

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Application of Laser Northeast
Gathering Company, LLC for
Approval to Begin to Offer, Render,
Furnish, or Supply Natural Gas
Gathering and Transporting or
Conveying Service by Pipeline to the
Public in Certain Townships of
Susquehanna County, Pennsylvania**

**Public Meeting May 19, 2011
2153371-OSA
Docket No. A-2010-2153371**

**CONCURRING STATEMENT OF
VICE CHAIRMAN JOHN F. COLEMAN, JR.**

Before the Commission for disposition is the Application of Laser Northeast Gathering Company, LLC (Laser) for a certificate of public convenience so that it may offer to transport or convey natural gas by pipeline for members of the public for compensation. Laser proposes to construct and operate an intrastate natural gas gathering and transport system in portions of Susquehanna County to enable producers to bring their natural gas to the market.

I agree with the decision to remand this case to the Office of Administrative Law Judge for the reasons expressed in the Motion. On the threshold issue of whether Laser is a public utility, I agree that the proposed service clearly meets the statutory definition of public utility. Specifically, the Code provides that a public utility includes any person or corporations owning or operating in this Commonwealth equipment or facilities for:

"Transporting or conveying natural or artificial gas by pipeline or conduit, for the public for compensation."

Definition of Public Utility, (1)(v), 66 Pa.C.S. §102. Laser will transport or convey natural gas via pipeline for compensation, and has testified that it is willing to serve the public, all gas producers, in its proposed area of service. Its proposed activities, as demonstrated by the record, are clearly consistent with the plain language of the definition of public utility.¹ The Commission's own regulations define a gathering line as "a pipeline that transports gas from a current production facility to a transmission line."²

When interpreting a statute, the rules of statutory construction require us to construe words according to their common and accepted usage. Accordingly, we may not ignore the clear intent of the Pennsylvania legislature due to policy concerns or defer to other jurisdictions in their management of a particular issue.³

¹ Findings of Fact 15-24, Recommended Decision.

² 52 Pa. Code §59.1.

³ 1 Pa.C.S. §§ 1903, 1921(b).

This Application does not implicate any of the exceptions to the definition of public utility or involve federal preemption. Gathering systems are not among the six exceptions identified in the definition of public utility. Laser is not a "producer" of natural gas, as it will neither own nor operate any of the wells it proposes to serve. The rules of statutory construction require us to construe exceptions expressed in statutes to exclude all others.⁴ Nor is this an area where the Commission is treading on federal jurisdiction. The Federal Energy Regulatory Commission has already ruled that Laser is not a public utility subject to its jurisdiction under the Natural Gas Act.⁵

I disagree with a number of the legal arguments advanced against this Application by some of the parties to this proceeding. To begin, I do not agree that in Nutmeg Energy, Inc., Gas City Oil and Gas Corporation, Exley Oil and Gas Corporation, Docket No. P-00062204 (Order entered February 26, 2007), we found a natural gas gathering company's gathering service was not public utility service. A review of Nutmeg shows that the jurisdictional status of the gathering component of Nutmeg's service was not at issue in the case. Rather, the issue in Nutmeg was whether the provision of natural gas distribution service to a specific class of end-user property owners (25 in number) was public utility service.

Nutmeg asked the Commission to find that its distribution service did not constitute public utility service. It did not request, and the Commission did not provide, any determinations regarding the public utility status of Nutmeg's gathering system. Additionally, Nutmeg filed a settlement agreement with the Commission in which it expressly stated that it was not holding itself out to serve the public. As the Commission made clear at page 9 of the Nutmeg order, the jurisdictional determination was based on "the specific factual scenario" in that case.

I also believe that our *Policy Statement* at 52 Pa. Code § 69.1401, which contains guidelines for determining public utility status of utility projects and services, including alternative energy systems, does not serve as a valid basis to deny public utility status to Laser. As a Policy Statement, these guidelines are not binding⁶ and do not trump the standard established in the case law discussed that service to a limited customer group can constitute public utility service.

Regarding the second criterion of the *Policy Statement*, I agree with the position set forth in the Motion that limitations in capacity should not serve as colorable grounds to deny public utility status to an entity that is otherwise holding itself out as willing to serve all members of the applicable customer group and makes a commitment on the record to expand its capacity, as needed, to meet increased customer demand. In analyzing the third criterion of the *Policy Statement*, we are to examine whether Laser's proposed service will be provided "to a defined, privileged and limited group when the provider reserves its right to select its customers by contractual arrangement so that no one among the public outside of the selected group is privileged to demand service." 52 Pa. Code § 69.1401(c)(3). As discussed in the Motion, the record demonstrates that Laser's service offering is not to a defined, privileged, limited group, but rather, is for the public, as defined by case law and Commission precedent.

⁴ 1 Pa.C.S. §1924(c).

⁵ Laser Marcellus Gathering Company, LLC, 130 FERC ¶61,162 (Order issued March 5, 2010).

⁶ See Pa. Human Relations Comm'n v. Norristown Area School Dist., 473 Pa. 334, 374 A.2d 671 (1977).

I also do not agree with the reasoning that Laser is not a public utility because its service is not being offered or provided to retail end users. Rather, Pennsylvania case law and Commission precedent are clear that a retail component of the service is not a requirement for public utility service. See, e.g., Rural Telephone Co. Coalition v. Pa. Pub. Util. Comm'n, 941 A.2d 751 (Pa. Cmwlth. 2008) (holding that offering wholesale telecommunications services to Internet Service Providers and other similar entities constitutes public utility service).

Granting Laser's certificate request would be consistent with the Commission's regulatory treatment of other intrastate pipelines in Pennsylvania. Currently, the Commission regulates the following eight entities as pipeline utilities in Pennsylvania: (1) Laurel Pipeline Company, L.P.; (2) Sunoco Pipeline, L.P., (3) Conoco Phillips Pipeline Co.; (4) Buckeye Pipeline Company, L.P., (5) PPL Interstate Gas Company, (6) Pentex Pipeline Company, (7) Sun Company, Inc. and (8) Allegheny Land & Exploration, Inc. What these examples show is that, for many years, the Commission has been issuing certificates of public convenience to pipelines providing transportation service.⁷ And, the Commission has been issuing these certificates, notwithstanding the fact that these entities service a narrow segment of the public – shippers, producers, etc. While there have been relatively few oil or gas pipeline utilities certificated by the Commission, as compared to some other types of utilities, that is not a valid reason to deny this Application.

Additionally, the Commission appears to have already concluded in several cases that natural gas gathering services provided to producers at negotiated rates was jurisdictional. See, e.g., Pa. Pub. Util. Comm'n v. Equitable Gas Company, et al., Docket Nos. R-2008-2029325, et al. and C-20066800 (Order adopting Recommended Decision entered February 26, 2009).⁸ While the Commission is not bound by *stare decisis*, it must issue consistent opinions and either follow, distinguish or overrule prior precedent. PECO v. Pa. Public Utility Commission, 756 A.2d 156 (Pa. Cmwlth 2000).

In closing, I would note that I take very seriously the concerns raised by citizens who participated in the public input hearings. Some individuals expressed fears that regulated gathering companies would misuse the power of eminent domain granted to public utilities by the Pennsylvania General Assembly. This is a valid concern, and if we were to ultimately approve Laser's application, I would support affording greater protections to property owners affected by these projects. I believe that pursuant to Section 1501 of the Public Utility Code, the Commission has the discretion to regulate

⁷ The Commission formerly regulated at least two intrastate crude petroleum and refined products gathering and transportation utilities, the National Transit Company and the Bradford Transit Company, and their aggregated gathering pipelines alone exceeded 2000 miles. The Commission approved their issuance of securities, the acquisition of the former by the latter, and on at least one occasion adjudicated a service dispute between a production customer served off a gathering line and the National Transit Company. Applications of Bradford Transit Company and National Transit Company, Docket Nos. 91667, 91668, 91669, (Order entered March 25, 1965); John Harris v. National Transit Company, Complaint Docket No. 20963, 1976 Pa. PUC LEXIS 50.

⁸ Equitable's Appalachian Gathering Service rate was the subject of a formal complaint, and approved after a contested, on the record proceeding. Equitable offers this service "... to any party desiring to transport gas through the gathering system" and its tariff states that "... All rates for this service shall be determined by negotiation." Separately, T.W. Phillips Gas and Oil Company, a certificated NGDC, offers Rate FTS ("Field Transportation Service"), for "... natural gas production to be injected from gas wells directly into the Company's gathering or transmission system..." and provides that the "Volumetric Delivery Rate may be discounted on an individual contract basis but in no case will the negotiated rate exceed the Maximum Volumetric Delivery Rate." Tariff Gas – PA PUC No. 7, Original Tariff Page No. 95.

the conduct of certificated gathering companies in their interactions with property owners, as we have done in the context of the siting and construction of high voltage electric lines.

However, the fear that the power of eminent domain might be misused is not a sufficient reason for the Commission to deviate from the regulatory framework established by the General Assembly. The legislature has on multiple occasions made the decision to expressly grant pipeline corporations the power of eminent domain, or to confer on them that power by including them within the category of public utilities.⁹ Pipelines companies serving the public were regulated by our predecessor agency under the Pennsylvania Public Service Company Law of 1913.¹⁰ The current definition of a pipeline public utility was derived from the Public Utility Law of 1937, and retained in the adoption of the Public Utility Code in 1978.¹¹ While too lengthy to detail here, the history of pipeline regulation in this Commonwealth shows that the legislature determined that public interest would be served by providing for pipeline utilities that enable producers and shippers to bring their oil, gasoline, natural gas, etc. to market at reasonable rates, and that eminent domain was a sometimes necessary element to effectuate this intent.¹² And as noted by the parties in the proceeding below, federally regulated pipeline utilities are already exercising the power of eminent domain for purposes of constructing gathering lines in Pennsylvania.¹³

It may be that changes in energy markets, technology, and federal and state law in the intervening period have obviated the need for state regulated pipeline utilities, or more narrowly, their power of eminent domain. If that is true, the prerogative to change the law rests not with the Commission but rather with the Pennsylvania General Assembly.

DATE: May 19, 2011


JOHN F. COLEMAN, JR.
VICE CHAIRMAN

⁹ Known as the Free Pipe Line Act of June 2, 1883 (P.L. 61. No. 54); as amended by the Act of April 30, 1929 P.L. 896; repealed and supplied by the General Association Act of 1988 (P.L. 1444, No. 177) through adoption of 15 Pa.C.S. §1511.

¹⁰ The Pennsylvania Public Service Company Law, Act of July 26, 1913, (P.L. 1374, No. 854).

¹¹ Public Utility Law, Act of May 28, 1937 (P.L. 1053, No. 286); Public Utility Code, Act of July 1, 1978, (P.L. 598, No. 116).

¹² See Commonwealth, ex. rel. v. Keystone Pipeline Co., 1934 Pa. Dist. & Cnty. Dec. LEXIS 500, ("It is a matter of history and we have found as a fact that the Act of June 2, 1883, P.L. 61, giving pipe line companies the right of eminent domain, was passed for the very purpose of meeting the monopoly in pipe line transportation held by the Standard Oil Company").

¹³ National Fuel Gas Supply Corporation v. Kovalchick Corporation, 2005 Pa. Dist. & Cnty. Dec. LEXIS 93.