FERC Regulation of LDC Services

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FERC Jurisdiction Over LDCs

- NGA was never intended to apply to LDCs

- Applies to “natural-gas companies” which are defined as a “person[s] engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.”

- § 1(b) says NGA “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.”
East Ohio and the Hinshaw Amendment

- 1950 Supreme Court held in *East Ohio* that operations of LDC could make it a natural-gas company if it sells gas that was transported by a high-pressure interstate pipeline. Court viewed this not as local distribution but as transportation in interstate commerce.

- 1954 Congress effectively overruled *East Ohio* by enacting “Hinshaw pipeline” exemption in NGA § 1(c).
NGA § 1(c) establishes the following required characteristics of a Hinshaw pipeline:

1. Pipeline must receive the gas within the State.
2. Gas must be consumed within the State.
3. Pipeline must be regulated by the State.
Preservation of Hinshaw Pipeline Status

- Important for LDC to preserve (not jeopardize) its Hinshaw pipeline exemption

- If a customer of the LDC delivers gas out of state, LDC could lose its Hinshaw exemption (even if the gas is delivered back to the state)

- LDC should be alert to this risk of a customer delivering gas out of state
NGA § 7(f) Service Area Pipelines

Q: What if a Hinshaw pipeline wants to serve market demand that is immediately adjacent to the State in which it operates?

A: It may qualify for a NGA § 7(f) Service Area Determination.

- NGA § 7(f) enables LDC to enlarge or extend its distribution facilities to supply out of State market immediately adjacent to its facilities without becoming subject to FERC regulation.
NGA § 7(f) Service Area Pipeline Requirements

Q: How does LDC qualify for NGA § 7(f) service area determination?

A:

1) LDC provides transportation service to the “ultimate consumers” in that service area

2) LDC is subject to exclusive jurisdiction of the State commission in State where the gas is consumed
NGA § 7(f) Service Area Pipeline Considerations

Q: What other factors does FERC consider in deciding whether LDC qualifies for a § 7(f) service area determination?

- If the company makes sales of gas for resale;
- If the company has an extensive transmission system;
- If the state or local agencies regulate the company’s rates, and
- If the service area determination will affect other LDCs providing service in the same area.
Hinshaw Pipelines and § 7(f) Pipelines Compared

- The facilities of a Hinshaw pipeline are located entirely within one state and are exempt from the NGA.
- The facilities of a company with a § 7(f) service area determination cross state lines, making the company a jurisdictional “natural-gas company” under the NGA. However, FERC generally exempts § 7(f) companies from complying with NGA requirements.
- A company may hold both Hinshaw facilities and § 7(f) facilities. But the two facilities may not interconnect (would jeopardize Hinshaw status).
LDC As Transportation and Storage Service Providers

- If a LDC (Hinshaw or a 7(f) pipeline) wants to transport or store interstate gas without jeopardizing its NGA-exempt status, it can do so under 18 CFR § 284.224 (FERC’s “Blanket Transportation Certificate” program).

- These regulations allow LDCs to engage in sales and transportation (including storage) of natural gas *to the same extent as an intrastate pipeline under § 311 of the NGPA.*
Quick Background on NGPA and § 311

- Gas shortages of 1970s caused in part by bifurcated (interstate/intrastate) regulation of producer sale prices
- Led to NGPA of 1978
  - Complex system of wellhead (producer) price ceilings by category (now entirely deregulated).
  - **Section 311 authorization of certain sales and transportation**
    - Allows for integration of interstate and intrastate grid under certain circumstances
    - Intrastate pipelines can participate without becoming jurisdictional under NGA
Blanket Transportation Certificates for LDCs and Hinshaw Pipelines

- 18 C.F.R. § 284.224 (parallels regulations for intrastate pipelines under § 311)
- Allows Hinshaw pipeline to retain its exempt status while providing § 311-type transportation “on behalf of” an interstate pipeline or an LDC served by interstate pipeline.
- But not without limitation: Must still be predominantly in the business of local distribution
Key Requirements of 18 CFR § 284.224, et seq.

- “On behalf of” interstate pipeline or LDC served by interstate pipeline. Means it must have custody or title to the gas before, during or after the transportation.
- Nature of service – firm or interruptible transportation or storage (considered by FERC to be a form of transportation)
- “Fair and Equitable” rates (more to come on this)
- Statement of Operating Conditions (non-discriminatory, no undue preference)
- Buy/Sell prohibition and SMHT rules an open question (Sequent orders and NOI)
“Fair and Equitable” Rate Election

- A pipeline can elect to design rates based on a cost-based methodology approved by its state commission.
- A pipeline can use rates on file with a state commission for a comparable (i.e., city-gate) service.
- A pipeline can apply to FERC to set the rates by order.
LDC As Provider Of Storage Service

- Generally, same principles apply to storage as apply to transportation under 284.224, except may be more latitude for storage rates (incl. possibility of market based rates).

- EPAct 2005 added new NGA § 4(f) which allows FERC to approve market based rates even if market power as long as it’s in the public interest and necessary to encourage the construction of new storage capacity.
LDC As Sellers of Natural Gas

- Blanket Marketing Certificate (18 CFR § 284.402, et seq.)
  - Program allows LDC to make wholesale sales at negotiated rates, terms and conditions
  - Self-implementing, no formal application required
  - Pre-granted abandonment authority
  - Limited FERC jurisdiction
  - Reporting requirements including code of conduct (if LDC engages in reporting to publishers of gas price indices)
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ATTACHMENTS

Table of Contents

Attachment B  NGAA Section 3(i), 15 U.S.C. § 717c(c).
Attachment C  NGAA Section 7(0), 15 U.S.C. § 717k(0).
Attachment E  Interim Rate Changes Municipal Gas Dist. 74 FERC ¶ 61,254 (1996).

Capacity Transfer on Intermate Natural Gas Pipeline, Notice of Inquiry, 132 FERC ¶ 61,064 (2010).