

LAW OFFICES OF
FLECK, MATHER & STRUTZ, LTD.

400 East Broadway, Suite 600, Wells Fargo Bank Building

P. O. Box 2798, Bismarck, North Dakota 58502

Telephone: 701-223-6585 Facsimile: 701-222-4853 E-Mail: fms@flecklaw.com Website: www.flecklaw.com

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Via email and U.S. Mail

Ms. Illona Jeffcoat-Sacco
North Dakota Public Service Commission
600 East Boulevard Avenue
Dept. 408
Bismarck, ND 58505-0480

In re: Whiting Oil and Gas Corporation
Robinson Lake Plant
Supplemental Statement of Support

Dear Ms. Jeffcoat-Sacco:

This letter supplements Whiting Oil and Gas Corporation's ("Whiting") letter to you and Mr. Fahn dated July 11, 2008.

As we discussed Whiting does not believe that the residue gas pipeline connecting the Robinson gas plant to the WBI Holdings, Inc.'s ("WBI") natural gas transmission line is a "transmission facility" within the meaning of Section 49-22-03(12) of the North Dakota Century Code and therefore does not believe that a route permit is required pursuant to Section 49-22-07 of the North Dakota Century Code, which requires a route permit for the construction or operation of a "transmission facility."

Initially, the Robinson Lake Plant is a plant designed to process natural gas produced in association with oil from the Bakken formation in the Mountrail County area of North Dakota. The rated capacity of the plant is less than one hundred million cubic feet per day, so the plant is not an "energy conversion facility" subject to Chapter 49-22 pursuant to Section 49-22-03(5). The pipeline in question gathers residue gas processed at the plant for delivery into a transmission line operated by WBI.

In addition to “energy conversion facilities,” Chapter 49-22 applies to “transmission facilities.” A “transmission facility,” insofar as the term relates to a gas pipeline, is defined as follows:

A gas ... transmission line and associated facilities designed for or capable of transporting ... gas. This subdivision does not apply to [a] ... gas gathering system. For purposes of this chapter, a gathering system *includes* the... pipelines and associated facilities used to collect gas from the well to the gas processing facility. (emphasis added).

This definition cannot be read to provide that any pipeline other than a pipeline running from a well or group of wells to the inlet of a gas processing plant is a transmission line. First, the statute does not provide that all pipelines other than gathering lines are transmission lines. The Commission has, in the past, recognized that some pipelines are neither “transmission” lines nor “gathering” lines and has not required that “distribution” lines connecting transmission lines to end users to be sited. A pipeline is only subject to the Commission’s jurisdiction under Chapter 49-22 if it is, in fact, a “transmission line.”

The residue line in question is part of a “gathering system” within the meaning of Section 49-22-03(12) and is therefore excepted from the siting requirements of the chapter. The statute does not define “gathering system” but instead contains only a non-exclusive example of what constitutes a “gathering system.” The statute expressly uses the word “includes” and not words such as “is” or “is limited to.” The ordinary sense of the word “includes” is that it is not a word of limitation but of enlargement. *Lucke v. Lucke*, 300 N.W.231 (N.D.1980). Generally, the word indicates that which follows is “but a part of the whole.” *In re Chevron M.*, 698 N.W.2d 95 (Wis. 2005). By stating that a gathering system “includes” pipelines used to collect gas from the well to the gas processing facility, the statute clearly indicates that the term “includes” other types of pipelines or systems in addition to those specifically mentioned.

Words used in statutes must be construed according to the rules of grammar and approved usage of the language, but where technical words have acquired a peculiar or appropriate meaning in the law, they must be afforded that meaning. Section 1-02-03, North Dakota Century Code. Words are to be given their “commonly understood meaning.” *Kim-Go, H.K. Minerals, Inc. v. J.P.Furlong Enters. Inc.*, 460 N.W.2d 694 (N.D.1990) Giving the “commonly understood meaning” to “gathering” compels a conclusion that the pipeline in question is part of a gas gathering system, even though it is downstream of the inlet of the Robinson Lake plant.

The American Petroleum Institute (“API”) is a national trade association that represents all aspects of America’s oil and natural gas industry, including producers, refiners, suppliers, pipeline operators, transporters, and service and supply companies. [Http://www/api.org/about api](http://www/api.org/about/api). For more than 75 years, API has led the development of standards which represent the “industry’s collective wisdom” on a number of subject matters and API currently maintains more than 500 standards and recommended practices. *Id.* These practices have been incorporated into a wide range of state and federal regulations. See, for example, 73 FR 39376-01 (Department of the Interior Minerals Management Service regulations regarding facility assessments for alternative energy on outer continental shelf); 73 FR 20166-01 (Department of the Interior Minerals Management Service regulation incorporating API hurricane bulletins and RP2A-WSD

regarding working stress design for fixed offshore platforms); 72 FR 31453-01 (Occupational Safety and Health Administration proposed regulation referring to definitions of “facility” and “process” contained in and API document described as an “industry consensus document on managing process hazards”).

One of the industry standards which has been developed by API is API Recommended Practice 80, a copy of which is attached hereto. Section 2.2.1.2.6 of RP 80, recognizes that “the connection [of a gas processing plant] to a transmission line is generally contained within the boundaries of the facility.” This section goes on to recognize that when gas must be moved through a pipeline some distance from the plant to another pipeline, the activity is considered to be “incidental gathering.” The illustration to Section 2.2.1.2.6 states as follows: “‘Incidental gathering’ is the additional downstream gathering pipelines sometimes needed to connect the outlet of an identified gathering endpoint [i.e., a gas plant] with a transmission line, distribution line, or other pipeline facility.” *Id.* at p. 5. See also Figure B-1 at p. 21.

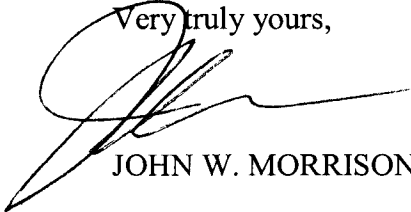
RP 80 was specifically designed to address Pipeline Safety Act standards. It was specifically incorporated into the safety rules promulgated by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”). See 49 C.F.R. §192.8. PHMSA clearly adopted the “incidental gathering” treatment afforded by RP 80: “PHMSA considers ‘incidental gathering’ to include only lines that directly connect a transmission line to one of the endpoints (A) through (D) [referring to paragraphs (A) through (D) of the definition of “gathering line” at RP 80 § 2.2, which includes at (A) “the inlet of the furthestmost downstream natural gas processing plant”], as limited by this final rule.” 71 F.R.13289-01.

While RP 80 was designed to address Pipeline Safety Act standards, it clearly incorporates a broader industry understanding of the term “gathering,” and is consistent with other understandings of the term. The Federal Energy Regulatory Commission (“FERC”) regulates interstate pipelines that transport gas in interstate commerce. 15 U.S.C. §717(b). Gathering lines are not subject to FERC regulation. FERC applies a multi-factor test to determine the primary function of a pipeline in which it considers (1) the length and diameter of the pipeline; (2) its proximity to the central point in a field; (3) the geographic configuration of the facility; (4) its proximity to processing plants and compressors; (5) the location of wells along all or part of the facilities; and (6) operating pressure. *Farmland Industries, Inc.* 23 FERC ¶61,063 (1983). Under the “modified” primary function test, the location of a processing plant is not necessarily determinative and can be outweighed by other factors. *Jupiter Energy Corporation v. Federal Energy Regulatory Commission*, 482 F.2d 293 (5th Cir. 2007). The fact that compression, separation and dehydration occur upstream from a pipeline necessary to gather casinghead gas into a transmission line does not render the pipeline a transportation line rather than a gathering line under the modified primary function test. *Amerada Hess Corporation, et al*, 116 P.U.R 4th 350, 52 FERC 61268, 1990 WL 1241336.

Neither RP 80 nor the FERC’s modified primary function test have been expressly incorporated into Chapter 49-22 and are not binding upon the Commission. They do, however, reflect the general understanding of the industry as to the meaning of “gathering” and indicate that a common understanding of the term would include a pipeline necessary to carry residue gas from a gas gathering plant to a transmission line.

For these reasons, Whiting respectfully submits that the subject residue gathering line is not a jurisdictional line within the meaning of Chapter 49-22. If you have any questions or need additional information, please contact the undersigned at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John W. Morrison', with a long horizontal flourish extending to the right.

JOHN W. MORRISON

cc: Brent Miller