

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The package requests a three-year extension of its Security, OMB Control Number 1910-1800. This information collection package covers information necessary for DOE management to exercise management oversight and control over their contractors. The collections consist of information (1) for the nuclear materials control and accountability for DOE-owned and—leased facilities and DOE-owned nuclear materials at other facilities that are exempt from licensing by the NRC; (2) for the protection of classified information, special nuclear materials and other national security assets (DOE site self-assessments and site security plans); and (3) on DOE Federal and contractors traveling to foreign countries; for tracking and recording background information on foreign nationals having access to DOE facilities and information; and collection of Foreign Ownership, Control or Influence data from bidders on DOE contracts requiring personnel security clearances.

DATES: Comments regarding this collection must be received on or before October 24, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202-395-4650.

ADDRESSES: Written comments should be sent to: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

Comments should also be addressed to: Sharon A. Evelin, Director, IM-11/ Germantown Bldg., U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585-1290, and to: Kathy Murphy, SP-1.22 Germantown Building, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874-1290.

FOR FURTHER INFORMATION CONTACT: Sharon A. Evelin and Kathy Murphy, at the addresses listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This package contains: (1) OMB No.: 1910-1800; (2) Package Title: Security (3)

Purpose: for DOE management to exercise management oversight and control over their contractors; (4) Estimated Number of Respondents: 39,136; (5) Estimated Total Burden Hours: 249,955; (6) Number of Collections: The package contains fourteen (14) information and/or recordkeeping requirements.

Statutory Authority: Department of Energy Organization Act, Public Law 95-91, of August 4, 1977.

Sharon A. Evelin,

*Director, Records Management Division,
Office of the Chief Information Officer.*

[FR Doc. 05-19038 Filed 9-22-05; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL05-10-000]

Criteria for Reassertion of Jurisdiction Over the Gathering Services of Natural Gas Company Affiliates; Notice of Inquiry

September 15, 2005.

1. This order institutes a notice of inquiry to evaluate possible changes in the criteria set forth in *Arkla Gathering Service Co.*¹ employed by the Commission in evaluating whether and under what circumstances the Commission may invoke its “in connection with” jurisdiction to guard against abusive practices by natural gas companies and their gathering affiliates.

2. The *Arkla* test involves a determination that, as a result of the concerted action of a pipeline and its gathering affiliate, the Commission’s effective regulation of the pipeline is circumvented. In a recent decision,² the United States Court of Appeals for the District of Columbia found that the Commission had misapplied the criteria set forth in *Arkla*. Under *Arkla*, the Commission’s ability to reassert jurisdiction is limited to abuses directly related to the affiliate’s unique relationship with an interstate pipeline, such as tying gathering service to the pipeline’s jurisdictional transmission service or cross-subsidization between the affiliate’s gathering rates and the pipeline’s transmission rates. The court stated that *Arkla* permits a reassertion of

jurisdiction in circumstances “limited to” abuses “directly related to the affiliate’s unique relationship with an interstate pipeline,” such as “tying gathering service to the pipeline’s jurisdictional transmission service,” or “cross-subsidization between the affiliate’s gathering rates and the pipeline’s transmission rates.”³ The court found that, in the case before it, the gathering affiliate’s affiliation with the pipeline was “utterly irrelevant to its ability to charge high rates, or to impose onerous conditions for gathering service.”⁴ Instead, the affiliate “could do these things for one reason only “ because it was a recently deregulated monopolist in the North Padre gathering market.”⁵ Accordingly, the court held that the Commission had not met its own test under *Arkla* for reassertion of jurisdiction and vacated and remanded the Commission’s orders.

3. The Commission is interested in reevaluating both its legal authority to reassert jurisdiction and the policy considerations in deciding whether to do so. To assist this reevaluation of the *Arkla* test, the Commission is seeking comment on the following questions:

1. Is there an inherent anti-competitive issue when pipelines spin-down gathering facilities to affiliates or are concerns about the behavior of affiliated gatherers unique to certain specific pipeline/affiliate relationships, such as those articulated by Shell in its request for rehearing in the *Shell v. Transco* proceeding in Docket No. RP02-99-010?

2. Once a pipeline has spun-down its gathering services into an affiliated company, is it common for the affiliated gatherer to seek higher rates for its gathering services than the rates charged by the pipeline for those services prior to the spin-down?

a. How do the rates of non-affiliated gatherers compare to the rates of affiliated gatherers?

b. Have the rates charged by affiliated gatherers had an impact on well shut-ins?

3. What factors are relevant in determining whether a gathering affiliate is separate from its pipeline affiliate and independent from its pipeline affiliate in performing its gathering functions?

4. Must a gathering affiliate be physically separate and separately staffed in order to be independent of its pipeline affiliate?

5. Because the basis of initially disclaiming NGA section 4 and 5 “in

¹ *Arkla Gathering Service Co.*, 67 FERC ¶61,257 at 61,871 (1994), *order on reh’g*, 69 FERC ¶61,280 (1994), *reh’g denied*, 70 FERC ¶61,079 (1995), reconsideration denied, 71 FERC ¶61,297 (1995) (collectively, *Arkla*), *aff’d Conoco Inc. v. FERC*, 90 F.3d 536 (D.C. Cir. 1996) (*Conoco*).

² *Williams Gas Processing Co., L.P. v. FERC*, 373 F.3d 1335 (2004) (*Williams Gas Processing*).

³ *Williams Gas Processing*, at 1342.

⁴ *Id.* at 1342.

⁵ *Id.*

connection with" rate and service jurisdiction is solely a change in ownership of the gathering facilities, is it necessary for the Commission to require a showing of collusion or abusive conduct in order to reassert jurisdiction, if it is found that the transfer of the facilities is a sham and/or there is no real, de facto separate corporate ownership?

6. What kind of conduct should trigger the Commission's reassertion of jurisdiction over the gathering services of a pipeline affiliate?

7. Should the Commission be especially concerned about the actions of gathering affiliates when they control access to an essential facility in order to gain access to the interstate pipeline grid?

8. Should a showing of "concerted action" by the gathering affiliate and the pipeline be required, or should it be sufficient for the gathering affiliate alone to have engaged in anticompetitive or otherwise objectionable behavior to trigger the Commission's reassertion of jurisdiction?

9. What kind of activities would constitute "concerted action" between the gathering affiliate and its affiliated pipeline for purposes of circumventing the Commission's effective regulation of the pipeline?

10. What incentives do states have to ensure that providers of gathering services do not engage in anticompetitive behavior?

11. Is there a gap between state regulation of gathering services and the Commission's regulation of natural gas companies, and, if so, what is the nature of that gap?

12. Should the Commission view the conduct of offshore affiliated gatherers differently from onshore affiliated gatherers due to the lack of state regulation offshore?

13. What criteria should the Commission employ in reasserting NGA section 4 and 5 "in connection with" jurisdiction over gathering rates and services following a spin-down of gathering facilities by a pipeline to an affiliate?

Procedure for Comments

4. The Commission invites interested persons to submit comments, and other information on the matters, issues and specific questions identified in this notice. Comments are due 60 days from the date of publication in the **Federal Register**. Comments must refer to Docket No. PL05-10-000, and must include the commentor's name, the organization they represent, if applicable, and their address.

5. To facilitate the Commission's review of the comments, the Commission requests that commentors provide an executive summary of their position. In addition, the Commission requests that commentors identify each specific question posed by the Notice of Inquiry that their comments address and to use appropriate headings. Comments should be double-spaced.

6. Comments may be filed on paper or electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commentors may attach additional files with supporting information in certain other file formats. Commentors filing electronically do not need to make a paper filing. Commentors that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

7. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commentors are not required to serve copies of their comments on other commentors.

Document Availability

8. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

9. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

10. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (e-mail at FERCOnlineSupport@ferc.gov) or the Public Reference Room at 202-502-8371, TTY 202-502-8659 (e-mail at public.referenceroom@ferc.gov).

By direction of the Commission. Commissioner Brownell concurring with a separate statement attached.

Magalie R. Salas,
Secretary.

Notice of Inquiry on Criteria for Reassertion Jurisdiction Over the Gathering Services of Natural Gas Company Affiliates.

BROWNELL, Commissioner,
concurring:

Today we issue a Notice of Inquiry (NOI) to evaluate possible changes in the criteria for invoking the Commission's "in connection with" jurisdiction. I appreciate the need to guard against affiliate abuse. However, I think it is important to put the questions proffered in the NOI in context.

In *Panhandle*, the Supreme Court found that sections 4, 5 and 7 of the NGA do not concern gathering and only extend to the interstate transportation of gas by their express terms.¹ In *Conoco*, the court expressly stated that where an activity or entity falls within the section 1(b) gathering exemption of the NGA, the other provisions of the NGA, including the "in connection with" language in sections 4 and 5 neither expand our jurisdiction nor override the gathering exemption.² Therefore, the fundamental question for me is whether any new test has a direct nexus to our effective regulation of the interstate pipeline, not the gatherer. I am hard pressed to find that necessary linkage even if a spun-down entity seeks a higher rate for its services or is an essential access point to the interstate grid. In either situation, the Commission will continue to employ its section 4 and 5 NGA authority to ensure that the pipeline's rates remain just and reasonable.

Since Order 636, the Commission has approved a number of proposals to spin-down (as well as spin-off) gathering facilities because such transfers eliminated unnecessary costs from interstate rates and the stand-alone gatherer could more efficiently utilize the facilities involved. There have been very few complaints.

I urge commentors to consider whether there is a need for a new test and, if so, how any new test is consistent with the limits of our current statutory authority.

Dated:
Nora Mead Brownell,
Commissioner.

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¹ *Panhandle III*, 337 U.S. at 508-09, 69 S.Ct. at 1257-58.

² *Conoco Inc. v. FERC*, 90 F.3rd 536 at 552 (D.C. Cir. 1996), cert. denied, 519 U.S. 1142 (1997).