

PI-01-0114

U.S. Department of Transportation
400 Seventh Street, S,W, Washington, D.C. 20590
Research and Special Programs Administration

Mr. Glynn Blanton
Chief, Gas Pipeline Safety Division
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Dear Mr. Blanton:

This refers to your enclosed letter of January 22, 2001, in which you ask whether the Stone Mountain Pipeline Company (Stone Mountain) project, as described below, is jurisdictional to our agency.

According to the information provided, Stone Mountain currently has 63 miles of pipelines extending from Kentucky to Virginia which the Federal Energy Regulatory Commission (FERC) regards as a gathering system and does not regulate. However, Stone Mountain has started a project which will add a ten-inch pipeline from the south end of the ten-inch Martins Fork to Rose Hill pipeline to a proposed Rogersville Compressor Station. . This pipeline will be used to deliver gas gathered from many fields, through as many as 62 wells, into the East Tennessee system at an interconnection downstream of the Rogersville Compressor Station, East Tennessee will build a lateral to the proposed site of the interconnection pursuant to its blanket authority from FERC. According to Stone Mountain, some of the lines feeding into the ten-inch pipeline will be several miles long and will act as "backbone" pipelines that will collect gas from numerous feeding lines along their length.

Onshore gathering lines are not subject to 49 CFR Part 192 if they lie outside of the limits of an incorporated or unincorporated city, town, or village or any designated residential or commercial area. Assuming that the Stone Mountain project will lie entirely outside of these areas, the issue is whether the ten-inch pipeline that is being constructed between Rose Hill, Virginia, and the proposed Rogersville Compressor Station, is classified as a gathering line or a transmission line.

49 CFR. § 192.3 explains that a gathering line ends at a transmission line, and a transmission line is a pipeline that transports gas from a gathering line to a distribution center, storage facility or large volume customer that is not downstream from a distribution center.

Accordingly, the Office of Pipeline Safety (OPS) historically has selected the appropriate end point on a case-by-case basis, primarily using four points. These four points include

(1) the outlet of a processing plant; (2) if there is no upstream processing plant, the outlet of a main compressor; (3) if there is no processing plant or compressor station, then the point where two or more well lines converge; and (4) if no other point is appropriate, the point where there is a change in ownership of the pipeline. In addition, once designated as a transmission line, no portion of the line may be redesignated as a gathering line even if further commingling of gas occurs downstream.

Stone Mountain believes that FERC will continue to classify their entire system as a gathering system. However, OPS is not bound by FERC's classification of gathering lines under the Natural Gas Act (15 U.S.C. § 717 et seq.), 49 U.S.C. § 60101(b)(1)(B)(ii). This means that although FERC may continue to classify the Stone Mountain system as a gathering system, OPS is not required to do so.

Although the Stone Mountain project clearly does not contain a processing plant, it will have three compressor stations, located at Martins Fork and Rose Hill, Virginia, and Rogersville, Tennessee. As used in our four-point test, a main compressor is one that has the main function of moving gas in transportation even if it also enhances the production process. Because the Rose Hill Compressor Station is not currently being used to gather gas from the existing upstream facilities, it appears that it will be used to move gas through the proposed ten-inch line from Rose Hill to Rogersville. Therefore, this is the last logical end point for the gathering line and, therefore, the point at which the transmission line begins. Because this line becomes a transmission line no further downstream than Rose Hill, Virginia, it cannot be redesignated a gathering line in Tennessee, even if it receives additional gas from other gathering lines.

The Stone Mountain ten-inch pipeline from Martins Fork to Rose Hill and continuing to the Rogersville Compressor Station is expected to receive and commingle gas from as many as 62 wells located in multiple fields. Moreover, this line currently serves four market delivery points, including a federal prison, and Stone Mountain anticipates an additional delivery point to the Hawkins County Utility District. The ten-inch pipeline appears to be transporting gas from the incoming gathering lines to its delivery points and, finally, to the East Tennessee interconnect. Therefore, OPS characterizes the ten-inch line from the proposed Rose Hill Compressor Station to the proposed Rogersville Compressor Station as a transmission line.

Interstate transmission lines are subject to the jurisdiction of OPS. Intrastate transmission lines are subject to the jurisdiction of the state under its Section 60105 certification. According to 49 U.S.C. § 60101(a), an interstate pipeline must be subject to the jurisdiction of FERC under the Natural Gas Act and intrastate pipelines are not subject to the jurisdiction of FERC. Therefore, the determination of whether this is an interstate or intrastate pipeline is based on whether FERC has jurisdiction over the pipeline. Because this segment is not certificated by FERC, it is an intrastate transmission line and, therefore, it is subject to jurisdiction by the Tennessee Regulatory Authority under its Section 60105 certification.

If we can be of further assistance in this matter, please contact me at (202) 366-4565.

Sincerely yours,

Richard D. Hurliaux, P.E. Manager, Regulations Office of Pipeline Safety

Enclosure

BILLING CODE 4910-60-P

TENNESSEE REGULATORY AUTHORITY
460 James Robertson Parkway Nashville
Tennessee 37243-0505

January 22, 2001

Mr. Bennie Andrews, State Liaison
U.S. DOT/RPSA/OPS
Atlanta Federal Center, Suite 16T15
61 Forsyth St. SW
Atlanta, GA 30303

Dear Bennie,

Enclosed please find the information that I discussed with you last week pertaining to a natural gas gathering system (Evan Energy) that will be constructing a ten-inch pipeline from Virginia into Tennessee to an interconnection with Duke Energy Gas Transmission in Rogersville, Tennessee. Evan Energy stated, "We are not an interstate pipeline company and not jurisdictional to federal authority." They have filed the enclosed information with our agency to make us aware of the pipeline construction activities that started on January 8, 2001. During our meeting with them on December 19, 2000 they mentioned that they would provide us additional information on a meeting they had with FERC on federal jurisdiction. We have not received the information but anticipate the document being filed with our office in the coming week.

Your assistance in reviewing this information and determining if this operator is jurisdictional to your agency would be appreciated. I would like to request your decision be provided to our office as soon as possible since this project is on a fast track to be installed.

Sincerely,
Glynn Blanton, Chief
Gas Pipeline Safety Division

Excellence with Energy
EVAN ENERGY

January 9, 2001

Glynn Blanton
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

RE: Stone Mountain Pipeline Company, LC Pipeline Technical Information

Dear Glynn:

On Tuesday, December 19, 2000, Stacey Vamey, Evan Energy Company's Vice President of Marketing and Finance met with you to discuss Stone Mountain Pipeline Company's upcoming pipeline gathering project located in Hancock and Hawkins Counties, Tennessee (Stone Montanan Pipeline Company is a wholly-owned subsidiary of Evan energy Company, LC). Stacey requested that I further provide you with our preliminary construction schedule and to further elaborate as to the technical details of the project.

Stone Mountain Pipeline plans on beginning Initial construction late this week, the week of January 8, 2001. A clearing crew will be mobilizing into the Mulberry Gap area northwest of Sneedville. The pipeline spread should move in approximately one week later to begin laying the 10" steel gathering pipeline.

As of today, our land acquisition crews have acquired 46,020 feet of rights- of-way in Hancock County, leaving a balance of 10,390 feet to be acquired. In Hawkins County we have procured 16,000 feet of rights-of-way, leaving an approximate balance of 24,000 feet to be acquired. We expect to move a second crew to the construction schedule in early March and anticipate the project completion, to the Rogersville compressor site, by September 1, 2001.

The gathering facilities will be constructed in accordance with The Department of Transportation codes and standards. Cathodic protection will be installed at 300-foot intervals. A minimum of 15% of the welds will be x-rayed. Nesbitt Engineering will provide project inspection. The project will require a General Stream Crossing Permit and a permit to bore the Clinch River. Nesbitt Engineering, with Bud Baldrige as the lead engineer, will prepare the necessary permits.

Topo maps of the line route are included in this package. The topo maps consist of Back Valley, Sneedville, Lee Valley and Camelot. Valve locations and the final location of the Rogersville Compressor Site have not been finalized. Upon determination of these locations, I will forward a design schematic for your records. If you have any questions you can contact me or Bill Hubbard. Bill Hubbard is Stone Mountain Pipeline Company's Vice President of Pipeline Construction and Operations. We can be reached at the following phone numbers:

Brant Camp Office: 423-245-4900
Mobile: 423-534-9251

E-mail: bcamp@evanenergylc.com

Bill Hubbard Office: 540-445-5950
Mobile: 423-956-1236

Stacey also suggested that we plan an initial site visit and review with you. At your convenience, I would like to plan a meeting in Hancock County to review the particulars of the project.

Once again, if you should need additional information or have questions, please feel free to give me a call.

Sincerely,
Brint Camp
Chief Operating Officer

Enclosure — As Noted

cc: Stacey Varney, Evan Energy Company, LC
Mark Pate, Evan Energy Company, LC
Tim Kingsmill, Duke Energy Gas Services Corporation

Glynn Blanton – MEMORANDUM

From: <tpkingsmill@duke-energy.com>
To: <gblanton@mail.state.tn.us>
Date: 2/5/01 2:08PM
Subject: MEMORANDUM

Glynn, Attached is the information you requested regarding the Stone Mountain gathering project. We will be forwarding originals and certain FERC rulings in this regard as well. I hope this answers the questions you may have about the project and please call me with any other questions.

Thanks You, Tim

-----Forwarded by Tim P. Kingsmill/Mktg/TETCO/PEC on 02/05/01 02:03 PM

"Patten,
Neil" To: "Gerik, Rodney (Duke)" <regerik@duke-energy.com>,
<npatten@velaw.com> ""tpkingsmill@duke-energy.com"" <tpkingsmill@duke-energy.com>
<npatten@velaw.com> cc: "Johnson, Judy (Partner)" <jjohnson@velaw.com>
Subject: MEMORANDUM
02/05/01
01:49 PM

«443833_2.DOC» +++++CONFIDENTIALITY NOTICE+++++

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(See attached file: 443833_2.DOC)

CC: <regerik@duke-energy.com>, <svarney@evanenergy.com>

Page 1
February 5, 2001

Vinson & Elkins

Attorneys At Law
Vinson & Elkins L.L.P
2300 First City Tower
1001 Fannin Street
HOUSTON, TEXAS 77002-6760

February 5, 2001

Rodney E. Gerik
Duke Energy Corporation
5600 Westheimer Court
Houston, Texas 77

Re: Stone Mountain Project

Re: Stone Mountain Project

Dear Rod:

Pursuant to your request, attached hereto is an analysis of whether the Stone Mountain project (as defined in the attached memo) will be exempt from the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act. As set forth in the attachment, and based on information provided to us by your, it appears likely that the Commission would determine that Stone Mountain performs primarily a gathering function under current Commission and case law precedent. The details of this analysis are set fort in this attachment.

Please call if you have any questions.

Very truly yours,

Judy M. Johnson

MEMORANDUM

February 5, 2001

TO: Judy Johnson
FROM: Neil Patten
RE: Application of the Commission's Modified Primary Function
Factors to the Stone Mountain Project

I. QUESTION PRESENTED

Does the Stone Mountain Project ("Stone Mountain") meet the tests applied by the Federal Energy Regulatory Commission (the "Commission") in determining that particular facilities perform a gathering function, exempt from the Commission's Natural Gas Act ("NGA") jurisdiction?

II. BRIEF ANSWER

Based on Stone Mountain's physical, geographic, and other features, and based on current Commission precedent, it seems likely that the Commission would determine that Stone Mountain performs primarily a gathering function.

III. DISCUSSION

A. *Description of the Facilities*

In its present state, the Stone Mountain Gathering System (a natural gas system not subject to FERC jurisdiction) consists of 63 miles of two, four, six, eight, and ten inch pipe, extending from Kentucky south to Virginia.¹ Proposed construction would add an additional 81 miles of two to ten inch gathering lines to the Stone Mountain System to gather gas from wells in and around the system (some of which are not currently producing due to the lack of infrastructure and connection to markets) for delivery into the East Tennessee system at an interconnection downstream of the Rogersville compression station.² East Tennessee will build a lateral (twelve inches in diameter) to the proposed site of interconnection pursuant to East Tennessee's blanket authority.

B. *Interstate Commerce*

It is well established that merely crossing state lines does not affect a gathering system's non-jurisdictional status.³ Accordingly, the next analytical step is to determine whether the facilities are gathering in nature under the applicable Commission test as applied to on-shore facilities.

C. *The Modified Primary Function Test*

Under NGA Section 1(b), the Commission has jurisdiction over the transportation and sale for resale of natural gas in interstate commerce and any natural gas company engaged in such transportation or sale. By the specific terms of the NGA, the Commission's jurisdictional power, however, does not extend to facilities used for the production or gathering of natural gas.⁴

¹We have been informed that the existing Stone Mountain Gathering System is regarded as a gathering system and is not currently regulated by the Commission.

² An extension of the existing Stone Mountain facilities, similar to the one now proposed, albeit with a different, longer route, was developed by the previous owners of Stone Mountain and discussed with three members of the Commission staff on June 4, 1998; staff, at that time, informally advised that the proposal was consistent with a gathering function.

³ See Columbia Gas Transmission Corporation and Norse Pipeline, L.L.C., 85 FERC ¶ 61,191 (1998), reh'g denied, 86 FERC 1161,137 (1999).

⁴ See 15 USC § 717(b) (1994) (noting that "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."). 15 U.S.C. § 717(b) (1994).

The NGA does not further define gathering, but the Commission has, on a case by case basis, described a set of factors it considers in determining the primary function of a facility, currently known as the "modified primary function test."⁵ For an on-shore facility, these factors include: (1) the length and diameter of the line; (2) the extension of the facility beyond the central point of the field; (3) the facility's geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facility; and (6) the operating pressure of the line.⁶ Additionally, the Commission also considers the purpose, location, and operation of the owner of the facility and whether the jurisdictional determination is consistent with the objectives of the NGA.⁷ Moreover, the Commission does not consider any one factor of the modified primary function test to be determinative and recognizes that all factors do not necessarily apply in all situations.⁸ The goal is to determine whether the primary function of the facility is to gather gas from production areas for delivery into a major transmission facility.

D. *Application of the Modified Primary Function Test to the Instant Facts*

Applying the factors outlined above to Stone Mountain's physical, geographic and other features suggests that Stone Mountain's facilities are most likely gathering in nature.

1. *Length and Diameter of the Lines*

The portion of Stone Mountain yet to be built will consist of 81 miles of two to ten inch line. The Commission generally considers lines with such a small diameter to be gathering lines, and has found lines with diameters up to 20 inches gathering⁹ when reviewed in the context of the other factors.¹⁰ And although several line sections in the system are fairly long by gathering standards—one of the lines currently on the system, and another proposed line, are in excess of 35 miles—these long lines are, or will be "backbone" pipelines that will collect gas from numerous feeding lines along their length. The Commission has held that such backbone lines are consistent with a gathering function.¹¹ Moreover, the small diameter of these lines, combined with their low pressure and the fact that no one factor is paramount in determining function status, suggests that length alone will probably not engender a transmission label.

2. *Central Point in the Field*

The central point in the field test is based on the idea that gathering involves the collection and movement of gas through various lines to a central point where the gas is delivered into a single line for transmission. Any facilities located upstream of the central point are considered non-jurisdictional gathering lines. The Commission has recognized that identifying the central point in the field is not always possible or easy and may be unnecessary to a gathering determination.¹² Here, however, Stone Mountain plans to gather gas from many fields and deliver the gas into an East Tennessee lateral and main line. Given, as noted infra, that there are producing properties throughout the Stone Mountain System and future production is expected, a logical conclusion would be that the central point, for these many fields would be that interconnection.¹³

⁵ONEOK Midstream Pipeline, Inc., 93 FERC 1161,042 (2000).

⁶ See Farmland Industries, Inc., 23 FERC 1161,063 (1983).

⁷ See Amerada Hess Corporation, 52 FERC 1161,268 (1990) and Amerada Hess Corporation, ("Amerada Hess II 67 FERC 1161,254 (1994).

⁸ Moreover, the Commission's policy for offshore facilities is somewhat different given the unique considerations in the offshore area. See Amerada Hess II, 67 FERC 1161,254 (1994) (noting that for off-shore facilities the Commission would consider, in addition to the Farmland factors, the changing and technical nature of offshore exploration and production).

⁹ ONEOK Midstream Pipeline, Inc., 93 FERC ¶ 61,042 at (2000).

¹⁰ See Noram Gas Transmission Company, 82 FERC ¶ 61,330 (1998) (holding that small diameter line segments—between 2 and 12 inches are "consistent with a gathering determination."). Id. at p. 62,308. See also, KN Gas Gathering, Inc., 69 FERC 61,378 at p. 62,435 (1994).

¹¹ See Arkla Gathering Services Company, 67 FERC ¶ 61,257 at p. 61,867 (1994), and Northwest Pipeline Corporation, et al., 59 FERC ¶ 61,115 at p. 61,434 (1992).

¹² See Arkla Gathering Services Company, 67 FERC 61,257 at p. 61,867 (1994).

¹³ See Id.

3. *Geographic Configuration*

Commission precedent holds that systems set up in web, spoke or backbone type designs are suggestive of a gathering function.¹⁴ Here, nine wells are currently producing and delivering gas into the system via laterals. Moreover, Stone Mountain plans to gather gas from existing wells not now able to produce due to the lack of a gathering system and delivery system, and what is projected to be numerous producing wells in the area via small diameter, low-pressure laterals. As projected, these laterals will give the system a backbone-type configuration, which, as noted above, the Commission generally finds to be indicative of a gathering function.

4. *Location of Processing Facilities and Compressors*

Commission precedent holds that for on-shore gathering facilities located upstream of a processing plant indicate a gathering function.¹⁵ Given the nature of the gas that feeds into the system, Stone Mountain currently sees no need for a processing plant.

The system has many small field compressors, which the Commission tends to view as supporting a gathering function.¹⁶

Further, the Rogersville compression station itself most likely performs a non-jurisdictional gathering function. Ranging from 150 to 5,000 horsepower, the size of the Rogersville compression station is similar to other compression facilities found to be gathering in nature.¹⁷ Moreover, at Rogersville, new gas supplies that come from exclusively non-jurisdictional lines are compressed above the pressure threshold needed for delivery into East Tennessee's lateral and main lines. As the Commission has stated, "we view the act of compressing gas volumes from a production area in order to enable lower pressure supplies to enter a higher pressure mainline as the last act in the gathering process."¹⁸

Additionally, the compressor at Rogersville acts to lower the line pressure upstream, allowing gas to come in from the producing areas and giving this low-pressure production a boost. Commission precedent holds that "a significant boost in pressure is often necessary to enable gas to move from the lower pressure gathering system into transmission lines" and "this type of compression is ... integral to the gathering function."¹⁹ Thus, because pressure change at Rogersville can increase the rate of production upstream of the wellhead, the compression at Rogersville serves to pull produced volumes through gathering lines; this clearly indicates a gathering function.²⁰ Finally, the Commission, in the El Paso²¹ cases—which analyzed the jurisdictional status of various compression facilities—recently held that only those facilities upstream of a processing system provided non-jurisdictional gathering services. The Rogersville compression station, while not upstream of any processing facilities, provides a boost in pressure both for the gas to enter the East Tennessee mainline and to increase production upstream, much like the compressors at issue in the El Paso cases, where the Commission noted that such activities, "would be non-jurisdictional gathering regardless of whether the cryogenic plant or any other non-jurisdictional processing facilities were located immediately downstream."²²

¹⁴ See e.g., *id.*

¹⁵ See *Amerada Hess Corporation*, 67 FERC ¶ 61,254 at p. 61,846 (1994).

¹⁶ See *GPM Gas Corporation v. EL Paso Natural Gas Co.*, 81 FERC 1161,208 (1997) (holding that "minimal compression in the field that facilitates production from low pressure wells is consistent with a gathering function."). *Id.* at p. 61,888.

¹⁷ See *id.* (finding a compressor with 7,660 horsepower to be gathering).

¹⁸ *Williams Field Services Group, Inc. v. El Paso Natural Gas Company*, 89 FERC 1161,161 at p. 61,149 (1999)

¹⁹ See *GPM Gas Corporation v. EL Paso Natural Gas Co.*, 81 FERC 1161,208 (1997)

²⁰ See *Williams Field Services Group, Inc. v. El Paso Natural Gas Company*, 89 FERC 1161,161 at p. 61,149 (1999).

²¹ See *id.*, and *GPM Gas Corporation v. El Paso Natural Gas Co.*, 81 FERC 1161,208 (1997); *El Paso Natural Gas Company*, 81 FERC 1161,209 (1997).

²² *Williams Field Services Group, Inc. v. El Paso Natural Gas Company*, 89 FERC 1161,161 at p. 61,149 (1999) (quoting *El Paso Natural Gas Company*, 84 FERC ¶ 61,048 at p. 61,205 (1998)).

5. *Location of Wells Along All or Part of the Facility*

Commission precedent holds that wells along all or part of the facility suggest a gathering function.²³ As noted above, nine wells along Stone Mountain are already operational and producing. Moreover, there are approximately 30 existing wells in close proximity to the system that are to be connected. Also, there is another producing field adjacent to the backbone that offers a potential tie-in and acreage in the area is currently being acquired to begin drilling operations. In total 62 wells are projected to be operational and connected to the system by September 1, 2001. The Commission currently allows consideration of anticipated production in determining gathering status.²⁴

6. *Operating Pressure*

The Commission has held that low operating pressure indicates a gathering function.²⁵ Most of the lines in the Stone Mountain system operate, or will operate, at pressures between 300 psig and 700 psig, which fall within, or very close to, the range the Commission normally accepts for gathering facilities.²⁶

7. *Purpose of Stone Mountain*

The central purpose of the Stone Mountain system is to gather gas from producing wells for ultimate delivery onto the proposed East Tennessee interconnect. Stone Mountain currently has only a few small market deliveries—a local municipality, a local restaurant, an asphalt plant, and a federal prison. Additionally, Stone Mountain projects that, in addition to the interconnection at East Tennessee, it will have only one delivery point in Tennessee, the Hawkins County Utility District. Furthermore, Stone Mountain has a very limited market for potential deliveries, which is clearly indicative of a primary purpose of gathering.

IV. CONCLUSION

The Stone Mountain system is comprised of small diameter, low-pressure lines, arrayed in a backbone configuration around the area's existing and projected producing wells. Moreover, the principal stated purpose of the system is to gather gas from producing wells for delivery to East Tennessee. Therefore, under the modified primary function test, as the Commission currently applies it, Stone Mountain most likely performs, and will continue to perform, a gathering function. Of course, any opinion as to the status of a gathering facility may be affected by new Commission or court decisions, or legislation. These contingencies, however, are factors that will always affect a determination of gathering status.

²³ See *Williams Natural Gas Company, et al.*, 67 FERC 1161,252 (1994).

²⁴ See *Dauphin Island Gathering System*, 79 FERC 61,391 (1997) (noting that "Dauphin Island anticipates attaching new production" from both shallow and deep water reserves.). *Id.* at p. 62,658.

²⁵ See *id.* at p. 61,829.

²⁶ See *El Paso Natural Gas Company*, 72 FERC 1161,220 at p. 62,012 (1995) (finding that pressures between 500 and 750 psig were "not inconsistent with a gathering function."). *Id.*

See Original For Map