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FERC Finds Williams' Louisiana Energy Gateway System Will Not Be Jurisdictional

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By Michael Pincus, Michael Diamond, and Travis Malesky

On Friday, September 27, 2024, the Federal Energy Regulatory Commission ("FERC") issued an Order on Petition to Show Cause ("Order") finding that The Williams Companies' Louisiana Energy Gateway ("LEG") System will not be subject to FERC's jurisdiction under the Natural Gas Act. The Order is a major victory for Williams. Williams was defending its project against a petition to show cause filed by Energy Transfer, LP. Energy Transfer asserted that Williams was illegally constructing the LEG System as a non-jurisdictional gathering system, when the system was in fact an interstate transmission system that required FERC's authorization for construction. The Order confirms that Williams may continue with construction of the LEG System, and removes the broader uncertainty that had been created by Energy Transfer's request that the Commission reevaluate its test for determining whether a pipeline is a gathering system exempt from FERC jurisdiction. Van Ness Feldman successfully represented Williams in defending the LEG System's jurisdictional status before FERC.

Williams' Louisiana Energy Gateway System

Williams' LEG System, currently under construction, will gather up to 1.8 billion cubic feet per day of natural gas from the prolific Haynesville Shale formation and other natural gas production areas in Texas and Louisiana, and deliver to LNG export terminals and other markets along the Gulf Coast. The LEG System will be comprised of two segments: the Haynesville Spine and Juniper South. The Haynesville Spine will include approximately 64 miles of 30- to 42-inch-diameter pipeline and two compressor stations gathering gas from approximately 775 wellpads to a Juniper Compressor Station in Sabine, Louisiana. Juniper South will be an approximately 110-mile, 42-inch-diameter pipeline that will carry gas gathered from the Haynesville Spine south to a new treatment facility that will provide carbon dioxide ("CO2") removal service at the Gillis Hub in Louisiana. Williams also plans to gather additional volumes of gas along Juniper South from the Austin Chalk and Tuscaloosa Marine Shale production areas.

Energy Transfer's Petition

Energy Transfer initiated the proceeding in April 2024 with a Petition for Order to Show Cause ("Petition") alleging that Williams was illegally constructing the LEG System without FERC authorization. The Natural Gas Act provides FERC with jurisdiction over pipelines that transport gas in interstate commerce, but pipelines that "gather" gas are exempt from FERC jurisdiction. Energy Transfer claimed that Williams was avoiding FERC oversight under the Natural Gas Act by constructing the LEG System as a gathering system, and alleged that the LEG System will be an interstate natural gas transmission pipeline that requires a certificate of public convenience and necessity from FERC. The Petition also asked FERC to open a generic proceeding to clarify FERC's "primary function" which it balances several factors to determine if a pipeline is gathering or transmission.

Williams objected to Energy Transfer's Petition, explaining that the LEG System is properly classified as a gathering facility under FERC's primary function test, and that even if FERC were to find that a segment of the System will perform a transmission function, Williams would construct that segment as an intrastate pipeline, such that under no circumstances would it be subject to FERC's jurisdiction under the Natural Gas Act.

FERC's Order Rejecting Energy Transfer's Petition

FERC rejected Energy Transfer's Petition, determined that the LEG System will not be subject to its jurisdiction under the Natural Gas Act, and found no reason to change or reexamine its primary function test. FERC weighed each factor of the primary function test and found that, as currently contemplated, the LEG System will perform a gathering function. FERC's discussion of each factor is summarized below:

- Length and diameter of the pipeline. FERC found that while the LEG System's 36- and 42-inch diameter pipelines are large for gathering, the dimensions are a function of Haynesville Shale's high-pressure production and the large volume of gas that will be gathered.

- Facilities' geographical configuration and location of wells along the facilities. FERC found that both the Haynesville Spine and Juniper South will have spine-like configurations, in which they will gather gas from smaller feeder lines along their length, consistent with a gathering function. FERC noted, however, that if the Juniper South segment does not ultimately interconnect with production along its length, it would appear to be performing a transmission function given its length and high pressure. However, FERC stated that in that case, Williams could construct that segment as an intrastate transmission line exempt from Natural Gas Act regulation, which could subsequently transport gas in interstate commerce through authorization under Section 311 of the Natural Gas Policy Act.

- Extension of the facilities beyond the central point in the field. FERC explained that due to the configuration of the LEG System, this factor did not apply.

- Location of compressors and processing plants. FERC found that once the CO2 treatment facility at Gillis was installed, the LEG System would carry gas with high CO2 content that does not meet interstate pipeline gas quality standards. FERC explained that the LEG System's transportation of non-pipeline quality gas is indicative of a gathering function.

- The operating pressures of the pipeline. FERC found that while gathering facilities often operate at low pressure levels, the LEG System's high pressure was a function of the high pressure of Haynesville Shale production.

- Other factors. FERC rejected Energy Transfer's argument that the LEG System is a jurisdictional extension of Williams' interstate Transcontinental Gas Pipe Line system, and found that the LEG System's ability to gather gas from a highly productive area that could otherwise be shut in is consistent with the greater goals of the Natural Gas Act.

Implications

Williams' victory confirms that the LEG System is not subject to the Natural Gas Act and provides a greater degree of certainty to industry as pipeline companies contemplate new projects to gather gas from burgeoning shale formations. The Order indicates that FERC is likely to continue to apply its primary function test flexibly in future proceedings, recognizing the changes that are occurring in natural gas production and gathering as a result of the shale gas revolution. As such, the Order may reassure developers of other large, high-pressure systems that gather gas from shale formations that their facilities are non-jurisdictional.

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For More Information

For additional information about the services Van Ness Feldman provides to pipelines and other members of the energy industry regulated by FERC, please contact Michael Pincus, Michael Diamond, Travis Malesky or any member of our Oil, Gas, & LNG practice at 202-298-1800.

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