



Pipeline Construction under the Natural Gas Act and Natural Gas Policy Act

BOB CHRISTIN

Van Ness Feldman

BERNE MOSLEY

Energy Projects Consulting, LLC

**Energy Bar
Association lunch
March 21, 2012**

Natural Gas Act Enacted in 1938, 15 U.S.C. §§ 717-717z



- Establishes federal regulation of:
 - Transportation (including storage) and sale for resale of natural gas in interstate commerce
 - **Construction, acquisition and operation of facilities**
 - Natural gas companies
 - Facilities for importation and exportation



Natural Gas Act § 7 Certificate

- Certificate required to construct, acquire or operate an interstate pipeline
 - Certificate shall issue when required by the present or future public convenience and necessity
 - FERC has authority to add conditions
 - Certificate confers eminent domain
 - Blanket certificates for smaller projects
 - Extensive application process for significant projects



Jurisdictional Exemptions

- Intrastate Pipelines (i.e., not engaged in interstate commerce)
- Specific Exemptions
 - Production - §1(b)
 - Gathering - §1(b)
 - Local Distribution - §1(b)
 - Smaller, low pressure lines; retail delivery
 - Hinshaw Pipelines - §1(c)
 - Gas received from another person
 - Within or at the boundary of a State
 - Gas consumed within such State
 - Rates and service subject to regulation by State commission
 - Municipalities (not “persons” by definition)

Natural Gas Policy Act of 1978



- Gas shortages of 1970s caused in part by bifurcated (interstate/intrastate) regulation of producer sale prices
- Led to NGPA of 1978
 - Complex system of wellhead (producer) price ceilings by category (now entirely deregulated).
 - Natural gas curtailment policies
 - **Section 311 authorization of certain sales and transportation**
 - Allows for integration of interstate and intrastate grid under certain circumstances
 - Intrastate pipelines can participate without becoming jurisdictional under NGA



NGPA § 311(a)(1)(A)

- The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of—
 - (i) any intrastate pipeline; and
 - (ii) any local distribution company
- 18 C.F.R. §§ 284.101-.102
 - Rules for Transportation by Interstate pipelines



NGPA § 311(a)(2)(A)

- The Commission may, by rule or order, authorize any **intrastate pipeline** to transport natural gas **on behalf of—**
 1. any interstate pipeline; and
 2. any local distribution company served by any interstate pipeline.
- 18 C.F.R §§ 284.121-.126 – transportation by intrastate pipelines
 - Without prior authorization
 - Fair and equitable rates
 - Statement of operating conditions
 - Reporting requirements

NGPA § 601(a)(2)



- (A) provisions of NGA shall not apply to any transportation authorized under NGPA 311(a)
- (B) the term “natural-gas company” under the NGA “shall not include any person by reason of, or with respect to, any transportation of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission under the Natural Gas Act do not apply to such transportation by reason of subparagraph (A) of this paragraph”
- Thus, under NGPA § 601(a)(2) none of the participants (or downstream recipients) in a § 311(a) transaction become subject to the Commission's NGA jurisdiction as a result of that transaction

§ 311-Type Blanket Certificate for LDCs and Hinshaws



- 18 C.F.R. § 284.224 (Order No. 63)
- Blanket certificate for LDC or Hinshaw pipeline company to engage in **sales or transportation** of gas to same extent as an intrastate pipeline under NGPA § 311
- Subject to same rates, terms, conditions and reporting requirements
- Will not otherwise subject certificate holder to NGA jurisdiction (i.e., limited jurisdiction certificate)
- Pre-granted abandonment

What is an intrastate pipeline under the NGPA?



- “The term ‘intrastate pipeline’ means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act (other than any such pipeline which is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act).” [NGPA, 15 U.S.C. § 3301(16)]

- “If a new pipeline is planned, it would not fit within this literal definition of an ‘intrastate pipeline.’” [Order No. 46, FERC Stats & Regs ¶30,081 at p. 30,536 (1979)]
 - So you need to *be* an intrastate pipeline first, before you can transport under NGPA § 311 – but for how long?

What is an intrastate pipeline under the NGPA (continued)?



- Facility must be contiguous to the rest of the intrastate system
 - Egan Hub Partners, L.P., 73 FERC ¶ 61,334 (1995) (requiring certificate under the NGA to operate storage facility constructed solely to provide interstate service and physically separate from company's existing intrastate facilities)
- *See generally Federal Power Commission v. East Ohio Gas Company*, 338 U.S. 464 (1950) (pipeline located entirely within state border found to be jurisdictional interstate pipeline)



What does “on behalf of” mean?

- 18 C.F.R. § 284.123(d)
- Transportation of natural gas [by in intrastate pipeline] is not **on behalf of** an interstate pipeline or local distribution company served by an interstate pipeline or authorized under this section unless:
 1. The interstate pipeline or local distribution company has **physical custody of and transports** the natural gas **at some point**; or
 2. The interstate pipeline or local distribution company **holds title to the natural gas at some point**, which may occur prior to, during, or after the time that the gas is being transported by the intrastate pipeline, for a purpose related to its status and functions as an interstate pipeline or its status and functions as a local distribution company.

How much intrastate transportation makes a pipeline “intrastate”?



- *Three Rivers Pipeline Company*, 84 FERC ¶ 61,238 (1998)(requiring company to provide evidence of its jurisdictional status where company claimed to be an intrastate pipeline transporting gas under 311(a)(2), but was no longer transporting *any* gas from local production)
- *Saltville Gas Storage Co.*, 104 FERC ¶ 61,273 at P 25 (2003)(company providing *de minimis* amount of in state service cannot claim a Hinshaw exemption to qualify for 311-type blanket certificate under § 284.3(c))
- Prior to acquisition of its storage facilities by an interstate pipeline, UGI Central Penn Gas, Inc., an LDC, offered 80 percent of its storage capacity under a 311-type blanket certificate. *See UGI Storage Co.*, 134 FERC ¶ 61,239 (2011).

Construction of § 311 facilities: 18 C.F.R. § 284.3(c)



- “The Natural Gas Act shall not apply to facilities utilized **solely** for transportation authorized by section § 311(a) of the NGPA.”
 - Thus, you don’t need a NGA certificate to construct these facilities
- 18 C.F.R. § 284.11: Environmental compliance
 - a) construction authorized by § 284.3(c) must comply with environmental regulations of § 157.206(b)
 - Same as for construction under automatic authorization of a blanket certificate
 - b) Advance notification to Commission if project costs exceed \$10.8 million
 - c) Contents of advance notification can be significant
 - d) Reporting requirements

What part of “solely” don’t you understand?



- Intrastate pipeline planned to build extension of its system to connect with new interstate line
 - Extension **not** proposed “only for the purpose of performing transportation in interstate commerce” (**i.e., not solely for § 311 transportation**)
 - Company expected “to provide gathering and transportation services for intrastate customers” (**i.e., not solely for § 311 transportation**)
- Nevertheless, *Trans-Union Interstate Pipeline, L.P.*, 92 FERC ¶ 61,066 at p 61,223 (2000) said:
 - Company must make advance notice filing under § 284.11(b)
 - If company cannot meet environmental requirements of 157.206(b) it “would not have the authority under Section 311 of the NGPA to construct and operate the facility”
- How can this case be reconciled with § 284.3(c)?

Can LDCs and Hinshaws construct under their 311-type blanket?



- Commission 311-type blanket certificate regulations do not establish construction authority for Hinshaws and LDCs.
- *See Michigan Consolidated Gas Co.*, 50 FERC ¶ 61,010 (1990)
- *See also WestGas Interstate, Inc.*, 59 FERC ¶ 61,029 at p. 61,062 (1992)(construction of 300-foot segment not exempt under NGA § 1(c) because only that part of Hinshaw system that brings gas into the state is exempt).
 - Note lack of any discussion as to whether the Hinshaw company could have constructed the line under its 311-type blanket certificate
- *But see Boston Gas Company*, 58 FERC ¶ 61,180 at p. 61,561 (1992)(declining to assert jurisdiction over line built by an LDC to deliver regasified LNG into an interstate pipeline for (physical) redelivery within the state).



Other References

- Exemptions Under the Natural Gas Act
 - *Laser Marcellus Gathering Co., LLC*, 130 FERC ¶ 61,162 (2010) (gathering exemption under NGA § 1(b)).
 - *Midwestern Gas Transmission Co.*, 85 FERC ¶ 61,358 (1998) (Pipeline lateral constructed to serve end user is jurisdictional, not a local distribution facility under NGA § 1(b). See extensive discussion of difference between interstate pipeline and LDC facilities, esp. cites in footnote 14).
 - *La. Power & Light Co. v. FPC*, 483 F.2d 623 (5th Cir.1973) (history and scope of Hinshaw exemption under NGA § 1(c)); *City of Fort Morgan. v. FERC*, 181 F. 3d 1155 (10th Cir. 1999) (Hinshaw exemption may apply to physically separate facilities owned by an otherwise jurisdictional company if all the statutory tests are met).
 - *Intermountain Mun. Gas Agency v. FERC*, 326 F.3d 1281 (D.C. Cir. 2003) (non-jurisdictional status of municipalities).



For more information

BOB CHRISTIN

Van Ness Feldman
202-298-1987
rfc@vnf.com

BERNE MOSLEY

Energy Projects Consulting, LLC
703-850-8779
bernemosley@yahoo.com

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