

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

**Petition of Xpress Natural Gas LLC, for a
Declaratory Ruling Regarding Regulation
of a Compressed Natural Gas Filling
Station and Related Facilities.**

Case 14-G-_____

PETITION FOR DECLARATORY RULING

Ruth E. Leistensnider
Nixon Peabody LLP
Attorneys for Xpress Natural Gas LLC
677 Broadway, 10th Floor
Albany, New York 12207
rleistensnider@nixonpeabody.com
(518) 427-2650

Date: February 4, 2014

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Pursuant to Part 8 of the Public Service Commission’s (“Commission”) Rules (16 NYCRR Part 8), petitioner Xpress Natural Gas LLC (“XNG”) hereby petitions the Commission for a declaratory ruling that XNG’s proposed siting and operation of a compressed natural gas (“CNG”) fueling station (the “Facility”), and associated connection facilities at customer locations throughout the State, will not be subject to the Commission’s jurisdiction.

The proposed location for the Facility is Route 167 in Manheim, New York, a state highway with proximity to the New York State Thruway and potential customers to the north of the Facility. The Iroquois pipeline runs through the site location via an easement with the existing property owner, and a mainline valve is also located on the property. This location thus provides XNG with direct access to a source of natural gas for the Facility that does not require piping to be installed on or under any uncontrolled private or public property.

The operation consists of drawing natural gas from the Iroquois pipeline, conditioning it to remove excess moisture, compressing it and loading it into trailers specially designed for the safe and efficient transport of CNG. The trailers will then deliver the CNG to customer sites throughout the northeast. XNG’s customers are likely to be large industrial facilities or public institutions with significant power and/or heating needs, such as paper mills, hospitals, prisons,

and colleges or universities. XNG also expects to provide supply services to certain local distribution companies (“LDC”), and already has a preliminary agreement in place with one such LDC in upstate New York. XNG will not provide service directly to residential customers.

XNG’s preliminary agreement with the LDC requires XNG to begin providing gas supply services to the LDC in the 2014-2015 heating season. In order to ensure that construction can begin soon enough to satisfy that agreement, XNG respectfully requests an expedited review of this petition and the prompt issuance of a declaratory ruling that XNG’s services are not within the Commission’s jurisdiction.

I. BACKGROUND

A. Petitioner¹

XNG is the leading provider of truck-transported compressed natural gas and liquefied natural gas solutions to industrial and commercial businesses in the northeastern United States and Canadian Maritimes. In the last 18 months, XNG has delivered over 4 Bcf of natural gas to customers in the U.S. and Canada. XNG and its affiliates own and operate two CNG fueling stations in Maine which are of the same design as the proposed Facility. The station in Baileyville, Maine went through a detailed design and safety review and was ultimately approved by the Maine Public Utilities Commission (“Maine PUC”) (see Attachment 1).

B. Proposed Facility

The Facility will be very similar to XNG’s two other stations in Maine. Equipment to be installed will consist of (a) a metering station and pipeline extension built to Iroquois safety and

¹ XNG recently entered into a joint venture agreement with Direct Energy, which acquired Hess Direct Marketing in 2013. Direct Energy is one of the largest commercial retail energy suppliers in North America. In business for more than 25 years, it supplies electricity and natural gas to customers in 14 states, the District of Columbia and five Canadian provinces. In 2012, Direct Energy supplied 68 Bcf of natural gas and 51 TWh of power to customers. It is expected that a joint venture entity created by XNG and Direct Energy will ultimately become the owner and operator of the Facility, but XNG currently remains the Facility’s primary developer.

design specifications, (b) a double tower desiccant dryer system (manufactured by PSB Industries) to remove water from gas in preparation for compression (see Attachment 2), (c) 2-4 300 hp electric powered compressors (manufactured by Ariel) in parallel which will build pressure to 4,000 psi (see Attachment 3), (d) a cooling system to accelerate filling times in warmer conditions, and (e) up to four dispensing stations for filling trailers. The trailers will be Titan Type IV CNG trailers manufactured by Hexagon Composites in Lincoln, Nebraska, designed specifically for the transport and storage of CNG (see Attachment 4). The trailers contain four storage tubes configured in a standard 43' intermodal trailer. They are inspected and approved for operation by DOT. XNG has required Hexagon to incorporate an additional safety feature on the trailers, specifically an interlock on the trailer's rear wheels to prevent them from moving while the rear access doors are open.

C. Daughter Stations

Following completion of the filling process at the Facility, the trailers will transport the CNG to customer locations where the CNG will be off-loaded for customer use. Trailers remain at the site throughout the off-loading process, which can take anywhere from one to three days, depending upon customer burn rates. All trailers will be owned by XNG.

Off-loading process equipment at the daughter station is specially designed and fabricated by XNG at its manufacturing facility in Dover, New Hampshire, and consists of connection equipment, a decompression skid, heaters, controls, and a meter. XNG owns the equipment before the meter, and the customer owns the equipment beyond the meter. Equipment installed by XNG is installed aboveground. The customer's equipment beyond the meter may be underground, but the vast majority of XNG's customers' equipment is currently aboveground.

D. Safety Standards

1. Compression Station

Although no National Fire Protection Association (“NFPA”) safety code is directly applicable to the Facility, NFPA 52, *Vehicular Gaseous Fuel Systems Code*, provides regulatory standards for facilities that compress natural gas and dispense CNG into vehicles for use as transportation fuel. XNG based the design of its two stations in Maine on this standard, supplemented by certain provisions of 49 CFR 192 (Federal safety standards for natural gas pipelines), which was satisfactory with the Maine PUC for purposes of its analysis of XNG’s Baileyville facility.

The Facility will comply with the applicable requirements of NFPA 52 Chapters 5 and 7, as follows:

- Chapter 5 (General CNG Requirements and Equipment Qualifications)
 - Composition and odorization of gas sourced from the Iroquois pipeline will comply with Section 5.2 (composition);
 - System components are listed or approved for CNG service or otherwise constructed to provide the safety equivalent to listed CNG components in compliance with Section 5.3 (system approvals);
 - The tanks supplied by Hexagon Lincoln are DOT approved and will therefore comply with Section 5.4 (design and construction of containers);
 - The pressure relief devices on the tanks sourced by Hexagon Lincoln comply with Section 5.5 (pressure relief devices);
 - Pressure gauges will have the capacity to indicate greater than 1.2 times the system design pressure as required by Section 5.6 (pressure gauges);
 - Pressure regulators have been selected with a pressure safety factor of at least four in compliance with Section 5.7 (pressure regulators);
 - The CNG facility will be constructed with piping and fittings compatible with natural gas and wherever possible has been designed to a three times safety factor to comply with Section 5.8 (fuel lines). All piping and

fabrication will be done to ANSI/ASME B31.3 standards, and components prohibited from use in CNG systems will not be used;

- All system valves will comply with Section 5.9 (valves);
- All hoses will have at least a four times burst pressure and will be OEM tested to two times service pressure and comply with other requirements of Section 5.10;
- Section 5.11 (vehicle fueling connection) requires CNG vehicle fueling connection devices to be listed in accordance with ANSI/IAS NGV1, Standard for Compressed Natural Gas Vehicle (NGV) Fueling Connection Devices. Listed CNG vehicle fueling connection devices do not allow sufficient flow rates necessary to fill the Hexagon Lincoln tanks in a reasonable amount of time. Therefore, XNG proposes to use connection devices that are manufactured specifically for high rate CNG dispensing that are similar in safety features to the listed connection devices.
- Chapter 7 (CNG Compression, Gas Processing, Storage, and Dispensing Systems)
 - Per Section 7.2 (system component qualifications), the Facility system components will comply with the appropriate provisions of Chapter 5 and Section 7.5 through 7.13;
 - Compression and dispensing equipment will be protected from vehicle damage and vandalism as appropriate to comply with Section 7.3.2;
 - The CNG Facility's dryer system will eliminate internal icing and minimize hydrate formation and external icing will be minimized by process design, all in compliance with Section 7.3.3;
 - Fueling connections will prevent the escape of gas when not engaged or if it should become separated from the tank while fueling in compliance with Section 7.3.5;
 - The Ariel compression equipment complies with Section 7.3.7 – 7.3.12.
 - The Facility will be located outdoors, aboveground, and will otherwise comply with the spacing/distance requirements in Section 7.4.2;
 - All containers, pressure relief devices, regulators, gauges, piping and hoses will be installed in accordance with Sections 7.5 – 7.9 (installation requirements for containers, pressure relief devices, pressure regulators, pressure gauges and piping and hoses);
 - Leak testing will be performed during installation and pressure relief devices will be tested periodically in accordance with Section 7.10 (system testing);

- The Facility's emergency shutdown system has been designed and will be installed in compliance with Section 7.11 (installation of emergency shutdown equipment) to the extent possible for this non-vehicle fueling application:
 - 49 CFR § 192.167 (Compressor stations: Emergency shutdown) has been used as guidance in the design and construction of the Facility's emergency shutdown system
 - 49 CFR § 193.2519 (Communication system) has been used as guidance in the implementation of a communication system for operating personnel;
- Electrical equipment installations will comply with Section 7.12 (installation of electrical equipment) and electrical bonding will conform to Section 7.13 (stray or impressed currents and grounding);
- The Facility will comply with the system operation requirements of Section 7.14 (system operations) by mechanical design and/or operational procedures, including the prevention of over-pressurization of transport tanks, clearly stated dispensing instructions for operators, restrictions on sources of ignition in the dispensing area, and appropriate warning signs;
- Portable fire extinguishers will be provided in the dispensing area as required by Section 7.15 (fire protection);
- Containers, piping systems, hoses, compression equipment, pressure reducing valves, controls, and detection devices will be maintained in safe operating condition and according to manufacturer recommendations in compliance with Section 7.16 (system maintenance).

2. Daughter Stations

As with the Facility, there are no NFPA codes that directly apply to the equipment to be installed at XNG's customers' facilities. However, as applicable, XNG utilizes and installs all equipment in compliance with NFPA 52 standards (as described above), and all welding is done to ANSI/AMSE B31.3 standards. XNG has a full-time Director of Safety and Compliance who educates and trains first responders in the area of the daughter stations, and creates an approved emergency response plan customized for each such station.

II. PETITION

Section 8.1 of the Department of Public Service’s Rules of Procedure states that: “[d]eclaratory rulings may be issued with respect to (1) the applicability to any person, property, or state of facts of any rule or statute enforceable by the Commission or the validity of any such rule.”² XNG respectfully submits that a Declaratory Ruling is appropriate in this case, as XNG seeks confirmation that, consistent with existing Commission precedent, the Commission does not have jurisdiction over the Facility and/or the related daughter stations.

Under the Public Service Law (“PSL”), a gas corporation is subject to regulation by the Commission. Gas corporation is defined as a “corporation, company, association, joint-stock association, partnership and person . . . ***owning, operating or managing any gas plant***”.³ The term “gas plant” in turn, is defined to include “real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the manufacture, conveying, transportation, distribution, sale or furnishing of gas . . . ***but does not include property used solely for or in connection with the business of selling, distributing or furnishing of gas in enclosed containers***”.⁴ Thus, if an operation is entirely based upon the business of selling, distributing or furnishing of gas in enclosed containers, it is not considered to be “gas plant,” and therefore, the entity undertaking such operation is not a gas corporation subject to Commission jurisdiction.

² 16 NYCRR 8.1(a).

³ PSL § 2(11) (emphasis added).

⁴ PSL § 2(10) (emphasis added).

The Commission recently addressed this question in a declaratory ruling requested by Procurement Energy, LLC (“PE”).⁵ Procurement Energy proposed to construct and operate a CNG facility similar to XNG’s Facility. In reviewing the facts, the Commission determined that the tube trailers that will hold and deliver the CNG were ““enclosed containers”” as that phrase is used in the definition of “gas plant.”⁶ The Commission also stated that the other property PE planned to use, such as the compressor, will be used solely in connection with the selling, distributing or furnishing of gas in enclosed containers, and thus concluded that such property was also excepted from the PSL’s definition of “gas plant.”⁷ Finally, the Commission found that PE would not be operating any permanent storage facilities in connection with its proposed operations, or installing any aboveground or underground piping.⁸ The Commission ultimately concluded that in light of these facts, PE would not be “owning, operating or managing any gas plant,” meaning it would not be a “gas corporation,” and thus not subject to the Commission’s jurisdiction.⁹

It is respectfully submitted that XNG’s operations are materially the same as those described in the Procurement Energy Declaratory Ruling. XNG will be delivering all of its gas by enclosed containers on trailers. The other property to be used in connection with its operations, including compressors, dryers, etc., will all be used solely in connection with the selling, distributing or furnishing of the gas in the enclosed containers. Piping associated with XNG’s facilities will be limited to the lengths of two taps leading from the Iroquois pipeline to

⁵ Case No. 13-G-0187, *Procurement Energy, LLC*, Declaratory Ruling Regarding Jurisdiction (issued August 16, 2013).

⁶ *Id.* at 4.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 4-5.

the Facility (less than 195 feet each), all of which is also to be used solely in connection with the sale and distribution of gas in enclosed containers. Thus, XNG's operations should fall within the exception to the definition of "gas plant." Since XNG is not operating a "gas plant," XNG should not be considered a gas corporation under the PSL.

Regulation of XNG's operations is also unnecessary from a safety or consumer protection standpoint. As described in detail above, XNG will build its facilities in compliance with applicable NFPA requirements, supplemented by requirements in 49 CFR 192. Those requirements, as well as the New York State Building and Fire Prevention Code, will be adequate to protect public safety. Those requirements have been used in the propane industry and at CNG vehicle fueling stations currently operating throughout the State.¹⁰ The Facility will need to obtain approvals from multiple other state and local agencies, including the Town of Manheim Planning Board, the Town of Manheim Zoning Board of Appeals, the Town of Manheim Code Enforcement Officer, the New York State Department of Environmental Conservation, and the New York State Department of Transportation. The Facility will also be reviewed under the State Environmental Quality Review Act. The Facility will therefore receive a thorough environmental and safety review before construction and operation begin.

Rate regulation is also unnecessary, as XNG will not be serving captive ratepayers without other fuel supply options. XNG will not have the ability to exercise pricing power, due to the availability of alternate fuels, the varying economics applicable to those fuels, and the presence in the market of competing CNG suppliers (such as PE). Accordingly, rate regulation should not be required for XNG's proposed operations.

¹⁰ According to the Department of Energy, there are 36 CNG vehicle fueling stations in New York State, whose operations are nearly identical to the proposed operations at the Facility.

It is respectfully submitted that issuing the requested Declaratory Ruling will further support New York State's energy policies and the Commission's own goals. The benefits of substituting natural gas for other existing fuels such as heating oil, kerosene, and propane are well known. Natural gas is cleaner than those fuels, emitting less particulate matter, nitrous oxide, sulfur dioxide, and carbon dioxide. Natural gas is also significantly cheaper than heating oil, the most common alternative to natural gas.¹¹

New York has long recognized the benefits of expanding natural gas usage. The current New York State Energy Plan ("State Energy Plan") calls for the expansion of natural gas infrastructure throughout the State.¹² The 2014 Draft State Energy Plan, issued January 7, 2014 (the "Draft State Energy Plan"), repeated this call for additional natural gas service in the State – one of the 15 initiatives enumerated in the Draft State Energy Plan is to “reduce reliance on petroleum products for heating buildings by supporting the use of clean alternatives to heating oil and expanding access to natural gas in the near term . . .”.¹³ The expansion of natural gas service is also consistent with the Governor's New York Energy Highway “Blueprint.”¹⁴

The Commission has also recognized the benefits associated with increasing the availability of natural gas within the state. In Case 12-G-0297,¹⁵ the Commission is examining policies surrounding the expansion of natural gas service. The Commission's Order Instituting

¹¹ Using 2012-2013 winter season data, the residential price of natural gas was \$9.15/MMBtu, while the price of fuel oil was \$37.35/MMBtu. (Calculations made using data and calculators on the U.S. Energy Information Administration's website at <http://www.eia.gov/tools/faqs/faq.cfm?id=8&t=5>.)

¹² State Energy Plan, at 44.

¹³ Draft State Energy Plan, at 43.

¹⁴ The Blueprint states that “accelerating utility capital and operation and maintenance spending on the State's . . . natural gas infrastructure will result in enhanced reliability and safety for utility customers while generating substantial economic development benefits for the State's overall economy.” New York Energy Highway Blueprint, at 14.

¹⁵ Case 12-G-0297, *Proceeding on Motion of the Commission To Examine Policies Regarding the Expansion of Natural Gas Service*, Order Instituting Proceeding and Establishing Further Procedures (issued November 30, 2012) (the “Natural Gas Expansion Order”)

Proceeding extensively discusses the benefits of natural gas. In reviewing the benefits of natural gas the Commission stated that “[t]here are many ways the use of natural gas as an alternative to other fossil fuels could provide benefits to New Yorkers.”¹⁶ The benefits listed and discussed in some detail in the Order included (a) lower prices, (b) fewer emissions, (c) extending low income programs, (d) promoting economic development, and (e) enhancing reliability.¹⁷

In sum, the State Energy Planning Board, the Commission, and the Governor’s office have all recognized the benefits of making natural gas more accessible throughout New York. As discussed below, XNG’s proposed Facility will be a positive step in that direction, and the Commission should encourage its prompt deployment by finding that it is not subject to the Commission’s jurisdiction.

The challenges associated with building natural gas pipelines in certain areas of the State has made expansion of natural gas service into those areas too costly to pursue. In its Natural Gas Expansion Order, the Commission acknowledged that CNG facilities could play a role in bringing natural gas services to those areas, stating that “in [areas of remote, rocky or mountainous terrain], it may make sense to site a compressed natural gas (CNG) or liquefied natural gas (LNG) storage facility, which could be used to supply a local distribution system.”¹⁸ CNG facilities like XNG’s Facility and the one addressed in the Procurement Energy Declaratory Ruling (discussed *supra*) are well-suited to address this issue, and have begun to make an impact in the markets. Through its facilities in Maine, XNG is currently supplying customers throughout the Northeast and Canada, as well as in New York. In addition to XNG’s two facilities in Maine and Procurement Energy’s proposed facility, NG Advantage has a station

¹⁶ Natural Gas Expansion Order, at 2.

¹⁷ *Id.*

¹⁸ Natural Gas Expansion Order, at 7.

in Milton, Vermont and is building another in Pembroke, New Hampshire. Global Partners has a facility in Bangor, Maine. These facilities are bringing long-needed competition to the energy markets (both in terms of competition with other fuels and competition with each other), which will bring long-awaited benefits to commercial and industrial customers. XNG's proposed Facility will provide additional competition, as it is in an area convenient to both the Adirondacks and Catskills where natural gas distribution infrastructure is unlikely to be installed in the near future.

XNG's operations can also benefit residential natural gas customers by acting as a supplier to LDCs until additional delivery infrastructure is built. Certain LDCs have expressed concern that they do not have access to sufficient gas supplies to serve existing customers at peak times, or to expand their services. As noted earlier, XNG has a preliminary agreement in place to alleviate this concern for one LDC that is currently operating under supply constraints. XNG's facilities will thus help ensure that LDCs will be able to provide continuous services to their customers in peak conditions, and possibly to extend their infrastructure to new customers.

XNG's proposed operation will have a number of other benefits which satisfy the goals and initiatives in the Draft State Energy Plan. As noted above, XNG's operations will now allow industrial and commercial entities another choice for their fuel supply. This will provide a significant benefit by adding competition to markets where it is currently very limited. The resource diversity provided by XNG's operations will drive down prices and improve customer service in areas not currently served by utilities. This helps satisfy two of the five stated goals of the Draft State Energy Plan (improving energy affordability and giving customers more control over their energy use).

XNG's operations will also help contribute to infrastructure efficiency and resiliency. XNG's services will reduce the need for new and costly infrastructure development by providing natural gas services to locations where developing pipelines would be difficult. As discussed above, XNG's services can also ensure that LDCs and other customers have an additional source of fuel supply in the event of disruptions. By ensuring that more areas of the State have reliable access to natural gas, XNG's services will also enhance New York's reputation as a commercial center with the ability to offer clean, reliable, cost-effective, and high quality energy services to businesses of all kinds in all areas. These benefits help satisfy the goal in the Draft State Energy Plan of providing a more resilient and flexible power grid, and specifically helps address Initiative 06 (“[u]pdate and modernize electricity and gas delivery systems to replace aging infrastructure and ensure service quality and reliability with a more integrated and distributed energy network”) and Initiative 07 ([s]upport community-based energy planning . . . to develop smart, integrated energy networks to spur regional economic development”).¹⁹

In sum, XNG's Facility will provide a substantial benefit to energy customers in the State of New York, and falls comfortably within the State's stated plans, policies and goals for future energy development. A ruling from the PSC confirming that it does not have jurisdiction over these types of facilities (confirming its earlier ruling in the PE Petition) will help facilitate the development of XNG's Facility and the expansion of natural gas service State-wide.

III. CONCLUSION

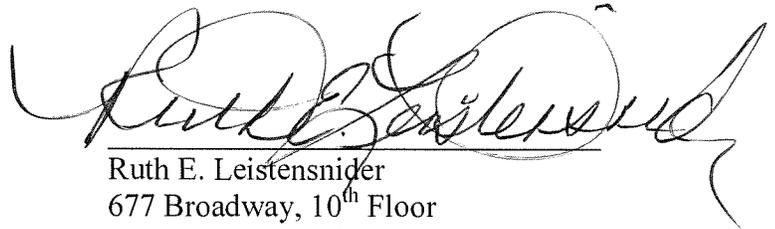
For the reasons set forth herein, XNG respectfully requests a declaratory ruling from the Commission that the CNG facilities proposed by XNG do not constitute “gas plant” within the

¹⁹ Draft State Energy Plan, at 40-41.

meaning of the PSL, and therefore, XNG is not a gas corporation subject to Commission jurisdiction.

DATED: February 4, 2014

Nixon Peabody LLP
Attorneys for Xpress Natural Gas LLC

A handwritten signature in black ink, appearing to read "Ruth E. Leistensnider", written over a horizontal line.

Ruth E. Leistensnider
677 Broadway, 10th Floor
Albany, New York 12207
Tel: (518) 427-2650
Email: rleistensnider@nixonpeabody.com

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VERIFICATION

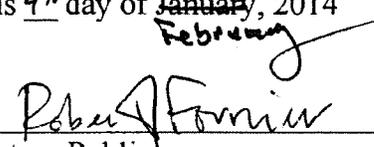
SETH BERRY, being duly sworn according to law, upon his oath, deposes and
says:

1. I am the Chief Administrative Officer and General Counsel of Petitioner
Xpress Natural Gas LLC, and am authorized to make this Verification on behalf of
Petitioner.

2. I have read the contents of the foregoing Petition and hereby verify that the
statements therein contained are true and accurate to the best of my knowledge and
belief.


SETH BERRY

Sworn to and subscribed before me
this 4th day of ~~January~~, 2014



Notary Public

