

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

**Application of Laser Northeast
Gathering Company, LLC**

**Public Meeting November 10, 2011
2153371-OSA
Docket No. A-2010-2153371**

**MOTION OF
VICE CHAIRMAN JOHN F. COLEMAN, JR.**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition of Laser Northeast Gathering, LLC (Laser), to withdraw its Application for a certificate of public convenience filed on September 8, 2011. The Pennsylvania Independent Oil and Gas Association ("PIOGA") filed Objections to this Petition on September 29, 2011, and MarkWest Liberty Midstream, LLC ("MarkWest") and Laurel Mountain Midstream, LLC ("Laurel") filed a Joint Answer in Support of the Petition.

The Commission's disposition of Petitions to Withdraw in contested proceedings is governed by Section 5.94 of our regulations, 52 Pa. Code §5.94, and directs the Commission to apply a public interest standard. Laser now represents that its service plans have changed, and that it no longer intends to offer service to the public. Based on this representation, I find it to be in the public interest that its Petition be granted.

Markwest and Laurel also request that the Commission's prior Orders at this docket be rescinded, given Laser's change in business plans. They aver that Laser's business plans have changed, that the facts used to support the prior Orders are no longer present. This request is opposed by Laser.

In 2010, we addressed the issue of rescission of an interlocutory order in a case with a similar procedural and appellate history. In 2008, the Commission referred a dispute over purchased gas cost rates to the Office of Administrative Law Judge for additional hearings. As is the case here, a party filed both a Petition for Reconsideration and a Petition for Review with Commonwealth Court of that interlocutory Order. After the Commission granted the Petition for Reconsideration, pending later disposition on the merits, the Petition to Review was withdrawn. When the Commission subsequently denied the Petition for Reconsideration, the same party filed a second Petition for Review of the Commission's interlocutory orders with Commonwealth Court. Shortly thereafter, the parties to that case negotiated a settlement, withdrew the pending appeal, and requested that the remand proceeding be discontinued and that the prior Commission orders be rescinded.

While the Commission granted the request to discontinue the remand proceeding, it declined the request to rescind its prior orders. It had been asserted that the non-rescinded orders would serve as advisory opinions, which was disfavored under the law. The Commission

rejected this argument, noting its full authority to issue declaratory orders under Section 331(f) of the Public Utility Code, 66 Pa. C.S. §331(f).¹

Separately, I note that while the determinations in the prior Orders issued at this docket were specific to the interlocutory issues presented to us, other statements were of generally applicable legal principles. These Orders did not adjudicate the merits of Laser's application. The Commission also granted Exceptions for the purpose of acknowledging prior Commission and Commonwealth Court decisions that were relevant. For example, the Commission concluded that:

- It had the authority, under Section 502 of Public Utility Code, to enforce its orders approving settlement provisions agreed to by the parties as a condition for resolving a case, including those involving certificates of public convenience.²
- Service to a limited class of customers may constitute service "to or for the public."³
- That the provision of natural gas gathering and transportation services was not exempt from Commission jurisdiction under the definition of "public utility" at Section 102 of the Public Utility Code, as had been asserted, but that the determination of utility status was a fact specific inquiry.⁴

The Commission has the full authority and the obligation to affirm its prior orders, correct the misapplication of Commonwealth Court precedent, and provide guidance to the public regarding issues within its jurisdiction for future adjudications. Rescinding these Orders would in fact foster regulatory uncertainty about the validity of prior, long-standing Commission decisions.

Additionally, I conclude that rescission is no longer an appropriate option for one other reason. There are two other cases involving applications for certificates of public convenience for natural gas gathering and transportation service that are pending before the Commission. In one, the presiding Administrative Law Judge has required the parties, via a Prehearing Order, to address all the directed questions issued by the Commission at this docket, including both those attached to our June 14, 2011 Order, and those attached to the Secretarial Letter issued on August 25, 2011.⁵ The Applicant in that case has already submitted its Direct Testimony, and public input hearings have already occurred. It would be impractical and illogical for us to require the parties to this case to address these directed questions, but at the same time rescind these Orders and thereby instruct them to ignore the guidance provided therein.

¹ *Pennsylvania Public Utility Commission v. T.W. Phillips Oil and Gas Company*, R-2008-2013026 (Order entered April 16, 2010).

² The Commission has on numerous occasions approved settlements of cases involving certificates of public convenience that included provisions that required the public utility to make charitable donations to a non-profit entity, maintain a corporate presence in a specific city or maintain a certain minimum level of employees for period of time, etc. All of these actions are normally fully within the discretion of utility management, and not something the Commission could compel. The Commission has been monitoring and enforcing compliance with orders approving settlement provisions such as these for many years. See *Statewide Sustainable Energy Board*, Docket No. M-00031715 (Order entered August 12, 2003)

³ *Waltman v. Pa. PUC*, 596 A.2d 1221(Pa. Cmwlth. 1991); *Rural Telephone Co. Coalition v. Pa. PUC*, 941 A.2d 751, 760 (Pa. Cmwlth. 2008)

⁴ "We note that, while natural gas gathering and transportation service can meet the definition of "public utility" service, and in the case of Laser's proposed operations, does meet the definition of "public utility" service, not all gathering and transportation service providers will be considered public utilities and subject to the Commission's jurisdiction." (emphasis added) *Application of Laser Northeast Gathering Company, LLC*, Docket No. A-2010 (Order entered June 14, 2011).

⁵ *Application of Peregrine Keystone Gas Pipeline, LLC*, Docket A-2010-2200201 (Fourth Prehearing Order Issued September 12, 2011).

Finally, I would note that a bill has recently been introduced in the General Assembly that would address the jurisdictional status of natural gas pipeline corporations that provide gathering services.⁶ As I acknowledged in my previous statement at this docket, the regulatory scheme established in the law for intrastate pipeline utilities may be obsolete due to subsequent changes in markets, law and technology. The Commission stands ready to assist the General Assembly in its review of this matter, and will promptly implement any legislation signed into law.

THEREFORE, I MOVE THAT:

1. The Petition of Laser Northeast Gathering Company, LLC to Withdraw its Application be granted.
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

DATE: November 10, 2011


JOHN F. COLEMAN, JR.
VICE CHAIRMAN

⁶ House Bill 1926 of 2011.