 116 FERC ¶ 61,288 at P 33.

²⁶ See, e.g., *Southern Star*, 116 FERC ¶ 61,288 at P 41.

length of TGG's existing lines. The petitioners maintain that when the proposed line becomes operational, approximately 450 wells and over 20 gathering connections will be located along its length. The petitioners add that TGG's existing and proposed lines are located among thousands of miles of other gathering lines in the same region. The Commission finds the number of wells attached to TGG's existing lines, the prospect of the similar attachment of numerous wells to the proposed line, and the location of the facilities among other gathering systems in producing fields to be consistent with a gathering function.

6. Operating Pressures of the Line

18. Lower operating pressures are consistent with a gathering function; however, the Commission has acknowledged that gathering lines may have higher operating pressures that occur as a result of higher wellhead pressures in the field.²⁷ The petitioners contend that TGG existing and proposed facilities will operate at pressures ranging from 500 to 650 psi due to wellhead pressure and the pressure on interconnected third party gathering lines. The Commission finds that TGG's and the proposed line's operating pressures are not inconsistent with a gathering function.²⁸

7. Additional Considerations

19. In addition to the primary function test, the Commission also considers other factors such as: the general business activities of the owner of the facility and whether the jurisdictional determination is consistent with the objectives of the NGA and NGPA. As previously stated, EXCO is an NGA-exempt oil and natural gas company engaged in

²⁷ See, e.g., *ANR Pipeline*, 76 FERC at 61,914.

²⁸ *ANR Pipeline*, 76 FERC at 61,914 (The Commission determined that operating pressures of 780 to 1,050 psig were indicative of a gathering function since the operating pressures were a result of higher wellhead pressures in the field and the operating pressures of interconnected third party gathering systems); *El Paso*, 116 FERC at 64,274 ("The operating pressure of the system – approximately 850 psig – will be driven by production pressures in the area and, as such, is not inconsistent with a gathering function"); *El Paso*, 72 FERC ¶ 61,220 at 62,012 (1995) ("The six gathering systems in the Anadarko Basin range anywhere from 300 to 1,000 psig because of the higher gathering system pressures resulting from the high pressure reservoirs underlying the Anadarko Basin. Under these circumstances, the high operating pressures are not inconsistent with a gathering determination.").

the acquisition, exploitation, and development of oil and natural gas properties.²⁹ Currently, EXCO does not own any assets subject to the Commission's NGA jurisdiction. The Commission finds that the general business activities of EXCO are not inconsistent with a determination that its affiliate TGG's existing and proposed pipelines should be exempt from the Commission's jurisdiction under the NGA.

20. When establishing whether a jurisdictional determination is consistent with the objectives of the NGA and the NGPA, the Commission considers improving infrastructure, enhancing competition, and providing additional supplies of gas.³⁰ The petitioners state that the proposed line will enhance the development of regional gathering infrastructure in order to bring gas from existing wells and from wells currently under development by other producers and by EXCO. The Commission finds this enhancement of infrastructure in the region in order to promote gathering activities is consistent with the objectives of the NGA and the NGPA. Therefore, the Commission determines that declaring TGG to be an NGA-exempt gatherer is consistent with the objectives of the NGA and NGPA.

B. Section 311 of the NGPA

21. For the reasons discussed herein, the Commission finds that TGG is a natural gas gatherer; therefore, TGG need not file rates with the Commission under NGPA section 311.³¹ NGPA section 311 authorizes the Commission to allow intrastate pipelines to transport gas "on behalf of" interstate pipelines without becoming subject to the Commission's NGA jurisdiction. The record demonstrates that TGG only provides gathering services, not intrastate transportation services. Therefore, it is not necessary for TGG to seek NGPA section 311 approval, and TGG is no longer required to file further cost-based rate determinations with the Commission.

IV. Summary

22. For the foregoing reasons, the Commission finds that TGG is engaged primarily in gathering and will continue to do so after the proposed expansion of its system, provided

²⁹ See, e.g., *El Paso*, 116 FERC at 64,275 (a gathering determination was supported because the owners of the subject facility were primarily engaged in non-jurisdictional business activities).

³⁰ See, e.g., *Straight Creek*, 117 FERC ¶ 61,005 at P 18 and *Columbia Gas Transmission Corp.*, 116 FERC ¶ 61,191 at P 44 (2006).

³¹ *TGG*, 53 FERC ¶ 62,035.

the additional facilities are constructed and operated as described. Accordingly, the Commission declares TGG to be exempt from its NGA jurisdiction pursuant to NGA section 1(b). As a gas gatherer, TGG need not make NGPA section 311 filings with the Commission.

The Commission orders:

(A) The Commission declares the primary function of TGG's existing facilities to be gathering, and as such, to be exempt from the Commission's jurisdiction under NGA section 1(b).

(B) The Commission declares TGG will continue to be an NGA-exempt gatherer following the proposed expansion, provided the facilities are constructed and operated as described by the petitioners.

(C) TGG is not required to make any further NGPA section 311 filings with the Commission.

By the Commission.

(S E A L)

Philis J. Posey,
Deputy Secretary.