

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 23, 2014

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Garry A. Brown
Gregg C. Sayre
Diane X. Burman

CASE 14-G-0037 - Petition of Xpress Natural Gas, LLC for a
Declaratory Ruling Concerning Regulation of a
Proposed Compressed Natural Gas Supply Station
and Related Facilities.

ORDER GRANTING CLARIFICATION IN PART

(Issued and Effective October 28, 2014)

BY THE COMMISSION:

On July 30, 2014, Xpress Natural Gas, LLC (XNG) filed a petition for rehearing and/or clarification (Petition),¹ requesting clarification that, under the Declaratory Ruling Regarding Jurisdiction (XNG Ruling) issued on June 30, 2014 in this proceeding, its service to multiple customers on separate properties from a single "daughter station" would not bring any of the facilities used within the ambit of the "gas plant" as defined in Public Service Law (PSL) §2(10). It was decided in the XNG Ruling that, subject to certain limitations, XNG's proposed siting and operation of a compressed natural gas (CNG) fueling station (CNG facility), and subsequent delivery of CNG

¹ While XNG sought rehearing and clarification, inasmuch as it did not point to an error of law, and any misunderstanding of its proposal is not an error of fact, its Petition is treated as one for clarification.

to facilities at customer locations throughout the state, is not subject to the Commission's jurisdiction. The XNG Ruling specifically declared, "XNG is not subject to this Commission's jurisdiction only to the extent that it will serve one customer per Regulation and Metering station and its pipes do not cross into the public rights-of-way."²

As discussed in the XNG Ruling, XNG is a provider of truck-transported CNG and liquefied natural gas to industrial and commercial businesses located in the Northeastern U.S. and Canadian Maritimes. Its planned CNG facility will be located in Manheim, NY adjacent to the Iroquois interstate pipeline and will interconnect directly with that pipeline on property XNG will own. Gas taken from the pipeline will be compressed at that site and from there the compressed gas will be delivered to customer sites where "daughter stations," referred to as "Regulation and Metering stations" in the XNG Ruling, will be built. At those daughter stations, the gas will be decompressed and metered for sale to the customer.

XNG would own the equipment at the daughter stations situated before its meters while the customers would own the equipment beyond the meters. Any piping required to transport gas from the location of the daughter station at the customer's site to other locations at the customer's premises would be the responsibility of the customer, not of XNG.

THE PETITION

According to the Petitioner, the meaning of the "Regulation and Metering station" terminology used in the XNG Ruling is unclear. The Petitioner reiterates that it will construct daughter stations at customer sites where compressed gas will be received. It explains that, while it will generally

² XNG Ruling, p. 5.

construct a daughter station for each customer, where two or more customers are situated on adjacent properties, it may build just one daughter station. In those cases, it explains, multiple pipes will exit the daughter station following decompression, with separate meters for each customer.

Therefore, the Petitioner explains, there may be multiple metering stations at a single daughter station. Petitioner applies for a clarification that using a daughter station, as described above, to serve multiple customers does not bring any of the facilities used within the ambit of the definition of "gas plant."

DISCUSSION AND CONCLUSION

Under the PSL, the Commission's jurisdiction extends to the manufacture, conveying, transportation, sale or distribution of natural gas for light, heat or power; to gas plant; and, to the entities owning, leasing or operating gas plant.³ PSL §2(10) specifically excludes from the definition of "gas plant" "property used solely for or in connection with the business of selling, distributing or furnishing of gas in enclosed containers." Further, a "gas corporation" subject to regulation under PSL §2(11) is defined as an entity "owning, operating or managing any gas plant... ."

Resolving the question raised in XNG's Petition therefore requires a determination of whether the property XNG proposes to operate meets the definition of "gas plant" and whether XNG fits within the definition of "gas corporation." Making that determination depends on the circumstances. Petitioner specifically asks that a single daughter station serving multiple customers be treated as outside the scope of the definition of "gas plant." As noted in the XNG Ruling, in

³ PSL §5(1)(b).

some cases, such a project could lead XNG or its customers to install pipelines that would facilitate the distribution of the decompressed gas. These pipes could potentially use public rights-of-way or cross property lines for the purpose of serving a customer who is not the owner of the property where the daughter station is sited, posing safety risks to the public if they are not adequately maintained. In either event, under those circumstances, the owner of the pipeline would become a gas corporation subject to the Commission's regulation.

Where a pipeline serves a customer by using a public right-of-way or crossing a property line, it falls within the definition of gas plant used for the sale or distribution of gas under PSL §2(10). The owner of the pipeline becomes a "gas corporation" as that term is defined at PSL §2(11) because the sale or distribution of gas will be made "to others," who are not the "tenants" exempt from regulation under §2(11).⁴ Consequently, if a pipeline from a daughter station serves a customer by using a public right-of-way or crossing onto a separate property, the owner of the pipeline, be it XNG or someone else, would be subject to our jurisdiction. Approval under PSL §68 would be required before such a pipeline could be constructed or service could commence to the customer not

⁴ Case 29001, Whiting Roll-Up Door Manufacturing Corporation, Order Concerning Jurisdiction (issued November 29, 1985), p. 18-19; Case 27378, Whiting Roll-Up Door Manufacturing Corporation, Declaratory Ruling Regarding Jurisdiction (issued July 6, 1978), p. 2-6.

located on the property where the daughter station is sited, and the service would be subject to Commission regulation.⁵

If, however, only one property owner is served per "daughter station" and pipelines do not use public rights-of-way or cross property lines for the purpose of serving other customers, the service will not be subject to Commission jurisdiction. That is, multiple customers may be served from one daughter station, to the extent the customers are "tenants" outside the ambit of regulation under §2(11) because of being located on the same property as the daughter station (such as tenants in an industrial park).⁶ In those instances, the daughter stations and their appurtenant pipelines would not become gas plant and their owner would not become a gas corporation.⁷ The XNG Ruling is clarified accordingly.

⁵ Cf. Case 13-S-0248, Monroe Community College, Order Granting a Certificate of Public Convenience and Necessity, Providing for Incidental and Lightened Ratemaking Regulation, and Denying Petition in Part (issued October 18, 2013), p. 10 (holding that a steam corporation which was providing service to only one customer had to seek the Commission's approval before expanding its steam service to multiple customers).

⁶ XNG is reminded that some configurations it might select would subject its operations to the federal and state gas safety regulations at 49 C.F.R. §192.1(b)(5) and 16 NYCRR §255.1(d)(11), respectively.

⁷ Cf. Case 93-E-0999, Grumman Aerospace Corporation, Declaratory Ruling (issued January 26, 1994), p. 8-9 (holding that an entity reselling electricity to a customer on a separate property was an electric corporation); Case 93-E-0272, Niagara Mohawk Power Corporation, Declaratory Ruling on Regulation of Sithe/Independence Power Partners (issued February 9, 1994), p. 11-12 (holding that, although the sale of electricity to tenants is exempt from regulation, respondents were subject to regulation because they failed to describe their lease arrangement with sufficient particularity to allow a determination that a landlord-tenant relationship existed).

The Commission orders:

1. The Petition of Xpress Natural Gas, LLC, and its request for clarification, are granted in part to the extent discussed in the body of this Ruling.

2. This proceeding is reopened for the purpose of considering the Petition of Xpress Natural Gas, LLC and is thereafter closed.

By the Commission,

KATHLEEN H. BURGESS
Secretary