

be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

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[Docket No. CP95-779-000]

**Gateway Pipeline Company,
Complainant v. Western Gas Interstate
Company, Respondent; Notice of
Complaint**

September 27, 1995.

Take notice that on September 26, 1995, Gateway Pipeline Company (Complainant), 333 North Sam Houston Parkway East, Houston, Texas 77060, filed a complaint in Docket No. CP95-779-000, pursuant to Section 385.206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) against Western Gas Interstate Company (Respondent) to immediately cease and desist all activity related to its application filed in Docket No. CP95-606-000, as amended. Complainant states that this pleading is in response to respondent's on-going construction activities related to the proposed interstate transmission facilities identified in the above-mentioned proceeding, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Complainant states that respondent has already constructed the permanent delivery point facilities for which it currently has pending an application for construction authority in Docket No. CP95-606-000, and it is now in the process of constructing the associated permanent mainline transmission facilities for which it has pending an application in Docket No. CP95-606-001. Complainant states that respondent began construction of these mainline facilities on Friday, September 22, 1995, and as of Sunday, September 24, has already strung, welded and buried some four miles of mainline transmission pipeline. Complainant states that at respondent's current pace, it should complete the construction and installation of nearly all of the 16-mile mainline by the end of the week ending September 30, 1995, and the facilities should be operational within three weeks.

Complainant asserts that respondent has no authority to construct these facilities, because the amendment to the pending application filed in Docket No. CP95-606-001 is still pending before the Commission, and the Commission is in the process of conducting an environmental assessment of respondent's proposal.

Complainant also asserts that respondent's construction activities therefore appear to violate Section 7(c) of the Natural Gas Act (NGA), which, among other things, requires natural gas companies to secure prior approval of proposals to construct and operate facilities used for the transmission of gas in interstate commerce.

Complainant further asserts that by respondent having unilaterally decided to begin constructing its interstate transmission facilities without obtaining prior Commission approval of its application, respondent has now in effect told the Commission: "Never mind"; respondent never really needed to file anything because these are NGPA Section 311 facilities.¹

Complainant states that the Commission should reject Western's transparent and flagrant attempt to rationalize, on a *post hoc* basis, citing what it considers respondent's "no-holds-barred" effort to get its pipeline in the ground. In its petition, complainant states that these facilities are not even arguably legitimate 311 facilities—"facilities utilized solely for transportation authorized under Section 311(a) of the NGPA"²—since no intrastate or LDC entity is involved in the proposed transportation transaction to Seaboard.³

Further, complainant states that respondent's FERC filings have evidence a pronounced "make-it-up-as-we-go" flavor, geared toward getting its pipeline in the ground as soon as possible, with as little Commission scrutiny as it can get by with. Complainant further states that respondent is not content to wait for a Commission order on its abbreviated

application and has decided simply to construct its pipeline, apparently hoping that it can cure any FERC problems after its pipeline is up and running. Complainant argues that the Commission should not tolerate respondent's disregard of Commission authority.

Complainant requests that, in order to prevent respondent from completing the construction and installation of its entire project and to preserve the *status quo* pending Commission investigation of this complaint, the Director of Enforcement issue by telephone a cease and desist order directly to respondent's offices, via telephone, by close-of-business on September 25, 1995, but in no event later than 12 noon September 26, 1995. Complainant also requests that the Commission should (1) institute an investigation into respondent's construction activities related to respondent's application, (2) order respondent to show cause why it should not be held in violation of Section 7(c) of the NGA, and thus subject to penalties under Section 21 of the NGA, including criminal and civil penalties under Sections 21(a) and 21(b), respectively, of the NGA and (3) grant other appropriate relief pursuant to Sections 5 and 16 of the NGA as a result of the requested investigation.

Any person desiring to be heard or to make protest with reference to said complaint should on or before October 4, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the complaint are also due on or before October 4, 1995.

Lois D. Cashell,
Secretary.

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¹ In the Notice of Withdrawal, respondent attempts to withdraw both its request and abbreviated application, claiming that both of these applications have "become moot, because [Western] will construct and operate the 15.5 miles of 8" pipeline and sales tap to the Seaboard Farm (Seaboard) processing plant * * * pursuant to Section 311 of the Natural Gas Policy Act." Notice of Withdrawal at 1-2.

² 18 CFR 284.3(c).

³ According to Exhibit I of Western's Abbreviated Application, Seaboard is to be served by Western under a Rate Schedule FT-N transportation contract executed by Seaboard. Nowhere in that contract or in the abbreviated application is there any mention of an LDC or intrastate pipeline "on behalf of" entity, the essential element for transportation service to qualify as a Section 311(a) transaction.