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Northern Natural Gas Company, Targa Texas Field Services LP

Docket No. CP06-42-000, Docket No. CP06-43-000

FEDERAL ENERGY REGULATORY COMMISSION – COMMISSION

115 F.E.R.C. P61,112; 2006 FERC LEXIS 964

ORDER APPROVING ABANDONMENT AND DISCLAIMING JURISDICTION

April 26, 2006

**PANEL:**

[\*\*1] Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeem G. Kelly

**OPINION:**

[\*61,422]

1. On December 27, 2005, **Northern Natural** Gas Company (Northern) filed an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for permission and approval to abandon by sale to Targa Texas Field Services LP (Targa) certain pipeline facilities (Eldorado to Spraberry line) located in Schleicher, Irion, Reagan, Glasscock, and Midland Counties, Texas. On December 23, 2005, Targa filed a corresponding petition for a declaratory order seeking a determination that upon their conveyance the facilities will be **gathering** facilities exempt from the Commission's jurisdiction pursuant to section 1(b) of the NGA.

2. As discussed below, we will approve Northern's request for authorization to abandon facilities and services. We also find that upon abandonment the facilities will primarily perform a **gathering** function exempt from the Commission's jurisdiction.

**Background**

3. Northern, a Delaware corporation, is an interstate pipeline company with extensive facilities including the Eldorado to Spraberry line which it acquired [\*\*2] in 1960. n1 Targa, a Delaware limited partnership, owns a **gathering** system in the same geographic area where Northern's Eldorado to Spraberry line is located. Targa's natural gas operations are limited to **gathering**, processing, and treatment of natural gas. Targa does not own any jurisdictional interstate gas pipeline facilities or any intrastate pipeline facilities.

n1 *Northern Natural Gas Company*, 24 F.P.C. 1208 (1960). Northern acquired the subject facilities through a merger with Permian Basin Pipeline Company.

4. Targa's **gathering** system is referred to as the San Angelo Operating Unit (SAOU). The SAOU has a web-like configuration consisting of approximately 1,215 miles of high pressure and low pressure **gathering** pipeline in Schleicher, Irion, Tom Green, Reagan, Sterling, Coke, Glasscock, Mitchell, and Howard Counties, Texas. It has twenty-six compressor stations and five Targa-owned processing plants of which only two are currently operating due to insufficient connected gas. [\*\*3] One operating processing plant, located in the northern part of Targa's **gathering** system (Sterling), delivers gas to four pipelines: Oneok Pipeline Company, Atmos Pipeline-Texas, a pipeline jointly owned by Enterprise Pipeline Company and ET Fuels Company, and El Paso Natural Gas Company. The other operating plant (Mertzon) delivers gas into Northern's Eldorado to Spraberry line near its southern end.

**Proposal**

5. Northern proposes to abandon by sale to Targa certain pipeline facilities consisting of approximately 101 miles of 4-

inch to 16-inch pipeline, along with all delivery and receipt points and appurtenances, extending from the discharge side of Northern's abandoned Eldorado Compressor Station, located in Schleicher County, Texas at the southern terminus of Northern's system, to Northern's Spraberry Compressor Station located in Midland County, Texas. n2 The Eldorado to Spraberry line consists of 85 miles of 16-inch diameter pipeline connecting the two compressor stations, with 4-inch, 8-inch, and 10-inch diameter pipelines feeding into the 16-inch pipeline. n3 Northern states that Targa will pay \$3 million for the facilities. n4

n2 Northern has abandoned, pursuant to the automatic provisions of its blanket certificate, its Eldorado Compressor Station and its San Angelo Dehydration Plant, located in Irion County, Texas, which have not been utilized since 2001 and October 2004, respectively. These facilities will also be conveyed to Targa. Targa states that it does not currently require the Eldorado Compressor Station to operate its **gathering** system but will retain the compressor station for future use.

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n3 Upon abandonment, Northern will construct, pursuant to its blanket certificate, an interconnect with gas measurement and quality control equipment at its Spraberry Compressor Station to receive gas from Targa, as well as minor station piping modifications and communications equipment installed pursuant to section 2.55(a) of the Commission's regulations.

n4 Exhibit Y of the application indicates a "Gain on Disposition of Property" of \$802,174 for the sale.

6. Northern also seeks to abandon services related to the subject facilities. Currently, there are shippers with primary firm entitlement on the Eldorado to Spraberry facilities. Northern states that such shippers' firm entitlements will be realigned to other points on Northern's pipeline system. Further, Northern states that Targa has indicated that it will offer **gathering** service to existing and new customers pursuant to terms and conditions agreeable to all applicable parties. Upon abandonment of the subject facilities, Northern states that it will revise its Point Catalog to [\*61,423] reflect the elimination of the points associated [\*\*5] with the facilities to be conveyed to Targa.

7. Northern states that the subject facilities are located on the extreme south end of Northern's Field Area in the Permian Basin of West Texas, and were originally constructed for the purpose of attaching gas supplies which Northern had purchased for its merchant sales obligation. Northern explains that the facilities are no longer necessary for Northern's merchant function due to the industry changes mandated by the Commission's Order Nos. 436 and 636. Northern argues that Targa will be able to better utilize the facilities, benefiting the overall pipeline infrastructure in the area. Northern further argues that its customers will benefit because Northern will no longer incur the operating and maintenance costs associated with the facilities while its customers will retain access to supplies located on the facilities.

8. Targa petitions the Commission for an order declaring that Targa's ownership and operation of the subject facilities purchased from Northern will not subject Targa, or its rates, services, facilities or operations, to the Commission's jurisdiction. Targa explains that it intends to integrate and interconnect the Eldorado [\*\*6] to Spraberry facilities with its existing **gathering** system.

9. Targa states that additional interconnection facilities may be constructed at the north end of the Eldorado to Spraberry line to enable deliveries to either of two interstate pipelines, Atmos Pipeline-Texas or to a pipeline jointly owned by Enterprise Pipeline Company and ET Fuels Company. In addition, Targa intends to interconnect the southern end of the Eldorado to Spraberry line to Rancho Pipeline, an intrastate pipeline owned by Kinder Morgan Texas Pipeline, for further movement of gas eastward toward Gulf Coast markets.

10. Targa states that it also intends to integrate its existing **gathering** system and the Eldorado to Spraberry line by constructing several new interconnections. Targa explains that such interconnections will allow gas gathered along the Eldorado to Spraberry line to be redelivered off of its existing SAOU **gathering** system. Targa further states that, depending on the mix of reserves delivered to the north and south ends of the Eldorado to Spraberry line, it may be necessary to construct additional processing facilities at the north end and/or south end of the line.

11. Targa concludes that the [\*\*7] acquisition will provide the opportunity to expand its **gathering** business by allowing

Targa access to additional new gas reserves that it has identified and expects to be delivered into the Eldorado to Spraberry line along its entire length, and by allowing more efficient use of Targa's existing processing and treating facilities. In addition, Targa states that the acquisition will enable production in the area to reach additional markets, while increasing competition.

### Notices and Interventions

12. After notice of the application and petition by publication in the *Federal Register* on January 9, 2006 (71 *Fed. Reg.* 1,419), Northwest Municipal Distributors Group (NMDG) and the Midwest Region Gas Task Force Association (MRGTF), n5 Northern States Power Company–Minnesota and Northern States Power Company–Wisconsin and CenterPoint Energy Resources Corp. dba CenterPoint Energy Minnesota Gas (jointly NSP/CenterPoint), Kinder Morgan Texas Pipeline, L.P. (Kinder Morgan), Targa, Northern, and the Independent Petroleum Association of America filed timely, unopposed motions to intervene. n6 Aquila, Inc. dba Aquila Networks (Aquila), WTG Gas Marketing, [\*\*8] Inc. and Davis Gas Processing, Inc. (jointly WTG/Davis), and Calpine Corporation (Calpine) requested late intervention. WTG/Davis initially protested the filings but, subsequently, on April 11, 2006, it withdrew its protest and asserted its consent for the proposal. n7 No other protests were filed.

n5 Together the parties are referred to as NMDG/MRGTF, and are both composed of municipal–distributor and local distribution customers of Northern.

n6 Timely, unopposed motions to intervene are granted by operation of Rule 114 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2005).

n7 Aquila, Calpine, and WTG/Davis have shown an interest in this proceeding and their participation will not delay the proceeding nor prejudice the rights of any other party. Accordingly, for good cause shown, we will grant these parties motions for intervention in accord with Rule 214(d). *See* 18 C.F.R. § 385.214(d) (2005).

13. Kinder Morgan comments in support of the proposal stating that Targa's integration [\*\*9] of the Eldorado to Spraberry facilities into its existing **gathering** system and anticipated interconnection with Kinder Morgan's pipeline system would benefit area producers and other shippers on Targa's system by providing access to intrastate markets in and around Austin and on into Katy and the Houston area. Kinder Morgan also asserts that such an interconnection would provide access for shippers on its system to production from that part of West Texas. Calpine comments that it supports the proposal to the extent the transaction increases available gas supplies and increases price competition in the Texas Gulf Coast Region.

14. NSP/CenterPoint comment that they do not oppose abandonment authorization as service on much of Northern's Field Area facilities is being sold, if at all, only at substantial discounts, thereby resulting in additional costs to the market area. NSP/CenterPoint believe that sales of portions of the Field Area facilities should relieve some of that burden on the market area. However, NSP/CenterPoint and NMDG/MRGTF request that, if abandonment is approved, the order confirm that such approval does not prejudice the impact of the abandonment on Northern's rates. [\*\*10] NMDG/MRGTF states that the appropriate treatment [\*61,424] of any gain or loss associated with the sale of these facilities should be left to a future section 4 rate case, as would all other ratemaking issues. We will address the parties' concerns by affirming that the impact of the abandonment on Northern's applicable rates will be addressed when it files its next section 4 rate case. n8

n8 *See, e.g., Southern Natural Gas Company*, 108 FERC P 62,129 (2004).

15. The parties filed various answers and responses. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or to answers, the Commission finds good cause to waive Rule 213(a) to admit these pleadings because they have provided information that assisted us in our decision making process. n9

n9 *See* 18 C.F.R. § 385.213(a)(2) (2005).

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### Discussion

16. Since the facilities and services Northern proposes to abandon involve the transportation of natural gas in interstate commerce, the proposal is subject to the jurisdiction of the Commission and the requirements of NGA section 7(b). **Abandonment of Jurisdictional Facilities**

17. Northern asserts that the Eldorado to Spraberry facilities are no longer necessary because they were acquired to serve a merchant function which no longer exists. Further, Northern states that the facilities are underutilized, transporting only about 20 percent of capacity in the recent past. Northern also states that its customers will benefit from reduced operation and maintenance expenses and reduction of future capital expenditures for repair and replacements for the facilities. Finally, Northern states that Targa is willing to provide service to Northern's shippers that have been using the facilities. No shipper objects to abandonment of the facilities. Accordingly, we find that Northern's proposal to abandon the Eldorado to Spraberry facilities and related services is permitted by the public convenience and necessity. **Primary Function Test**

18. Under section [\*\*12] 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. n10 Over the years the Commission has developed a number of legal tests to determine which facilities are non-jurisdictional **gathering** facilities. n11 The Commission presently relies on the modified "primary function test," which includes consideration of several physical and geographical factors, including: (1) the length and diameter of the pipelines; (2) the extension of facilities beyond the central point-in-the-field; (3) the facilities' geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facilities; and (6) the operating pressures of pipelines. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations. n12

n10 The courts have narrowly construed the NGA section 1(b) exemption to "the physical act 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 & Gas Board*, 474 U.S. 409, 418 (1986) (quoting *Northern Natural Gas Co. v. State Corporation Commission of Kansas*, 372 U.S. 84 (1963)).

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n11 *See Amerada Hess Corp.*, 52 FERC P 61,268 (1990); and *Farmland Industries, Inc.*, 23 FERC P 61,063 (1983).  
n12 *See, e.g., TOMCAT*, 59 FERC P 61,340 at 62,239 (1992).

19. In addition to the factors enumerated above, the Commission also weighs any and all other relevant facts and circumstances of a particular case, including non-physical criteria. n13 The Commission also may consider the purpose, location, and operation of facilities, the general business activity of the owner of the facilities, and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978. The United States Court of Appeals for the Fifth Circuit stated in *Sea Robin*, n14 however, that while non-physical factors, such as the business of the owner or prior certification of facilities, may be relevant considerations for determining the demarcation point between **transmission and gathering** facilities, these kinds of non-physical factors are secondary to the physical factors.

n13 *Id.* and *Amerada Hess Corp.*, 52 FERC P 61,268 (1990).

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n14 127 F.3d 365 at 371 (5 th Cir. 2003).

20. Application of the primary function test criteria to these facilities supports a finding that the primary function of the Eldorado to Spraberry line will be **gathering** when integrated with Targa's existing facilities, as described herein and in the application, petition and other filings. The Eldorado to Spraberry line will form an 85-mile, 16-inch diameter spine, along which processed and unprocessed gas will be collected. To the extent additional compression is required to deliver newly-added gas supplies from wells located along the line, Targa states that it stands ready and willing to install such field compression for **gathering** purposes. The length and diameter of the subject facilities are consistent with a **gathering** function. n15 In addition, the location of wells along the line is consistent with a **gathering** function.

n15 See, e.g., *El Paso Natural Gas Co.*, 57 FERC P 61,186 (1991) (a 75-mile pipeline consisting of about 62 miles of 16-inch pipeline and 13 miles of 20-inch pipeline was found to be **gathering**); and *ANR Pipeline Co.*, 76 FERC P 61,153 (1996) (a 92-mile, 16-inch pipeline was found to be **gathering**).

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21. In addition to feeder lines connecting wells along the line, Targa's existing **gathering** system roughly parallels the Eldorado to Spraberry line and will be interconnected at various points. The spine-type configuration of the Eldorado to Spraberry line and the overall web configuration [\*61,425] of the resulting, integrated system are consistent with a **gathering** function.

22. There is no compression on the Eldorado to Spraberry line and field compression is scattered throughout Targa's existing **gathering** system. The active and inactive processing plants are likewise located throughout Targa's existing **gathering** system. Only two processing plants currently interconnect with the Eldorado to Spraberry line – the Targa-owned Mertzson plant and the Davis-owned Rocker B II plant, both located along the southern portion of the Eldorado to Spraberry line. Unprocessed gas gathered along the Eldorado to Spraberry line will be commingled with processed gas for delivery to the pipeline systems of others. By way of newly constructed interconnects to Targa's existing **gathering** system, gas collected along the subject facilities could also be delivered to pipelines currently connected to [\*\*16] Targa's existing system. If necessary, additional processing facilities will be constructed, most likely at the northern end of the Eldorado to Spraberry line as there may be less opportunity for blending to make deliveries to pipelines at the northern end of the line.

23. The fact that processing plants exist on Targa's **gathering** system does not disqualify the Eldorado to Spraberry line from performing a **gathering** function upon abandonment. By integration into Targa's system, the Eldorado to Spraberry line will serve to collect unprocessed gas from numerous sources which will be blended with processed gas. As noted, the amount of unprocessed gas could be so great as to require additional processing facilities on the north end of the line. This is consistent with a **gathering** function.

24. Targa states that pressures on the Eldorado to Spraberry line will range from 20 psig to 850 psig, depending on several factors. Targa currently delivers gas to Northern at 640 psig, and will compress the gas to whatever pressures are necessary to deliver the gas into the pipeline systems of others. However, Targa notes that operating pressures of Kinder Morgan's Rancho Pipeline at the point [\*\*17] of the anticipated interconnection are limited to an MAOP of 811 psig. The pressure on the Eldorado to Spraberry line will be determined by the pressures required to accept gas for **gathering** as well as to deliver gas into the pipeline systems of others, and, therefore, is consistent with a **gathering** function. n16

n16 *North American Resources Co.*, 75 FERC P 61,286 (1996) (because the operating pressure of the proposed pipeline would be determined by the 1400 psig operating pressure of the pipeline system into which it feeds, the proposed pipeline's pressure was found to be consistent with a **gathering** function).

25. Targa is exclusively in natural gas **gathering** and related businesses. Targa states that it will integrate the Eldorado to Spraberry line into its existing SAOU **gathering** system for the purpose of attaching new supplies to the Eldorado to Spraberry facilities and to increase its **gathering** activities in the area. In addition, existing and new supplies flowing on the line will [\*\*18] have various new options for delivery into the pipeline systems of others. Thus, the operation of the Eldorado to Spraberry line will be significantly different from its current operation in which the line receives only pipeline quality gas and flows in one direction for delivery to a single interstate pipeline. We believe that operation of the Eldorado to Spraberry line by Targa will result in more efficient utilization of the facilities, increased access to other markets for supplies in the area, and increased competition in the area.

26. Accordingly, for the foregoing reasons, we find that upon acquisition by Targa the Eldorado to Spraberry line will perform primarily a **gathering** function and thus will be exempt from Commission jurisdiction under NGA section 1(b).

### **Environmental Considerations**

27. This order authorizes Northern to abandon facilities and services. Therefore, the action is categorically excluded under 18 C.F.R. § 380.4(a)(31).

28. The Commission, on its own motion, received and made a part of the record all evidence, including the application and petition, supplements, and exhibits thereto, submitted in support of the authorization sought in this proceeding [\*\*19] were made part of the record and upon consideration of the record,

The Commission orders:(A) Permission for and approval of the abandonment by Northern of the subject facilities and services as described above and in the application is granted.(B) Northern shall notify the Commission within ten (10) days of the date of abandonment of the facilities.(C) Upon acquisition by Targa, the Eldorado to Spraberry facilities will be **gathering** facilities exempt from the Commission's jurisdiction pursuant to NGA section 1(b).(D) Northern must file its actual accounting entries within six months of the sale as required by paragraph B of the instructions to Account 102, Gas Plant Purchased or Sold.

By the Commission.