

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.

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[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.

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[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 systems³ and proposed offshore facilities in the Gulf of Mexico⁴ to be exempt gathering facilities, and in view of increases in

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." "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.

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

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

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