

Feb 5 1982

Mr. Kenneth W. Haile, Esq.  
Attorney at Law  
Panhandle Eastern Pipe Line Co.  
3444 Broadway  
Kansas City, Missouri 64141

Dear Mr. Haile:

Your letter of January 15 seeks an interpretation of the classification of Panhandle Eastern's Sneed Compressor Station, Moore County, Texas. You seek a determination that the Sneed Station falls within the pipeline safety jurisdiction of the Department of Transportation (DOT) under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.), and more specifically that it does not fall within the gathering exclusion contained in 49 U.S.C. 1671(3).

From your letter and attachments, it appears that the Sneed Station is at the upstream end of Panhandle Eastern's main transmission line originating in Texas and terminating at the Canadian border. That station is connected to several gathering lines furnishing gas from numerous wells in the area. Processing plants operated by Phillips Petroleum Company and Panhandle Eastern are located just downstream of the compressor, and the Phillips plant processes some 27% of the gas compressed. The Panhandle Eastern plant only operates a few days each year during the winter and separates liquid from only and extremely small amount of gas going through Sneed annually. The full stream going through the Sneed Station is later processed by Panhandle Eastern at Liberal, Kansas. Between the Sneed and Liberal, Panhandle Eastern makes sales to some 35 farm tap, distributor, and small industrial customers, and numerous irrigation customers. Your attached exhibits reveal that the Sneed Station is the first of some 15 compressor stations along Panhandle Eastern's main line. You state that both the Phillips plant near the Sneed Station and the Panhandle Eastern plant at Liberal are operated in order to extract liquid hydrocarbons for sale, and not for the purpose of purifying gas in order to make it marketable.

In general, the gathering process terminates when the gas is in a condition suitable for delivery to customers. Also, the determination may turn on the use of the facilities involved. The fact that sales are made prior to final processing at Liberal, Kansas, suggests that the gas passing through the Sneed Station is suitable for such delivery. Further, from your letter, it appears that the only thing distinguishing the Sneed Station from other stations along the main line is that the Sneed Station is the first. This suggests that its primary function is to facilitate the transportation of gas, rather than its gathering. This is corroborated by the fact that twenty booster compressors are situated upstream from Sneed to regulate gathering pressure. Sneed, on the other hand, regulates the higher main line pressure downstream. From the facts as you have presented them, I conclude on this basis that the Sneed Compressor Station is subject to our jurisdiction under the Natural Gas Pipeline Safety Act of 1968 and the applicable regulations in 49 CFR Part 192.

You also urge in your letter that since the Sneed Station is considered "transportation" for purposes of Federal Energy Regulatory Commission jurisdiction under the Natural Gas Act, DOT should treat it as "transportation" for purposes of the Pipeline Safety Act. In view of the conclusion that it is jurisdictional for other reasons, it is not necessary to reach this determination. I would note, however, that that fact would at the very least be persuasive in reaching the same conclusion.

I trust that this has answered your inquiry. If we can be of further assistance in this matter, please let us know.

Sincerely,

Melvin A. Judah  
Acting Associate Director for  
Pipeline Safety Regulation  
Materials Transportation Bureau

January 15, 1982

Mr. Melvin Judah  
Associate Director For  
Pipe Line Safety Regulations  
Material Transportation Bureau  
U.S. Department of Transportation  
400 7th Street, S.W.  
Washington, D.C. 20590

Attn: Mr. L.M. Furrow

Re: Panhandle Eastern Pipe Line Company -  
DOT Jurisdiction over Sneed Compressor Station

Dear Mr. Furrow:

As you may recall, I spoke with you over the telephone January 13 concerning whether the Department of Transportation would exercise jurisdiction over the Sneed Compressor Station (Sneed) of Panhandle Eastern Pipe Line Company (Panhandle Eastern), with particular reference to the gathering exemption contained in §2(3) of the Natural Gas Pipeline Safety Act, 49 U.S.C. 1671(3). This letter follows up on that conversation, and gives facts and arguments why Panhandle thinks Sneed is jurisdictional.

### **I. Facts**

Attached are Exhibits 1 through 3 which show the relationship of Sneed to the gathering system and to the remainder of Panhandle Eastern's transmission system. As shown on Exhibit 1, the inlet side of Sneed is the beginning of the main line; upstream of the compressor station is an extensive gathering system in Hutchison, Carson, Potter and Moore Counties, Texas. Exhibit 2 shows a schematic of the lines and rated capacity of compression on the gathering system, as well as the Blair line connected to the main line just downstream of Sneed. The rated capacity of the boosters in the gathering lines is small compared to the 11952 rated horsepower of Sneed; the boosters only regulate pressure for gathering lines whereas Sneed primarily regulates the higher pressure required in the main transmission line. Exhibit 3 shows Sneed in relation to the remainder of Panhandle Eastern's transmission system (each of the red dots on this exhibit is a mainline compressor station).

Panhandle Eastern purchases gas at the wellhead from an affiliated producer and independent producers. All gas going through Sneed is owned by Panhandle Eastern except approximately 20% which is owned by Phillips Petroleum Company (Phillips) and sold to Panhandle Eastern at the tailgate of the Phillips processing plant. Phillips owns and operates the gas processing plant on one of the segregated lines downstream of Sneed. By virtue of

processing rights under various gas purchase contracts, Phillips processes only that part of the gas to which it has processing rights, approximately 27% of the gas coming through Sneed; the remaining 70 to 75% of the gas bypasses the Phillips plant. The full stream is then processed at a Panhandle Eastern plant at Liberal, Kansas. See Exhibit 4 which is a gas process diagram depicting the foregoing movement of gas.

Liquid accumulation is not normally a problem downstream from Sneed except for a few days in the winter when low temperatures increase the "fall out" rate of the liquids. Therefore, Panhandle Eastern has a separation plant immediately downstream of Sneed which operates only a few days a year. An extremely small amount of the gas annually flowing through Sneed goes through the plant. In fact, it is anticipated the plant will not be operated at all during the 1981/1982 winter because of low volumes of gas and its relative dryness. In 1981, one-half of 1% of the gas flowing through Sneed passed through the Panhandle Eastern plant.

Between Sneed and Liberal, Panhandle Eastern makes sales of gas to some 35 customers, including 32 farm taps (residential use); numerous irrigation taps; and two municipal distribution companies and one small industrial customer. See Exhibits 5 and 6.

Sneed is jurisdictional under §§1(b) and 7(c) of the Natural Gas Act, 15 U.S.C. 717(b), 717f(c). Attached to demonstrate this fact are the order of October 17, 1945, of the Federal Power Commission in Docket No. G-254 (Exhibit 7), and the underlying application listing in part Sneed as the subject of a certificate application (Exhibit 8). Also, enclosed as Exhibit 9 is an order of September 21, 1945 of the FPC authorizing in part additional horsepower at Sneed.

## **II. Discussion**

Panhandle Eastern believes the Sneed Station is jurisdictional under the Pipeline Safety Act for at least three reasons:

### **A. Readiness for Market**

From our telephone conversation, it appears that the primary DOT criterion is whether the gas being transported is in a condition ready for market, or whether further processing is required to make it market-ready. If the former, the facilities in question would be jurisdictional under the Pipeline Safety Act.

Panhandle Eastern's plant immediately downstream of Sneed is operational only a few days out of each year; less than 1% of the gas that went through Sneed in 1981 went through the plant and the plant is, therefore, not a significant factor in determining DOT jurisdiction.

There are two chief reasons gas is processed - to remove impurities which would render it undesirable for immediate consumption and to recover relatively more valuable heavier

hydrocarbons for sale; in this case, the Phillips plant serves the latter. The Phillips plant processes approximately 27% of the gas after going through Sneed pursuant to processing agreements contained in purchase contracts with independent producers. Although the gas could be marketed in its then-condition, the sellers insist on the right to strip out valuable liquids as a condition of the sale. This gas is processed for economic reasons, not for engineering reasons.

The same is true with respect to the Panhandle Eastern plant a Liberal, Kansas. As described above, the full stream passes through this plant. However, this processing is again to recover the liquids prior to sale of the gas, rather than to make the gas market-ready. In fact, the numerous sales previously listed are made prior to the time the gas stream passes through the Liberal plant; it is, thus, by definition "marketable" because it is, in fact, marketed.

This being the case, the gas compressed through the Sneed Station is marketable in the condition it passes through that station. The Sneed Station is an integral part of Panhandle Eastern's transmission system and is a mainline station not unlike any of the other mainline stations shown on Exhibit 3. It is different both in function and capacity from the field compressor units shown on Exhibit 2 in that it increases pressure in the mainline, not the gathering lines. Accordingly, it is part of Panhandle Eastern's transportation system, rather than a part of a gathering system.

B. Natural Gas Act

Panhandle Eastern believes that the treatment of a particular facility under the Natural Gas Act (15 U.S.C. 717, et seq.) should be dispositive of its treatment under the Pipeline Safety Act. The relevant sections provide as follows:

The Natural Gas Pipeline Safety Act provides in pertinent parts:

49 U.S.C. §1672(a) (1) (last sentence)

"No State agency may adopt or continue in force any such standards applicable to interstate transmission facilities, after the Federal minimum standards become effective."

This sentence implies the Secretary of Transportation will adopt minimum standards for all interstate transmission facilities! This is why interstate transmission facilities are defined:

[49 U.S.C. 1671]

As used in this chapter--

(8) 'Interstate transmission facilities' means pipeline facilities used in the transportation of gas which are subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, except that it shall not include any pipeline facilities within a State which transports gas from an interstate gas pipeline to a direct sales customer within such State purchasing gas for its own consumption. (Emphasis provided).

Moreover, in the case of United Gas Pipeline Co. v. Terrebonne Parish Police Jury, 319 F. Supp. 1139 (D.C. La. 1970), aff'd 445 F.2d 301, the Court made the jurisdiction of the Department of Transportation clear by saying that Congress intended by the enactment of the Natural Gas Pipeline Safety Act to give it exclusive jurisdiction to regulate the safety of interstate transmission facilities.

"Just as Congress intended by the Natural Gas Act to confer exclusive jurisdiction to the Federal Power Commission [now Federal Energy Regulatory Commission] to regulate commerce in the interstate sale and transportation of natural gas, so also it intended by the Natural Gas Pipeline Safety Act of 1968 to give exclusive jurisdiction to the Department of Transportation to regulate the safety of 'interstate transmission facilities.'" <sup>2/</sup> (319 F. Supp. at 1140.)

Footnote 2 is relevant; it read:

"<sup>2/</sup> 'Interstate transmission facilities' means pipeline facilities used in the transportation of gas which are subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act; Section 1671(8) of the Safety Act."

This was clearly the intent of the Congress as reflected in a conference report on the Safety Act:

"Additional or more stringent State standards are prohibited as to interstate transmission facilities, that is, pipe line facilities used in transportation of gas which are subject to jurisdiction of FPC under the Natural Gas Act. With respect to these facilities, the Federal Standard will apply providing for uniformity of regulation where the line of a single company may traverse a number of States." H.R. Rep. 1390, S.B. 1166, page 3236, 1968 USC Cong. and Adm. News, p. 3223 (Emphasis provided).

Thus, the Department of Transportation has jurisdiction where the FERC has jurisdiction! Sneed is clearly an interstate transmission facility under FERC jurisdiction by virtue of the orders issuing certificates of public convenience and necessity, Exhibits 7 and 9; therefore, DOT has jurisdiction over Sneed.

DOT likewise has recognized its jurisdiction in regard to large compressor stations like Sneed; the Department of Transportation has issued regulations concerning compressor stations. Such regulations appear in Title 49 of the Code of Federal Regulations, Part 192. The regulations incorporate in Subpart D - "Design of Pipeline Components" the essentials of designing, constructing, operating and ventilating compressor stations and their components. In fact, Panhandle Eastern's compressor stations at Liberal, Olpe and Louisburg, Kansas; and at Houstonia and Centralia, Missouri have been inspected by DOT! These stations serve the same purpose and are similar in size as Sneed. All the compressor stations are situated upstream of a large Panhandle processing plant located at Tuscola, Illinois; DOT, thus, does not strictly follow a rule that any facility upstream of a processing plant is gathering.

### C. Other Tests Applied by the FERC

The FERC applies four tests in determining whether facilities are jurisdictional transmission facilities or nonjurisdictional gathering facilities under the Natural Gas Act. These tests might be of aid in determining DOT jurisdiction under the Natural Gas Pipe Line Safety Act.

a. The behind-the-plant test has not been applied to an interstate pipe line to this writer's knowledge; it is natural to apply to a producer or a gathering company which gathers the gas and conditions the gas for sale at the tailgate of its processing plant to an interstate pipe line company. This test is therefore, inappropriate to Panhandle Eastern; the only sale made at the tailgate of any plant is by Phillips to Panhandle. If any facilities were to be considered gathering, it would be only the facilities owned by Phillips behind the Phillips plant. Besides Phillips is not processing the gas to make it marketable; it is processing the gas to remove and sell valuable hydrocarbon liquids. [See Phillips Petroleum Company v. State of Wisconsin, 347 US 672 (1954)]

b. On the other hand, Sneed complies with the central point test where gathering ends at a central point in the field; all upstream gathering lines, Panhandle Eastern's and Phillips', converge at Sneed; downstream of Sneed, there is only one line! [See Barnes Transportation Co., 18 F.P.C. 69 (1957)]

c. Sneed also complies with the central compressor station test where gathering ends at the inlet side of a centrally located compressor station. [See Northern Natural Gas Co., 50 F.P.C. 177 (1973)]

d. Of course, Sneed complies with the primary function test where a facility is not gathering if the primary function of the company is interstate transportation of gas rather than gathering of gas. [See Ben Bolt Gathering Co. v. F.P.C., 26 F.P.C. 825 (1961), aff'd 323 F.2d 610 (5th Cir. 1963)]

Although no one test is determinative, three out of four would be in those situations where the gas is ultimately processed far downstream. Further, a distinction is drawn between compressor stations which deliver into a main line (jurisdictional) and those which are simply field booster stations. Continental Oil Co., 16 F.P.C. 1 (1956)

In a doubtful case, DOT might consider the foregoing tests to resolve the issue of whether a facility is or is not gathering. If the tests are applied in this case, the conclusion is compelling that the Sneed Station is not a gathering facility.

### **III. Conclusion**

Under both DOT's own interpretation of the gathering exemption contained in the Natural Gas Pipeline Safety Act, and under the closely analogous gathering exemption under the Natural Gas Act, the Sneed Compressor Station is not a "gathering" facility. As such, it falls within the DOT's responsibilities for the "transportation of gas by pipeline."

Panhandle Eastern seeks a letter from some person in DOT responsible for the administration of the Pipeline Safety Act to the effect that its Sneed Compressor Station falls within the Act's ambit. The letter will be used only to urge an OSHA attorney to dismiss a complaint for lack of jurisdiction. OSHA is preempted where another Federal agency has jurisdiction. If you agree with the above position, please send such a letter to me.

I have included a draft letter and stamped envelope for your convenience. I do not necessarily expect that you will accept that letter as is; however, if you feel any significant changes are required, I would be grateful if you would consult with me by telephone. If you would like additional information, I will make every effort to provide whatever is required.

Sincerely,



Kenneth W. Haile