

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 26, 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

DECLARATORY RULING REGARDING JURISDICTION

(Issued and Effective June 30, 2014)

BY THE COMMISSION:

BACKGROUND AND INTRODUCTION

On February 4, 2014, Xpress Natural Gas, LLC (XNG) filed a Petition for Declaratory Ruling (Petition), in which it requests that the Commission declare XNG's proposed siting and operation of a compressed natural gas (CNG) fueling station (CNG Facility), and associated connection of facilities at customer locations throughout the state would not be subject to the Commission's jurisdiction.

XNG is a provider of truck transported CNG and liquefied natural gas supply to industrial and commercial businesses in the Northeastern United States and Canadian Maritimes. XNG states that it has delivered over 4 billion cubic feet of natural gas to customers in the Northeast and Canada over the last 18 months. XNG and its affiliate currently

own and operate two CNG fueling stations in Maine, similar to the CNG Facility proposed in its Petition.

As more fully described in this ruling, and consistent with our recent ruling in Case 13-G-0187,¹ XNG is not subject to the Commission's jurisdiction within the parameters established by the Procurement Ruling.

THE PETITION

XNG states that the proposed location of its fueling station is on Route 167 in Manheim, NY. According to the company, the Iroquois pipeline runs through this location and provides direct access to a source of natural gas for the CNG Facility that does not require piping to be installed on or under any uncontrolled private or public property. The gas will be drawn and conditioned to remove excess moisture. The gas will then be compressed and loaded into trailers, as needed, to be delivered to customer sites throughout the Northeast.

At the XNG fueling station, the company submits that the equipment to be installed includes: (a) a metering station and pipeline extension built to the Iroquois safety and specifications; (b) a double tower desiccant dryer system; (c) between two and four three hundred horsepower electric powered compressors; (d) a cooling system to accelerate filling times; and (e) up to four dispensing stations for filling trailers.

According to XNG, at the typical customer location, the offloading equipment consists of connection equipment, a decompression skid, heaters, control devices, and a meter

¹ Case 13-G-0187, Petition of Procurement Energy, LLC for a Declaratory Ruling Regarding Regulation of Compressed Natural Gas Filling Stations and Related Facilities, Declaratory Ruling Regarding Jurisdiction (issued August 16, 2013) (Procurement Ruling).

(Regulation and Metering station). XNG states that it owns the equipment before the meter and the customer owns the equipment beyond the meter. XNG also states its operation is entirely based upon the business of selling, distributing and furnishing of gas in enclosed containers, which are not considered to be "gas plant" and, therefore, it is not a gas corporation subject to the Commission's jurisdiction.² XNG also states that its operations are materially the same as those of Procurement Energy, Inc., a company not subject to the Commission's jurisdiction for similar practices.

In the Petition, and in response to an information request by Staff, XNG explains that for its compressor site, it requires permit approvals from the local municipalities. XNG further states that there are numerous CNG refueling stations in New York, each of which have been constructed and operated in accordance with NFPA 52 standards and subject to the oversight of local government officials. Petitioner explains that this code applies to CNG systems and dispensaries. Finally, XNG states that the facility will also be reviewed under the State Environmental Quality Review Act.

Regarding the tube trailers which XNG expects to utilize, it explains that the trailers are manufactured, operated and maintained according to Department of Transportation and American Society of Mechanical Engineers "ASME" Boiler and Pressure Vessel "BPV" Code. The transportation of CNG over public roads and highways is subject to Federal and State DOT standards.

Regarding the equipment at customer sites, Petitioner states that such equipment would be subject to regulation and

² The Procurement Ruling explains that under the PSL "Gas Plant" excludes "property used solely for or in connection with the business of selling gas in enclosed containers," PSL 5(1) (b).

oversight by the local fire marshal and other relevant municipal officials. Petitioner explains that any piping required to transport natural gas from the location of the trailer at a customer's site to other locations at the customer's location will be the responsibility of the customer, not of XNG. The equipment at the customer sites would need to be reviewed by local code enforcement officers to ensure compliance with NFPA 52.

DISCUSSION AND CONCLUSION

Under the Public Service Law (PSL), this 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 The PSL specifically defines the terms "gas plant" and "gas corporation." The definition of "gas plant" specifically excludes "property used solely for or in connection with the business of selling, distributing or furnishing of gas in enclosed containers."⁴ Further, "gas corporation" is defined as an entity "owning, operating or managing any gas plant... ."⁵ Accordingly, when considering the Petition, we must determine whether the property XNG proposes to operate meets the definition of "gas plant" and whether XNG fits within the definition of "gas corporation." Here, subject to the discussion below, we agree it does not.

As indicated by XNG, its operations are materially the same as those of Procurement Energy, Inc., a company not subject to the Commission's jurisdiction for similar practices.

³ PSL §5(1)(b).

⁴ PSL §2(10).

⁵ PSL §2(11).

However, while XNG is similar to Procurement Energy, Inc. in that it intends to supply end use customers, it is different than Procurement Energy, Inc. in that it also seeks to supply local distribution companies (LDCs). Accordingly, as a supplier of natural gas to New York State LDCs, XNG will be under the same scrutiny as traditional pipeline suppliers in that they are reviewed on an annual basis, as part of the Staff's Winter Supply Review process.⁶

Moreover, while XNG intends to serve an individual customer from a regulation and metering station, in its response to Staff's interrogatories, XNG states that it is exploring the possibility of utilizing a station or trailer to serve multiple customers within a large complex, such as a business park. We are concerned that such project would require XNG or its customers to install pipelines to facilitate the distribution of natural gas to multiple customers. These pipelines could potentially cross into public rights-of-way and pose safety risks to the public if they are not adequately maintained. Because of this concern, we conclude that 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. If XNG's operations serve more than one customer from a single Regulation and Metering station or its pipes do cross into the public rights-of-way, the company or its customers would have to petition for our approval before either constructs any pipelines above or underground that service multiple customers or cross the public rights-of-way.

⁶ Every year, Department of Public Service Staff in the Gas Policy & Supply Section of the Office of Electric, Gas and Water conduct a review to ensure the LDCs have enough capacity and supply to meet their customers' needs for the winter.

Predicated on the planned operations and property described above, the Petitioner is not owning or operating any "gas plant" and is not a "gas corporation." Accordingly, with regard to the planned operations and property described above, Petitioner and its operations are not subject to this Commission's jurisdiction.

Finally, it is important to note here that this proceeding is separate from the petition filed by New York Gas & Electric Corporation (NYSEG), where, among other things, NYSEG requests a declaratory ruling that "the supplier's facilities and operations at a proposed compressed natural gas supply station to be built in the City of Mechanicville, New York are not subject to Commission regulations."⁷ XNG's Petition requests a declaratory ruling that covers its proposed facilities in New York State.

The Commission finds and declares:

1. The Petition of Xpress Natural Gas, LLC is granted to the extent discussed in the body of this Ruling.
2. This proceeding is closed.

By the Commission,

KATHLEEN H. BURGESS
Secretary

⁷ Case 14-G-0037, Petition of New York State Electric & Gas Corporation for a Declaratory Ruling Regarding Regulation of a Proposed Compressed Natural Supply Station (filed January 24, 2014) at p. 2.