

124 FERC ¶ 61,017  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Quicksilver Resources Inc.  
BreitBurn Operating L.P.

Docket No. CP08-7-001

ORDER DENYING REHEARING AND GRANTING CLARIFICATION

(Issued July 3, 2008)

1. On February 8, 2008, the Commission issued a Declaratory Order on Jurisdiction for natural gas facilities in Indiana and Kentucky owned by Quicksilver Resources Inc. (Quicksilver).<sup>1</sup> The February 8 Order found that the facilities upstream of the Cardinal Station processing plant perform a non-jurisdictional gathering function, whereas the Cardinal Line, an 8.3-mile pipeline downstream of the Cardinal Station, performs a jurisdictional transportation function. On March 10, 2008, Quicksilver filed a request for rehearing of the February 8 Order. Quicksilver states that (1) the Commission erred in determining that the primary function of the Cardinal Line is jurisdictional transportation, or, in the alternative, (2) the Commission failed to make clear that BreitBurn Operating L.P. (BreitBurn), successor in interest to Quicksilver, may apply for a certificate of limited jurisdiction to satisfy the requirement in the February 8 Order to file a certificate application for the Cardinal Line.

2. The Commission is denying Quicksilver's request for rehearing, but is clarifying the scope of the requirement to apply for a section 7(c) certificate of public convenience and necessity under the Natural Gas Act (NGA).<sup>2</sup>

**I. Background**

3. Quicksilver is an independent oil and gas company engaged in the development and production of natural gas, natural gas liquids, and crude oil in Texas, Indiana, Kentucky, Michigan, Montana, and Canada. In November 2007, Quicksilver conveyed its natural gas producing interests in the Corydon Field of northeast Kentucky and

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<sup>1</sup> *Quicksilver Resources Inc. and BreitBurn Operating L.P.*, 122 FERC ¶ 61,115 (2008) (February 8 Order).

<sup>2</sup> 15 U.S.C. § 717f (2000).

southeast Indiana to BreitBurn. BreitBurn is a wholly-owned affiliate of BreitBurn Energy Partners L.P., an independent oil and gas limited partnership that acquires and develops oil and gas properties. BreitBurn's assets include producing and non-producing crude oil and natural gas reserves located in the Los Angeles Basin in California, the Wind River and Big Horn Basins in central Wyoming, the Permian Basin in West Texas, and the Sunniland Trend in Florida.

4. The pipeline facilities in the Corydon Field consist of producing wells directly connected to 134 miles of smaller diameter (2- to 10-inch) pipeline feeding into a larger diameter (8- to 12-inch) 20.4-mile backbone system. The backbone is sectioned into three segments by substations (Wimp, Danner, and Olin), each with one compressor, one dehydrator, and one separator to supplement the gathering system and move gas down the backbone line.

5. The Wimp Station is located at the farthest upstream point of the backbone system. The 3.6-mile long, 8-inch diameter Wimp-Danner Line runs from the Wimp to the Danner Station. From the Danner Station, the 8.5-mile long, 8-inch diameter GTG Line runs to the Olin Station. From the Olin Station, all the gathered gas, except quantities delivered to the Arch Chemical Plant, goes through processing at the Cardinal Station to bring the gas to the specifications required by Texas Gas Transmission, LLC's (Texas Gas), interstate pipeline. The Cardinal Line, an 8.3-mile long, 12-inch diameter pipeline delivers the pipeline quality gas from the Cardinal Station into the Texas Gas interstate pipeline.

## **II. The February 8 Order**

6. In the February 8 Order, the Commission determined that Quicksilver's facilities upstream of the Cardinal Station perform a gathering function, and therefore, under NGA section 1(b), are not subject to the Commission's jurisdiction. However, the Commission determined that the 8.3-mile long Cardinal Line performs a transportation function that is subject to the Commission's jurisdiction under NGA section 7(c).

7. In the February 8 Order, the Commission determined that: the Cardinal Line is inconsistent with a gathering function because the Cardinal Station is a processing plant that serves as the central point in the field;<sup>3</sup> the length of the Cardinal Line downstream

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<sup>3</sup> 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. *Minerals, Inc.*, 69 FERC ¶ 61,184, at 61,774 (1994). Any facilities located upstream of the central point are generally considered non-jurisdictional gathering facilities, while those downstream are considered jurisdictional transmission facilities. *See El Paso Natural Gas Co.*, 57 FERC ¶ 61,186, at 61,648 (1991). *See also Florida Gas Transmission Co.*, 75 FERC ¶ 61,289, at 61,931 (1996).

from the Cardinal Station exceeds the five-mile stub line exception previously approved in *Amerada Hess II* and *SOPCO*;<sup>4</sup> the Cardinal Station provides additional processing to prepare the gas to interstate pipeline quality standards, thereby making any lines downstream of the Cardinal Station that are not incidental to a gathering function jurisdictional transportation; and, no gas from wells feeds directly into the Cardinal Station.

8. Because the Commission determined that the Cardinal Line performs a jurisdictional transportation function, the February 8 Order required Quicksilver to file for a certificate of public convenience and necessity under section 7(c) of the NGA within 60 days of the issuance of the order. The February 8 Order immediately issued to Quicksilver a limited-term certificate for the continued operation of the Cardinal Line pending receipt of a permanent certificate.

### **III. Discussion**

#### **A. Request for Rehearing on Primary Function Determination of Cardinal Line**

9. Quicksilver contends that the February 8 Order failed to consider all relevant factors in determining that the primary function of the Cardinal Line is jurisdictional transmission under the NGA. Quicksilver believes that if the Commission had considered the unique characteristics of shale formation production areas, we would have determined that the Cardinal Line's primary function is gathering. In particular, Quicksilver argues that gas produced from shale formations has a high water and carbon dioxide content that precludes the direct connection of wells to the Cardinal Line because the Cardinal Line carries interstate pipeline quality gas. As a result, Quicksilver states that a smaller line from these downstream producing wells is placed in the same trench as the Cardinal Line, and extends back to the Cardinal Station for dehydration and carbon dioxide removal. Quicksilver argues that because wells are located approximately two miles downstream alongside the Cardinal Line, the length of the Cardinal Line for stub line purposes should be measured from the farthest downstream well to the interconnection with Texas Gas, which in this case would be about six miles. Therefore, Quicksilver asserts that the 8.3-mile Cardinal Line should be considered by the Commission as a 2.3-mile gathering line followed by a 6-mile line that is incidental to gathering and should fall within the five mile stub line exception set forth in *Amerada Hess II* and *SOPCO*.<sup>5</sup> Quicksilver further emphasizes that there is no operational reason

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<sup>4</sup> *Amerada Hess Corporation*, 67 FERC ¶ 61,254 (*Amerada Hess II*) and *Superior Offshore Pipeline Company*, 67 FERC ¶ 61,253 (1994) (*SOPCO*).

<sup>5</sup> 67 FERC ¶ 61,254 and 67 FERC ¶ 61,253.

that requires the location of the Cardinal Station to be upstream of the Cardinal Line. If it had appreciated the weight placed on this factor, Quicksilver contends it would have placed the Cardinal Station immediately upstream of the interconnection with Texas Gas.

10. In the 1994 *Amerada Hess II* and *SOPCO* proceedings,<sup>6</sup> the Commission issued orders adopting new policies regarding the application of the modified primary function test to pipeline facilities located downstream from processing plants. Those orders found that the modification of the primary function test in *Amerada Hess I*<sup>7</sup> in 1990 led to ever increasing size and length of lines extending beyond the outlet of a processing plant being found to function as gathering facilities. The orders clarified that, in general, the Commission will find that facilities located beyond the outlet of a processing plant, other than incidental extensions such as stub lines, are jurisdictional transmission facilities. The Commission has been unwilling to expand the stub line exemption beyond the five miles established in *SOPCO*.<sup>8</sup>

11. The Commission disagrees with Quicksilver's characterization of the Cardinal Line as incidental to a gathering function because wells are located adjacent to the 8.3-mile long Cardinal Line for two miles. Even though wells are present alongside a portion of the Cardinal Line, they are not connected to the Cardinal Line. The gathered gas in the wells along the Cardinal Line travels through smaller gathering lines back to the Olin Station to be combined with the rest of the gathered gas in the system. Except for quantities delivered to the Arch Chemical Plant, all the gathered gas in the system then travels through the Cardinal Station where it is brought to interstate pipeline quality standards for delivery into the Texas Gas transmission line.

12. Despite Quicksilver's suggestion that the Commission did not appreciate the unique characteristics of shale formation gathering fields, the Commission made clear

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<sup>6</sup> *Id.*

<sup>7</sup> *Amerada Hess Corporation, et al.*, 52 FERC ¶ 61,268 (1990) (*Amerada Hess I*).

<sup>8</sup> See, e.g., *Western Gas Resources, Inc., and Pioneer Natural Resources (USA), Inc.*, 119 FERC ¶ 61,308 (2007) (finding 10.9-mile long, 10- to 12-inch diameter line from the processing plant to an interstate pipeline is not incidental to a gathering function); *Natural Gas Pipeline Company of America*, 85 FERC ¶ 61,004 (1998) (finding 14-mile long, 12-inch diameter line that does not gather gas from wells along its length is not incidental to a gathering function); *Western Gas Resources, Inc., and Williams Natural Gas Company*, 82 FERC ¶ 61,072, at 61,252 (1998) (finding 9-mile long, 10-inch diameter line is not incidental to a gathering function); and, *Plant Owners v. Continental Natural Gas, Inc.*, 80 FERC ¶ 61,285 (1997) (finding 11-mile long, 10-inch diameter line does not perform a gathering function because it is downstream from a processing plant and carries pipeline quality gas).

that the Wimp, Danner, and Olin substations, which do physically process gas, are a part of the gathering system. As noted in the February 8 Order, it is the fact that the Cardinal Station brings the gathered gas to interstate pipeline quality standards 8.3 miles upstream from the interconnection with Texas Gas with no additional wellhead connections, that distinguishes both the function of the Cardinal Station from the substations, and the function of the Cardinal Line from the upstream sections of the backbone gathering pipeline.

13. Further, the Commission has made clear the importance of the location of a processing plant as it was this factor that initiated reconsideration of the primary function test in *Amerada Hess II* and *SOPCO*. Since that time, the Commission has been unwilling to find that a pipeline at the tail of a processing plant longer than five miles can be considered a stub line that is incidental to a gathering function. Therefore, Quicksilver's request for rehearing on the determination that the Cardinal Line performs a jurisdictional transportation function is denied and the Commission affirms its conclusion in the February 8 Order that the Cardinal Line performs a jurisdictional transportation function.

**B. Request for Limited Jurisdiction Certificate**

14. Quicksilver requests that in the event the Commission denies rehearing on the jurisdictional determination of the Cardinal Line, we clarify the certificate filing requirement set forth in Ordering Paragraph (B) of the February 8 Order by explaining that the filing requirement may be satisfied through a request for a limited jurisdiction certificate. Quicksilver believes that a limited jurisdiction certificate is appropriate because the Commission has previously issued certificates of limited jurisdiction to otherwise non-jurisdictional companies that were engaged in comparatively minor jurisdictional activities. Quicksilver requests a waiver of all rate, reporting, tariff, open access and other regulatory requirements<sup>9</sup> because the Cardinal Line, now owned by BreitBurn, does not transport gas on behalf of third parties. Quicksilver states that no regulatory purpose would be served by compelling BreitBurn to incur the regulatory obligations and expense of compliance with all otherwise applicable regulatory requirements since there is no present prospect that third parties will want access to the Cardinal Line.

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<sup>9</sup> Citing *Western Gas Resources, Inc.*, 119 FERC ¶ 61,308, at 62,698 (2007) in which Western requested and the Commission granted waiver of: (1) rate schedule and tariff filing requirements under Part 154 of the Commission's regulations; (2) accounting and reporting requirements under Parts 158, 201 (including the Uniform System of Accounts), 225, 250, and 260 (including Form 2); and, (3) sections 157.6 (Application), 157.7 (Abbreviated Application), 157.13 (Form of Exhibits), and 157.14 (Exhibits).

15. A limited jurisdiction certificate is appropriate where an otherwise non-jurisdictional company is engaged in comparatively minor jurisdictional activities.<sup>10</sup> Here, Quicksilver and BreitBurn operate primarily a gathering system, with the exception of the 8.3-mile long Cardinal Line which does not transport third-party gas. The Commission finds that BreitBurn may file for a limited jurisdiction certificate to continue transporting only its own gas on the Cardinal Line. BreitBurn may request waiver of Commission regulations in its application. The Commission will determine whether to grant any waivers when it issues an order addressing BreitBurn's application.

#### **IV. Conclusion**

16. For the reasons discussed above, the Commission denies Quicksilver's request for rehearing of the determination that the Cardinal Line is a jurisdictional transportation facility under the NGA. Given the specific facts of Quicksilver's facilities, BreitBurn, as successor in interest to the Cardinal Line, may file for a limited jurisdiction certificate for operation of the Cardinal Line in satisfaction of the certification requirements of NGA section 7(c).

#### **The Commission orders:**

(A) The Commission reaffirms that the primary function of the Cardinal Line is transmission and BreitBurn must file for a certificate of public convenience and necessity pursuant to NGA section 7(c) within thirty days of the issuance of this order.

(B) BreitBurn may satisfy the requirement of Ordering Paragraph (A) by filing for a certificate of limited jurisdiction as described in this order.

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<sup>10</sup> See *Western Gas Resources, Inc.*, 119 FERC ¶ 61,308, at 62,698 (limited jurisdiction certificate issued and certain filing requirements waived for 10.9-mile line downstream from processing plant where owners transport only their own gas); see also, *Continental Natural Gas, Inc.*, 83 FERC ¶ 61,065 (1998) (limited jurisdiction certificate issued and certain filing requirements waived for 11-mile line downstream from processing plant where owners transport only their own gas).

(C) Quicksilver's limited-term certificate for the transmission of gas through the Cardinal Line pending resolution of this rehearing is cancelled upon the issuance of a limited jurisdiction certificate to BreitBurn by the Commission.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.