potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the EA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact Surender M. Yepuri, Environmental Coordinator, at (202) 219–3847.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5068 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2310–073 California]

Pacific Gas & Electric Co.; Notice of Availability of Environmental Assessment

February 28, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed a non-capacity related amendment of license for the Drum Spaulding Hydroelectric Project, No. 2310–073. The Drum Spaulding Project is located on the Bear, South Yuba, and North Fork American Rivers in Placer and Nevada Counties, California. The plan is for a revised recreation plan for the project. An Environmental Assessment (EA) was prepared for the plan. The EA finds that approving the plan would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–5073 Filed 3–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM96–5–000]

Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act; Statement of Policy

Issued February 28, 1996.

I. Introduction

In this docket, the Commission has been exploring the issue of the application of its jurisdiction under the Natural Gas Act (NGA) [1] and the Outer Continental Shelf Lands Act (OCSLA) over natural gas facilities and services on the Outer Continental Shelf (OCS).[2] In response to several recent requests that the Commission declare existing certificated offshore systems [3] and proposed offshore facilities in the Gulf of Mexico[4] to be exempt gathering facilities, and in view of increases in successful offshore exploration and development activities, the Commission has elected to review issues concerning the status, scope, and effect of its regulation of gathering and transportation on the OCS. In view of the importance of current OCS production,[5] and its potential as a source of new production, the Commission seeks in this proceeding to assure that regulatory policies do not impede or distort development activities on the OCS.

The Commission solicited comments on the operational considerations pertaining to OCS exploration and development activities, and the legal and policy issues implicated in either maintaining or departing from present policy.[6] Thirty-five responses were submitted by representatives of all segments of the industry.[7] The Commission has reviewed these comments and will clarify its regulation of OCS facilities and services, as discussed below.

II. Background

In 1989, in response to the decision in *EP Operating Co.* v. *FERC (EP Operating)* [8]—which reversed a Commission determination that a 16-inch diameter, 51-mile long pipeline connecting an OCS production platform to an offshore processing plant was a jurisdictional transportation facility—the Commission set upon a review of its gathering policy. The purpose of that review was to assess the impact of *EP Operating* as well as the continuing viability and relevance of the ''primary function'' test, which at that time was the Commission's preferred methodology for determining the jurisdictional status of gas pipeline facilities.[9] That review culminated in

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[1] Section 1(b) of the NGA grants the Commission regulatory jurisdiction over ''the transportation of natural gas in interstate commerce'' and ''the sale in interstate commerce of natural gas for resale.'' At the same time, section 1(b) exempts from the NGA's coverage ''the production or gathering of natural gas.'' Thus, section 1(b) first grants to the Commission broad plenary authority to regulate the business of transporting and of wholesaling natural gas moving in interstate commerce. Secondly, section 1(b) removes from that plenary grant of federal jurisdiction those aspects of natural gas regulation which are the proper subject of state regulation.

[2] Generally, sections 5(e) and 5(f)(1) of the OCSLA give the Commission certain responsibilities and authorizations to ensure that natural gas pipelines on the OCS transport for non-owner shippers in a nondiscriminatory manner and operate in accordance with certain competitive principles. Section 5(e) of the OCSLA requires pipelines to transport natural gas produced from the OCS ''without discrimination'' and in such ''proportionate amounts'' as the Commission, in consultation with the Secretary of Energy, determines to be reasonable. In addition, section 5(f)(1) of the OCSLA requires pipelines transporting gas on or across the OCS to adhere to certain ''competitive principles.'' These ''competitive principles'' include a requirement that the pipeline must provide ''open and nondiscriminatory access to both owner and nonowner shippers.'' The applicability of the provisions of sections 5(e) and 5(f)(1) is not restricted to interstate pipelines that are subject to the Commission's NGA jurisdiction.

The only pipelines that may be exempt from the Commission's authority under the OCSLA are certain ''feeder lines,'' which are defined in section 5(f)(2) of the OCSLA as a pipeline that feeds into a facility where oil and gas are ''first collected'' or a facility where oil and gas are ''first separated, dehydrated, or otherwise processed.'' These ''feeder lines'' may only be exempted from the requirements of the OCSLA by order of the Commission.

[3] *See* Sea Robin Pipeline Company (Sea Robin), 71 FERC ¶ 61,351 (1995) (denying request for declaration of gathering status), *reh'g pending;* Enron Gulf Coast Gathering L.P., Docket No. CP95–516–000; and, Venice Gathering Company, Docket No. CP95–202–000.

[4] *See* Shell Gas Pipeline Company (SGPC), Docket No. CP96–9–000 (issued contemporaneously with this policy statement) and SGPC, Docket No. CP96–113–000.

[5] The Gulf of Mexico is the largest single domestic source of natural gas production, currently representing 27 percent of the lower 48 states' total dry gas production and 17 percent of proven reserves. Energy Information Administration, 1994 Annual Report, U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Reserves, Table 8 at 28 and Table 9 at 31 (October 1995).

[6] *See* Notice of Inquiry into Jurisdictional Issues Respecting Natural Gas Pipeline Facilities and Services on the Outer Continental Shelf (NOI), 73 FERC ¶ 61,227 (1995).

[7] Four parties filed comments out-of-time, which for good cause shown, we accept. Minerals Management Service and Williams Field Services filed supplemental comments and OCS Producers filed reply comments. A list of the commenters is included as an appendix to this policy statement.

[8] 876 F.2d 46 (5th Cir. 1989).

[9] The ''primary function'' test was articulated in Farmland Industries, Inc. (Farmland), 23 FERC ¶ 61,063 (1983). In Farmland the Commission enumerated several physical and geographic criteria to be included in the analysis for determining whether the primary function of a facility is the

Continued

the Commission's articulation and application of the ''modified primary function'' test in *Amerada Hess Corporation, (Amerada Hess I).*[10]

Amerada Hess I explained that because of recent advances in engineering and available technology, offshore drilling operations were moving further offshore and further from existing interstate pipeline interconnections. Accordingly, a relatively long pipeline on the OCS may be consistent with a primary function of gathering or production whereas an onshore pipeline of similar length would not. Therefore, in applying the primary function test to offshore pipeline facilities, the Commission modified that test in order to apply, in effect, a sliding scale that would allow for the use of gathering pipelines of increasing lengths and diameters in correlation to the distance from shore and the water depth of the offshore production area. Specifically, when applying the *Farmland* criteria, the Commission stated that it would consider, especially for offshore facilities, the changing technical and geographic nature of exploration and production.

III. The Notice of Inquiry

As explained in the NOI, the Commission has been prompted to reexamine its approach to regulating OCS facilities in view of the fact that several companies have filed, or indicated their intent to file, requests for exempt gathering status for proposed projects designed to bring gas onshore from significant, newly developed deep water reserves in the Gulf of Mexico. Additionally, there are pending requests to declare existing certificated offshore systems to be gathering, including Sea Robin's request for rehearing of the Commission's June 15, 1995 order denying gathering status for its offshore system. Accordingly, the NOI set out issues to be addressed by commenters regarding the need for continued NGA regulation of offshore facilities. The NOI contained a number of specific questions, among them whether the Commission should: continue to distinguish between gathering and transportation on the OCS; declare all OCS facilities to be gathering exempt from the Commission's jurisdiction under NGA section 1(b); issue a rule under the NGA declaring all OCS facilities to be jurisdictional transportation facilities; adopt a ''light-handed'' regulatory approach that relies on complaints of discriminatory access and/or the regulatory authority provided by the OCSLA; or, continue application of the modified primary function test on a case-by-case basis.

IV. Comments[11]

The commenters overwhelmingly reject the suggestion that the Commission eliminate the distinction between transportation and gathering, maintaining that it is necessary, as a practical and legal matter, to continue to segregate facilities that perform primarily different functions.[12] Generally, interstate pipelines assert that regulation under the OCSLA is adequate given OCS competition and parties' recourse to a complaint proceeding; generally producers believe continued NGA rate regulation is necessary to protect against OCS interstate pipelines' market power.

Commenters maintain that a declaration that all OCS facilities are of one generic type would constitute a precipitous departure from the Commission's past practice of case-specific consideration, upset parties' reliance upon functional classifications in developing offshore reserves and accepting terms and conditions of service, and invite judicial reversal. Gatherers Leviathan and Tejas note that NGA section 1(b) specifically exempts gathering facilities from the Commission's NGA jurisdiction; thus, particularly in light of *EP Operating,* the Commission is without authority under the NGA to find all OCS facilities to be jurisdictional. OCS Producers[13] concur, and add that it would constitute an abdication of the Commission's regulatory responsibility under NGA section 1(b) to classify all OCS facilities as gathering. OCS Producers argue that pipeline systems, including facilities offshore, perform different functions, that the Commission's historical practice has been to recognize the different functions through application of a primary function test, and that courts have upheld this practice. OCS Producers also raise concerns about the Commission's need to regulate the rates charged by the pipelines. Producers Blue Dolphin Exploration and Energy Development assert that OCS pipelines possess market power and it is the Commission's responsibility under the NGA is to protect gas consumers from the exercise of such power.

The NOI sought comments on whether absent NGA regulation of OCS facilities or services, the Commission's regulatory authority under the OCSLA alone would be sufficient to protect the public interest, or would result in a regulatory gap.

Section 5(f)(1) of the OCSLA provides that pipelines must provide open and nondiscriminatory access. Parties recognize that the scope of the Commission's regulatory reach over gas gathering and transportation under the OCSLA is largely untested and differ in their interpretation of the extent and type of action the Commission might take to assure open and nondiscriminatory access. However, parties agree that the OCSLA does not provide for NGA-type cost-based rate regulation.

Interstate pipelines,[14] producer-owned pipelines, gatherers Leviathan,

transportation or the gathering or production of natural gas. These factors are: (1) the length and diameter of the line, (2) the extension of the facility beyond the central point in the field, (3) the lines' geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) the operating pressure of the line. The primary function test has been found by the Commission to be applicable to both onshore and offshore facilities. The criteria set out in Farmland were not intended to be all inclusive. The Commission has also considered nonphysical criteria such as the intended purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and the Natural Gas Policy Act of 1978 (NGPA).

[10] 52 FERC ¶ 61,268 (1990).

[11] Marathon Oil submitted a response requesting that the Commission establish a priority for casinghead gas. However, as Marathon Oil notes, this particular concern is ''not included in the Commission's list of questions;'' therefore, this policy statement does not address the merits of Marathon Oil's request. We note a similar proposal to provide a priority for casinghead gas was considered and rejected in Order Nos. 509 and 509–A. Interpretation of, and Regulation of the OCSLA Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the OCS, 53 FR 50,925 (December 19, 1988), FERC Stats. & Regs., ¶ 30,842 at 31,290 (1988), on *reh'g,* 54 FR 8,301 (February 28, 1989), FERC Stats. & Regs., ¶ 30,848 at 31,347–48 (1989).

The State of Louisiana urged the Commission not to take any action that might extend federal regulation to include gathering activities in state waters which have traditionally been considered subject to regulation by the states. The Commission does not anticipate the clarification of its primary function test contained herein will affect the regulatory scheme now in effect offshore in state waters.

[12] Four parties—interstates Columbia, Natural, and Tennessee, and local distribution company (LDC) Brooklyn Union—argued for a blanket gathering declaration; the remaining thirty commenters seek to maintain, to one degree or another, the distinction between gathering and transportation, or else express no opinion.

[13] OCS Producers represents the interests of major producers of oil and gas on the OCS, and marketers, and/or shippers on OCS pipelines and consists of: Amerada Hess Corporation; Amoco Production Company and Amoco Energy Trading Corporation; Anadarko Petroleum Corporation; Ashland Exploration Inc.; Chevron U.S.A. Inc; Conoco Inc.; Exxon Corporation; Marathon Oil Company; Meridian Oil Inc.; Mobile Natural Gas Inc.; Oryx Energy Company; OXY USA Inc.; Phillips Petroleum Company; Shell Offshore Inc.; Texaco Natural Gas Inc.; and, Union Pacific Fuels, Inc.

[14] Excepting Blue Dolphin Pipe Line, which argues that absent a legislative mandate, the

Tejas, and Williams Field Services, and LDC Brooklyn Union consider the Commission's authority under the OCSLA to be sufficient to protect the public interest.[15] These parties generally maintain that because of the competitive environment offshore, light-handed OCSLA oversight, coupled with a complaint procedure, can provide an adequate safeguard against the exercise of market power.[16] PanEnergy contends the Commission's authority under the OCSLA is broad enough to encompass establishing nondiscriminatory rates. These parties do not anticipate that reliance upon the OCSLA alone will produce a regulatory gap.

In contrast, producers[17] and industrial end users[18] are wary of relying solely on the OCSLA and what they view as a cumbersome complaint procedure. They contend that absent the Commission's NGA rate regulation, barriers to entry and a current lack of transportation alternatives leave OCS producers subject to OCS transportation pipelines' potential to exercise market power. For example, Energy Development states the OCSLA protects only access, but does not provide the Commission authority to regulate OCS transportation rates, and without rate regulation there is no effective check on the exercise of market power. Producers and end users predict that removing NGA rate regulation would result in a regulatory gap.[19]

Several commenters stress that the Commission may not opt to substitute OCSLA regulation for NGA regulation, since simultaneous regulation is mandated by statute.[20] Enserch, NGSA, and Texaco speculate that if the Commission were to rely solely on the OCSLA and remedial complaint procedures, rate and litigation uncertainties would chill offshore exploration and development.

The NOI asked whether the Commission should, under a light-handed regulatory approach, distinguish between new and existing OCS pipelines. Most interstates[21] and gatherers[22] assert that a distinction between OCS facilities based on age would be inappropriate, unlawful, and place existing facilities which are subject to NGA rate regulation at a competitive disadvantage. However, interstate Koch, and producer Texaco, suggest that new facilities be presumed to be gathering, and thus eligible for light-handed regulation under the OCSLA. Tejas comments that new gathering lines will be less likely to exert market power than existing pipelines.

Some producers[23] argue that a lack of market power, not vintage, is the proper criteria to consider in distinguishing which facilities might appropriately be subject to light-handed regulation. OCS Producers accept that vintage might be considered as a factor when determining whether light-handed regulation is appropriate in a particular instance. Total Minatome urges that light-handed regulation apply only to production from OCS leases granted after promulgation of such regulation so as not to thwart the expectations upon which prior development was undertaken. Leviathan proposes to distinguish existing facilities which have customers who have relied on a certain level of regulation from new facilities which have customers with no such reliance.

The NOI requested comments on the option of allowing all rate regulation to end at any point that a pipeline and a non-affiliated shipper agree. INGAA and PanEnergy endorse the proposal. OCS Producers, Process Gas Consumers, Blue Dolphin Pipe Line, and Tejas disagree with this option. Tennessee asserts there should be no rate regulation behind the processing plant, regardless of agreement. Total Minatome claims this option is not needed, since pipelines can currently negotiate discounts with any customer and minimum rates are low enough to not inhibit freely negotiated rates. Leviathan also rejects this option and proposes market-based rates for new supply facilities 24 inches in diameter or less, light-handed rate regulation for new supply facilities greater than 24 inches in diameter, and light-handed rate regulation (through a rate freeze and an inflation adjustment) for existing OCS faculties.

Several parties addressed particular concerns involving rates. Atlanta Gas, Brooklyn Union, and Natural argue that if the Commission were to declare existing OCS jurisdictional facilities to be gathering, then it should promptly require pipelines to revise their rates to exclude costs associated with their OCS facilities from their rates. Leviathan proposes an anti-cost-shifting limitation to prevent cross-subsidies between existing and new facilities by barring discount rate adjustments for jurisdictional purposes by a market area pipeline in setting downstream rates for downstream transportation of gas transportation on OCS facilities of that pipeline or its affiliates. Brooklyn Union claims a number of interstate pipelines have onshore or offshore points of aggregation, and that transportation facilities upstream of these pooling points provide the same function as OCS facilities; consequently, these facilities, like OCS facilities, should be subject only to light-anded regulation.

The NOI asked parties to consider the rationale for and consequences of declaring all offshore facilities to be either gathering or transportation. No party adopted the proposition that all OCS facilities be declared transportation. Columbia, Natural, Tennessee, and Brooklyn Union argued for a generic determination that all offshore facilities are gathering. CNG proposes a limited declaration of nonjurisdictional status for OCS pipelines owned by producers (or their affiliates) and used exclusively by the same producers (or their affiliates), claiming such facilities function as extensions of the production platforms to which they are connected. All other parties seek to maintain, to one degree or another, the distinction between gathering and transportation, or else express no opinion.

If the Commission did declare all offshore facilities gathering, Leviathan, Sea Robin, Tejas, and Tennessee suggest existing customers' expectations may be protected, as they have been onshore, through a default contract mechanism. Leviathan proposes a term that runs for the life of the currently connected reserves with an option to purchase gas supplies attached to competing offshore pipelines. Tennessee suggests a contract term of two years, and adds that issues relating to existing customers could be resolved in individual abandonment proceedings. Total Minatome proposes retaining the existing rate structure for current shippers for the life of production and providing that current

Commission cannot displace its NGA regulatory obligations by acting exclusively under the OCSLA.

[15] Tejas conditions its endorsement of OCSLA-only regulation upon the Commission's finding ''that interstate transportation on the entire OCS is workably competitive and that no interstate pipelines have market power over OCS transportation.''

[16] Leviathan would not rely entirely on complaints. Leviathan proposes to maintain cost-of-service based rates for existing OCS pipelines for three years, with annual inflation adjustments, and would similarly apply cost-based rates to new facilities exceeding 24 inches in diameter. Blue Dolphin Pipe Line is concerned about the administrative burden born by the complainant and the fact that relief will be, at best, prospective.

[17] OCS Producers, IPAA, NGSA, Blue Dolphin Exploration, CNG, Energy Development, Total Minatome, and Vastar.

[18] Process Gas Consumers and NGSA.

[19] OCS Producers, IPAA, NGSA, Blue Dolphin Exploration, Energy Development, Total Minatome, Process Gas Consumers, and NGSA.

[20] Blue Dolphin Exploration, Energy Development, CNG, IPAA, OCS Producers, NGSA, and Process Gas Consumers.

[21] INGAA, Columbia, Sea Robin, PanEnergy, and Tennessee.

[22] Centana and Williams Field Services.

[23] Blue Dolphin Exploration and IPAA.

shippers receive any lesser rate that might be negotiated by new shippers. PanEnergy rejects the need for a default contract, noting gathering facilities offshore remain subject to the Commission's OCSLA jurisdiction. Columbia, Enron, and PanEnergy believe that vigorous competition and the Commission's ability to remedy discrimination under the OCSLA will protect existing customers' expectations. Blue Dolphin Exploration states that the Commission should protect existing customers by (1) conditioning any declaration of gathering status for existing facilities owned by interstates or their affiliates upon divestiture of those facilities to a non-pipeline, non-pipeline affiliate party, and, (2) requiring interstate pipelines to divest all interests in offshore gathering facilities to unaffiliated, non-interstate owned or controlled third parties. OCS Producers contend that without NGA rate regulation, no uniform standard conditions could adequately protect historical customers.

As noted above, the vast majority of comments received reject the prospect of a blanket declaration and instead advocate continuing to distinguish between gathering and transportation on a case-by-case basis. However, while producers and industrial end users endorse a continued application of the Commission's current modified primary function test, other parties propose that that test be altered in various ways.

Interstate and producer-owned pipelines complain that nonjurisdictional gatherers enjoy competitive advantages over regulated transporters and urge the Commission to apply the primary function test in a manner that favors finding OCS facilities to be gathering. For example, INGAA asserts the Commission should continue with a case-specific analysis, but should ''customize its analysis for offshore facilities,'' recognizing that size, ownership, and vintage are not necessarily determinative of gathering offshore, whereas the behind-the-plant location of many offshore lines demonstrates their ''true gathering nature.'' Rather than relying exclusively on a bright-line physical test, Sea Robin urges the Commission to consider the commercial function of an OCS facility. ANR would eliminate ownership as a factor when considering the status of jurisdictional stand-alone OCS facilities. Williams Field Services maintains that gathering systems' facilities may extend beyond a processing plant to deliver into multiple transportation systems.

Enron and PanEnergy propose adopting a rebuttable presumption that all offshore facilities are gathering. Hence, gathering status for new and existing facilities would be granted unless parties opposed demonstrate the facilities function primarily as transportation. Koch and Texaco would limit the presumption to new offshore facilities so as not to disturb the expectations of existing owners and customers. Texaco would also require that an existing jurisdictional pipeline seeking gathering status be evaluated in view of the technology employed at the time the facilities were constructed and be obliged to demonstrate that circumstances have changed since the facilities were initially classified.

On the other hand, producers and industrial end users generally urge the Commission to continue applying the primary function test without any change which would skew that test in favor of a gathering determination. OCS Producers, IPAA, NGSA, and Process Gas Consumers maintain there is no legal or policy basis for altering the Commission's present application of the modified primary function test. OCS Producers claim that revisions of the test such as elevating the behind-the-plant factor above all others, ''would lead to the conclusion that virtually all pipeline facilities on the OCS are nonjurisdictional gathering.'' OCS Producers, Vastar, and Blue Dolphin Exploration endorse the outcome of the Commission's application of the primary function test in *Sea Robin*.

CNG would have the Commission disregard the behind-the-plant and central-point-in-the-field factors, and the facilities' geographic configuration and ownership, in favor of those factors deemed relevant to determining an offshore facility's core operation, namely: size, location of connecting platforms, operating pressures, and compression. According to CNG, pipelines with a single or serial attachment of supply sources serve as surrogate supply laterals and are likely to be gathering, whereas systems that generate economies of scale in aggregating multiple, scattered sources of supply are likely to be transportation.

Total Minatome considers offshore production platforms to function as the central point in a field, aggregating gas from different wells. Accordingly, Total Minatome views the large diameter lines that move gas from platforms as transportation lines, and proposes that the short, low-pressure lines linking multiple platforms be considered feeder lines under the OCSLA and gathering lines under the NGA.

Leviathan, a gatherer, proposes a novel jurisdictional test whereby new OCS system extensions of market area pipelines—*i.e.*, expansions to reach new production or attach additional OCS supplies—would be treated as jurisdictional transportation if the pipe diameters exceeded 24 inches. Market area pipelines' new supply pipe with a diameter of 24 inches or less would be treated as gathering. New jurisdictional production area facilities greater than 24 inches in diameter, including extensions of jurisdictional pipelines, would be treated as jurisdictional transportation facilities. Existing and new gathering facilities, including new OCS supply pipe with a diameter of 24 inches or less, would be presumed to be nonjurisdictional. Existing OCS transportation facilities would be treated as they have been historically.

V. Commission Response and OCS Policy

As stated in the NOI, the Commission has been presented with recent requests to clarify the jurisdictional status of OCS pipeline facilities. These facilities are an integral part of proposals to explore and develop natural gas reserves in deep water areas of the Gulf of Mexico and bring gas from such projects onshore for processing and delivery into the onshore interstate transportation grid. On the one hand, the Commission recognizes that such projects are expensive, and would not be undertaken in an atmosphere of regulatory uncertainty. We do not want to employ a policy that might impede exploration and development of these new areas. On the other hand, we are mindful of our obligations under the NGA to prevent the exercise of market power by companies that transport natural gas.

To strike a balance between these different objectives, we will retain our existing primary function test and clarify how we intend to apply that test for determining whether particular facilities constitute gathering facilities exempt from our jurisdiction under NGA section 1(b). We will add a new factor to our primary function test that will apply to facilities that are designed to collect gas produced in water depths of 200 meters or greater. Such facilities will be presumed to qualify as gathering facilities up to the point or points of potential connection with the interstate pipeline grid. From there on, the facilities will be evaluated under our existing primary function test and if found to be primarily transportation facilities, will be subject to our jurisdiction under NGA section 7.

We realize this statement of our gathering policy will require further refinement in that it leaves unresolved a number of questions that will have to be addressed in individual cases. For

instance, what constitutes a point of potential connection with the interstate pipeline grid may depend on individual circumstances. In *SGPC*, Docket No. CP96–9–000, which we are issuing contemporaneously with this policy statement, the platform and downstream stub lines interconnecting with Texas Eastern Transmission Corporation's interstate line six miles away are considered gathering. All facilities downstream of these are deemed to be transportation. To consider another example, the Viosca Knoll system (which predates this policy statement, but which we believe is consistent with it) was constructed in depths less than 200 meters, but was specifically designed to access new, deep water production. Viosca Knoll, a 20-inch diameter, 95-mile pipeline, was constructed roughly parallel to the edge of the Continental Shelf in a type of ''header'' configuration interconnecting with interstate pipelines at either end. The facility was declared to be gathering then and a similar project would qualify for a presumption of gathering under the policy we are adopting today.[24]

Despite the issues that will still need to be addressed in individual cases, we believe the above policy provides the necessary certainty for most new projects and fairly balances the concerns raised by the commenters in this proceeding. Many commenters, for instance, opposed any initiative that would effectively eliminate NGA regulation on the OCS and rely only on the OCSLA to provide a level playing field. Commenters pointed to reliance on the existing regulatory scheme for access to reasonably priced transportation and protection against market power by interstate pipelines. The policy adopted here would not upset that scheme. Existing interstate pipelines and gathering facilities would retain their status barring some change in circumstances, and new proposals for construction on the OCS would be considered under the current primary function test for gathering.

At a depth of roughly 200 meters, however, geographical and topographical changes on the sea floor make a rigid application of the modified primary function test undesirable. This is the point at which the Outer Continental Shelf drops off sharply to very deep waters. Of necessity, exploration past this point must rely on large, floating production platforms. The expense of exploring for and producing gas at these depths is considerably greater than in shallower waters.[25] This depth also is consistent with the 200 meter depth specified in the Outer Continental Shelf Deep Water Royalty Relief Act, which provides royalty relief to encourage new oil and gas production in deep water lease blocks in the Gulf of Mexico. *See* P.L. 104–58, Title III, 43 USC § 1337 (1995).

There is little point in attempting to distinguish between new projects of this kind based on their physical features. Such deep water projects perform essentially the same function and they are all primarily engaged in production and gathering activities. We think the better approach is to consider all such facilities as production and gathering facilities up to the point where they duplicate or are in proximity to facilities that are established as transportation facilities; downstream of that point, we will determine the facilities' jurisdictional status based on our primary function test.

At present, there are a limited number of projects that produce from these depths, so there is no significant reliance by investors, producers, or shippers on an established regulatory scheme. Further, the companies who are sponsoring pending projects are large companies that intend to produce, gather, and transport their own gas and who appear less in need of regulatory protection than others closer to shore. As noted in the comments, these producers closer to shore have relied on regulated interstate pipelines to transport most, if not all, of their gas onshore and may be captive to these pipelines if Commission oversight were suddenly withdrawn. In sum, it is our view that under current circumstances the need for NGA regulation of deep water projects far offshore is significantly less than it is elsewhere.

Having said this, however, we note that where gas is destined for interstate commerce, there is necessarily a point at which the gathering or collection of the gas ends, and interstate transportation begins. The original primary function test was designed to help identify this point. For the reasons explained, though, the rigid application of that test has not been helpful in categorizing the new large projects designed to bring gas onshore from deep water production areas. For long lines designed to bring gas onshore from deep water, we believe the place where gathering or collection ends and transportation begins is the point or points of potential connection with the existing interstate pipeline grid. Whether the lines actually interconnect there or not, we see little difference in function between an interstate transportation line that takes gas to shore and a newly built line that, for all practical purposes, runs parallel to it and serves the same purpose of moving gas to shore.

One of the principles underlying our policy on the OCS is to hold all owners of facilities that perform similar functions to the same regulatory requirements that our statutory jurisdiction allows. It would be inconsistent to allow new, large pipelines that perform a function no different from nearby existing lines subject to NGA regulation to operate outside the framework of Order No. 636 while, at the same time, applying the requirements of Order No. 636 to existing pipelines with the same physical features and function.

For example, in the *SGPC* order,[26] the Commission is issuing a certificate under NGA section 7(c) for that portion of the proposed facility that performs a transportation function. The Commission will regulate the WD 143 to Venice Line as an NGA facility because, under the Commission's ''primary function'' test, the line is ''representative of the other long-haul transportation systems in the area that serve to move OCS production, that has been aggregated at interconnection platforms, to shore for processing and subsequent redelivery onto the onshore interstate transportation grid.''[27] Like other interstate pipelines performing the same function, the Commission will require SGPC to comply with all the requirements of Order No. 636.[28]

The Commission will continue to exercise rate jurisdiction for gathering facilities that are owned by natural gas companies (irrespective of whether these natural gas companies are existing interstate pipelines or new deep water producers that also own transportation

[24] Viosca Knoll Gathering System, 66 FERC ¶ 61,237 (1994), *reh'g denied*, 68 FERC ¶ 61,050 (1994).

[25] ''In 1991, total costs for the average exploratory natural gas well in the lower 48 states were almost $600,000 onshore, and over $5 million offshore. In deep water, a tension leg platform in 3,000 feet of water can cost a billion dollars.'' U.S. Senate Committee on Energy and Natural Resources, Report 103–248 (April 11, 1994) (commenting on S. 318, a draft of what became the Outer Continental Shelf Deep Water Royalty Relief Act, Title III, P.L. 104–58, enacted November 28, 1995).

[26] *See* Docket No. CP96–9–000, issued contemporaneously with this policy statement.

[27] *Id.*, slip op. at 20.

[28] In response to the interstate pipelines' concerns about competing on the OCS with unregulated entities, the Commission notes it recently issued a policy statement that allows a pipeline to negotiate creative approaches to pricing other than traditional cost-of-service ratemaking if its cost-based recourse rate is available. *See* Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996).

facilities).[29] As noted in the *SGPC* order, the Commission will have jurisdiction over rates charged by SGPC for gathering services over those facilities upstream of the WD 143 platform.

Moreover, in addition to our NGA ''in connection with'' jurisdiction over gathering rates charged by natural gas companies, the Commission has jurisdiction pursuant to sections 5(e) and 5(f) of the OCSLA. Such jurisdiction is not restricted to interstate pipelines subject to the Commission's NGA jurisdiction, but rather extends to all pipelines on the OCS, including gathering lines owned by non-interstate pipelines.[30] The Commission acknowledged this jurisdiction in Order Nos. 509 and 509–A. In Order No. 509–A, the Commission stated that ''the open-access mandate of the OCSLA applies to all pipeline operations on the OCS, and will consider appropriate measures for remedying discriminatory access to other OCS facilities on a case by case basis.'' [31]

The Commission continues to believe this and will treat seriously, and respond promptly to, complaints filed pursuant to the OCSLA by shippers on OCS gathering pipelines that are not otherwise subject to the Commission's NGA ''in connection with'' jurisdiction. The Commission interprets the nondiscrimination mandates of sections 5(e) and 5(f) of the OCSLA to require, at a minimum, nondiscriminatory access and nondiscrimination with respect to rates and terms and conditions of service.

In particular, the Commission believes it has the authority under the OCSLA to take those steps necessary to guarantee that all OCS pipelines, including those not subject to the NGA, provide fair and unrestricted access in a manner that ensures the efficient development of OCS natural gas resources. The Commission stated in Order No. 509 that if it received complaints it would ''use its ancillary authority, its authority under sections 4 and 5 of the NGA, and its authority under section 5 of the OCSLA, as appropriate under the circumstances presented.'' [32]

In sum, the Commission will continue to determine the primary function of offshore facilities on a case-by-case basis, as the majority of commenters advocate. However, in applying our primary function test to facilities offshore, in recognition of the technology and topography particular to operations in deep water, we will presume facilities located in deep water are primarily engaged in gathering or production. Other than this clarification regarding the primary function of facilities offshore, after consideration of the comments, we find no cause to seek to alter our regulatory authority under the NGA and OCSLA over natural gas facilities and services on the OCS. By the Commission.

Lois D. Cashell,

Secretary.

Appendix

Parties submitting comments in Docket No. RM96–5–000:

American Gas Association (AGA)
Amoco Energy Trading Corporation jointly with Amoco Production Company (Amoco)
ANR Pipeline Company (ANR)
Atlanta Gas Light Company jointly with Chattanooga Gas Company (Atlanta)
Brooklyn Union Gas Company (Brooklyn Union)
Blue Dolphin Exploration Company (Blue Dolphin Exploration)
Blue Dolphin Pipe Line Company (Blue Dolphin Pipe Line)
Centana Gathering Company (Centana)
Chemical Manufactures Association (Chemical Manufactures) *
Columbia Gas Transmission Corporation jointly with Columbia Gulf Transmission Company (Columbia)
Consolidated Natural Gas Company (CNG)
Energy Development Corporation (Energy Development)
Enron Interstate Pipelines (Enron)
Enserch Exploration, Inc. (Enserch)
Independent Petroleum Association of America (IPAA)
Interstate Natural Gas Association of America (INGAA)
Koch Gateway Pipeline Company (Koch)
Leviathan Gas Pipeline Company (Leviathan)
Marathon Oil Company
Maryland Department of the Environment *
Minerals Management Service, U.S. Department of Interior (MMS) *
Natural Gas Pipeline Company of America (Natural)
Natural Gas Supply Association (NGSA) *
OCS Producers
PanEnergy Companies (PanEnergy)
Process Gas Consumers Group jointly with American Iron and Steel Institute and Georgia Industrial Group (Process Gas Consumers)
Sea Robin Pipeline Company (Sea Robin)
State of Louisiana (Louisiana)
Tejas Power Corporation (Tejas)
Tennessee Gas Pipeline Company (Tennessee)
Texaco Natural Gas Inc. (Texaco)
Total Minatome Corporation (Total Minatome)
Vastar Resources, Inc. (Vastar)
Venice Gathering Company (Venice)
Williams Field Services Group, Inc. jointly with Transcontinental Gas Pipe Line Corporation (Williams Field Services)

***Filed out-of-time.**

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[29] Under sections 4 and 5 of the NGA, the Commission has jurisdiction over the rates and charges received by natural gas companies for or ''in connection with'' the jurisdictional transportation of gas. Thus, an interstate pipeline's gathering rates generally are subject to the Commission's jurisdiction because they are in connection with the pipeline's jurisdictional transportation services. *See* Northern Natural Gas Company, 929 F.2d 1261 (8th Cir. 1991), *cert. denied*, 112 S.Ct. 169 (1991).

[30] The only pipelines that may be exempt from the Commission's jurisdiction under the OCSLA are certain ''feeder lines,'' which are defined in section 5(f) of the OCSLA, 43 USC 1334(f)(2), as a pipeline which feeds into a facility where oil and gas are ''first collected'' or a facility where oil and gas are ''first separated, dehydrated, or otherwise processed.'' Moreover, these ''feeder lines'' only may be exempted from the requirements of the OCSLA by order of the Commission.

[31] Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf, 54 FR 8,301 (February 28, 1989), FERC Stats. & Regs. ¶ 30,848 at 31,334 (1989).

[32] Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf, 53 FR 50,925 (December 19, 1988), FERC Stats. & Regs. ¶ 30,842 at 31,289 (1988).

[Docket No. CP96–201–000, et al.]

Algonquin Gas Transmission Company, et al.; Natural Gas Certificate Filings

February 26, 1996.

Take notice that the following filings have been made with the Commission:

1. Algonquin Gas Transmission Company

[Docket No. CP96–201–000]

Take notice that on February 20, 1996, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135 filed an application pursuant to Sections 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities necessary to connect Algonquin's existing pipeline system with facilities owned by The Connecticut Light and Power Company (CL&P) in Middletown, Connecticut (the ''Middletown Plant'').