Bonito Pipe Line Company
61 FERC ¶ 61,050 (1992), aff'd sub. nom.,
Shell Oil Co. v. FERC, 47 F.3rd 1186 (D.C. Cir. 1995)

OXY Pipeline, Inc. et al.
61 FERC ¶ 61,051 (1992)

Bonito Pipe Line Company is a crude oil pipeline that operates exclusively on the Outer Continental Shelf (OCS). Bonito sought a declaratory order confirming that it was not required to comply with a request for an interconnection from Shell Pipe Line Corporation or, in the alternative, that the Commission determine the proper methodology for allocating capacity and for compensating existing shippers for damages they might suffer as a result.

The Commission concluded that the ICA does not expressly cover pipelines transporting oil solely on or across the OCS, since the OCS is not a State or Territory of the United States. Because the involved facilities do not leave the OCS, there is no ICA jurisdiction or common carrier obligation to accept and transport Shell's volumes. However, the Commission also concluded if a pipeline chooses to operate on the OCS, the Outer Continental Shelf Lands Act requires open and nondiscriminatory access to both owner and nonowner shippers. Therefore, a requested interconnection must be granted if the refusal to do so would be discriminatory. In this case, the Commission found that Bonito's refusal to accept and transport Shell's volumes would constitute discrimination. Bonito's request for alternative allocation and compensation methodologies was denied as premature and unnecessary.

OXY Pipeline, Inc. also filed petitions for a declaratory order disclaiming ICA and Commission jurisdiction over certain of OXY's pipelines on the OCS. For the reasons noted above, the Commission concluded that the ICA does not apply to pipelines operating solely on the OCS. However, such pipelines remain subject to the provisions of the Outer Continental Shelf Lands Act.

Bonito Pipe Line Company
Order Determining Transportation Obligation
61 FERC ¶ 61,050 (1992), aff'd sub. nom.,
Shell Oil Co. v. FERC, 47 F.3rd 1186 (D.C. Cir. 1995)

OXY Pipeline, Inc., et al.
Order Granting Petitions for Declaratory Order
and Disclaiming Jurisdiction
61 FERC ¶ 61,051 (1992)

[¶ 61,050]

Bonito Pipe Line Company, Docket No. OR92-7-000

Order Determining Transportation Obligation

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[4] 59 FERC ¶ 61,358, at p. 62,315 (1992).

[5] 59 FERC ¶ 61,361 (1992).

[6] 59 FERC at pp. 62,317-319.

[7] 59 FERC ¶ 61,358 (1992).

[8] Letter Order, Docket Nos. RP91-78-003 and CP92-108-001 (August 25, 1992).

[9] "Filing to Implement Modified Stipulation and Agreement," Docket Nos. RP91-78-003 and CP92-108-001, Explanatory Statement at pp. 3 and 5-6.

(Issued October 8, 1992)

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

On July 1, 1992, Bonito Pipe Line Company (Bonito)[1] filed a petition for a declaratory order asking the Commission to declare that, under the Outer Continental Shelf Lands Act (OCSLA)[2] and the Interstate Commerce Act (ICA),[3] Bonito is not unconditionally required to interconnect with Shell Pipe Line Corporation (Shell Pipe Line) and commence transportation of crude oil for Shell Oil Company (Shell Oil).[4] In the alternative, should the Commission determine that Bonito must connect with Shell Pipe Line and provide the requested transportation, Bonito asks the Commission to determine a proper methodology for allocating capacity and the appropriate methodology for compensating its existing shippers for the alleged "material disadvantage" they will suffer. As discussed below, we have determined that the OCSLA requires Bonito to grant Shell's request for an interconnection and the transportation of its crude oil. However, we will deny Bonito's request that we determine an allocation methodology and a methodology for compensating its shippers.

Background

The Bonito pipeline is an outer Continental Shelf (OCS) crude oil pipeline, which extends for 71 miles from Eugene Island Block 330 to Ship Shoal Block 28. At Ship Shoal Block 28, the crude oil is tendered to Ship Shoal Pipe Line Company (Ship Shoal) for ultimate delivery to onshore points. The Ship Shoal pipeline is owned in part and operated by Shell Pipe Line. Ship Shoal also receives deliveries from the Shell-Tarpon system, which is likewise owned in part and operated by Shell Pipe Line, and from the Whitecap system, which is operated by Unocal Pipeline Company. According to Shell, the Bonito crude oil is sour crude, but that accepted from Shell-Tarpon and Whitecap is sweet crude.

Bonito states that when the crude oil streams from all three pipelines are commingled, the Ship Shoal common stream historically has had an average sulfur content of approximately 0.41 percent and has been considered sweet crude. This has allowed all of the producers of crude oil transported on the Ship Shoal system to receive a substantially higher price than they would if the common stream had a sulfur content in excess of 0.5 percent, which is considered to be sour. For this reason, Bonito states that prior to its acceptance of any sour crude tendered to it, it has obtained Ship Shoal's agreement to receive and transport that production.

Bonito also states that its owners are shippers which individually utilize their capacity either as common carriers pursuant to tariffs on file with the Commission[5] or on a proprietary basis. Bonito acknowledges that nonowner shippers have utilized and are utilizing the Bonito system.

A subsidiary of Shell Oil is developing a production unit known as the Augur Unit. Shell anticipates that the Augur production, which is sour crude, will peak at about 50,000 barrels per day (BPD) in 1995. Shell has obtained the necessary permits to construct a 70-mile long pipeline from the Augur Unit to Shell's platform at Eugene Island Block 331. From that point, Shell plans to lay a two-mile long pipeline to Eugene Island Block 330, where it has requested access to the Bonito pipeline system. Bonito has declined Shell's request, based on Ship Shoal's refusal to accept Bonito's increased volumes for transportation in a commingled stream due to the high sulfur content of the Augur production.

Public Notice, Interventions, and Protests

Public notice of this filing was issued on July 8, 1992, providing for protests, motions, or notices to intervene to be filed on or before July 23, 1992. Timely motions to intervene were filed by Shell and Exxon Pipe Line Company (Exxon). Pursuant to rule 214 of the Commission's Rules of Practice and Procedure,[6] a timely filed motion to intervene is granted unless an answer in opposition is filed within 15 days of the date such motion is filed. Shell also filed a protest and motion for summary disposi-

[1] Bonito Pipe Line Company is the operator of the Bonito pipeline system, which is jointly owned in undivided interests by the persons listed in appendix A to this order. Bonito Pipe Line Company is a wholly owned subsidiary of Pennzoil Exploration and Production Company (Pennzoil). Pennzoil is one of the Bonito pipeline system's owners.

[2] 43 U.S.C. § § 1331, *et seq.*

[3] 49 U.S.C. app. § § 1, *et seq.*

[4] Both Shell Oil and Shell Pipe Line are parties to this proceeding. In this order, they will be referred to both jointly and individually as "Shell" unless the context requires otherwise.

[5] The owners which have tariffs on file with the Commission are Chevron Pipe Line Company (Chevron Pipe Line), Conoco Pipe Line Company (Conoco), and Mobil Eugene Island Pipeline Company (Mobil).

[6] 18 C.F.R. § 385.214 (1992).

tion. No other persons intervened or protested Bonito's filing.

Bonito filed an answer to Shell's protest and motion for summary disposition. Shell then filed a reply to Bonito's answer, and Bonito filed an answer to Shell's reply. Rule 213 of the Commission's Rules of Practice and Procedure[7] generally prohibits answers to protests and answers; however, these pleadings have aided the Commission in developing the record in this proceeding, and we will admit them.

Discussion

Outer Continental Shelf Lands Act

We will first examine Bonito's responsibilities under the OCSLA. Originally enacted in 1953 and amended in 1978, the OCSLA declares that it is the policy of the United States that the OCS is a vital national resource reserve held available for expeditious and orderly development in a manner consistent with the maintenance of competition and other national needs.[8]

Section 1334(e) provides in part that

> [r]ights-of-way through the submerged lands of the outer Continental Shelf ... may be granted by the Secretary [of the Interior] for pipeline purposes for the transportation of oil [and] natural gas ... upon the express condition that oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from submerged lands or outer Continental Shelf lands in the vicinity of the pipelines ....

Section 1334(f) was added by the 1978 amendments and states in part that

> every permit, license, right-of-way, or other grant of authority for the transportation by pipeline on or across the outer Continental Shelf of oil or gas shall require that the pipeline be operated in accordance with the following competitive principles:
>
> (A) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers....

We have not heretofore addressed the specific question before us in this proceeding. However, in Order Nos. 491,[9] 509,[10] and 509-A,[11] we have addressed the obligations of natural gas pipelines under the OCSLA.[12] While we acknowledge that application of those orders is limited to jurisdictional natural gas pipelines, some aspects of our analysis of the OCSLA apply with equal force to the obligations of oil pipelines.

For example, in Order No. 509, we quoted the Conference Report on the 1978 amendments to the OCSLA which describes the intent of section 5(f)(1) as follows:

> The agreed-to subsection (f) provides for open and nondiscriminatory access to apply to all pipelines and is a reaffirmation and strengthening of subsection 5(e) which provides for the transport or purchase of all OCS oil and gas " without discrimination."[13]

We went on to state that section 5(f)(1)(A) requires an OCS pipeline to provide open and nondiscriminatory access to both owner and nonowner shippers, in addition to the express condition in section 5(e) of the OCSLA that OCS pipelines must transport or purchase without discrimination.[14] We noted that "Congress, through the OCSLA, has made open-access a prerequisite to doing business on the OCS."[15]

In affirming our earlier conclusion regarding the open-access mandate of the OCSLA, we further emphasized in Order No. 509-A that, while OCS pipelines are not compelled to operate on the OCS, if they choose to do so, they are required to comply with the mandate of section

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[7] 18 C.F.R. § 385.213(a)(2) (1992).

[8] 43 U.S.C. § 1332(3).

[9] Interpretation of Section 5 of the Outer Continental Shelf Lands Act, 57 Fed. Reg. 14922 (April 26, 1988), 43 FERC ¶ 61,006 (April 1, 1988).

[10] Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf, 55 Fed. Reg. 50925 (December 19, 1988), *FERC Statutes and Regulations, Regulations Preambles 1986-1990* ¶ 30,842 (December 9, 1988).

[11] Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on or Across the Outer Continental Shelf, 54 Fed. Reg. 8301 (February 28, 1989), *FERC Statutes and Regulations, Regulations Preambles 1986-1990* ¶ 30,848 (February 21, 1989).

[12] Order Nos. 491, 509, and 509-A were recently affirmed in *Tennessee Gas Pipeline Co. v. FERC*, Nos. 89-1094, 89-1257, 89-1455, and 89-1621 (D.C. Cir. Aug. 14, 1992). The matter was remanded to the Commission on an issue not relevant to our decision in this proceeding.

[13] *FERC Statutes and Regulations, Regulations Preambles 1986-1990* ¶ 30,842, at p. 31,270 (quoting H.R. Conf. Rep. No. 1474, 95th Cong., 2d Sess. 37, *reprinted in* 1978 U.S.Code Cong. & Admin. News 1674, 1686).

[14] *FERC Statutes and Regulations, Regulations Preambles 1986-1990* ¶ 30,842, at p. 31,270.

[15] *Id.* at p. 31,274.

5 of the OCSLA.[16] Additionally, we note that there is nothing in the legislative history of the OCSLA that persuades us that the nondiscrimination provisions of that act were intended to apply to oil pipelines in a different fashion than they apply to natural gas pipelines.[17]

Interstate Commerce Act

Next, we will address the jurisdictional issue of whether the ICA applies to OCS oil pipelines. That requires the Commission to interpret its authority over such pipelines under section 1(1) of the ICA. That section provides in pertinent part that the ICA "shall apply to common carriers engaged in ... [t]he transportation of oil ... by pipeline ...

> from one State or Territory of the United States ... to any other State or Territory of the United States ... or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only insofar as such transportation takes place within the United States ....

The section specifically excludes transportation wholly within one state.

It is clear that the ICA does not expressly cover pipelines transporting oil solely on or across the OCS. While the OCS appertains to the United States,[18] the OCS is not a State or Territory of the United States.[19] Hence the OCS does not come within the ICA's jurisdictional language quoted above.[20]

Although the OCSLA, at 43 U.S.C. § 1333(a)(1), makes it clear that federal law applies to the OCS and the ICA comes within that provision, this alone does not make the ICA applicable to the OCS. Section 1333(a)(1) also provides that the OCS is to be treated as "an area of exclusive federal jurisdiction located within a State" for the purposes of applying federal laws. The ICA would not apply to transportation within such a federal enclave unless the facilities exited the enclave and the oil moved in interstate commerce.[21] Here, the involved facilities do not leave the OCS, and, therefore, do not give rise to jurisdiction. Accordingly the Commission concludes that it does not have jurisdiction under the ICA to require Bonito, which is a pipeline engaged in the transportation of oil solely on or across the OCS, to accept and transport Shell's volumes.[22] However, as stated above, Bonito remains subject to the antidiscrimination provisions of the OCSLA and must provide open and nondiscriminatory access to both owner and nonowner shippers.

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[16] *FERC Statutes and Regulations, Regulations Preambles 1986-1990* ¶ 30,848, at pp. 31,334-35.

[17] *See* H.R. Rep. No. 413, 83rd Cong., 1st Sess. (1953), *reprinted in* 1953 U.S.C.C.A.N. 2177-85, H.R. Rep. No. 590, and H.R. Conf. Rep. No. 1474, 95th Cong., 2d Sess. 1 (1978), *reprinted in* 1978 U.S.C.C.A.N. 1450-1760.

[18] 43 U.S.C. § 1332 (The OCSLA states: "It is hereby declared to be the policy of the United States that (1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.")

[19] Section 1333(a)(1) of the OCSLA provides that "[t]he Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to ... any ... installation or other device ... for the purpose of transporting [resources therefrom], to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State." 43 U.S.C. § 1333(a)(1). The Supreme Court has described the OCS as an "exclusive federal enclave." *Shell Oil v. Iowa Dept. of Revenue*, 488 U.S. 19, 29 n. 9 (1988). However, the OCSLA's grant of jurisdiction did not extend sovereignty in the sense of total ownership or control. *Treasure Salvors, Inc. v. The Unidentified Wrecked and Abandoned Sailing Vessel*, 569 F.2d 330 (5th Cir. 1978) (A Spanish vessel wreck on the OCS is not within the jurisdiction of the United States because the OCS is not land owned or controlled by the United States for purposes of the Antiquities Act (16 U.S.C. §§ 431-433)). In sum, the OCS is part of the United States and commerce there is interstate commerce for Constitutional purposes, *Maryland v. Louisiana*, 451 U.S. 725 (1981), but the OCS is not an organized Territory and is not within the jurisdictional grant of the ICA.

[20] By contrast, the definition of interstate commerce in the Natural Gas Act does cover OCS pipelines. Section 2(7) provides:

> (7) "Interstate commerce means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States."

15 U.S.C. § 717(b). *See Continental Oil Co. v. FPC*, 370 F.2d 57 (5th Cir. 1967). (The transfer of certain offshore leasehold interests is a sale of natural gas in interstate commerce.)

[21] *Cf. Interstate Energy Co.*, 32 FERC ¶ 61,294 (1985), in which we stated that the question of whether commerce is interstate or intrastate is to be determined from the essential character of the commerce and that the transportation intent of the shipper at the time the shipment commences its journey is one of the most significant factors in making that determination.

[22] A pipeline that starts on the OCS and transports oil through the seaward boundaries of the State to shore for further movement in interstate commerce is jurisdictional under the ICA. 43 U.S.C. §§ 1311-1315.

The Question of Discrimination

Bonito is not subject to the common carrier obligation under the ICA as discussed above. However, under the OCSLA, Bonito must provide nondiscriminatory open access transportation on its system as also discussed above. Bonito argues that its refusal to permit the interconnection and to transport Shell's volumes is not discriminatory. It contends it is justified in refusing the Shell volumes because Ship Shoal will not accept Bonito's common stream if the Augur volumes are introduced. According to Bonito, Shell Pipe Line, the operator of Ship Shoal, "flatly refused to accept the incremental production available from Shell Oil" (the producer seeking access to Bonito's system) into Ship Shoal's common stream, indicating that it has a plan to segregate the Bonito stream offshore and batch the separate streams in a common line once the oil comes onshore.

Bonito asserts that introduction of the Augur volumes and the resulting segregation by Ship Shoal would cause Bonito's current shippers to lose the financial benefit of the upgrade they receive by virtue of the commingling with other streams on Ship Shoal. Bonito also argues that its sulfur bank would not provide an adequate remedy for this loss.

Bonito's arguments miss the point, and we will reject them. Clearly, under the facts of this case, Bonito's refusal to accept and transport the Augur volumes constitutes discrimination that is prohibited by the OCSLA.

First, Bonito acknowledges that since it commenced service in 1973, it has received for transportation both sweet and sour crude oil. This mixture of crude oil has resulted in an average sulfur content on the system ranging from 0.67 percent to 0.79 percent, which is the current figure. The Augur crude oil will have a sulfur content of approximately 1.0 percent.

Bonito's status as a sour crude line is further demonstrated by undisputed evidence submitted by Shell. In a January 31, 1989 letter to Chevron Pipe Line, Bonito enclosed a projected five-year flow rate on its system. Only two input points were projected to have a sulfur content lower than 0.5 percent, and those two total approximately 1,561 BPD of the projected 1992 throughput of approximately 26,430 BPD. The remaining 11 input points were projected to have sulfur contents ranging from 0.6 percent to 1.0 percent.[23] Thus, contrary to Bonito's claims, introduction of the Augur production will not adversely affect Bonito's current shippers because that system is now and always has been a sour crude system. In light of the fact that a portion of the crude oil already transported by Bonito has a sulfur content at or near 1.0 percent, Bonito cannot legitimately argue that Shell's volumes are so different from the common stream already being transported that they will materially affect the current quality of the stream.

We specifically reject Bonito's allegation that acceptance of the Shell volumes would result in a material disadvantage to its current shippers. Those shippers, most of whom have been tendering sour crude to Bonito,[24] have received a windfall for the past 19 years in the form of the upgrade resulting from commingling on Ship Shoal. The fact that they have benefitted from a higher price for the crude oil than they would have received had they sold it at the wellhead does not override Bonito's obligation to avoid discrimination against a similarly situated shipper.

Second, there is an additional factor that leads us to determine that Bonito's refusal to accept the Augur volumes is contrary to the pipeline's statutory duty under the OCSLA. The parties cite a 1991 example involving Chevron Pipe Line's interconnection with the Bonito system and subsequent transportation of a large volume of crude oil with a sulfur content of 0.91 percent. However, Bonito attempts to distinguish that situation by stating that in Chevron's case, the combined stream on Ship Shoal remained below 0.5 percent, and Shell Pipe Line, as operator of Ship Shoal, consented to Chevron's connection with the Bonito's system. Yet despite Ship Shoal's acceptance of the Chevron Pipe Line volumes, Bonito asserts that this connection prompted an unprecedented expression of concern from Ship Shoal that increased introduction of sour crude might adversely affect all shippers on the Ship Shoal system.[25]

Shell disputes Bonito's interpretation of Ship Shoal's acceptance of the Chevron Pipe Line crude. Shell offers a series of letters relating to the Chevron Pipe Line crude indicating that

[23] Shell Protest, Tab 5.

[24] Shippers of crude on Bonito's system are compensated for differences in sulfur content through the quality bank in place on the system.

[25] Shell Pipe Line's letter to Bonito dated September 6, 1991, states in part:

> [H]ad we been aware of the Chevron tie-in prior to the start of their construction, we would have asked that they not proceed. However, we do understand that the Chevron tie-in work is essentially complete. Therefore, the Ship Shoal Owners will reluctantly accept the Bonito stream at additional volume on a trial basis. Please be aware, though, that should the Chevron tie-in result in any significant shipper complaints of significant degradation we may be forced to reduce receipts from Bonito to pre-tie-in levels or ask Bonito to explore alternatives for batching their stream throughout the Ship Shoal system.

Shell Pipe Line, as operator of Ship Shoal, was repeatedly assured that the sulfur content of the Chevron Pipe Line crude oil would not exceed .69 percent,[26] when, in fact, it is approximately 1.0 percent sulfur by weight.[27] The letters also indicate that Ship Shoal was advised that Bonito's throughput would decline to little more than half of current levels. This series of correspondence, contends Shell, was the basis for its statement in the September 6, 1991 letter to Bonito that, had it known the facts before the connection with Chevron was complete, it would have objected to Ship Shoal's acceptance of the higher volumes of Bonito sour crude resulting from introduction of the Chevron volumes.

Shell states that Chevron Pipe Line is shipping approximately 18,000 BPD of sour crude that is essentially identical to the Augur crude oil. According to Shell, that amounts to more than one-half of Bonito's current throughput; therefore, Shell expected that Bonito would accept the Augur production. Bonito, however, while not disputing Shell's contentions concerning the volume and sulfur content of the Chevron volumes, continues to attempt to distinguish the situations by pointing out that in the Chevron Pipe Line example, Ship Shoal expressly agreed to accept Chevron Pipe Line's volumes as part of the Bonito stream, while there is no such approval for Shell. Bonito then contends that it is not discriminating against Shell, rather it is Shell Pipe Line, as operator of Ship Shoal, that has precluded Bonito's acceptance of the Augur volumes. Bonito notes that Chevron Pipe Line, as an owner of Bonito,[28] had its own existing capacity available for transportation while Shell, according to Bonito, has demanded that all available capacity be made available to it, including that which is owned and operated on a proprietary basis.

Finally, Bonito seeks to refute Shell's charge of undue discrimination by citing a 1987 request by Conoco, one of the Bonito owners, to ship 35,000 BPD of crude oil having a sulfur content of approximately 1.0 percent. Bonito states that it advised Conoco that Ship Shoal's consent would be required, and Bonito further states that Conoco apparently did not obtain that consent and ultimately transported its production on the Eugene Island System.

Bonito's attempts to distinguish the Chevron connection must fail. Approval or lack thereof on the part of Ship Shoal is irrelevant to the Bonito owners' statutory duty to transport crude oil on Bonito's system in a nondiscriminatory fashion. Chevron's ownership interest in the Bonito system and the suggestion that the "proprietary" owners are not required to provide the requested transportation are equally unpersuasive, given the clear mandate of the OCSLA that the pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers. And Bonito's effort to compare Shell's request with that of Conoco is of no avail. Given the fact that Bonito's system historically has transported a considerable volume of crude oil with a sulfur content at or near 1.0 percent, Bonito improperly denied Conoco's 1987 request.

In summary, it is Shell's effort to obtain transportation for crude oil comparable to that already being shipped on Bonito and Shell's desire to interconnect with Bonito as Chevron previously has done that causes us to find that Bonito's refusal to permit the interconnection and transport the volumes constitutes discrimination. Thus, we conclude that under the OCSLA, Shell must be permitted to interconnect with Bonito's system and to transport the Augur volumes.

Bonito's Other Arguments

Bonito raised a variety of other arguments in support of its position that it is not required to interconnect with Shell and transport the Augur volumes. However, none of these arguments alters Bonito's statutory obligations under the OCSLA.

Transportation Alternatives

Bonito alleges that Shell Oil has other transportation alternatives available to it, including the Whitecap system, the Eugene Island Pipeline, and the Shell-Tarpon system. However, Bonito states that Shell has refused to discuss alternatives, thereby giving the appearance that the two Shell affiliates are seeking to force the Bonito crude oil stream to be segregated on Ship Shoal. Disputing Bonito's assertion that it has transportation alternatives, Shell contends that Bonito is the only pipeline that transports sour crude from Eugene Island to Ship Shoal, that transportation on the Eugene Island system would be circuitous and more costly, and that even if it were to ship its production on the Shell-Tarpon system, that action would cause Ship Shoal's common stream to turn sour, and Ship Shoal would be forced to segregate its sweet and sour streams, thereby likewise depriving Bonito's shippers of their claimed right to the upgrade.

We have already determined that the OCSLA compels Bonito to accept the Augur

[26] Shell Protest, Tab 5.

[27] As noted above, Bonito has described Chevron Pipe Line's crude oil as containing approximately 0.91 percent sulfur.

[28] Chevron Oil is listed as an owner of the Bonito system. *See* appendix A.

volumes. The possible availability of other transportation in the area does not relieve Bonito of its obligation to accept Shell's volumes.

Effect of Operating Agreements and Tariffs

Bonito contends that sections IV[29] and XVII[30] of the operating agreement require the approval of 65 percent of the pipeline's owners before Bonito may construct the interconnection for Shell or accept the Augur production. Bonito also states that the operating agreement generally prohibits deliveries of crude oil into the system unless the oil is of sufficient quality that its acceptance for transportation will not materially affect the quality of other shipments or cause material disadvantage to the other owners.[31]

As we will discuss in greater detail below, the connection with Shell will not require an expenditure on the part of Bonito's owners. Further, as we have also determined, acceptance of the Augur volumes will not materially affect the quality of the other shipments, which already include considerable volumes of sour crude, including those tendered by Chevron, one of Bonito's owners. Finally, it is clear that acceptance of the Augur volumes will not cause material disadvantage to Bonito's owners, who have no legal basis for their claim that they are entitled to continue to receive the benefit of the upgrade on the Ship Shoal system. In any event, Bonito cannot avoid by contract the obligations imposed on it by statute.

Bonito also asserts that the tariffs of the three acknowledged common carrier owners contain provisions that are generally consistent with the pertinent terms of the operating agreement,[32] and that the tariffs permit it to refuse Shell's volumes.

We have examined the provisions of all three tariffs, and we find nothing in those tariffs that would permit those owners to refuse to accept Shell's volumes in this situation. Bonito has stated that the Augur volumes will have a sulfur content of approximately 1.0 percent, which does not exceed the limits specified in the tariffs. Conoco's tariff specifically provides that the acceptance of crude oil for transportation is on the condition that the crude oil may be subject to changes in gravity, quality, *and value* as may result from mixture in transit with other crude oil.[33] Chevron Pipe Line's tariff includes a similar provision; although it does not mention value along with gravity and quality, it does provide that there will be no adjustment for downgrading or upgrading as a result of mixing in transit any crude oil tendered for transportation.[34] Further, all three tariffs provide for apportionment among shippers when volumes are tendered in excess of what can be transported.

Necessity for Expansion

Bonito alleges that Shell's plan would require the construction of expensive new facilities and substantial alteration of the terms and conditions under which Ship Shoal accepts oil for transportation onshore. On the other hand, Bonito admits that capacity is available on its line, but argues that merely because the shipper/owners are not fully utilizing their capacity does not mean that it can accept the additional sour volumes without materially affecting the other shippers.

Shell disputes Bonito's allegation concerning the need for an expansion. Shell submitted evidence, unrefuted by Bonito, that the Bonito system has a capacity of 100,000 BPD,[35] and that only about 30,000 BPD of that capacity is currently utilized. Shell also argues that al-

[29] Section IV of the operating agreement sets forth the general duties and powers of the operator. It requires that the operator shall not make any single expenditure in excess of $25,000 without first obtaining the approval of the parties voting in accordance with the provisions of Article XVII of the operating agreement.

[30] Section XVII of the operating agreement provides that any matter to be voted upon directly affecting Segment I or the system as a whole shall require the affirmative vote of 65 percent of the voting strength of the parties owning an interest in the system. Should the matter affect only Segment II of the system, the affirmative vote of 55 percent of the voting strength of the parties owning an interest in the system is required.

[31] Section XV, paragraph 11 of the operating agreement states as follows:.

> Except as provided in Paragraph 4 of Section XIV, no production will be delivered into the system by any party unless its gravity, viscosity, vapor pressure, B S & W, sulfur content, salt content, and other characteristics are such that it will be acceptable for transportation through the System's existing facilities, and that it will not materially affect the quality of other shipments or cause material disadvantage to the other parties hereto.

[32] Bonito quotes the following provision from Mobil's Tariff No. 36, Rule 3:

> No crude petroleum will be received unless it is of acceptable character ... and will not materially affect the quality of the other crude petroleum shipments or cause disadvantage to other shippers and/or [owner] .... If crude petroleum tendered for transportation differs materially in character from that transported in [Bonito's] pipeline then it will be transported, if at all, only under such terms as [owner] and the shipper may agree.

[33] *Conoco Pipe Line Company*, FERC No. 117, Rules and Regulations.

[34] *Chevron Pipe Line Company*, FERC No. 247, Rules and Regulations Tariff.

[35] Shell Protest, Tabs 3 and 5.

lowing it access to Bonito will require no significant participation by Bonito or its owners and no investment. Shell intends to finance and to oversee the construction of the proposed two-mile pipeline and the interconnection. The interconnection will not involve any new construction; Shell Pipe Line will merely remove a flange from an existing manifold and bolt its pipeline to the manifold. All that Bonito will be required to do is provide technical information to Shell Pipe Line's construction engineers.

Bonito then engages in considerable speculation about Shell's motivation in seeking transportation on Bonito's line, including a possible business dispute with the Ship Shoal owners and the likely financial benefit to Shell.

Shell argues that even if its Augur volumes are not accepted, segregation of sweet and sour crude on Ship Shoal will be required eventually because of the mounting effects of the unexpectedly large Bonito sour crude stream on Ship Shoal's sweet stream. While Shell acknowledges that allowing it access to the Bonito system for the Augur volumes may hasten the necessity for the segregation of sweet and sour crudes on Ship Shoal, Shell emphasizes that these changes are both reasonable and inevitable.

Bonito responds that segregation is not inevitable, contending that it has effectively demonstrated that presently connected sources of production can meet the existing operating and other requirements of Ship Shoal to preserve the existing common stream quality. Bonito engages in further speculation about whether the batching facilities will in fact be constructed and a possible reduction in total volumes accepted by Ship Shoal.

We will not join Bonito in speculating about Shell's motives and whether the batching facilities will really be constructed. However, it is clear that excess capacity exists on Bonito's system, and even if the line were capacity constrained, proration of all shippers' volumes would be required.[36] No expansion of Bonito's line is planned or required—Shell has demonstrated that the interconnection will be a simple process involving no cost[37] and essentially no effort on the part of Bonito and its owners. Yet, even if we were to accept Bonito's allegations as true, that would not diminish its duty to accept the Shell volumes as we have previously determined.

Request for Development of an Allocation Methodology

We will not grant Bonito's alternative request that we prescribe an allocation methodology either for its system or that of other pipelines in the area. In light of our determination that the Bonito owners must provide transportation for Shell under the facts of this case and because Bonito currently has capacity available, that request is premature. Further, we have also noted that the tariffs of its owners on file with this Commission provide for proration of capacity in the event that volumes tendered for transportation exceed available capacity. Finally, because Bonito's owners will not suffer a material disadvantage, Bonito's request that we determine a methodology for compensating such shippers is inappropriate.

The Commission orders:

(A) Bonito's request that the Commission declare that it is not obligated to permit an interconnection with and provide transportation for Shell is denied as set forth in the body of this order.

(B) Bonito's alternative request that the Commission prescribe an allocation methodology for its system and that of other pipelines in the area and that the Commission determine a methodology for compensating its owners for any material disadvantage is denied as set forth in the body of this order.

Commissioner Moler *dissented in part* with a separate statement attached.

Commissioner Langdon *concurred* with a separate statement attached.

Appendix A

Bonito Pipeline Ownership

Chevron Oil Company
Conoco Pipeline Company
ECEE, Inc.
Exxon Co. U.S.A.
George R. Brown Partnership
Hamilton Brothers Oil Company
Hamilton Brothers Petroleum Company
Hunt Oil Company
Hunt Petroleum Company
Lamar Hunt Trust Estate
MESA Offshore Company
Mobil Eugene Island Pipeline Company
Nelson Bunker Hunt Trust Estate

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[36] *See Belle Fourche Pipeline Co.*, 28 FERC ¶ 62,150, at pp. 62,281-82 (1984) where the Commission stated "An oil pipeline operating in interstate commerce is thus obliged to accept any shipments tendered to him, 'upon reasonable request.' ... and the carrier is entitled to adopt reasonable rules to allocate insufficient capacity." We further noted that the prohibition against undue discrimination between shippers when allocating insufficient capacity is embodied in section 3(1) of the ICA, which prohibits undue or unreasonable preferences.

[37] While the issue of possible increases in operation and maintenance expenses was not raised by the parties, we point out that any such increases can be recovered by Bonito through its cost of service.

Pennzoil Company
Pennzoil Exploration and Production Company
POGO Producing Co.
Texaco Exploration and Production, Inc.
Texaco Trading & Transportation, Inc.
Torch Operating Company

Elizabeth Anne MOLER, Commissioner, *dissenting in part*:

I dissent from that part of the Commission's order finding that we do not have jurisdiction under the Interstate Commerce Act over Bonito. I do so for the reasons expressed in my dissent to the Commission's order issued concurrently involving the Oxy and Samedan pipeline systems.[1]

Jerry J. LANGDON, Commissioner, *concurring*:

For the reasons stated in *Oxy Pipeline, Inc. et al.*, Docket Nos. OR87-1-000, *et al.* issued contemporaneous with this order, I believe that we should not disclaim Interstate Commerce Act (ICA)[1] jurisdiction over Bonito Pipe LIne. I concur in the outcome of the order, however, because the Outer Continental Shelf Lands Act (OCSLA) provides the statutory authority to accomplish a similar result.

[¶ 61,051]

Oxy Pipeline, Inc., Docket Nos. OR87-2-000, OR87-4-000, OR87-5-000, and OR87-8-000
Cxy Offshore Systems Inc., Docket No. OR87-6-000 and Samedan Pipeline Corporation, Docket No. OR85-2-000

Order Granting Petitions for Declaratory Orders and Disclaiming Jurisdiction

(Issued October 8, 1992)

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

On March 2, and 3, 1987, Oxy Pipeline, Inc. (Oxy) filed seven petitions for declaratory order[1] in which it asks the Commission to declare that it has no jurisdiction under the Interstate Commerce Act (ICA)[2] over certain of Oxy's pipelines in the outer Continental Shelf waters off the coast of Louisiana. In the alternative, Oxy requests that the Commission exempt Oxy from the requirements of sections 6, 19a, and 20 of the ICA.[3] Earlier, on April 19, 1985, Samedan Pipe Line Corporation (Samedan) also filed a request for relief from those requirements.

As discussed below, the Commission concludes that the ICA does not apply to pipelines engaged in the transportation of oil on or across the outer Continental Shelf. Accordingly, Oxy and Samedan need not comply with any of the requirements of the ICA with respect to their facilities on or across the outer Continental Shelf. However, Oxy and Samedan remain subject to the anti-discrimination provisions of the Outer Continental Shelf Lands Act (OCSLA).[4]

Background

Oxy's filings all involve pipelines in which Oxy and others own undivided joint interests and that connect to leases in which the pipeline owners or their affiliates own working interests in the connecting pipeline.[5] Oxy states that it "transports (or gathers) its parent company's oil from its working interest in the well ... over its own space in the ... pipeline, to a connection with another pipeline ... where the oil is sold."[6] It further avers that its pipelines cross no state lines, that it "has no knowledge of the ultimate

[1] *Oxy Pipeline Inc.*, Docket Nos. OR87-2-000 *et al.*; *CXY Offshore Systems, Inc.*, Docket No. OR87-6-000; *Samedan Pipe Line Corporation*, Docket No. OR85-2-000, Order Granting Petitions for Declaratory Orders and Disclaiming Jurisdiction, 61 FERC ¶ 61,051 (1992).

[1] 49 U.S.C. § 1 *et seq.*

[1] Oxy filed but withdrew other petitions in Docket Nos. OR87-1-000, OR87-3-000, and OR87-7-000. On June 2, 1989, the petition in No. OR87-6-000 was amended to substitute Cxy Offshore Systems Inc. (Cxy) as the petitioner. References herein to Oxy shall include Cxy.

[2] 49 U.S.C. § 1 *et seq.* (1976).

[3] 49 U.S.C. §§ 6 (tariff filing), 19a (valuation reporting), and 20 (record keeping and reporting) (1976).

[4] 43 U.S.C. § 1334(e) and (f)(1) (1982).

[5] In many but not all situations, the percentage ownerships in the pipeline are identical to each pipeline owner's share of the working interest in the lease or leases attached to the pipeline.

[6] *E.g.*, Oxy Memorandum at p. 5 (Docket No. OR87-2-000). Oxy made such a statement in its memoranda in the other dockets.

destination of the oil,"[7] and that no non-owner of the pipelines has ever expressed an interest in shipping oil over the pipelines.

Samedan, a wholly-owned subsidiary of Samedan Oil Corporation (Samedan Oil), transports crude oil from a lease located in the Eugene Island area of the Gulf of Mexico to an offshore Tenneco Pipeline Subsea Tie-In located in the same area for transport to shore. The lease is jointly owned and developed by Samedan Oil and New England Energy, Inc.

Jurisdiction

The jurisdictional issue of whether the ICA applies to outer Continental Shelf oil pipelines requires the Commission to interpret its authority over oil pipelines on the outer Continental Shelf under section 1(1) of ICA. That section provides in pertinent part that the Act "shall apply to common carriers engaged in ... [t]he transportation of oil ... by pipeline ...

> from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only insofar as such transportation or transmission takes place within the United States.[8]

Oxy contends that the Commission lacks jurisdiction under the ICA over Oxy's pipelines on the outer Continental Shelf because the Act does not expressly provide for "jurisdiction over oil pipelines providing transportation ... on the outer Continental Shelf."[9]

The Commission agrees with Oxy that the ICA does not expressly cover pipelines transporting oil solely on or across the outer Continental Shelf. While the outer Continental Shelf appertains to the United States,[10] the outer Continental Shelf is not a State or Territory of the United States.[11] Hence, the outer Continental Shelf does not come within the ICA's jurisdictional language quoted above.[12]

Although, the OCSLA, at 43 U.S.C. § 1333(a)(1), makes it clear that federal law applies to the outer Continental Shelf and the ICA comes within that provision, this alone does not make the ICA applicable to the outer Continental Shelf. Section 1333(a)(1) also provides that the outer Continental Shelf is to be treated "as area of exclusive federal jurisdiction located within a State" for the purposes of applying federal laws. The ICA would not apply to transportation within such a federal enclave unless the facilities exited the enclave and the oil moved in interstate commerce.[13] Here, the involved facilities do not leave the outer Continental Shelf and, therefore, do not give rise to jurisdiction. Accordingly, the Commission concludes that it has no jurisdiction under the ICA over pipelines engaged in the

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[7] *Id.* at p. 6.

[8] 49 U.S.C. § 1(1) (1976).

[9] Oxy's Memorandum at pp. 1, 2 (Docket No. OR87-2-000). *See* n.6.

[10] 43 U.S.C. § 1332 (The OCSLA states: "It is hereby declared to be the policy of the United States that (1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control and power of disposition as provided in this subchapter.")

[11] Section 1333(a)(1) of OCSLA provides that "[t]he Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to ... any ... installation or other device ... for the purpose of transporting [resources therefrom], to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State." 43 U.S.C. § 1333(1). The Supreme Court has described the outer Continental Shelf as an "exclusive federal enclave." *Shell Oil v. Iowa Dept. of Revenue*, 488 U.S. 19, 29 n. 9 (1988). However, the OCSLA's grant of jurisdiction did not extend sovereignty in the sense of total ownership or control. *Treasure Salvors, Inc., v. The Unidentified Wrecked and Abandoned Sailing Vessel*, 569 F.2d 330 (5th Cir. 1978) (A Spanish vessel wreck on the outer Continental Shelf is not within the jurisdiction of the United States because the outer Continental Shelf is not land owned or controlled by the United States for purposes of the Antiquities Act (16 U.S.C. §§ 431-433)). In sum, the outer Continental Shelf is part of the United States and commerce there is interstate commerce for Constitutional purposes, *Maryland v. Louisiana*, 451 U.S. 725 (1981), but the outer Continental Shelf is not an organized Territory and is not within the jurisdictional grant of the ICA.

[12] By contrast, the definition of interstate commerce in the Natural Gas Act does cover Continental Shelf pipelines. Section 2(7) provides:

> (7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

15 U.S.C. § 717b (1982). *See Continental Oil Co. v. FPC*, 370 F.2d 57 (5th Cir. 1967) (The transfer of certain offshore leasehold interests is a sale of natural gas in interstate commerce.

[13] *Cf. Interstate Energy Co.*, 32 FERC § 61,294 (1985), in which we stated that the question of whether commerce is interstate or intrastate is to be determined from the essential character of the commerce and that the transportation intent of the shipper at the time the shipment commences its journey is one of the most significant factors in making that determination.

transportation of oil solely on or across the outer Continental Shelf.[14] However, as stated above, those pipelines remain subject to the anti-discrimination provisions of the OCSLA[15] and must provide "open and non-discriminatory access to both owner and non-owner shippers."[16]

The Commission Orders:

(A) Oxy's petition for declaratory order is granted as set forth in the body of this order.

(B) The Commission disclaims jurisdiction under the Interstate Commerce Act over Oxy's pipelines and Samedan's pipeline on or across the outer Continental Shelf.

(C) Samedan's request for relief from the requirements of the Interstate Commerce Act is denied as moot in light of the Commission's determination that it has no jurisdiction over Samedan under that Act.

Commissioner Moler *dissented in part* with a separate statement attached.

Commissioner Langdon *dissented* with a separate statement attached.

Elizabeth Anne MOLER, Commissioner, *dissenting in part*:

I dissent from that part of the Commission's order finding that the Interstate Commerce Act (Act) does not apply to pipelines engaged in the transportation of oil on or across the outer Continental Shelf. Oxy and Samedan perform the very functions we are required to regulate under the Act. Consequently, I would uphold the Commission's rate jurisdiction under the Interstate Commerce Act over these pipelines. However, I do join the majority in finding that the pipelines remain subject to the anti-discrimination provisions of the Outer Continental Shelf Lands Act (OCSLA).[1]

Admittedly, the legal question we are presented with is not simple nor clear cut. As the majority points out, the Act does not expressly cover pipelines transporting oil solely on or across the outer Continental Shelf.[2] If this were all there is to the matter, I might agree with the majority. This issue should not be treated simply as a matter of statutory construction where we carefully parse the words of two statutes enacted nearly 50 years apart. There is more to it than that. I believe we must look at the issue in the broader context of how Congress treats oil pipelines operating in interstate commerce.

The Commission has historically regulated outer Continental Shelf oil pipelines as though they were covered by the Interstate Commerce Act. Numerous oil pipeline companies have tariffs on file for movements of crude petroleum from various offshore Louisiana and Texas blocks. Some tariffs had been filed earlier with the Interstate Commerce Commission. And we have processed cases assuming jurisdiction.[3]

To be sure, the Interstate Commerce Act does not expressly provide for such jurisdiction. This is not surprising as the Act's jurisdictional provisions were crafted almost 50 years before Congress asserted federal jurisdiction over the outer Continental Shelf in 1953 with the OCSLA.[4] But, in passing the OCSLA Congress provided that:

> The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the . . . outer Continental Shelf . . . to the same extent as if the outer Continental Shelf were an area of exclusive federal jurisdiction located within a state. [[5]]

This provision indicates that Congress intended to extend the scope of all federal laws, including the Interstate Commerce Act, to the outer Continental Shelf.[6]

Further, the legislative history of the OCSLA Amendment indicates that Congress' open and non-discriminatory access and pipeline expansion amendments were viewed as additions to the Interstate Commerce Act's common carrier

[14] A pipeline that starts on the outer Continental Shelf and transports oil through the seaward boundaries of the States to shore for further movement in interstate commerce is jurisdictional under the ICA. 43 U.S.C. § § 1311-1315.

[15] *See* n. 4, *supra*.

[16] 43 U.S.C. § 1334(f)(1).

[1] Slip op. at p. 5.

[2] *Id.* at pp. 3-4. .

[3] For example, in 1984 the Commission approved a Stipulation and Consent Agreement in *South Timbalier Pipe Line System*, 29 FERC ¶ 61,345 (1984), imposing a penalty and requiring an outer Continental Shelf pipeline to file tariffs.

[4] Act of August 7, 1953, c. 345; 67 Stat. 462.

[5] 43 U.S.C. § 1333(A)(1) (1982).

[6] It is no answer to argue that, by incorporating the terms of the Interstate Commerce Act, the OCSLA carried forward the limited jurisdictional provisions of section 1(1) of the Interstate Commerce Act and thus intended to exempt oil pipelines from our regulation. By its terms, the OCSLA sought to expand, not limit federal regulation. When Congress sought to limit federal jurisdiction in the OCSLA, it knew how to do so directly without recourse to such a convoluted reading of the law. *See, e.g.* 43 U.S.C. § 1333(2)(A) providing for the application of certain state civil and criminal laws to the outer Continental Shelf.

requirement for oil pipelines in the outer Continental Shelf.[7]

Under the terms of the Interstate Commerce Act, Oxy and Samedan are statutory common carriers transporting oil moving in interstate commerce.[8] The Interstate Commerce Act was enacted to regulate precisely such activity by "eliminat[ing] the competitive advantage which . . . integrated companies might possess from exclusive ownership of a pipe line."[9] Rate regulation is necessary to ensure that pipeline rates are not too high. In light of the broad Congressional purpose, which is applicable to the transport of oil no matter where the oil is produced, Congress should not be read to have intended that there be gaps in the regulation of oil that flows in interstate commerce. Rather, Congress intended to deal comprehensively with the transportation of oil.[10] I believe we should construe the Act in a way consistent with its underlying purpose. That is best done by finding jurisdiction in these cases. Thus, I would find both pipelines to be jurisdictional.[11]

Jerry J. Langdon, Commissioner, *dissenting*:

I believe that we should not disclaim Interstate Commerce Act (ICA)[1] jurisdiction on the Outer Continental Shelf (OCS). While I am not blind to the text of the ICA—which makes no mention of the OCS, I recognize that the statute was written long before anyone dreamed of drilling for oil there. In addition, the more recent Outer Continental Shelf Lands Act (OCSLA)[2] did not specifically incorporate the ICA, yet, section 1333(a)(1) specifically extends the laws of the United States to the OCS to the same extent as if the OCS were an area of exclusive federal jurisdiction within a state.

I cannot make the same leap to the conclusion that the ICA would not, therefore, apply to the fact situation we find in this order as the majority did. After a review of the legislative history of the OCSLA, I do not believe that this conclusion is apparent. I, therefore, err on the side of caution and vote to exercise jurisdiction in this instance. I believe that, in any regard, a light-handed approach to regulation of these pipelines is warranted, and would have supported exemption from various ICA reporting requirements for Oxy, Cxy and Samedan.

I note that, pursuant to Commission precedent, and, in particular, the Court's direction in *EP Operating v. FERC*,[3] we have recently made some gathering determinations for offshore *natural gas* pipelines. Such determinations remove the relevant facilities from various aspects of the Commission's jurisdiction. I have supported these decisions. The Natural Gas Act explicitly makes exceptions for gathering facilities. There is no analogous provision in either the ICA or the OSCLA. (The only relevant exemption discussed in the OCSLA provides that the FERC *may* exempt pipelines which feed into dehydration and separation facilities. This does not appear to be the case here.)

It is in following the intent of Congress, therefore, that we have exempted natural gas gathering facilities from NGA regulation. Such a clear intent regarding oil pipelines is not evident from my reading of the ICA and OCSLA. In fact, there is broad Congressional intent that there be no gaps in the regulation of oil flowing in interstate commerce. Absent some clearer showing that this is not Congress' intent, I am required to conclude that the ICA does apply to the three pipelines before us here.

Therefore, I will dissent on this issue.

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[7] *See* 123 Cong. Rec. 23,252-57 (July 15, 1977)(colloquy of Senators Kennedy and Johnston). The Amendments were enacted as Pub. L. No. 95-372, 92 Stat. 632 (1978); codified at 43 U.S.C. § 1334(f)(1982).

[8] Section 1(3) of the Interstate Commerce Act provides that "[t]he term 'common carrier' as used in this chapter shall include all pipe-line companies . . . ." Moreover, the shipments of oil are, unarguably, a link in an interstate chain of movements. *See, e.g. Interstate Energy Co.*, 32 FERC ¶ 61,294, at p. 61,690 (1985) (analysis of criteria for assessing jurisdiction).

[9] *U.S. v. Champlin Refining Co.*, 341 U.S. 290, 297 (1951). This advantage occurred because "[s]mall independent producers . . . lacked the resources to construct their own lines, or [their] output was so small that a pipe line built to carry that output alone would be economically unfeasible." *Id.*

[10] There is no evidence that had Congress known of the outer Continental Shelf industry it would have "varied its comprehensive language as to exclude it from the operation of the act." *Puerto Rico v. Shell Co.*, 302 U.S. 253, 257 (1937)(interpreting the sweep of section 3 of the Sherman Act to include Puerto Rico). To the same effect, *see U.S. v. Standard Oil Co. of California*, 404 U.S. 558, 559 (1972) (finding the term "Territory" under section 3 of the Sherman Act includes American Samoa).

[11] At the same time, I would, under the provisions of Section 6(3) of the Act, require only limited filings from the two and would exempt them from reporting requirements under Section 20 of the Act.

[1] 49 U.S.C. § 1 *et seq.*

[2] 43 U.S.C. § 1334(e) and (f)(1) (1992).

[3] 876 F.2d 46 (5th Cir. 1989).