

ENERGY ALERT

PENNSYLVANIA PUBLIC UTILITY COMMISSION JURISDICTION OVER MARCELLUS SHALE “MIDSTREAM” NATURAL GAS GATHERING PIPELINES IS IN QUESTION

A recent filing with the Pennsylvania Public Utility Commission (“PaPUC”) raises significant issues that could impact the future of natural gas exploration and development in the Marcellus Shale formation that underlays much of Pennsylvania and part of New York. The PaPUC’s action on this filing may set the requirements for the construction and operation of facilities to collect (or “gather”) and transport the Marcellus Shale natural gas from “downstream” production areas to “upstream” interstate pipelines for redelivery to end-use markets in the northeastern United States.

The filing was made in January 2010 by Laser Marcellus Gathering Company, LLC (Laser Marcellus), a natural gas “midstream” company that is not a producer. Laser Marcellus has proposed to construct a 30 mile gathering pipeline system to accept and transport Marcellus Shale natural gas from wells in Pennsylvania and New York to interconnections with interstate pipelines and interstate gas storage facilities.

In a previous filing with the Federal Energy Regulatory Commission (“FERC”) in December 2009, Laser Marcellus asked FERC for a declaration that its proposed pipeline project in Pennsylvania (21 miles) and New York (9 miles) performs a “gathering” function rather than a transmission function and is therefore not subject to FERC’s jurisdiction.

Laser Marcellus followed its FERC filing with a January 2010 filing asking the PaPUC for a certificate of public convenience to operate as an intrastate natural gas pipeline providing gathering and transportation services to unaffiliated producers (although the one producer with whom Laser Marcellus has a gathering agreement has an option to purchase a minority interest in the project). Laser Marcellus intends to install compressors and other equipment needed to meet interstate pipeline pressure and gas quality requirements. It is unknown at this time whether the smaller diameter pipes connecting the natural gas wells to the main 12” or 16” pipeline will be owned by Laser Marcellus, producers or a third-party. Laser Marcellus proposes that rates for the service be determined by negotiation between the pipeline and producers, subject to initial maximum (or “ceiling”) rates of rates of 75 cents/Mcf (or mmbtu) for gathering, 10 cents/Mcf for compression, and 3 cents/Mcf for dehydration.

Preliminary review shows that the Laser Marcellus PaPUC filing raises questions that directly affect businesses involved in Marcellus Shale natural gas exploration and development. These questions include:

- ◆ Will the Laser Marcellus filing be followed by other such projects seeking public utility status?
- ◆ If utility status is granted to the Laser Marcellus project, what will be the consequences for existing independently owned gathering systems that have not requested utility status?
- ◆ If FERC declares the Laser Marcellus pipeline to be non-jurisdictional, is the PaPUC’s jurisdiction nonetheless preempted by federal law?
- ◆ Would the issuance of a certificate of convenience for this project preclude a nearby producer from utilizing other alternatives available to transport its product to interstate transportation facilities?

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- ◆ Should some or all rates be based on traditional utility cost of service principles or be subject to negotiation between the pipeline and producers?
- ◆ Which rates should be subject to cost of service and which subject to negotiation?
- ◆ If rates are negotiated, should there be PUC-approved ceiling rates or a range of rates?
- ◆ Who is responsible for construction, operation and maintenance of smaller diameter pipes connecting the wells to the main gathering pipeline?
- ◆ If the PaPUC issues the requested certificate of public convenience, what is the effect on traditional agreements between producers to transport each other's gas based on convenience and the location of the producers' gathering lines?
- ◆ Could the PaPUC's issuance of the requested certificate open the door to expanded PaPUC gas safety inspection of independent producers' gathering lines not otherwise subject to inspection under federal Department of Transportation regulations?

Eckert Seamans can assist you in understanding the problems and opportunities the PaPUC's resolution of these questions will create. If you would like more information about the PaPUC filing or assistance in understanding how your interests may be affected by this filing, please contact Kevin Moody, Dan Clearfield or one of our other Energy Group attorneys at Eckert Seamans .

This Energy Alert is intended to keep readers current on matters affecting businesses and is not intended to be legal advice. If you have any questions or would like a copy of any of the above articles, please contact Kevin Moody at 717-237-7187 or kmoody@eckertseamans.com or Dan Clearfield at 717-237-7173 or dclearfield@eckertseamans.com or contact one of our other Energy Group attorneys at Eckert Seamans.

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