

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of Mid-Utah) DOCKET NO. 15-2577-01
Gas Pipeline Co., LLC Requesting a)
Declaratory Ruling by the Public Service) DECLARATORY RULING
Commission of Utah)

ISSUED: February 4, 2015

PROCEDURAL HISTORY AND BACKGROUND

On January 23, 2015, Mid-Utah Gas Pipeline Co., LLC (“Mid-Utah”) filed a Petition Requesting a Declaratory Ruling (“Petition”) from the Public Service Commission of Utah (“Commission”) establishing its jurisdiction over a 38 mile natural gas pipeline (“Pipeline”) Mid-Utah plans to build beginning west of Scipio, Utah in Millard County at the Kern River Gas Transmission (“Kern”) pipeline and ending in Sigurd, Utah in Sevier County.

The Petition

The Petition indicates Mid-Utah will own and operate the Pipeline to provide natural gas required to operate a 580 megawatt electricity generating plant permitted and licensed to be constructed by Sevier Power Company, LLC (“Sevier Power”). Although Mid-Utah’s principal customer will be Sevier Power’s power plant in Sigurd, Utah, Mid-Utah indicates there may be excess capacity on the Pipeline available to other Utah customers in areas along the Pipeline. Mid-Utah represents all of the gas transported over the Pipeline will be consumed in Utah.

According to the Petition, Mid-Utah’s natural gas purchases will be transported over the Kern pipeline. Mid-Utah further represents it consulted with representatives from Questar Pipeline Company (“Questar Pipeline”) and an in-house attorney for Questar Gas

Company (“Questar Gas”), however, neither entity has facilities or capacity in the area to serve Mid-Utah.

Mid-Utah states it will seek a certificate of public convenience and necessity before it begins construction of the Pipeline and is in the process of obtaining the required consent, franchises, and permits to construct the Pipeline as required by Utah Code Ann. § 54-4-25(4), including a permit to traverse minor parts of Bureau of Land Management (“BLM”) land. According to Mid-Utah, the BLM has required evidence that the Commission will have jurisdiction over Mid-Utah’s intrastate Pipeline, which is the impetus for its Petition. Mid-Utah requests the Commission make such a ruling on its Petition by February 6, 2015, to enable Mid-Utah to timely complete the permitting process and to begin constructing the Pipeline.

In support of its Petition, Mid-Utah provides the following assertions in the context of the definitions found under Title 54 of the Utah Code, which, among other things, establish the Commission’s jurisdiction over public utilities:

Pursuant to Utah law, Mid-Utah will be a “gas corporation” which includes:

“... every corporation and person ... owning, controlling, operating, or managing any gas plant for public service within this state or for the selling or furnishing of natural gas to any consumer or consumers within the state for domestic, commercial, or industrial use ...”

Utah Code Ann. § 54-2-1(11).

Pursuant to Utah law, Mid-Utah will own “gas plant” which includes:

“... all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the ... transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.”

Utah Code Ann. § 54-2-1(12).

Pursuant to Utah law, Mid-Utah will be a “public utility” which includes:

“... every ... gas corporation ... where the service is performed for, or the commodity delivered to, the public generally, or in the case of a gas corporation ... where the gas ... is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use.”

Utah Code Ann. § 54-2-1(19)(a).

Pursuant to Utah law, the Commission will have jurisdiction over Mid-Utah

because:

“If any ... gas corporation ... performs a service for or delivers a commodity to the public, it is considered to be a public utility, subject to the jurisdiction and regulation of the commission and this title.”

Utah Code Ann. § 54-2-1(19)(b)(i).

Pursuant to Utah law, the Commission also will have jurisdiction over Mid-Utah

because:

“If a gas corporation ... sells or furnishes gas ... to any member or consumers within the state, for domestic, commercial, or industrial use, for which any compensation or payment is received, it is considered to be a public utility, subject to the jurisdiction and regulation of the commission and this title.”

Utah Code Ann. § 54-2-1(19)(b)(ii).

Based on the foregoing, Mid-Utah asserts that Mid-Utah will be a “gas corporation” because it will own “gas plant” and provide natural gas to Sevier Power and possibly others within the State of Utah for industrial use. Accordingly, Mid-Utah asserts that it will be a “public utility” subject to the jurisdiction of and regulation by the Commission.

Mid-Utah also cites to the federal Natural Gas Act, which provides an exemption from regulation of gas companies by the Federal Energy Regulatory Commission (“FERC”), known as the Hinshaw Exemption:

(c) Intrastate transactions exempt from provisions of chapter; certification from State commission as conclusive evidence.

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

15 U.S.C. § 717(c).

According to the Petition, the Hinshaw Exemption is applicable if Mid-Utah takes service from an interstate pipeline, Mid-Utah’s transportation rates are regulated by the Commission, and all gas transported on the Pipeline is consumed in the State of Utah. Mid-Utah represents that Kern River Pipeline, an interstate natural gas pipeline, will transport gas to Mid-Utah within the boundaries of Utah. Mid-Utah further represents that all of the gas transported on Mid-Utah’s pipeline will be consumed within the State of Utah and the transportation rates for

Mid-Utah's pipeline will be subject to the regulation of the Commission. Mid-Utah asserts that based on the facts presented, Mid-Utah qualifies for the Hinshaw Exemption, Section 1(c) of the Natural Gas Act (15 USC 717 (c)) and therefore is not subject to the jurisdiction of the FERC.

Finally, Mid-Utah asserts that no public utility under the Commission's jurisdiction will be adversely affected by a ruling favorable to Mid-Utah. Mid-Utah further asserts that Questar Gas either has no facilities where Mid-Utah's pipeline will go or the facilities Questar Gas has do not have capacity to serve Mid-Utah.¹

Division of Public Utilities' Comments

Pursuant to the Commission's January 26, 2015, notice of filing and comment period, the Division of Public Utilities ("Division") submitted comments in support of the Petition on January 30, 2015. Relying on the facts represented by Mid-Utah, as applied to the pertinent statutes discussed above, the Division concludes that Mid-Utah will be a public utility as defined by Utah Code Ann. § 54-2-1(19)(a) "because it proposes to be a gas corporation with gas plant that will furnish gas for industrial use within the state of Utah."² The Division further states that "[i]f Mid-Utah is compensated for such service, it will also meet the definition of a public utility as defined by Utah Code Ann. § 54-2-1(19)(b)(ii)."³

The Division further concludes, based on the facts represented by Mid-Utah, that the proposed Pipeline will be "'gas plant,' Mid-Utah will be a 'gas corporation' with proposed 'gas plant' furnishing gas for 'industrial use' within the state of Utah, and, as such, Mid-Utah

¹ See Petition at p. 5, *citing* Utah Admin. Code R746-101-2(D).

² Division Comments at p. 4.

³ *Id.*

will qualify as a ‘public utility.’ As a result, Mid-Utah and its proposed pipeline will be subject to Commission jurisdiction.”

With respect to the Hinshaw Exemption to FERC regulation discussed above, the Division applied the facts presented in the Petition to FERC case law and concludes the Pipeline qualifies for the exemption.⁴

Finally, the Division addresses Mid-Utah’s statement that Utah Code Ann. § 54-4-25 must be reviewed. The Division states because that statute addresses a certificate of public convenience and necessity (“CPCN”) and related procedures, and there is no pending CPCN application from Mid-Utah, analysis of that statute at this time is unnecessary.

DISCUSSION, FINDINGS AND CONCLUSIONS

Based upon the facts presented in the Petition, we agree with the Division and find that under Utah law, the Commission would have jurisdiction over the proposed Pipeline under the facts as presented by Mid-Utah. Pursuant to Utah Code Ann. § 54-2-1(11), Mid-Utah would be considered a “gas corporation” because it will own “gas plant,” as defined by Utah Code Ann. § 54-2-1(12), and because Mid-Utah intends to provide natural gas to Sevier Power and possibly others within the state of Utah for industrial use. As such, based on the facts presented in the Petition, we conclude that Mid-Utah would be a “public utility” as defined in Utah Code Ann. § 54-2-1(19)(a), subject to the jurisdiction of and regulation by the Commission. We agree with the Division that that consideration or analysis with respect to Utah Code Ann. § 54-4-25 (the CPCN statute) is premature at this time.

⁴ See Division Comments at p. 6, *citing* 74 FERC ¶ 61,254 (1996).

Although we do not disagree with the Division's conclusions with respect to qualification of the Pipeline for Hinshaw Exemption to FERC regulation, we make no findings or conclusions with respect to FERC's regulation or jurisdiction over the proposed Pipeline.

DECLARATORY RULING

Pursuant to the foregoing discussion, findings and conclusions, and based on the lack of opposition to the Petition, we declare that based on the facts presented in the Petition, Mid-Utah and its proposed Pipeline would be subject to the jurisdiction of and regulation by the Commission.

DATED at Salt Lake City, Utah this 4th day of February, 2015.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#263544

DOCKET NO. 15-2577-01

- 8 -

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on the 4th day of February, 2015, a true and correct copy of the foregoing was served upon the following as indicated below:

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