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11-4322-GA-ARJ

July 14, 2011

Ohio Public Utilities Commission
Attention: Docketing Division
180 East Broad Street
Columbus, OH 43215

RECEIVED-DOCKETING DIV
2011 JUL 14 PM 4:05
PUCO

Re: Application of Caiman Eastern Midstream, LLC
for Relief from Jurisdiction

Dear Sir or Madam:

Enclosed please find an original and twenty-two (22) copies of the above referenced application for relief from jurisdiction (ARJ) of Caiman Eastern Midstream, LLC. Please return the extra time-stamped copies to me, via the courier making this delivery.

Should you have any questions, please contact me at (614) 458-9792.

Very truly yours,

A handwritten signature in cursive script that reads 'Kathy Milenkovski'.
Kathy Milenkovski

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Technician RE Date Processed 7/14/2011

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FILE

RECEIVED-DOCKETING DIV

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO JUL 14 PM 4:05

In the Matter of the Application of :
Caiman Eastern Midstream, LLC for :
Permanent Relief From Compliance :
with the Obligations Imposed by :
Chapters 4901, 4903, 4905, 4907, :
4909, 4921, and 4923 of the :
Ohio Revised Code :

PUCO

Case No: 11-4322-GA-ARJ

APPLICATION OF CAIMAN EASTERN MIDSTREAM, LLC
FOR PERMANENT RELIEF FROM JURISDICTION

Now comes Caiman Eastern Midstream, LLC, (the "Applicant" or "Caiman"), through its attorneys, pursuant to Section 4905.03(A) of the Ohio Revised Code ("ORC"), and respectfully requests that the Commission enter an Order granting its Application for Permanent Relief from Jurisdiction, relieving Caiman from compliance with obligations imposed by ORC Chapters 4901, 4903, 4905, 4907, 4909, 4921, and 4923. In support of such request, Caiman states the following:

1. Caiman Eastern Midstream, LLC is a Texas limited liability company authorized to do business in Ohio and has its principal office at 5949 Sherry Lane, Suite 1300, Dallas, Texas 75225. Caiman is a wholly owned subsidiary of Caiman Energy, LLC.

2. Caiman is also authorized to do business in Pennsylvania and West Virginia where it has constructed gathering facilities and provides gathering and processing services to non-affiliated producers for a fee under private, negotiated contracts.

3. Caiman's existing facilities in West Virginia and Pennsylvania are considered to be "gathering" under the long-standing precedent of the Federal Energy Regulatory Commission ("FERC") as well as the Natural Gas Pipeline Safety Act of 1968, 49 USC §1671 *et seq.* and regulations adopted thereunder, and are not subject to regulation by FERC, the West Virginia

Public Service Commission or the Pennsylvania Public Utility Commission, except as to pipeline safety standards.

4. Ohio's pipeline safety rules incorporate the federal pipeline safety regulation's definition for gathering. *See* ORC § 4905.90, which states that "'Gathering lines' and the 'gathering of gas' have the same meaning as in the Natural Gas Pipeline Safety Act and the rules adopted by the United States department of transportation pursuant to the Natural Gas Pipeline Safety Act, including 49 C.F.R. part 192, as amended."

5. The federal regulations that implement the Natural Gas Pipeline Safety Act, define a "gathering line" to mean "a pipeline that transports gas from a current production facility to a transmission line or main." 49 C.F.R. §192.3.

6. The American Petroleum Institute developed a guidance document, RP-80, to provide users with a practical guide for determining the application of the definition in 49 C.F.R. § 192.3. RP-80 is incorporated by reference into 49 CFR Part §192.8, which provides that a pipeline operator "must use" API RP-80 to determine if its lines are gathering lines. *See* 49 CFR §§192.7, 192.8. RP-80 defines a "gathering line" as follows:

Gathering line:

- (a) means any pipeline or part of a connected series of pipelines used to
 - (1) transport gas from the furthestmost downstream point in a production operation to the furthestmost downstream of the following endpoints, which physically may have intermediate deliveries (to other production operations, pipeline facilities, farm taps, or residential/commercial/industrial end users) that are not necessarily part of the gathering line:
 - (A) the inlet of the furthestmost downstream natural gas processing plant, other than a natural gas processing plant located on a transmission line,
 - (B) the outlet of the furthestmost downstream gathering line gas treatment facility,

- (C) the furthestmost downstream point where gas produced in the same production field or separate production fields is commingled,
- (D) the outlet of the furthestmost downstream compressor station used to lower gathering line operating pressure to facilitate deliveries into the pipeline from production operations or to increase gathering line pressure for delivery to another pipeline, or
- (E) the connection to another pipeline downstream of:
 - (i) the furthestmost downstream endpoint identified in (A), (B), (C) or (D), or (in the absence of such endpoint)
 - (ii) the furthestmost downstream production operation; or
- (2) transport gas from a point other than in a production operation exclusively to points in or adjacent to one or more production operations or gathering facility sites for use as fuel, gas lift, or gas injection gas within those operations; and
- (b) does not include a natural gas processing plant.

7. RP-80 goes on to explain that in order to determine where a gathering line ends, two important concepts —the concepts of “function” and “furthestmost downstream” – must be considered.

“Function” recognizes that a gathering line continues to fulfill the gathering function until it reaches a defined and recognized endpoint regardless of intermediate processes and/or deliveries along the line. Because gas flowing into a gathering line from various locations may be of differing quality and flowing pressure, it is sometimes necessary to subject the gas stream to one or more intermediate processes. This is usually done to maintain efficient operation of the gathering line and/ or maintain pressure in the line which will not result in an unacceptable back pressure on production or tributary gathering lines flowing into the gathering line. Regardless of the intermediate processes and/or deliveries that may occur along a gathering line, the gathering function—and therefore the gathering line—continues until the line terminates at a defined and recognized endpoint.

“Furthestmost downstream” recognizes that the most downstream of all locations defined as potential endpoints is the endpoint for the gathering line. The endpoint of a “gathering line” is often defined by the furthestmost downstream gas processing plant, gas treatment facility, gas gathering compressor, point of commingling of gas from two or more fields, or point of connection of the gathering line to another pipeline. These endpoints, together with related basic gathering line concepts, are discussed and illustrated in this section.

8. Caiman's facilities in West Virginia, Pennsylvania, and the ones it will construct in Ohio are "gathering lines" under this definition and criteria.

9. FERC has made it clear through various precedential holdings that, under the Natural Gas Act (NGA) section 1(b), FERC's jurisdiction does not extend to facilities used for the production or gathering of natural gas, or to gathering services. *See, e.g., Laser Marcellus Gathering Company, LLC*, 130 FERC ¶ 61,162 (2010). Because the NGA does not define "gathering," FERC has also developed criteria, which are now known as the modified "primary function" test, to determine which facilities are non-jurisdictional gathering facilities. *See Amerada Hess Corp*, 52 FERC ¶61,268 (1990) and *Farmland Industries, Inc.*, 23 FERC ¶61,063 (1983).

10. For many years prior to the modified "primary function" test, FERC employed two principal tests. Under the "behind-the-plant" test, facilities upstream of compressors and processing plants (*i.e.*, toward the wellhead where the gas comes out of the ground) were presumptively gathering facilities, while facilities downstream of the plants (*i.e.* toward the consumer) were presumptively transportation facilities. For gas that requires no processing, FERC has also employed a "central-point-in-the-field" test under which lateral lines collecting and transporting gas from separate wells that then converge into a single large line were classified as gathering facilities, while facilities downstream of the collection point in a field were classified as transportation.

11. Since 1983, FERC has subsumed those two tests into what eventually became known as the modified "primary function" test, which focuses on a number of physical factors and certain other criteria to determine whether facilities are primarily devoted to gathering or

transportation. *See, e.g., Sea Robin Pipeline Co. v. FERC*, 127 F.3d 365, 368-369 (5th Cir. 1997).

12. Under the modified “primary function” test, FERC considers a number of physical and geographical factors, including: (1) the length and diameter of the pipelines; (2) the extension of facilities beyond the central point in the field; (3) the facilities’ geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facilities; and (6) the operating pressures of the pipelines. *Laser Marcellus Gathering Company, LLC*, 130 FERC ¶ 61,162 (2010), citing *Columbia Gas Transmission Corp.*, 93 FERC ¶ 61,278 (2000). The Commission also considers the purpose, location, and operation of the facilities; the general business activities of the owner of the facility; and whether the jurisdictional determination is consistent with the NGA. *Id.*

13. To date, Caiman has constructed approximately 100 miles of gathering pipeline in Marshall and Wetzel counties, West Virginia, and two miles of gathering pipeline in Pennsylvania. In addition, Caiman has acquired and now operates another 10 miles, approximately, of low pressure gathering in Wetzel county, West Virginia, and another three miles, approximately, of gathering in southwestern Pennsylvania. These gathering lines range in diameter from four to 24 inches, and range in operating pressures from 200 to 1200 psig. Caiman operates seven compression stations on its system totaling approximately 2100 horsepower, which compression exists solely to move gas from producer wells downstream to Caiman’s centrally located fractionation and processing facilities. These gathering lines are all upstream of any processing plants or compressors. They originate in the production fields commencing with interconnections to producing wells, have producing wells connected to those lines along their path, and gather and move produced gas downstream to the centrally located

fractionation and processing facilities Caiman has constructed. The produced gas is not merchantable and requires this additional processing before it can be delivered beyond Caiman's facilities into interstate pipelines.

14. Caiman intends to construct gathering and possibly processing-related facilities in eastern-Ohio counties, the sole function of which will be to gather and process gas produced from non-affiliated producer wells located in those counties, and to move that gas to Caiman's existing centrally located fractionation and processing facilities.

15. Any facilities that Caiman will construct in Ohio will be for the same purpose, of the same general scope, and have the same characteristics as Caiman's facilities in West Virginia and Pennsylvania. In other words, any new facilities constructed in Ohio would be located upstream of any processing plants.

16. Caiman is not affiliated with or under the control of a gas company or a natural gas company engaged in the transportation or distribution of natural gas and Caiman does not engage in the distribution of natural gas to consumers or in any direct sale of natural gas to end users.

17. Caiman has never dedicated and does not ever intend to dedicate any of its facilities to the public. Caiman's activities are limited to constructing non-jurisdictional gathering facilities and offering gathering and gas processing services for a fee pursuant to individually negotiated and private contracts with producers.

18. Caiman has never exercised and does not ever intend to exercise any of the privileges, including the privilege of eminent domain, associated with a dedication of its facilities or activities to the public.

19. According to the Ohio Supreme Court in *Industrial Gas Co. v. Pub. Util. Comm.*, 135 Ohio St. 408, 413 (1939), “[t]he question whether a business enterprise constitutes a public utility is determined by the nature of its operations.” The nature of Caiman’s operations is that of a private business, not a public utility.

20. This Commission has regularly granted exemptions from regulation for applicants who construct and operate gathering systems and allow producers to use their gathering systems for a fee, and/or who operate as a private business rather than as a public utility. *See, e.g., In the Matter of the Application of Atlas America, Inc. et al.*, PUCO Case No. 99-1519-GA-ARJ (2000)(in granting gathering line system relief from jurisdiction, noting that “[t]he Commission has previously granted relief from jurisdiction to transporters, such as the applicant[s] ... which allow the use of their gathering lines by producers for a fee.”); *Bloomfield Pipeline Limited*, PUCO Case No. 82-1301-GA-ARJ (1982)(applicant allowed producers to use its gathering system for a fee; PUCO found that Bloomfield Pipeline’s was not a public utility, but instead a private business, reasoning that the applicant could operate a gathering system without submitting to PUCO jurisdiction).

21. Moreover, in 1997, the Ohio Legislature adopted Am. Sub. S.B. 187, which amended ORC § 4905.03 to expressly permit a “gatherer” to seek and obtain exemption.

22. The Ohio Legislative Service Commission’s Final Bill Analysis of Ab. Sub. S.B. 187 describes the amendments to ORC §4905.03 and states that,

“[u]nder continuing law, the PUCO, upon application to it, may relieve any ‘producer of natural gas,’ defined as a gas company or natural gas company, of compliance with the obligations imposed under the statutes governing utilities that are subject to PUCO regulation if the producer is not affiliated with or under the control of a gas company or natural gas company engaged in the transportation or distribution of natural gas or does not engage in the distribution of natural gas to consumers. The act allows gatherers to apply for this relief.” (Emphasis added).

23. Caiman, whose business is solely and exclusively that of a gatherer, is applying for such an exemption from PUCO regulation. Identifying Caiman as a gatherer and exempting it from PUCO jurisdiction would be consistent with both the “modified primary function test” that FERC applies to determine whether a company is operating as a gatherer, and with RP-80, which the Natural Gas Pipeline Safety Act uses to determine whether a company is a gatherer.

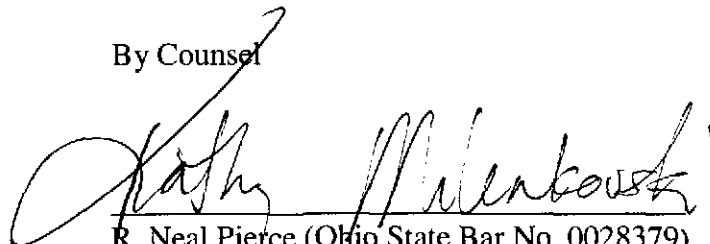
24. Caiman recognizes that such relief from PUCO jurisdiction does not affect the PUCO’s authority to enforce the statutory natural gas pipeline safety standards set forth at ORC §§ 4905.90 to 4905.96, if applicable.

WHEREFORE, pursuant to the authority of ORC §4905.03(A) and the above-cited PUCO decisions, Caiman respectfully requests that the Commission enter an Order granting its Application for Permanent Relief from Jurisdiction, relieving Caiman from compliance with the obligations imposed by ORC Chapters 4901, 4903, 4905, 4907, 4909, 4921, and 4923.

Respectfully submitted,

CAIMAN EASTERN MIDSTREAM, LLC

By Counsel

A handwritten signature in black ink, appearing to read "Kathy Milenkovski", is written over a horizontal line.

R. Neal Pierce (Ohio State Bar No. 0028379)
Kathy Milenkovski (Ohio State Bar No. 063314)
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