

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Jupiter Energy Corporation

Docket No. CP03-11-005

ORDER DENYING REHEARING

(Issued October 28, 2005)

1. On July 14, 2005, Jupiter Energy Corporation (Jupiter) filed a request for rehearing of the Commission's June 28, 2005, Order on remand affirming its finding that Jupiter's natural gas pipeline facilities are jurisdictional transmission facilities.¹ For the reasons discussed herein, the Commission will deny Jupiter's rehearing request.

2. On April 12, 2005, the United States Court of Appeals for the Fifth Circuit vacated and remanded the Commission's orders in this proceeding, which found that two pipelines owned and operated by Jupiter perform a transmission function rather than a gathering function, and are therefore subject to the Commission's jurisdiction under section 1(b) of the Natural Gas Act (NGA).² In the remanded orders, we relied on our jurisdictional determination in denying Jupiter's requests for rescission of its NGA certificates and authority to abandon its rate schedules and certificated services as a predicate to transferring its facilities to its parent company, Unocal Oil Company of California (Unocal).³

3. Jupiter's natural gas pipeline facilities extend from offshore Texas to a sub-sea interconnect with Transcontinental Gas Pipe Line Corporation (Transco) and a shoreline interconnect with Tennessee Gas Pipeline Company (Tennessee). The facilities at issue in this proceeding include (1) a 10.2-mile long, 10 3/4-inch diameter line that receives

¹ *Jupiter Energy Corporation*, 111 FERC ¶ 61,497 (2005).

² *Jupiter Energy Corporation v. FERC*, 407 F.3d 346 (5th Cir. 2005).

³ *Jupiter Energy Corporation*, 103 FERC ¶ 61,184 (2003), *reh'g denied*, 105 FERC ¶ 61,243 (2003), *reh'g denied*, 106 FERC ¶ 61,170 (2004).

gas from Unocal's Platform 39A and transports it to Tennessee's shoreline interconnect, (2) a 3.2-mile long, 8 5/8-inch diameter line that receives gas from Platform 39A and transports it to Transco's sub-sea interconnect, and (3) separation and dehydration facilities located 22 miles downstream of Tennessee's shoreline interconnect.

4. Unocal's compressors on Platform 39A bring the gas from low-level well pressures up to line pressures. There are no wells or other sources of gas feeding into Jupiter's facilities beyond that point. Accordingly, we determined that gas aggregation is complete once the gas reaches Platform 39A; after that point, Jupiter's two pipelines move the gas to Tennessee's and Transco's systems without collecting any additional gas. Since there is no additional gas being collected downstream of Platform 39A, we concluded that this is the point where gathering ends and transmission begins. Therefore, the Commission found that transmission is the primary function of Jupiter's facilities, which are located downstream of Platform 39A.⁴

5. In its petition for judicial review, Jupiter reiterated its argument that its facilities must be gathering facilities because they are located upstream of facilities, owned by Transco, that the Commission had previously found to be gathering facilities.⁵ The court agreed with Jupiter's argument that the Commission's decision was flawed by the inconsistency of having the point where gathering ends and transportation begins located upstream of another pipeline's facilities that the Commission had found to be gathering facilities. Pending remand proceedings before the Commission, the court declined to address Jupiter's other arguments.⁶

6. On April 19, 2005, the Commission issued an order in Docket No. CP01-368-004, *et al.*, vacating its previous gathering determination regarding Transco's facilities downstream of the interconnection with Jupiter's system and finding that Transco's downstream facilities are transmission facilities subject to the Commission's NGA jurisdiction.⁷ Since the April 19, 2005 Order in Transco's proceeding eliminated the inconsistency identified by the court in this proceeding, the Commission's June 28, 2005 Order on remand in this proceeding affirmed its jurisdictional determination regarding Jupiter's facilities.

⁴ *Id.*

⁵ See *Transcontinental Gas Pipe Line Corporation*, 96 FERC ¶ 61,246, order on reh'g, 97 FERC ¶ 61,298 (2001), *affirmed*, *Williams Gas Processing – Gulf Coast Company LP v. FERC*, 331 F.3d 1011 (D.C. Cir. 2004).

⁶ *Jupiter Energy Corporation v. FERC*, slip op. at p. 8.

⁷ *Transcontinental Gas Pipe Line Corporation*, 111 FERC ¶ 61,090 (2005).

7. In its request for rehearing of the Commission's order on remand, Jupiter states that the Commission "should consider anew all the issues relevant to Jupiter's jurisdictional status."⁸ The Commission will deny this request. Jupiter filed two requests for rehearing following the issuance of the Commission's original May 16, 2003 Order, which the Commission addressed in two orders on rehearing.⁹ All issues raised in Jupiter's latest request for rehearing have already been addressed by the Commission in its previous orders in this proceeding.

The Commission orders:

Jupiter's request for rehearing filed on July 14, 2005 is denied.

By the Commission. Commissioner Brownell dissenting with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

⁸ Jupiter states that the Commission erred by (1) finding that the primary function of Jupiter's system is transmission, rather than gathering; (2) failing to give proper weight to the physical and non-physical factors that demonstrate the function of Jupiter's facilities; (3) over-emphasizing and misapplying the central point of aggregation factor; and (4) failing to reconcile its decision with other Commission decisions.

⁹ 105 FERC ¶ 61,243 (2003) and 106 FERC ¶ 61,170 (2004).

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BROWNELL, Commissioner, dissenting:

Our criteria for determining whether the primary function of a facility is gathering or transmission is laid out in *Farmland Industries, Inc.*,¹ In short, we consider six physical and geographic characteristics of the facilities in question. We also weigh the nonphysical factors, such as intended purpose, location and operations of the facilities and the general business activity of the owner of the facility. In *Amerada Hess Corporation*,² the Commission, among other things, added a centralized aggregation point characteristic for determining the primary function of offshore pipelines.

As I stated in my prior dissent, I believe Jupiter satisfies the Commission's established criteria for determining whether a facility is gathering because the physical and non-physical characteristics are predominantly the elements of a gathering facility.³ The majority acknowledges that the physical characteristics of Jupiter's pipeline facilities are indicative of a gathering function in stating, "[w]e recognize that the length, diameter and operating pressures of Jupiter's pipeline facilities may not be inconsistent with a gathering function".⁴ Notwithstanding, the majority finds that Platform 39A is a central point of aggregation and determines this sole characteristic is sufficient to assert jurisdiction.

The majority also states that it need not consider nonphysical factors because "this is not a case where the physical factors are so ambiguous that we need to consider nonphysical factors".⁵ The nonphysical factors strongly support a finding that the

¹ 23 FERC ¶ 61,063 (1983).

² 67 FERC ¶ 61,254 (1994).

³ 105 FERC ¶ 61,243(2003).

⁴ Id. at P.9.

⁵ Id. at P.11.

proposed line is gathering.⁶ Jupiter's parent company Unocal is a non-jurisdictional exploration and production company and its only shipper since at least 1992. Jupiter merely operates as an extension of Unocal's non-jurisdictional system. The Commission has previously recognized Jupiter's unique operating circumstances by exempting Jupiter from compliance with Order No. 509⁷ and Order No. 636.⁸ Thus, the clear purpose and operation of Jupiter is an extension of its parent's non-jurisdictional gathering and processing businesses.

The decision by the majority rests essentially on the central point of aggregation factor. Even assuming the central point of aggregation factor supports a finding of jurisdiction, and the evidence is mixed, I believe today's order employs a flawed analytical application of our multi-factor test because one factor, the central point of aggregation factor, trumps the other physical and non-physical factors. Under established precedent, no one factor is considered to be determinative. A facility may still be determined to be gathering if it fails to meet one or more of the physical criteria. In *Farmland*, the Commission stated, "[a]lthough a variety of labels have been applied to these factors, the ultimate test is whether the primary function of the facility can be classified as transmission or gathering."⁹ I believe nearly all of the physical and non-physical characteristics of Jupiter's facilities are indicative of a gathering function.

For these reasons, I respectfully dissent.

Nora Mead Brownell
Commissioner

⁶ 105 FERC ¶ 61,243 (2003).

⁷ 52 FERC ¶ 61,064 (1990).

⁸ 60 FERC ¶ 61,044 (1992).

⁹ 23 FERC ¶ 61,063 at 61,143 (1983).