

ENERGY ALERT

LASER DECISION: THE PENNSYLVANIA PUC HAS JURISDICTION OVER “MIDSTREAM” NATURAL GAS GATHERING PIPELINES

The Pennsylvania Public Utility Commission (“Commission”) has determined that a natural gas gathering company can satisfy the definition of a public utility and be regulated by the Commission. This was a case of first impression, and it still leaves many unanswered questions for the applicant, Laser Northeast Gathering Company, LLC (“Laser”), and other gathering companies in Pennsylvania.

“For The Public”

The Commission’s determination turned on the phrase “for the public.” The Commission explained that the public utility status for gathering and transportation service providers depends on the specific facts surrounding each pipeline’s operations. It found that Laser’s proposed gathering service fit the definition of a “natural gas public utility” because Laser was offering its services to all members of the public who may require the offered service.

It is unclear if the Commission will immediately extend this finding to existing and future gathering companies in Pennsylvania. So, gathering companies who do not wish to be a public utility will need to take steps to ensure that they are not offering service “for the public” or are otherwise excluded from the definition of a public utility. The success of such a strategy will depend on the facts of each gathering company.

But, if a gathering company is not excluded from the definition of a public utility, it will need the prior approval of the Commission before it can begin (or continue) legal operations. There are astronomical risks for providing service that requires PUC approval as public utility service without the Commission’s prior approval. In the past, for example, the Commission has ordered such *de facto* public utilities to refund all of the rates charged to customers. *See, e.g., Popowsky v. Pennsylvania Public Utility Commission*, 647 A.2d 302 (Pa. Commw, 1994).

In The “Public Interest”

Laser’s request to be a public utility was remanded for further hearings. On remand, it must be determined if Laser’s proposed gathering operations would be in the public interest. *See* 66 Pa. C.S. § 1103(a). The Commission has explained that this remand will include issues such as (a) whether Laser’s request to be a public utility should be granted; (b) whether others will be allowed to compete against Laser’s gathering operations in Susquehanna County, Pennsylvania; (c) whether Laser’s tariff (which contains terms and conditions of service) is reasonable; and (d) whether the previously filed proposed settlement is reasonable.

Interested persons not currently participating in the proceeding may wish to consider becoming involved in the remand hearings – if they believe that the Laser application will set up “rules of the road” for other gathering systems.

Other Considerations

If Laser becomes a public utility, it will be able to use the power of eminent domain to condemn private property for its pipeline route. The use of this power was addressed by the proposed settlement, which provides that eminent domain would be used only as a matter of last resort after all other reasonable options (including re-routing) are not feasible. Docket No. A-2010-2153371, Joint Petition for Settlement (Public Version), at ¶ 6. It is unclear if the proposed settlement will be approved. But, in any event, this issue is likely to resurface if other gathering companies seek public utility status.

Conclusion

Eckert Seamans can assist you in understanding the issues and opportunities created by the Commission’s decision on Laser’s application. If you would like more information about Laser’s application or assistance in understanding how your interests may be affected by the Commission’s actions, please contact Dan Clearfield at (717) 237-7173, Carl Shultz (717) 255-3742, or Betsy McCoy at (717) 237-6026, or any one of our other Energy Group attorneys at Eckert Seamans.

This Energy Alert is intended to keep readers current on matters affecting energy, and is not intended to be legal advice. If you have any questions, please contact one of the attorneys listed above, or any other attorney with whom you have been working.