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REGULATION OF MIDSTREAM GAS GATHERING COMPANIES IN TEXAS AND OKLAHOMA

JOHN MOROZUK

This article will discuss the state regulation of midstream natural gas gathering companies in Texas and Oklahoma. For purposes of this article, a midstream natural gas gathering company is a person or legal entity that owns or operates a pipeline system or systems to receive natural gas at or near the wellhead or a central receipt point in a field and deliver the natural gas to a downstream delivery point that is not an end use customer. The pipeline system or systems operate entirely within the borders of a single state and are not subject to regulation by the Federal Energy Regulatory Commission. Examples of such companies include Mockingbird Midstream Gas Services, L.L.C. and Texas Midstream Gas Services, L.L.C. in Texas and Tall Oak Midstream, L.L.C. and Williams Midstream Gas Services, L.L.C. in Oklahoma.

State of Texas

Gas gathering companies in Texas are subject to regulation under either the Texas Natural Resources Code or the Texas Utilities Code¹. The difference depends primarily on whether the gathering company acquires pipeline rights of way by eminent domain. Companies that do not exercise the power of eminent domain are regulated under the Natural Resources Code. Companies that exercise the power of eminent domain are regulated

1. Texas Statutes may be found online at <http://www.statutes.legis.state.tx.us/Index.aspx>.

under the Utilities Code. Both types of company are subject to Rules of the Texas Railroad Commission.

I. Regulation Under the Natural Resources Code

- A. Statutes. Statutes regulating gas gathering companies in Texas are found in the Natural Resources Code, Title 3. Oil and Gas, Subtitle D. Regulation of Specific Businesses and Occupations, Chapter 111. Common Carriers, Public Utilities and Common Purchasers, Subchapter D. Common Purchasers.
1. Classification as a Common Purchaser – Gas gathering companies are lumped together with natural gas purchasers, crude oil purchasers, crude oil pipeline gatherers and crude oil trucking companies as common purchasers in Texas². Section §111.081(a)(2) states, in relevant part, that the definition of “common purchaser” means: “...every person, gas pipeline company, or gas purchaser that claims or exercises the right to carry or transport natural gas by pipeline or pipelines for hire, compensation or otherwise within the limits of this state...” Gas gathering companies are regulated as common purchasers for the purpose of further conserving the natural gas resources of the State of Texas³. They are also given certain rights and obligations of common carriers with regard to the construction and installation of pipelines⁴, such as the right of eminent domain, the limited right to run a pipeline along, across or over a public road or highway and the right to lay a pipeline under any railroad or railroad right-of-way⁵.
 2. General Duties as a Common Purchaser – A common purchaser gas gathering company is required to “...purchase or take the natural gas purchased or taken by it as a common purchaser under rules prescribed by the commission⁶ in the manner, under the inhibitions against discriminations, and subject to the provisions applicable under this chapter to common purchasers of oil⁷.”

2. TX Nat. Res. Code §111.081.

3. Ibid §111.082.

4. TX Bus. Org. Code §2.105.

5. TX Nat. Res. Code §111.019 – 111.022.

6. “Commission” means the Railroad Commission of Texas. Ibid §111.001(1).

7. Ibid §111.083.

3. Duty of Non-Discrimination – A gas gathering company that purchases gas must purchase all the natural gas offered to it without discrimination in favor of one producer or person against another producer or person in the same field⁸ and without unjust or unreasonable discrimination between fields in Texas⁹. The gas gathering company may not discriminate between or against natural gas of a similar kind or quality in favor of its own production or in production in which it may be directly or indirectly interested in whole or in part. For purposes of prorating its gas purchases, the gas gathering company must take natural gas in like manner as that of any other person or producer and gas must be taken in ratable proportion that the production bears to the total production offered for market in the field¹⁰.
- B. Case Law. There is very little case law interpreting the common purchaser obligations of pipeline companies under the Texas Natural Resources Code. There are at least two likely reasons for this. One is the length of time required for a lawsuit to wind its way through the court system to a final, unappealable order. This can take years and a producer typically wants to get its gas flowing and earning money as soon as possible without also incurring the ongoing cost of litigation with no certainty that the outcome will be favorable. A second reason is the desire of both the producer and the gas gathering company to avoid setting an unfavorable legal precedent that benefits one party over the other. Following are two cases addressing the common purchaser statutes.
1. In Railroad Commission v. Rio Grande Valley Gas Co.¹¹, a pipeline company appealed an order of the Railroad Commission directing the company to extend its pipeline to a specific producer's well and take gas from the well without discrimination. The company argued that the new well was not in the same field as another producing well already connected

8. The definition of "field" is variable. It sometimes means a particular reservoir and sometimes means an entire geographical area from which oil or gas is produced. *Seagull Energy E & P, Inc. v. Railroad Com'n.*, 99 S.W. 3d 232 (Tex. App. – Austin 2003), Note 4. *Seagull Energy E & P, Inc. v. Railroad Com'n.*, 226 S.W. 3d 383 (Tex. 2007), Note 10.

9. TX Nat. Res. Code §111.086.

10. *Ibid* §111.087.

11. 405 S.W. 2d 304 (Tex. 1966).

to the pipeline because the two wells produced from different, vertically separated reservoirs. The Texas Supreme Court upheld the Railroad Commission order finding that the two wells were “in the same field” within the meaning of the common purchaser law. The Court reasoned that the common purchaser law gave the Railroad Commission wide and extensive regulatory power to accomplish the law’s purpose of furthering the conservation of natural resources.

2. In *Kodiak 1981 Drilling Partnership v. Delhi Gas Pipeline Corp.*¹², a pipeline company and a producer entered into a gas purchase contract at the end of 1981. The contract required the pipeline company to take and pay for, or pay for even if not taken, a certain minimum quantity of natural gas each year. At mid-year 1982, the pipeline company informed the producer that a steep decline in the national market demand for gas constituted a force majeure under the contract. Therefore, the pipeline company claimed it was excused from its obligation to take, or pay for, the minimum quantity of gas. Instead, the pipeline company offered to take gas from the producer’s well ratably with its takes of gas from other wells in the same field. The producer refused the offer of ratable takes and sued for breach of contract. The Texas Court of Appeals upheld the finding of the trial court that market conditions did constitute a force majeure under the contract excusing the pipeline company from the take or pay obligation¹³. The Court also upheld the trial court’s finding as a matter of law that the pipeline company fulfilled its common purchaser obligation by offering to ratably take gas from the producer’s well.

II. Regulation Under the Utilities Code

- A. Statutes. Unlike many other states, pipeline companies that are not local distribution companies may also be regulated as gas utilities. Statutes regulating gas gathering companies as gas utilities are found in the Utilities Code, Title 3. Gas Regulation, Subtitle B. Regulation of Transportation and Use, Chapter 121 Gas Pipelines, Subchapters A. Gas Utility Defined, B. Public Policy, C. Duties of Gas Utilities and Pipelines, D. Regulation by Railroad

12. 736 S.W. 2d 715 (Tex. App. – San Antonio 1987).

13. The case was tried to the court without a jury, the trial court acting as the finder of fact.

Commission and Title 4. Delivery of Utility Services, Subtitle B. Provisions Regulating Delivery of Services, Chapter 181 Miscellaneous Power and Duties of Utilities.

- B. Classification as a Gas Corporation. A gas gathering company that owns, operates or manages a pipeline system that carries natural gas for public hire is a gas corporation¹⁴. It has certain statutory rights as a gas corporation, including the following:
1. The right and power to enter on, condemn and appropriate the land, right-of-way, easement or other property of any person¹⁵ or corporation¹⁶.
 2. The right to lay and maintain pipelines over, along, under and across a public road, interurban railroad, street railroad, canal or stream, municipal street or alley¹⁷, and over, under and across a railroad or a railroad right-of-way, only if:
 - a. it complies with all safety regulations of the Railroad Commission of Texas and all Federal regulations relating to pipeline facilities and pipelines; and
 - b. it complies with all rules of the Texas Department of Transportation (“TXDOT”) or the Railroad Commission and all federal regulations regarding accommodation of utility facilities on a right-of-way, including regulations

14. The definition of “corporation” includes a partnership, limited partnership, master limited partnership, a combination of entities composed of corporations or in which a corporation is a general partner and a limited liability company. Utilities Code §181.001(1). The Utilities Code does not have a separate definition of “gas corporation.” Courts have referred to the statutory definition of gas utility to determine if a company is a gas corporation with the power of eminent domain. *Anderson v Teco Pipeline Co.*, 985 S.W.2d 559, 564 (Tex. App. – San Antonio 1998, pet. denied); *Loesch v Oasis Pipe Line Co.*, 665 S.W.2d 595, 598 (Tex. App. – Austin 1984, writ ref’d n.r.e.).

15. “Person” includes a corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity. Texas Government Code §311.005(2).

16. Utilities Code §181.004.

17. Utilities Code §181.005. A municipality may assess a reasonable, annual charge for the pipeline in its streets and roads and recover the reasonable cost or repairing any damage from installation, repair and maintenance of the pipeline. Ibid §121.2025. An incorporated city or town may make a reasonable charge for use of the street of public way for the pipeline. Texas Tax Code §182.025. Consent of the local municipal or city government is also required. Utilities Code §181.006.

relating to horizontal and vertical placement of the pipeline; and

- c. it ensures that the public right-of-way and any associated facility are promptly restored to their former condition of usefulness after installation or maintenance of the pipeline; and
 - d. within a municipality, it considers using existing easements and rights-of-way¹⁸.
3. The power to own, hold or use land, right-of-way, an easement, a franchise, or a building or other structure as necessary for the company's purposes¹⁹.

C. Classification as a Gas Utility. As a gas corporation, a gas gathering company has the power of eminent domain. If it exercises eminent domain power to obtain pipeline right-of-way easements in Texas, it becomes a gas gathering utility²⁰ subject to Rules of the Railroad Commission²¹. As a gas gathering utility, the company must do the following:

1. Maintain an office in a Texas county where some part of its gas pipeline facilities is located. All books and records required to be kept by the Railroad Commission must be maintained in the company's Texas office²².

18. Ibid §181.005(c).

19. Ibid §181.007.

20. Ibid §121.001(2).

21. Ibid §121.052(a) & (b). Railroad Commission Rules define a "gas gathering utility" as a gas utility "...which employs a pipeline or pipelines and ancillary facilities thereto in the first taking or the first retaining of possession of gas produced by others which extends from any point where such gas is produced, purchased, or received to the trunk line or main line of transportation where such gas is sold or delivered,...thus having as its primary function the collecting or collecting and processing of gas produced by others as a preliminary incident to the transportation after it has been severed from the earth by production. 16 Tex. Admn. Code Rule 7.301(c).

22. Ibid §121.101.

2. File a sworn, annual report with the Railroad Commission providing certain information required by the Utilities Code²³.
3. Not directly or indirectly charge, demand, collect or receive from anyone a greater or lesser compensation for a service provided than it does from another party for a similar and contemporaneous service²⁴.
4. Abide by the pipeline safety rules of the Railroad Commission²⁵.
5. Pay a Gas Utility Tax equal to one-half of one percent (0.5%) of gross income²⁶ less costs paid to another person for purchasing, treating, storing, gathering or transportation of gas to its facilities²⁷. Utility Tax must be paid quarterly to the Railroad Commission, but payable to the Comptroller of Texas²⁸. Each quarterly payment must include report verified by the company's president, secretary or general manager²⁹. Utility Tax payment records must be maintained for four years after the date of the tax payment and report³⁰. A copy of the form of Gas Utility Tax Report is available at <http://www.rrc.state.tx.us/gas-services/forms/>.
6. Report to the Railroad Commission (i) a sale, acquisition or lease of a plant as an operating unit or system for a total consideration of more than one million dollars (\$1,000,000), or (ii) the merger or consolidation of the gas gathering utility with another gas utility. The report must be filed within sixty (60) days after the transaction date³¹. The reporting requirement does not apply to the purchase of a unit of property for replacement or additions to facilities by construction³².

23. Ibid §121.102.

24. Ibid §121.104(2).

25. The Railroad Commission has adopted the Federal Pipeline Safety Regulations for gas pipelines found at 49 C.F.R. Parts 191 & 192, but supplemented them with some additional, Texas specific regulations. See, generally, 16 Tex. Admn. Code Part 1, Chapter 8 and, specifically, Subchapter C.

26. Utilities Code §122.051.

27. Ibid §122.052.

28. Ibid §122.101.

29. Ibid §122.102.

30. Ibid §122.102.

31. Ibid §102.051(a). Ibid §102.051(a).

32. Ibid §102.051(d).

7. Post financial security with the Railroad Commission in the form of a bond, letter of credit or cash in an amount not to exceed twenty-five thousand dollars (\$25,000.00), unless the company is also a gas purchaser³³.

III. Railroad Commission Rules for Gas Gathering Companies. Various Rules³⁴ of the Railroad Commission apply to all gas gathering companies whether they are subject to the Natural Resources Code or the Utilities Code. The primary Rules are the following:

- A. Organizational Report. The company is required to file an Organizational Report (Form P-5)³⁵ before beginning operations. The Organizational Report must be refiled annually, including any updated information³⁶. A copy of Form P-5 may be downloaded at <http://www.rrc.state.tx.us/media/2637/form-p5.pdf>.
- B. New Construction Report. At least 30 days prior to commencement of construction of any installation totaling one (1) mile or more of pipe, the gas gathering company must file a New Construction Report (Form PS-48) with the Railroad Commission stating the proposed originating and terminating points for the pipeline, counties to be traversed, size and type of pipe to be used, type of service, design pressure and length of the proposed line³⁷. Go to <http://www.rrc.state.tx.us/media/6410/ps48-jun-20-2013.pdf> for a copy of the Report form.
- C. Pipeline Permits. No pipeline may be used to transport gas from any tract of land without a permit from the Railroad Commission³⁸. To obtain a pipeline permit, the company must file an Application for Permit to Operate a Pipeline in Texas (Form T-4), which is renewable annually. Along with the Form T-4, the company must also submit Form PS-8000A which gives more detailed information about the pipeline. A copy of Form T-4 may be downloaded at

33. Texas Natural Resources Code §91.142, 91.103, §91.109(b)(1)(I) & (b)(2).

34. Railroad Commission Rules may be found online at <http://www.rrc.state.tx.us/legal/rules/current-rules/>.

35. Utilities Code §102.003; 16 Tex. Admn. Code Rule 3.1(a)(1)(C) & (I) and Rule 8.51(a).

36. 16 Tex. Admn. Code Rule 3.1(a)(7).

37. Ibid Rule 8.115.

38. Ibid Rule 3.70(a).

<http://www.rrc.state.tx.us/media/27105/t4-2015-auto-fill.pdf>. Form PS-8000A is found at <http://www.rrc.state.tx.us/media/27104/ps8000a-2015-auto-fill.pdf>. A Form T-4 for a new permit or to change the classification of an existing pipeline must include a sworn statement from the applicant providing the factual basis for the pipeline classification, the purpose being sought for the pipeline and, if applicable, an attestation of the pipeline operator's knowledge of the eminent domain provisions in Texas Property Code, Chapter 21, and the Texas Landowner's Bill of Rights as published by the Texas Attorney General's Office³⁹. A Form T-4 to renew an existing permit or amend the permit for any reason other than a change in classification of the pipeline must include a statement from the pipeline operator confirming the pipeline's current classification and the purpose of the pipeline or pipeline system as a common carrier, a gas utility or a private line⁴⁰. The Railroad Commission has 15 calendar days to determine if the Form T-4 filing is complete or notify the applicant of additional information that is needed⁴¹. The Railroad Commission's decision on the issuance of the permit must be completed within 45 calendar days after it determines that the Form T-4 is complete⁴².

- D. Well Connection. Before a gas gathering company connects any well to its gathering system, a well operator must provide the company with a completed Certificate of Compliance and Transportation Authority (Form P-4) certifying the operator's compliance with Railroad Commission Rules. The gas gathering company may make a temporary connection to a well, not to exceed 30 days, in order to take care of production and prevent waste so that the well operator can obtain a Certificate⁴³. A copy Form P-4 may be downloaded at <http://www.rrc.state.tx.us/media/2726/p-4p.pdf>.
- E. Well Disconnection. The gas gathering company may not disconnect a well from its gathering system or cease providing gathering services without first obtaining the written consent of the well or lease operator or written permission from the Railroad Commission. If Railroad Commission permission to disconnect is

39. Ibid Rule 3.70(b)(3).

40. Ibid Rule 3.70(c)(2).

41. Ibid Rule 3.70(d).

42. Ibid Rule 3.70(e).

43. Ibid Rule 3.73(a).

required, the gas gathering company must file an application to disconnect at least 30 days before the desired date of disconnection. The well operator will have 28 days after the application is filed to make a written objection to the proposed disconnection. The Railroad Commission Rules describe what information is required for the disconnect application and the process for the agency to make its decision on the application⁴⁴.

- F. Revocation of Well Operator's Certificate of Compliance. Upon notification by the Railroad Commission that a well operator's Certificate of Compliance has been cancelled, the gas gathering company must disconnect the well or suspend service to the well. Reconnection of the well or the resumption of service shall not occur until a new Certificate has been issued by the Railroad Commission⁴⁵.
- G. Natural Gas Transportation Standards and Code of Conduct. In providing service to its customers, the gas gathering company is required to adhere to the following Railroad Commission Rules intended to prevent discrimination against, or in favor of, any customer⁴⁶:
1. Apply tariffs (e.g. fees for services)⁴⁷ and discretionary service provisions in a similar manner to similarly situated customers.
 2. If tariff or service provisions are not discretionary on the part of the gas gathering company, they must be enforced in a similar manner to similarly situated customers.
 3. Not give any customer preference in the provision of gathering services over other, similarly-situated customers.

44. Ibid Rule 3.73(b) & (c).

45. Ibid Rule 3.73(h).

46. Ibid Rule 7.7001(a) & (b). Local distribution gas utilities and any gathering company that transports only its own gas through its own gathering system, as designated on the gathering company's current T-4 Permit on file with the Railroad Commission, are exempt from these Rules. Rule 7.7001 uses the term "transporter." Rule 2.1(b)(18) defines transporter as: "Any common purchaser of gas, any gas utility, or any gas pipeline, that provides gas gathering and/or transportation service for a fee."

47. See Section IV.C.2., below, for a further discussion of tariffs in the context of gas gathering utilities.

4. Make available to the Railroad Commission its books and records of gathering services for audit purposes. Access to such records must be provided within ten (10) working days of notice by the Railroad Commission⁴⁸.

H. Informal Resolution of Gathering Disputes⁴⁹. The Railroad Commission provides a process for informal resolution of complaints within the Commission's jurisdiction about natural gas purchasing, selling, shipping, transportation and gathering practices⁵⁰. The process is initiated by calling the Commission Helpline⁵¹, or submitting a written complaint⁵² by US Mail, fax transmission or internet submission⁵³. Once received by the Commission, the complaint is assigned to a monitor who promptly contacts the complainant to confirm receipt of the complaint, obtain relevant information and supporting documentation and advise the complainant of its right to have the complaint mediated by a Commission employee or a non-Commission employee mediator⁵⁴. The monitor also notifies the respondent of the complaint by mailing a copy with supporting documentation to the respondent by certified US Mail. The notice also informs the respondent of its right to have the complaint heard by a mediator⁵⁵. The respondent has fourteen calendar days from receipt of the monitor's notice to reply⁵⁶. The parties have fourteen days from the date of the respondent's reply to resolve the complaint without a mediator⁵⁷. If the complaint is not resolved by then, and if both parties desire, the complaint will be referred to a mediator⁵⁸. The mediator has fourteen days to review all information about the complaint and provide the parties with a written summary⁵⁹. The mediator also

48. Ibid Rule 7.7001(d).

49. Ibid Rule 2.1.

50. Ibid Rule 2.1(a).

51. Ibid Rule 2.1(e)(1)(A).

52. Go to <http://www.rrc.state.tx.us/gas-services/complaint-filing/informal-gas-transportation-purchase-complaint-preliminary-information-online-form/> for a copy of the Complaint Form.

53. Ibid Rule 2.1(e)(1)(B). Internet submissions are sent to <http://www.rrc.state.tx.us/divisions/gs/mos/complaints/icp.html>.

54. Ibid Rule 2.1(e)(3).

55. Ibid Rule 2.1(e)(4).

56. Ibid Rule 2.1(e)(5).

57. Ibid Rule 2.1(e)(6).

58. Ibid Rule 2.1(e)(7)-(9).

59. Ibid Rule 2.1(e)(10).

schedules a mediation meeting within fourteen days after the mediator renders its summary⁶⁰. If the mediation does not result in a settlement, the mediator submits a confidential memorandum to the parties, the monitor and the Commission with one or more of the following conclusions⁶¹:

1. There are specific actions which, if taken by either of the parties or both, could resolve the complaint.
2. A formal evidentiary hearing may be warranted.
3. A formal evidentiary hearing may not be warranted.

In determining whether there has been discrimination⁶² by a gas gathering company, the Railroad Commission will consider many factors, including the following:⁶³

1. Service requirements;
2. Location of facilities;
3. Receipt and delivery points;
4. Length of haul;
5. Quality of service (firm, interruptible, etc.);
6. Quantity;
7. Swing requirements;
8. Credit worthiness;
9. Gas Quality;
10. Pressure (including inlet or line pressure);
11. Duration of service;
12. Connect requirements; and
13. Conditions and circumstances existing at the time of agreement or negotiation.

IV. Additional Rules Applicable to Gas Gathering Utilities. In addition to the foregoing Railroad Commission Rules, a gas gathering utility is subject to the following, additional rules:

60. Ibid Rule 2.1(e)(11).

61. Ibid Rule 2.1(e)(13).

62. Discrimination means any material difference in rates, service, rules and regulations, or conditions of service for transportation services which unreasonably disadvantages or prejudices similarly situated shippers. Ibid Rule 7.115(12).

63. Ibid Rule 7.7003(d).

- A. Annual Report. A gas gathering utility is required to file a Gathering Annual Report each year by April 1 on a form provided by the Railroad Commission. The covers all activities of the company for the previous calendar year⁶⁴. The gas gathering utility must use the Federal Energy Regulatory Commission's Uniform System of Accounts⁶⁵ for reporting information on the Gathering Annual Report and Gas Utility Tax reports, but is not required to operate its business using that system of accounts⁶⁶. A copy of the form of Gathering Annual Report form is found at <http://www.rrc.state.tx.us/gas-services/forms/>.
- B. Curtailement Program. A gas gathering utility is required to file a curtailment program with the Railroad Commission that complies with the Order issued January 5, 1973 in Gas Utilities Docket No. 489⁶⁷. A copy of that Order is available at <http://www.rrc.state.tx.us/gas-services/dockets/curtailment-plan/>. This Rule does not specifically require filing an updated curtailment plan after the initial filing. However, because certain information required by the plan may change over time⁶⁸, it may be advisable to file an updated plan periodically.
- C. Tariffs. A gas gathering utility is required to file certain information on the Railroad Commission web site about its contracts with customers. These filings will comprise its tariffs. Instructions about electronic tariff filings are found at www.rrc.state.tx.us/electronic_filing/electronic_filing.html.⁶⁹ Tariff filings are subject to the following requirements:
1. Whenever there is a change in the type of service provided to a customer or the rate charged, an amended tariff must be filed. If the rate is adjusted pursuant to an escalation provision or formula, the amended tariff must show the current rate charged, the unit of measure and the effective date. Amended tariffs

64. Ibid Rule 7.301(a).

65. 18 C.F.R. Part 201.

66. 16 Tex. Admn. Code Rule 7.310(a).

67. Ibid Rule 7.305.

68. Addition of new customers, changes in contract durations, volume of reserves under contract, rated deliverability, peak and average daily deliverability, forecasts of additions to reserves for the next 2 years. See Order filed in Gas Utilities Docket No. 489, Rule 1.

69. 16 Tex. Admn. Code Rule 7.315(a).

must be filed within 30 days of the effective date of the change⁷⁰.

2. Each tariff filing must include the following information⁷¹:
 - a. The name of the gas gathering utility.
 - b. Full name of the customer; provided, however, the gas utility may request that the customer name remain confidential. In that case, the Railroad Commission will assign a customer identification number that will appear in the tariff on the Railroad Commission web site.
 - c. The gas utility's contract number.
 - d. A list of the services provided under the tariff, such as gathering, compression and processing.
 - e. The original effective date of the contract.
 - f. The effective date of the most recent amendment to the contract.
 - g. The current rate and the billing unit (such as Mcf or MMBtu).
 - h. All rate adjustment provisions.
 - i. Whether the filing is for a new contract or amends an existing contract.
 - j. Names, titles, addresses, phone numbers and email addresses of all persons who will respond to inquiries regarding the tariffs.
 - k. The customer name or identification number.
 - l. The contractual point or points of redelivery.

State of Oklahoma

Gas gathering companies in Oklahoma are subject to regulation under the Pipelines Act of 1907 and the Production and Transportation Act of 1913⁷². Unlike Texas, Oklahoma utility law only regulates pipeline companies engaged in the business of gas distribution to end use customers. Oklahoma law grants the right of eminent domain to all pipeline companies whether or not they are gas distribution utilities.

70. Ibid Rule 7.315(b).

71. Ibid Rule 7.315(c) & (d)(2).

72. Oklahoma Statutes may be found online at <http://www.oscn.net/applications/oscn/index.asp?ftdb=STOKST&level=1>.

I. Regulation Under the Pipelines Act of 1907.

A. Statutes Generally Applicable. Statutes regulating gas gathering companies in Oklahoma under the Pipelines Act of 1907 are found in Title 52, Oklahoma Statutes, Chapter 1 Gas Pipelines and Companies (the “Pipelines Act”), Sections 1 – 10.

1. General Requirements to Transmit or Transport Natural Gas.

The Pipelines Act allows any firm, co-partnership, association or combination of individuals to become an Oklahoma domestic corporation for the purpose of producing, transmitting or transporting natural gas within or without the state⁷³. Foreign corporations authorized to do business in Oklahoma may also engage in the same businesses⁷⁴.

2. Certain Rights Granted to Gas Corporations.

Under the Pipelines Act, gas pipeline corporations are authorized to use eminent domain to acquire sites for pumping stations⁷⁵. They may also install pipelines over, under, across and through all highways, bridges, streets, alleys or other public places, subject to supervision of the state oil and gas inspector and subject to the control of municipalities⁷⁶. Before exercising the right of eminent domain, the pipeline corporation is required to file a plat with the Oklahoma Corporation Commission showing certain details and specifications concerning its pipeline system⁷⁷ and also file a formal acceptance of the provisions of the oil and gas conservation statutes applicable to pipelines⁷⁸. NOTE: Gas pipeline companies do not commonly exercise the right of eminent domain in Oklahoma because it results in a significant increase in ad valorem taxes to the company. The reason for this effect is beyond the scope of this paper. For more information, see Chesapeake Energy Marketing, Inc. v.

73. 52 O.S. §1.1. Limited liability companies are not mentioned in the statute because such entities did not exist under Oklahoma Law at the time the statute was enacted in 1907.

74. 52 O.S. §2.

75. 52 O.S. §9. The term “pumping station” is not defined, but may be assumed to mean the same thing as compressor station.

76. Ibid §10. The right to acquire pipeline rights of way by eminent domain is set forth in 52 O.S.22.

77. Ibid §8.

78. Ibid §244.

State Board of Equalization, et al., 167 P.3d 446 (OK. Civ. App. 2007).

II. Regulation Under the Production and Transportation Act of 1913.

A. Statutes Generally Applicable. Statutes regulating gas gathering companies in Oklahoma under the Production and Transportation Act of 1913 are found in Title 52, Oklahoma Statutes, Chapter 1 Gas Pipelines and Companies (the “Act”), Sections 21 - 35.

1. General Application of the Production and Transportation Act.

The Act states, in relevant part, that it applies to: “Every corporation, joint-stock company, limited copartnership, partnership or other person⁷⁹, now or hereafter exercising or claiming the right to carry or transport natural gas by or through pipeline or lines, for hire, compensation or otherwise, or now or hereafter exercising or claiming the right to engage in the business of...piping or transporting natural gas, or any other person or persons, now or hereafter engaging in the business of buying, selling in (sic) or transporting natural gas within the limits of this state, shall not have or possess the right to conduct or engage in said business or operations...except as authorized by and subject to the provisions of this act...⁸⁰,”

2. Classification as Common Purchaser. A gas gathering company that engages in the business of purchasing and selling natural gas is a common purchaser. As a common purchaser, the company must purchase all of the natural gas that may be offered for sale within the vicinity of, or that can reasonably be reached by, its trunk lines or gathering lines without discrimination in favor of one producer as against another or in favor of one source of supply as against another. If it cannot purchase all the gas offered for sale, pipeline purchaser must purchase from each producer ratably in proportion to the average production. The company may not discriminate in its gas purchases between like grades and pressures of gas or between like grades of gas or facilities as between producers. The company may be excused from these requirements if a

79. The term “person” means any individual, corporation, firm, partnership, master limited partnership, limited liability company, association, venture, trust, institution, or federal, state, or local governmental instrumentality, or any legal entity however organized. 52 O.S. §24.4, definition 3.

80. *Ibid* §21.

state District Court or the Corporation Commission determines that the nature and extent of its business is such that the public needs no use in it and that its conduct is not a matter of public consequence⁸¹.

3. Exemption from Classification as Common Carrier. A pipeline company engaged in the business of gathering natural gas is exempt from the obligations of a common carrier under the Act⁸², but is subject to similar statutory obligations that apply specifically to gas gatherers⁸³. Gathering is defined as the transportation of gas through a pipeline for hire, compensation or otherwise (including for the transporter's own account), in connection with the purchase, resale or processing of gas, or otherwise, by a party other than a local distribution company, an intrastate transmission pipeline or an interstate pipeline. Gathering includes activities or processes performed between the delivery and redelivery points, but limited to transportation, measurement, conditioning, compressing, pressure regulation, recompressing, cleaning, treating, and fuel and lost gas associated with such activities. It includes separation, dehydration, removal of contaminants and inert substances and filtering. It does not include processing or extraction of NGLs and liquid products⁸⁴.

- B. Statutes Specific to Gas Gatherers. A gas gatherer is required to provide open access natural gas gathering, including redelivery of gas to existing redelivery points, for a fee to any party requesting service (subject to certain exceptions)⁸⁵. It may not charge any fee or require any terms and conditions of service, or both, which is unjust, unreasonable or unduly discriminatory. The gatherer's obligations are subject to enforcement by the Corporation Commission⁸⁶. A party that believes it has been denied gathering service or is subject to discrimination by the gatherer may file an application with the Corporation Commission to order the gatherer

81. Ibid §23 & 240.

82. Ibid §24.

83. Ibid §§22, 23 & 24.1 – 24.5.

84. Ibid §24.4, definitions 1 & 2.

85. Ibid §24.5 B. & C.

86. Ibid §34.

to provide non-discriminatory gathering service⁸⁷. The Act provides certain exemptions that permit the gatherer not to provide gathering service based on findings by the Corporation Commission after notice and a hearing⁸⁸. The Act sets out the specific findings the Corporation Commission must make for an exemption, depending on whether or not a well is connected to the gatherer's pipeline system.

1. Well Connected to Gatherer's Pipeline System. If the applicant's well is already connected to the gatherer's system, the gatherer will not be required to provide service if it can demonstrate to the Corporation Commission that any of the following apply⁸⁹:
 - a. Continuation of service on the basis requested by the applicant would require an additional capital investment, material to the well at issue, by the gatherer and the applicant is unable or unwilling to timely pay the gatherer for all reasonable, direct costs attributable to the capital investment plus a reasonable portion of the gatherer's overhead directly related to the capital investment.
 - b. Continued gathering of the applicant's gas could reasonably be expected to have a material adverse effect on safety or service to existing customers.
 - c. The applicant's gas does not satisfy minimum quality standards, including energy content, consistently applied by the gatherer for the gathering system.
 - d. The service requested by the applicant is inconsistent with an existing contract that governs the gathering of the applicant's gas.
 - e. Such other good cause as the Corporation Commission may determine in the particular case.
2. Well Not Connected to Gatherer's Pipeline System. If the applicant's well is not connected to the gas gathering company's system, the company will not be required to provide

87. Ibid §24.5 A. See, also *Prairie Exploration, et al v. Tri-Star Energy*, 84 P.3d 788 (OK. App. 10/04/2002, mandate issued 11/01/2002).

88. Ibid §24.5.

89. Ibid §24.5 B.

service if it can demonstrate to the Corporation Commission that any of the following apply⁹⁰:

- a. The applicant's gas cannot be reasonably carried by the gatherer due to existing capacity limitations on the gatherer's pipeline.
 - b. An extension or expansion of the gatherer's facilities would be required and the applicant is unable or unwilling to timely pay the gatherer for all reasonable, direct costs attributable to such extension or expansion plus a reasonable portion of the gatherer's overhead directly related to the extension or expansion extension or expansion.
 - c. Gathering of the applicant's gas could reasonably be expected to have a material adverse effect on safety or service to existing customers or on the operation of or recovery in any processing facility.
 - d. The applicant's gas does not satisfy minimum standards for quality or energy or recoverable hydrocarbon content consistently applied by the gatherer for the gathering system.
 - e. Such other good cause as the Corporation Commission may determine in the particular case.
3. Corporation Commission Power to Set Gathering Fees and Terms and Conditions of Service. Regardless of whether the applicant's well is connected to the gatherer's system, if the Corporation Commission determines that the gatherer should provide open access gathering service and the parties cannot agree on a fee or terms and conditions of service⁹¹, or both, the Corporation Commission may fix the fee and/or terms and conditions of service. The Corporation Commission shall consider the fee and/or conditions and terms of service that would result from arm's-length bargaining in good faith in a

90. Ibid §24.5 C.

91. "Terms and conditions of service" includes all factors defining obligations between the parties respecting any gathering activities or process including, but not limited to, nominations, deductions for fuel, accounting for imbalances, imbalance penalties, assessments, charges or makeup provisions, costs, charges and fees for connection or maintaining connection, duration of gathering service, location of receipt and delivery points, quality specifications, minimum and maximum pressures and measurement. 52 O.S. §24.4, definition 5.

competitive market between parties of equal bargaining power and shall consider all economically significant factors which it determines to be relevant which may include, but are not limited to, the following⁹²:

- a. The fees and terms and conditions that the gatherer receives from the applicant and other shippers for analogous levels of gathering within an area that the Corporation Commission determines to be relevant.
 - b. The fees charged and terms and conditions of service provided by other gatherers for gathering within an area that the Corporation Commission determines to be relevant.
 - c. Reasonable financial risks of operating such a gathering system.
 - d. Reasonable capital, operating and maintenance costs of such a gathering system.
 - e. Such other factors that the Corporation Commission determines to be relevant.
4. Additional Powers of the Corporation Commission. If the Corporation Commission determines that the applicant's gas is processed, the order establishing the gathering fee shall include the following⁹³:
- a. The gatherer shall return to the shipper at the redelivery point the MMBtus attributable to the applicant at the plant inlet, less any volumetric deductions for fuel and loss associated with gathering the gas.
 - b. For any month in which there is a spread fee⁹⁴, the applicant shall pay to the gatherer such amount.
- C. Case Law. There is only one reported case concerning the application of the statutes applicable to gas gatherers.

92. Ibid §24.5 D.

93. Ibid §24.5 E.

94. "Spread fee" means the monthly difference obtained by subtracting the value received by the gas gatherer for NGLs attributable to the shipper from the value of the heating content of the natural gas converted to NGLs attributable to the shipper, established by the cost of gas purchased by the gatherer to specifically replace such heating content or, if no actual purchases were made, by the value received by the gatherer for gas sold at the plant tailgate; provided, however, in any month that the value generated by the calculation is zero or less, there shall be deemed to be no spread fee. 52 O.S. §24.4, definition 9.

1. In *Prairie Exploration, et al v. Tri-Star Energy*⁹⁵, Prairie alleged that Tri-Star refused to connect Prairie's wells to the Tri-Star gathering system and applied to the Corporation Commission for an order requiring connection. During pendency of the application, Tri-Star agreed to connect Prairie's wells to its system and gather gas for a rate of \$0.10 per Mcf for 120 days. The parties' agreement was memorialized in an interim order issued by the Corporation Commission. Several months later, Prairie filed another application with the Corporation Commission seeking emergency relief alleging that Tri-Star had interfered with operation of Prairie's wells. The Corporation Commission entered an emergency order allowing Prairie to repair and restore, at Tri-Star's expense, valves and lines disrupted by Tri-Star. It ordered Tri-Star to return to Prairie equipment Tri-Star had removed. It also allowed Prairie to repair and restore lines necessary to gather gas from certain wells listed in the interim order. The Corporation Commission later issued a final order directing Tri-Star to provide Prairie access to the gathering system at a gathering fee of \$.0584 per MMBtu. On appeal, the Court of Civil appeals held that the Corporation Commission exceeded its authority in the interim order by giving Prairie the power to exercise control over Tri-Star's property. However, the Court upheld the final order as an appropriate exercise of Corporation Commission's power under 52 O.S. §§24.4 and 24.5 to remedy discrimination by a gas gatherer.

III. Corporation Commission Rules for Gas Gathering Companies

- A. In contrast to the Railroad Commission of Texas, the Oklahoma Corporation Commission has issued fewer, less detailed Rules for gas gathering companies. The applicable Rules⁹⁶ are summarized as follows:
 1. Gas Volume Reports. Each well producing gas in Oklahoma, except for shut-in wells, is required to have a gas meter and a

95. Citation at Note 57.

96. Corporation Commission Rules may be found online at http://www.oar.state.ok.us/oar/codedoc02.nsf/frmMain?OpenFrameSet&Frame=Main&Src=_75tnm2shfcdnm8pb4dthj0chedppmcbq8dtmmak31ctijujrgcln50ob7ckj42tbkdt374obdcli00_.

recorder for the gathering line to measure gas production⁹⁷. The gas gathering company is typically the party responsible for operating the meter. As the responsible party, the gas gathering company is required to file a report on Form 1004 reporting the amount of gas in Mcf that passed through the meter for that well each month⁹⁸. If a well is subject to multiple gas purchase contracts, the operators of the meters for the well are required to report to the well operator all of the volumes of gas measured by the meters on or before the last day of the month following the month of measurement⁹⁹. Go to <http://www.occeweb.com/og/OGforms/form%201004.pdf> to obtain a copy of Form 1004.

2. Common Purchaser and Carrier Rules. No person shall purchase, take or transport any gas in excess of the well allowable fixed by the Corporation Commission when gas is being produced in violation of any Rule, regulation or order of the Corporation Commission¹⁰⁰.
3. Pipeline Safety Rules. The Corporation Commission has generally adopted the Federal pipeline safety rules for gas pipelines in 49 C.F.R. Part 192 with certain limited modifications¹⁰¹. Gas gathering pipelines not subject to the Federal pipeline safety rules are subject to separate Rules of the Corporation Commission¹⁰².
4. New Pipeline Construction. Prior to the new construction, relocation or replacement of a pipeline, the gas gathering company must complete and file Form 5001 and mail it to the Corporation Commission seven calendar days before commencement of construction, relocation or replacement¹⁰³. This requirement does not apply to installation of a pipeline less than one mile long¹⁰⁴. In the event of emergency construction, relocation or replacement, notice must be given

97. Okla. Admn. Code 165:10-17-5.

98. Ibid 165:10-1-47(a).

99. Ibid 165:10-1-47(f).

100. Ibid 165:10-1-48(b).

101. Ibid 165, Chapter 20, Subchapter 5.

102. Ibid 165, Chapter 20, Subchapter 10.

103. Ibid 165: 20-5-32(a)(1).

104. Ibid 165: 20-5-32(b).

by telephone to the Pipeline Safety Division of the Corporation Commission and Form 5001 mailed to the Corporation Commission within five days after the telephone notice¹⁰⁵. Go to <http://www.occeweb.com/tr/PLSNoticeConst5001.pdf> to download a copy of Form 5001.

5. Eminent Domain. Pipeline companies intending to acquire rights of way by eminent domain are required to file an acceptance of 52. O.S. Sections 21-34 and 236-247. Although no specific form of acceptance is required, the Corporation Commission provides a form on its website¹⁰⁶. A copy of the Commission's suggested form of acceptance may be downloaded at <http://www.occeweb.com/tr/PipelineAcceptanceForm.pdf>.
6. Curtailment. To protect waste and prevent correlative rights, the Corporation Commission has established a priority system¹⁰⁷ for gas wells as follows:
 - a. Priority One – Hardship and distressed wells.
 - b. Priority Two – Enhanced recovery wells.
 - c. Priority Three – Wells producing casinghead gas and associated gas.

If a common gas purchaser's market demand is less than the gas available to it, the purchaser must curtail its takes of gas using the priority system and then ratably within each priority¹⁰⁸. For example, the common purchaser must first ratably curtail its purchases of gas from all wells that are not in any of the priority categories. If the gas available still exceeds market demand when all non-priority gas has been curtailed, the common purchaser must then start curtailing gas ratably from wells in Priority Three and, if necessary, continue curtailments up through the other categories. If the common purchaser is not the first taker of gas, then curtailment by the priority system must be implemented by the first taker¹⁰⁹. The party implementing curtailment is required to submit Form 1004B to the Corporation

105. Ibid 165: 20-5-32(a)(2).

106. <http://www.occeweb.com/tr/PipelineAcceptanceForm.pdf>

107. Ibid 165:17-12(b).

108. Ibid 165:17-12(d).

109. Ibid 165:17-12(b).

Commission by the twentieth day of the month, showing nominations of gas to be purchased or used during the next month¹¹⁰. Go to <ftp://www.occeweb.com/OCCFILES/O&G-PDF/1004B.pdf> to download a copy of Form 1004B.

7. Mediation of Gathering Disputes. To encourage early settlement of disputes about natural gas gathering services, the Corporation Commission has a voluntary, non-binding, informal mediation procedure¹¹¹. Proceedings are conducted under the provisions of the Oklahoma Dispute Resolution Act¹¹². Prior to filing a formal complaint under the gas gathering statutes, a party seeking redress under the mediation procedure may file a Notice of Intent to Mediate on Form 1021B¹¹³. Go to <http://www.occeweb.com/og/OGforms/form%201021B.pdf> to download a copy of Form 1021B. The respondent shall reply within ten days of receiving a Notice, stating whether it will or will not agree to mediate. If the respondent agrees, it may also attach any documentary evidence it wishes to submit with its reply¹¹⁴. Parties submitting their dispute to mediation will select a mediator from a list maintained by the Corporation Commission¹¹⁵. The mediator will arrange a mediation conference within fifteen days of the filing of the Notice to Mediate¹¹⁶. The informal dispute resolution procedure will be completed within sixty days of the filing of the Notice¹¹⁷. All mediation proceedings are confidential and all testimony and evidence submitted are privileged, not discoverable and not admissible in any administrative or judicial proceeding unless they are otherwise discoverable independent of the mediation proceedings¹¹⁸. The Corporation Commission provides a telephone hotline to assist parties with complaints about gas gathering issues¹¹⁹.

110. Ibid 165:17-12(h).

111. Ibid 165:5-23-1.

112. 18 O.S. §1801, et seq.

113. Okla. Admn. Code 165:5-23-3(a).

114. Ibid 165:5-23-3(f).

115. Ibid 165:5-23-4(a).

116. Ibid 165:5-23-4(b).

117. Ibid 165:5-23-4(c).

118. Ibid 165:5-23-5(a).

119. Ibid 165:5-23-6.

Conclusion

Midstream gas gathering companies play a vital role in moving gas from wellhead to burner tip. System operators in Texas and Oklahoma should be mindful of laws governing their business in each state and the regulatory compliance obligations under rules of the Railroad Commission of Texas and the Oklahoma Corporation Commission.