Chapter 5

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Spinoffs, Spindowns and Gradualized Unbundling: An Examination of the Past, Present and Future of Natural Gas Gathering in the Appalachian Producing Region

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Synopsis

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§ 5.01 Introduction.

Natural gas gathering is, perhaps, the single-most important issue facing the Appalachian natural gas producing industry today. With the mandate of the complete unbundling of the merchant function brought about by Order 636, natural gas producers in the Appalachian producing region are facing fully allocated costs for gathering as natural gas companies begin the gradualized unbundling of their gathering function. Some natural gas companies have concluded that the gathering function is no longer a business they wish to continue, and are in the process of spinning off their gathering facilities to non-affiliated entities. Other natural gas companies have concluded that it may be advantageous to retain natural gas gathering facilities by spinning them down to an unregulated affiliate that does not engage in jurisdictional transportation or sales for resale. Whether the decision is to unbundle, spinoff or spindown, the result is a fundamental shift from the past gathering of natural gas.

The purpose of this chapter is to provide an overview of the fundamental changes in natural gas gathering brought about by the unbundling of natural gas pipelines, focusing, from a historical perspective, on the past regulation of natural gas gathering under federal law, then moving to recent authorities interpreting federal jurisdiction over gathering, survey of the status of Appalachian interstate pipelines and review the authority of the Appalachian producing states to regulate gathering. The chapter concludes with a discussion of policy considerations for the future of natural gas gathering in the Appalachian producing states.

§ 5.02. The Natural Gas Act Section 1(b) Exemption for Gathering.

In 1935, the Federal Trade Commission (FTC) completed an eight-year investigation of the interstate natural gas industry. In its report, the FTC concluded that natural gas pipelines were acting as unregulated monopolies, charging excessive and unreasonable rates.[2]

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[2] The interstate natural gas market was essentially unregulated since the regulation of wholesale rates of gas moving in interstate commerce was beyond the constitutional powers of the States. Missouri v. Kansas Natural Gas Co., 265 U.S. 298 (1924); Public Utilities Comm'n v. Attleboro Steam & Electric Co., 273 U.S. 83 (1927); State Corp. Comm'n v. Wichita Gas Co., 290 U.S. 561 (1934).