
FEDERAL ENERGY REGULATORY COMMISSION



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NEWS RELEASE

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COMMISSION LAUNCHES INQUIRY INTO CRITERIA FOR REASSERTION OF JURISDICTION OVER OFFSHORE GATHERING SERVICES

The Federal Energy Regulatory Commission today launched an inquiry to evaluate possible changes in the criteria used to determine when the Commission may invoke its jurisdiction to guard against abusive practices by offshore gathering affiliates of natural gas pipeline companies.

“Current law contains a regulatory gap that permits offshore gathering companies to collect monopoly rents, which can lead to shut-in of offshore gas production. The Commission has tried different legal theories to prevent monopoly rents, and suffered a series of court defeats. We may have run out of theories. If the law permits monopoly rents, it is time to change the law,” said Commission Chairman Joseph T. Kelliher.

“This regulatory gap is a particular concern in the wake of Hurricane Katrina. Restoration of offshore gas production is critical to mitigating high natural gas prices this winter. Allowing monopoly rents in offshore gathering may retard restoration of offshore gas production. The time has come for Congress to close this regulatory gap,” Chairman Kelliher added.

Today’s Notice of Inquiry seeks comment on the criteria set forth in a 1994 order, *Arkla Gathering Service Co.*, under which the Commission may invoke its “in connection with” jurisdiction under the Natural Gas Act to protect against monopoly rents by unregulated gathering affiliates of pipeline companies.

Gathering facilities beyond state waters are unregulated, and state and federal regulators have no express statutory authority to oversee their costs and rates. The Commission’s *Arkla* test involves a determination that, as a result of the concerted action of a pipeline and its gathering affiliates, the Commission’s effective regulation of the pipeline has been circumvented or frustrated. The Commission would then reassert jurisdiction over the gathering services “in connection with” interstate rates subject to the Commission’s Natural Gas Act oversight.

Today's action stems from a July 13, 2004, decision by the D.C. Circuit U.S. Court of Appeals, in which the court vacated and remanded Commission orders in response to a complaint by Shell Offshore Inc. regarding Williams Field Services, a gathering affiliate of Transcontinental Gas Pipe Line Corp.

The court determined that the Commission, in granting Shell's complaint and reasserting jurisdiction over the spun-down Transco affiliate, had misapplied the *Arkla* criteria.

In a related order today, the Commission denied a rehearing request from Shell in the case involving its complaint against the Transco affiliate. The Commission determined that the focus of Shell's rehearing request would involve abandoning the *Arkla* test and adopting new criteria for reasserting jurisdiction over gathering services of pipeline affiliates.

Changing the *Arkla* criteria within the context of Shell's complaint would not be equitable, the Commission said. "Making any change to the *Arkla* test raises industrywide implications," the Commission said in terminating the Shell complaint proceeding. "The Commission would not abandon the *Arkla* test and develop new criteria without a better understanding of such a change on the industry."

As a result of the appeals court decision, the Commission is reevaluating the criteria under the *Arkla* test. "The Commission is interested in reevaluating both its legal authority to reassert jurisdiction and then policy considerations in deciding whether to do so," today's Notice of Inquiry states.

The Notice seeks comment on 13 detailed questions, such as whether there is an inherent anticompetitive issue involved when pipelines spin down gathering facilities to affiliates, and whether it is common for such companies to seek higher rates for gathering services than were available from the Commission-regulated pipeline company before it spun down the gathering affiliate.

The Notice asks for comment on the relevant factors in determining whether a gathering company is separate from its pipeline affiliate, and what kind of conduct should trigger the Commission's reassertion of jurisdiction over the gathering affiliate. The Notice also asks whether states have incentives to ensure that gathering service providers do not engage in anticompetitive behavior, and asks for assessments of the nature of any gap between state and Commission regulation of natural gas companies.

Comments are due 60 days after publication in the Federal Register. For more information on the Notice of Inquiry on *Criteria for Reassertion of Jurisdiction Over the Gathering Services of Natural Gas Company Affiliates*, go to www.ferc.gov.