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Gathering Line Company Applies for Public Utility Status

By Lou Crocco

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A gathering line company's application with the Pennsylvania Public Utility Commission (PUC) to become a public utility has stirred debate on both the regulation of gathering lines in Pennsylvania and the power of eminent domain. Houston, Texas-based Laser Marcellus has applied to the PUC for a certificate of public convenience, which, if approved, would make the company a public utility. The company, working in the northeast region of the state, anticipates the commission to make a decision early next year.

The PUC will have regulatory authority over the safety of Laser's gathering lines, if it approves the application. "Unless it's a public utility, we really have no authority over the lines," said PUC spokesperson Jennifer Kocher. "This will be our first if it's approved." Kocher added that the PUC is working with legislative leaders to write legislation that would establish regulatory oversight over the gathering lines for non-public utilities, and clarify its authority over other gas lines.

Laser is planning to build a system in Susquehanna County, Pa., to gather up to 400,000 Mcf/d (million cubic feet per day) of natural gas from Marcellus Shale wells drilled in the county and move that gas to the Millennium Pipeline in New York. The Marcellus Shale is a sedimentary rock formation containing largely untapped natural gas reserves. Laser's \$50 million project would include a mainline running from Millennium south to the Tennessee Gas Pipeline's interstate system.

A "yes" from the PUC would also give Laser the right of eminent domain—the taking of property for the public good.

Many local residents and public officials oppose the application. Pa. State Representatives Phyllis Mundy (D-Luzerne) and Karen Boback (R-Columbia) sent letters to PUC Chairman James H. Cawley opposing the company's request. "A public utility must act in the public interest. These companies want to reap the benefits of being a public utility without the obligations," Mundy said in a statement.

But Tom Sniscak, a Harrisburg, Pa.-based attorney representing Laser Marcellus, blamed some of the objections to the public utility application on attorneys who would no longer negotiate fees for landowners. "The way this works is that the company would pay the going market rate for the rights to the land," Sniscak said. "That takes the attorney out of it."

Sniscak added that eminent domain is rarely used and difficult to apply. "The courts will appoint a board of review for anyone objecting to the use of eminent domain," Sniscak said. "That's a board of the landowner's peers."

Duane Morris attorney David M. DeSalle agreed with Sniscak's assessment. "Eminent domain is rarely used," DeSalle said. "But it's a valuable instrument in cases where someone's action truly is detrimental to the public good. Exercising eminent domain for installation of a natural-gas gathering system is a novel issue in Pennsylvania, and will be closely watched." Meanwhile, the PUC is working with legislative leaders to write legislation clarifying jurisdiction over the natural-gas pipelines, especially the gathering lines that move gas from the well to the main transmission pipeline.

The PUC held hearings this past April to solicit comments from the industry, citizens' groups and environmental groups. The PUC's role is limited to health and safety issues involving production field pipelines that move gas for a fee. The commission has little, if any, authority over collection and gathering systems owned by well producers.

The PUC will also consider regulating the rates that intrastate pipeline operators charge other companies to move gas. In addition, the state currently has no open-access or nondiscrimination regulations to give well producers a right to move their gas through existing pipelines.

"We once had a few systems to regulate, now we have exponential increases in the number of wells and lines," said Jennifer Kocher. "The commission's primary concern is safety. Kocher added that a timeline for introduction of the legislation covering pipeline jurisdiction is still being drafted.

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