

Background

2. The Transco and Jupiter pipeline facilities addressed by the Commission's November 15 Order on Remand are located in shallow waters offshore Louisiana. The Jupiter facilities include a 10.2-mile long, 10.75-inch diameter pipeline and a 3.2-mile long, 8.625-inch diameter pipeline. The Transco facility is a 12.43-mile long portion of a 37-mile long, 24-inch diameter pipeline located downstream of Jupiter's 3.2-mile long pipeline.

3. The *Transcontinental Gas Pipe Line Corporation (Transco)* proceeding³ began in 2001 when Transco's gathering affiliate, Williams, filed a petition for a declaratory order by the Commission finding approximately 380 miles of Transco's pipeline facilities onshore and offshore Louisiana to be non-jurisdictional gathering facilities. Upon consideration of the petition, the Commission determined that the primary function of a portion of the facilities, including the 12.43 miles of pipeline at issue in this proceeding, was indeed gathering, while other of the facilities at issue performed a jurisdictional transmission function. The D.C. Circuit Court upheld the Commission's determinations.⁴

³ *Transcontinental Gas Pipe Line Corp.*, 96 FERC ¶ 61,246 (2001), *order on reh'g*, 97 FERC ¶ 61,298 (2001), *aff'd*, *Williams Gas Processing–Gulf Coast Co. v. FERC*, 331 F.3d 1011 (D.C. Cir. 2003), *order requiring to show cause, Transcontinental Gas Pipe Line Corp.*, 107 FERC ¶ 61,122 (2004), *order addressing jurisdictional status of facilities and vacating, in part, abandonment authorization*, 111 FERC ¶ 61,090 (2005), *reh'g denied*, 111 FERC ¶ 61,498 (2005), *vacating and remanding, Williams Gas Processing–Gulf Coast Co. v. FERC*, 475 F.3d 319 at 329 (D.C. Cir. 2006) (*Williams Gas*).

⁴ Initially, Transco and Williams filed a comprehensive proposal in which they requested authorization to spin-down 3,100 miles of pipeline. *Transcontinental Gas Pipe Line Corp.* 76 FERC ¶ 61, 317 (1996), *order denying reh'g*, 95 FERC ¶ 61,696 (2001). After the Commission denied that comprehensive request, Transco and Williams filed three more limited spindown proposals. In the court's 2003 *Williams Gas* decision, *supra* n.3, the court addressed the appeals of the Commission orders in the comprehensive proceeding, as well as in the more limited Central Louisiana proceeding, involving the 12.43-miles of Transco pipeline at issue here, and Transco's North High Island/West Cameron proceeding. *See Transcontinental Gas Pipe Line Corp.* 96 FERC ¶ 61,118 (2001), *order denying reh'g*, 97 FERC ¶ 61,300 (2001) (orders addressing Transco's North High Island/West Cameron facilities).

4. The *Jupiter Energy Corporation (Jupiter)* proceeding⁵ began in 2002 when Jupiter filed an application seeking Commission approval to transfer two pipelines, one 10.2 miles long and the other 3.2 miles long, both located offshore Louisiana, to Jupiter's parent company, Union Oil Company of California (Unocal), for its use as part of its production and gathering system. The Commission denied Jupiter's application, concluding that the two pipelines performed a jurisdictional transmission function. On rehearing in the *Jupiter* proceeding, it came to light that Transco's above-referenced 12.43 miles of pipeline, at that time having been determined by the Commission to be performing a gathering function, is located downstream of Jupiter's 3.2-mile long pipeline. Jupiter argued that the Commission's prior finding that Transco's downstream pipeline is a gathering facility precluded a finding that Jupiter's upstream facilities were jurisdictional transmission facilities. In denying Jupiter's request for rehearing, the Commission stated that the "presence of upstream transmission facilities determines the classification of downstream facilities, not the opposite."⁶

5. While Jupiter's appeal of the Commission's decision was pending before the Fifth Circuit Court, the Commission revisited its finding in the *Transco* proceeding that the primary function of Transco's 12.43 miles of pipeline downstream of Jupiter's facilities is gathering. In an order issued on April 19, 2005, the Commission found, based primarily on its determination that Jupiter's upstream facility was jurisdictional, that the primary function of Transco's 12.43-mile pipeline is transmission.⁷ That determination was appealed and on December 26, 2006, the D.C. Circuit Court vacated and remanded the Commission's orders finding the Commission had not explained why its finding that Jupiter's upstream facilities were jurisdictional was determinative of the jurisdictional status of Transco's downstream facilities.⁸

6. On March 15, 2007, the Fifth Circuit Court again vacated and remanded the Commission's Jupiter orders, finding that the Commission had not given sufficient consideration to non-physical factors that tended to suggest the Jupiter facilities performed a gathering function. For example, Jupiter's only remaining shipper is its

⁵ *Jupiter Energy Corp.*, 103 FERC ¶ 61,184 (2003), *reh'g denied*, 105 FERC ¶ 61,243 (2003), *reh'g denied*, 106 FERC ¶ 61,170 (2004), *vacating and remanding*, *Jupiter Energy Corp. v. FERC*, 407 F.3d 346 (5th Cir. 2005), *order on remand affirming jurisdictional determination*, *Jupiter Energy Corp.*, 111 FERC ¶ 61,497, *reh'g denied*, 113 FERC ¶ 61,103 (2005), *vacating and remanding*, *Jupiter Energy Corp. v. FERC*, 482 F.3d 293 (5th Cir. 2007).

⁶ *Jupiter*, 105 FERC ¶ 61,243 at n.8.

⁷ *Transco*, 111 FERC ¶ 61,090 (2005), *reh'g denied*, 111 FERC ¶ 61,498 (2005).

⁸ *Transco*, 475 F.3d at 329.

parent Unocal, neither Jupiter nor Unocal owns any other jurisdictional facilities, Unocal's business activity is gathering and production, and Unocal was seeking to integrate Jupiter's facilities into Unocal's own production and gathering.⁹

7. Reconsidering Jupiter's facilities in light of the Fifth Circuit's discussion, the Commission, in its November 15 Order on Remand, reversed its previous determination with respect to Jupiter's facilities and found that they would be non-jurisdictional gathering facilities upon transfer of the facilities to Jupiter's parent company, Unocal, and integration with Unocal's upstream production and gathering system. However, as noted above, the Commission affirmed its determination that the 12.43 miles of Transco pipeline downstream of Jupiter's system is jurisdictional.

8. In their request for rehearing, Transco and Williams argue that in the November 15 Order on Remand, rather than returning to the original court-affirmed determination of gathering, the Commission espouses an entirely new rationale based on a misunderstanding of a number of key facts. Their arguments are addressed below.

Discussion

9. In the 2001 proceeding, a number of factors led to the Commission reaching the incorrect determination that the 12.43 miles of Transco pipeline still at issue performed a gathering function. Maps provided by Transco in that proceeding indicated that there were three separate 16-, 20-, 24-inch diameter pipelines, each traveling from Vermilion Block 67 to the Cow Island plant. However, because the onshore portions of all three pipelines, and the offshore portions of the 16- and 20-inch diameter pipelines, travel in straight, parallel lines in close proximity, the maps represented all three pipelines, except for the offshore portion of the 24-inch pipeline which includes the 12.43 miles of pipeline at issue here, by a single line.¹⁰

10. Moreover, for the purpose of its gathering analysis, Williams separated the 16-, 20-, and 24-inch diameter pipelines into onshore and offshore segments. The 16- and 20-inch diameter pipelines were divided into 24.633- and 24.618-mile long onshore segments and 17.25- and 17.109- mile long offshore segments, respectively. Williams' segmentation and analysis gave the impression that these were shorter pipelines. However, as the Commission determined in the original Central Louisiana proceeding, these pipelines, in fact, run approximately 42 miles from Vermilion Block 67 to the Cow Island plant.

⁹ *Jupiter*, 482 F.3d at 296-8.

¹⁰ See maps attached to Petition for Declaratory Order Disclaiming Jurisdiction filed in Docket No. CP01-369-000 (Petition).

11. Based on the maps and information in the record at the time, the Commission was able to discern that the onshore and offshore portions of the 16- and 20-inch diameter pipelines represented continuous jurisdictional pipelines. The change in direction of the 24-inch diameter pipeline beginning at about the shoreline, however, caused the Commission to erroneously conclude that the offshore portion of the pipeline – including the 12.43 miles of pipeline at issue here – was a lateral, similar to the laterals extending off the 16- and 20-inch pipelines that the Commission found to be gathering facilities. Therefore, the Commission initially found in 2001 that the 12.43 miles of pipeline at issue performed a gathering function.

12. In 2004, the Commission issued a show cause order to reopen the record in the *Transco* proceeding for the limited purpose of revisiting the jurisdictional status of the 12.43 miles of Transco pipeline downstream of Jupiter's system. In response to a data request, Transco filed additional information and more detailed maps. Although a change in direction beginning at the shoreline had caused the 12.43 miles of pipeline to appear to be part of a separate lateral facility on the less detailed maps filed by Transco and Williams in 2001, the more detailed maps clearly showed that there was no change in function at that point.¹¹ As represented on the more detailed maps, the 12.43 miles of offshore pipeline is a continuation of the 24.63-mile long onshore pipeline that the Commission found to perform a jurisdictional transmission function in 2001. Essentially, there is a single 37-mile long, 24-inch diameter pipeline which runs from Vermilion Block 22 to the Cow Island plant.¹²

13. In its April 19, 2005 Order reversing its gathering determination for Transco's 12.43-mile pipeline, the Commission found that its determination that Jupiter's upstream facilities were jurisdictional was dispositive of the jurisdictional status of Transco's downstream facilities, without applying its primary function test. In its opinion remanding the Commission's reclassification of the 12.43-mile long pipeline, the D.C. Circuit Court emphasized that there are Commission orders that appear to have created exceptions to the axiom that downstream facilities must be jurisdictional if the upstream facilities are jurisdictional. Therefore, the court found that the Commission needed to

¹¹ The Commission notes that shortly after the offshore interconnection with Jupiter, the pipeline facilities form an angle and the pipeline is reduced from 24 inches to 12 inches. From that angle, the 12-inch pipe extends approximately another ten miles offshore. The Commission's orders have not revisited or disturbed the 2001 gathering determination for the 12-inch diameter pipeline facilities that extend further out to sea.

¹² July 6, 2004, Joint Answer to Order to Show Cause filed in Docket Nos. CP01-368-004 and CP01-369-002, Dwg. No. 6WA-B (Show Cause Answer).

explain why the Transco facility did not fit into any such exception or justify the status of the facility consistent with existing precedent.¹³

14. The Commission's finding, on remand, that Jupiter's upstream facilities would perform a gathering function eliminated the jurisdictional relevance of the downstream location of Transco's facility. Therefore, the Commission responded to the D.C. Circuit Court's remand in *Transco* by performing its primary function test to determine the jurisdictional status of the 12.43-mile long segment of 24-inch diameter pipeline. After applying the test's various criteria, including relevant non-physical factors, the Commission concluded that the function of the entire 37 miles of 24-inch diameter pipeline that runs from Vermilion Block 22 onshore to the Cow Island plant, including the 12.43-mile segment that extends beyond the shoreline, is jurisdictional transmission.¹⁴

15. As discussed above, the more detailed maps filed by Transco following the Commission's issuance of the 2004 show cause order clarify that the 12.43 miles of 24-inch diameter Transco pipeline at issue is part of a single 37-mile long, 24-inch diameter pipeline which runs from Vermilion Block 22 to the Cow Island plant. The Commission used these maps, as well as additional maps and information that had been filed with the court, in its application of the primary function test in its November 15 Order on Remand.

16. As explained in the November 15 Order on Remand, the more detailed maps show the 16-, 20-, and 24-inch diameter pipelines that run to the Cow Island plant as three separate pipelines.¹⁵ Further, notwithstanding that the 24-inch diameter facility changes direction at the shoreline, the onshore and offshore segments of the 24-inch diameter pipeline constitute one continuous 37-mile long pipeline, just like the 42-mile long, 16- and 20-inch diameter pipelines, which also include onshore and offshore portions and which were determined to perform a transmission function in 2001.¹⁶

17. Nevertheless, Transco and Williams contend on rehearing that the Commission's conclusion in the November 15 Order on Remand that the 12.43-mile offshore and 24.62-mile onshore segments are part of a single pipeline is inconsistent with its previous characterization of the 24.62-mile segment of the pipeline as a "loop" that parallels the 16- and 20-inch diameter pipelines. Transco and Williams emphasize that loops

¹³ *Transco*, 475 F.3d at 327-28.

¹⁴ *Order on remand*, 121 FERC at PP 22-29.

¹⁵ *See* Show Cause Answer, Dwg. No. 6WB.

¹⁶ *Transco*, 96 FERC at 61,976.

essentially function as a single pipeline. Therefore, they argue that the Commission can not treat the onshore portion of the 24-inch diameter pipeline as a loop of the onshore portions of the 16- and 20-inch diameter pipelines and then single the 24-inch pipeline out as a continuous pipeline to assess its function independently.¹⁷

18. As discussed above, the original maps filed in 2001 indicated the presence of 16-, 20- and 24-inch diameter pipelines, but showed only a single line to represent all three pipelines, leading the Commission to believe at that time that the three pipelines looped each other onshore. However, whether or not the onshore portion of the 24-inch diameter pipeline is a true “loop” of the 16-inch and 20-inch pipelines, is immaterial to whether the offshore portion of the 24-inch diameter pipeline is a jurisdictional continuation of the onshore portion of the line. As explained above, the deficient maps filed by Transco and Williams in 2001 led to the Commission’s original, incorrect belief that the offshore 24-inch diameter pipeline was a lateral, distinct from the onshore 24-inch diameter facilities. It is now clear that the offshore 24-inch diameter pipeline is not a discrete lateral, and there is no other basis for thinking that the offshore portion of the 24-inch pipeline somehow functions differently from the onshore portion of the pipeline.

19. Transco and Williams emphasize that the onshore portion of the 24-inch diameter pipeline, extending from the shoreline to the Cow Island plant and paralleling the 16- and 20-inch lines, was initially constructed to connect supplies in the immediately offshore blocks in and around Vermilion Block 16 and was extended to Vermilion Block 22 ten years later to access supplies in Vermilion Block 22. They state that this is a classic example of a system that evolved in stages over time to logically and progressively reach

¹⁷ The Commission’s November 15 Order on Remand cited, at note 29, *Dauphin Island Gathering System*, 79 FERC ¶ 61,391, at 62,666 (1997), *order on clarification*, 80 FERC ¶ 61,237 (1997), *order denying reh’g*, 93 FERC ¶ 61,198 (2000) (*Dauphin Island*). Transco and Williams assert that the Commission cited that proceeding for the proposition that looped lines function as a single larger line. However, *Dauphin Island* was not cited to support a finding that looped lines function as a single larger line (though they generally do, that was not relevant here). Rather, the Commission cited to *Dauphin Island* because the facilities involved in that proceeding were found to be jurisdictional and were located in shallow waters, were relatively long (9.6 miles and 13 miles), and of relatively large diameter (20 inches and 24 inches). *Dauphin Island*, therefore, is an example of where the Commission has found that relatively large facilities in shallow waters are indicative of a jurisdictional transmission function. Thus, the *Dauphin Island* orders, along with the *Venice Gathering Co.*, 97 FERC ¶ 61,045, at 61,250 (2001) (finding a 20-mile, 22-inch pipeline, among others, that extends from an West Delta Block No. 79 to shore performs a transmission function), were cited because they involved transmission facilities similar to the segment of Transco pipeline at issue (located in shallow waters, relatively long (37 miles) and of large diameter (24 inches)).

out to collect and aggregate various sources of gas supply as they were developed and became available, citing *Enron Gulf Coast Gathering L P (Enron)*¹⁸ in support of their contention that gathering is the primary function of all of their offshore facilities.

20. Transco and Williams raised the same argument in their judicial appeal of the Commission's original 2001 orders which found that the onshore portion of the 24-inch pipeline, and the 16- and 20-inch pipelines in their entirety, performed a transmission function.¹⁹ As the D.C. Circuit Court noted in its decision, while the Commission recognized in *Enron* that the historical evolution of a pipeline system may be relevant, it has not traditionally been a criterion in the primary function test.²⁰ The court also pointed out that in its remand of the Commission's *Sea Robin Pipeline Co. (Sea Robin)* orders,²¹ it had instructed the Commission to afford nonphysical factors, such as a system's historical evolution, only secondary importance.²² The court observed that the historical classification of a system is of limited utility in the wake of major regulatory changes in the natural gas industry.²³ Transco and Williams have not added any new value to this argument that would necessitate a different outcome here.

21. While the 24-inch diameter pipeline was constructed, as Transco and Williams emphasize, in two stages – first to the shoreline and ten years later out to Vermilion Block 22 – the Commission finds that the offshore and onshore portions of the pipeline serve the same function: the jurisdictional transmission of gas for 37 miles from Vermilion Block 22 to the onshore Cow Island plant. This is consistent with the determination made by the Commission in the *Dauphin Island* proceeding, which also involved a system that was evolving and expanding over time.²⁴

¹⁸ 79 FERC ¶ 61,039 (1997), *order granting in part and denying in part reh'g*, 95 FERC ¶ 61,318 at 62,097(2001), *reh'g dismissed*, 97 FERC ¶ 61,001 (2001).

¹⁹ 331 F.3d at 1019.

²⁰ *Id.*, citing *ExxonMobil Gas Mktg. Co. v. FERC*, 297 F.3d 1071 at 1077 (D.C. Cir 2002) (*ExxonMobil*).

²¹ *Sea Robin Pipeline Co.* 71 FERC ¶ 61,351 (1995), *order on reh'g*, 75 FERC ¶ 61,332 (1996), *remanded and vacated by*, *Sea Robin Pipeline Co. v. FERC*, 127 F.3d 365 (5th Cir. 1997), *order on remand*, 87 FERC ¶ 61,384 (1999), *reh'g denied*, 92 FERC ¶ 61,072, *order denying stay*, 92 FERC ¶ 61,217 (2000), *aff'd*, *ExxonMobil Gas Mktg. Co. v. FERC*, 297 F.3d 1071 (D.C. Cir 2002).

²² *Transco*, 331 F.3d at 1019, *citing Sea Robin*, 127 F.3d at 371.

²³ *Id.*

²⁴ *Supra* n.17.

22. Dauphin Island's original offshore facilities were configured as an inverted Y. The trunk of the Y consisted of a single 12.5-mile long, 20-inch diameter pipeline that extends from an onshore metering facility near Coden, Alabama, seaward to a platform in Alabama State Tract 73.²⁵ The two upstream legs included 8-, 12-, and 20-inch diameter pipeline. The Commission determined that the 12.5-mile long, 20-inch diameter trunkline of the Y performed a jurisdictional transmission function and that gathering was the primary function of the two upstream legs of the Y.

23. Dauphin Island acquired another gatherer's system and proposed to construct a 63-mile long, 24-inch diameter pipeline to connect that system with the trunk of its existing Y system. The Commission determined that, rather than view the new 63-mile long pipeline as a third, gathering leg to the inverted Y, it was more appropriate to consider the proposed 63-mile pipeline as part of one long, large diameter jurisdictional transmission facility which included the existing 12.5-mile long, 20-inch diameter trunk of the existing Y. The Commission based its finding, in part, on the fact that the proposed 63-mile long pipeline would receive gas exclusively at its terminus.²⁶

24. Similar to the circumstances in *Dauphin Island*, Transco extended its then-existing 24-inch transmission line from the shoreline to collect gas from additional offshore sources.²⁷ These offshore facilities were extended over time, to include not only the 12.43-mile long, 24-inch diameter segment beginning at the shoreline, but also the more than 10 additional miles of 12-inch diameter pipeline that telescope into the 24-inch diameter pipeline.²⁸ As discussed below, Transco acknowledges that no significant volumes of gas are received along the 12.43-mile stretch of pipeline at issue, supporting a finding that this segment of offshore pipeline serves the same transmission function as the downstream onshore pipeline, notwithstanding that they were constructed at different times.

25. In its November 15 Order on Remand, the Commission stated that there are no wells attached along the length of the 12.43 miles of offshore pipeline at issue.²⁹ Transco and Williams contend that the Commission is "factually mistaken" and that significant

²⁵ In the original proceeding, the pipeline was described as a 9.6-mile, 20-inch pipeline. On rehearing, Dauphin Island clarified that the pipeline was actually 12.5 miles long. *Dauphin Island*, 93 FERC at n.5.

²⁶ *Dauphin Island*, 79 FERC at 62,667.

²⁷ *Transcontinental Gas Pipe Line Corp.*, 57 FPC 482 at 482 (1977).

²⁸ See discussion *infra* P 31.

²⁹ *Remand Order on remand*, 121 FERC at P 24.

volumes of gas are collected from Vermilion Block 16, through which the 12.43-mile long pipeline travels before reaching the shore.³⁰ However, based on the maps in the record, the Vermilion Block 16 production is received by a lateral that feeds into the 16- and 20-inch diameter pipelines, not by the 12.43-mile segment of 24-inch pipeline at issue.³¹ Further, while the maps show that the path of the 12.43-mile long segment of 24-inch pipeline passes in close proximity to a cluster of wells situated halfway between Vermilion Block 22 and the shoreline, the record does not contain any evidence that the 24-inch pipeline collects any gas from these wells. But more to point, Transco and Williams have acknowledged that no significant volumes of gas are currently being received along the length of the 12.43-mile long segment of pipeline.³² Moreover, the collection of relatively minor gas volumes along this segment of pipeline downstream of Vermilion Block 22 would not alter the Commission's determination that it performs a transmission function.³³

26. Transco and Williams believe it is relevant that the 12.43 miles of pipeline at issue was jointly constructed and has been jointly owned since it was constructed. They emphasize that Transco currently owns only a one-sixth interest in the facility. Therefore, they argue that when the Commission applied the primary function test to this 12.43 miles of 24-inch diameter pipeline, it should have recognized that, for Transco's purposes, it represents a much smaller pipeline and much less capacity than would be indicated by the actual 24-inch diameter. They contend that the Commission's findings should reflect the fact that Transco's capacity in the 24-inch diameter facility is actually much less than its capacity in its upstream 12-inch diameter pipeline facilities. Looked at that way, they assert that there can be no marked change in the function at the beginning of this 12.43-mile long segment of pipeline to support a finding that that point is where non-jurisdictional gathering ends and jurisdictional transmission begins.

³⁰ July 17, 2007 joint rehearing request at n.30.

³¹ See Show Cause Answer, Dwg. No. 6WA-B Detail and 6WB.

³² See Transco's and Williams January 12, 2006 Initial Br. at 23.

³³ See, e.g., *Enron*, 79 FERC at 61,177 (finding four receipt points located downstream of the central point of aggregation did not change determination that pipeline performs a transmission function) and *Sea Robin*, 87 FERC at 62,430 (finding that interconnections with two laterals and four wells was insufficient to alter the Commission's determination that the 66.3-mile long pipeline downstream of the central aggregation point performed a transmission function).

27. It is not uncommon for there to be several owners sharing capacity on offshore facilities.³⁴ In determining the primary function of facilities, the Commission looks to the physical characteristics of the facilities or system. The fact that Transco owns only a one-sixth interest in this segment of pipeline does not dilute the relevance of the segment's physical attributes and those of the larger facility of which it is part. While the Fifth Circuit Court found that the Commission had erred by ignoring non-physical factors in considering the status of Jupiter's facilities, it also has held that non-physical factors must be "secondary to the physical factors."³⁵

28. Transco and Williams contend that the Commission's November 15 Order on Remand cannot be squared with *Sea Robin*³⁶ or *ExxonMobil* and its predecessor *EP Operating Company v. FERC (EP Operating)*.³⁷

29. In response to the court's decision in *EP Operating*, the Commission modified the primary function test to apply a sliding scale so as to allow for the recognition that gathering pipelines may increase length and diameter in correlation to their distance from shore and the water depth of offshore production areas.³⁸ The 12.43 miles of 24-inch diameter pipeline at issue here is located in shallow waters and does not collect gas

³⁴ See generally *Southern Natural Gas Co.*, 79 FERC ¶ 61,076 (1997) (facilities jointly owned by Koch Gateway Pipeline Co.(Koch), ANR Pipeline Co.(ANR), NorAm Gas Transmission Co., Natural Gas Pipeline Co. of America, Gasdel Pipeline System, Inc., Northern Natural Gas Co. (Northern Natural), Columbia Gulf Transmission Co., and Texas Eastern Transmission Corp.), *El Paso Natural Gas Co.*, 72 FERC ¶ 61,219 (1995) (facilities jointly owned by CNG Transmission Corp., Northern Natural, ANR, and Koch), *Trunkline Gas Co.*, 67 FERC ¶ 61,256 (1994) (various facilities jointly owned by 12 separate companies).

³⁵ *Sea Robin*, 127 F.3d at 371.

³⁶ In the November 15 order on remand, the Commission made note of the 12-inch difference between the 24-inch pipelines feeding into Vermilion Compressor Station 149 on the Sea Robin system and the 36-inch trunk line running downstream of the station. While the Commission did indicate in *Sea Robin* that the lines upstream of the compressor station were between 4.5- and 24-inches in diameter, (*see* 92 FERC ¶ 61,072 at 61,291), Transco and Williams correctly point out that one of the arms feeding into Sea Robin's Vermilion 149 Compressor Station is a 30-inch diameter line and the other arm consists of two parallel, looped 26-inch and 30-inch diameter lines.

³⁷ *EP Operating Co. v. FERC*, 876 F.2d 846 (5th Cir. 1989).

³⁸ *Amerada Hess Corp.*, 52 FERC ¶ 61,268, at 61,988 (1990) (*Amerada Hess*).

produced from deep water reserves. Thus, the sliding scale and presumption of gathering set forth in *EP Operating* do not come into play.

30. The court in *ExxonMobil* determined it was reasonable for the Commission to find a central point of aggregation where there is a meaningful distinction between the upstream and downstream facilities.³⁹ In *Sea Robin*, the Commission determined that in cases where a pipeline system is configured so that gas collected from upstream wells is delivered through relatively smaller diameter lines to a centralized location for further transportation to shore through a single larger diameter pipeline, the centralized aggregation location should be given weight in identifying the demarcation point between gathering and transportation.⁴⁰ In *Sea Robin*, the Commission also found that a “straight-shot geographical configuration” interconnecting with only a few laterals and wells along its entire length is a further indication of a jurisdictional transmission function.⁴¹

31. A review of the physical characteristics of the facilities in the area of Vermilion Block 22 where Transco’s 24-inch diameter pipeline reduces to 12-inch diameter pipeline shows that the facilities undergo a marked change in physical attributes and geographic configuration in that area and that the beginning of the 24-inch pipeline represents a central point of aggregation where gathering ends and transmission begins, consistent with the court’s remand in *Sea Robin* and *ExxonMobil*. Transco’s and Williams’ maps indicate a convergence in that area of at least eight pipeline facilities, including Transco’s upstream 12-inch diameter pipeline determined to be gathering in 2001. These facilities range in length from 0.59 to 10.29 miles and in diameter from 1 to 12 inches.⁴²

32. In addition to Transco’s upstream 12-inch pipeline, at least four other short third-party gathering lines interconnect at the end of the 24-inch pipeline.⁴³ Near the end of the 24-inch pipeline, gas is collected from a 5.96-mile long, 6-inch diameter pipeline owned

³⁹ *ExxonMobil*, 297 F.3d at 1085.

⁴⁰ *Sea Robin*, 87 FERC at 62,428.

⁴¹ *Id.* at 62,430

⁴² *See* Petition, Dwg. No. 6WA and 6WB.

⁴³ These lines appear to be Conoco’s 0.66-mile long, 2-inch diameter pipeline, 1.72-mile long, 1-inch diameter pipeline, and 0.59-mile long, 1-inch diameter pipeline; and Energy Res Tech, 3.22-mile long, 6-inch diameter pipeline. *See* Petition, Dwg. No. 6WA.

by Sea Robin and from Jupiter's 3.2-mile long, 8.625-inch diameter pipeline.⁴⁴ There also appears to be an interconnection with a 2.20-mile long, 10-inch diameter pipeline owned by Union Oil⁴⁵ and a cluster of wells in and around the same immediate area.

33. Consistent with the court's remand in *Sea Robin* and *ExxonMobil*, virtually all of the gas transported by the 37-mile long, 24-inch diameter pipeline is received at or near its end and transported to the Cow Island plant. As discussed above, the collection of relatively minor gas volumes along this 37-mile stretch of pipeline would not be sufficient to alter the Commission's determination that the beginning of the 24-inch pipeline represents a central point of aggregation.⁴⁶ Thus, we affirm our finding that the configuration and physical characteristics of the facilities upstream of the 24-inch diameter pipe are markedly different from those downstream and show that the beginning of the 24-inch pipe is a central point of aggregation where gathering ends and transmission begins.

34. Transco and Williams argue that the 37-mile long, 24-inch diameter pipeline facilities should be viewed, along with the upstream 10.29-mile long, 12-inch diameter pipeline facilities already found to be gathering, as one continuous, approximately 47-mile long gathering leg analogous to one of the upstream legs of Sea Robin's inverted Y system. They emphasize that there are various third-party pipelines, platforms and wells upstream of this 47-mile length of telescoping pipeline. They argue that Jupiter's 3.2-mile long, 8.625-inch diameter pipeline that receives gas from Unocal's production platform and moves it to Transco's pipeline is comparable to the laterals that receive gas from production platforms and then move it to one of Sea Robin's gathering legs.

35. Furthering the analogy, Transco and Williams argue that just as gas from various wells is collected at production platforms and delivered via third-party pipelines to Sea Robin's gathering legs, the gas received by Transco's pipeline from Jupiter is gas collected by Unocal's upstream production platform from a number of wells. They conclude that, in essence, Transco's 47 miles of 24-inch and 12-inch pipeline is a smaller-scale version of one of Sea Robin's gathering arms, consistent with the sliding scale principle that the Commission adopted in response to *EP Operating*. They also emphasize that in the 2001 Transco proceeding the Commission rejected, as did the D.C.

⁴⁴ See Show Cause Answer, Dwg. No. 6WA-B Detail. Transco's and Williams' maps reflect the interconnecting Jupiter pipeline as a 2.03-mile long, 8-inch diameter pipeline.

⁴⁵ Petition, Dwg. No. 6WA shows a 2.20-mile long, 10-inch diameter pipeline owned by Union Oil. In Petition DWG. No. 6WB, it appears that the same line is designated as a 2.03-mile long, 8-inch diameter pipeline owned by Jupiter.

⁴⁶ See *supra* P 25.

Circuit Court in the remand of *Sea Robin* and *ExxonMobil* and the Fifth Circuit in *EP Operating*, producers' call for the Commission to make the fullest use it could of its then recently developed central point of aggregation criterion. In essence, producers argued that any particular offshore Transco facility should be found to be a jurisdictional transmission facility if it was downstream of other facilities that formed an inverted Y further upstream and could be designated as a central point of aggregation, so that any downstream Transco facilities would have to be found jurisdictional.⁴⁷

36. As discussed above, the sliding scale adopted in *EP Operating* was for application in situations involving facilities in deep waters. The Transco facilities at issue are in shallow waters. In any event, the Commission does not agree that Transco's 47-mile stretch of 24-inch and 12-inch pipeline looks like a smaller-scale version of one of Sea Robin's gathering legs. Sea Robin's gathering legs collect gas along their entire lengths. When Transco's 47-miles of 24-inch and 12-inch diameter pipeline and all of the interconnecting facilities are viewed as a whole, as requested by Transco and Williams, it does not change the fact that virtually all, if not all, of the gas entering the 24-inch diameter segment is received at or near the end of that 37-mile long segment.

37. At the end of their request for rehearing, Transco and Williams summarily claim without explanation that, given the fundamental principles governing the function criteria for determining NGA-exempt gathering as established in *EP Operating*, the court's remand in *Sea Robin*, *ExxonMobil* and their progeny, the Commission's November 15 Order on Remand cannot be reconciled with numerous other orders. However, the Commission has not identified any inconsistencies between its findings in the cited orders and its findings here.

⁴⁷ While the Commission rejected producers' contention in Transco's 2001 proceeding that each of the 67 productions upstream of Sea Robin's system was a central aggregation and that all facilities downstream of the platforms should be found jurisdictional, the court confirmed that the Commission is not confined to finding just one central point of aggregation on any given system or set of facilities. *Transco*, 331 F.3d at 1018. Thus, while Transco's 16- and 20-inch diameter pipelines deliver gas to the Cow Island processing plant, the Commission found that the offshore termini of those pipelines were central points of aggregation and that the Cow Island plant itself was also a central point of aggregation for gas received from other lines found to be non-jurisdictional gathering facilities. Similarly, in Transco's North High Island/West Cameron proceeding, the Commission determined that those offshore facilities consist of two subsystems, each with its own central point of aggregation. *Transcontinental Gas Pipe Line Corp.* 96 FERC ¶ 61, 118 (2001), *order denying reh'g*, 97 FERC ¶ 61,300 (2001), *aff'd*, *Williams Gas Processing—Gulf Coast Co. v. FERC*, 331 F.3d 1011 (D.C. Cir. 2003).

38. Three of the cases cited by Williams and Transco pertain to facilities used to access deep water reserves, including *Viosca Knoll Gathering System (Viosca Knoll)*,⁴⁸ a 95-mile long, 20-inch diameter pipeline; *Manta Ray Offshore Gathering Company (Manta Ray)*,⁴⁹ a 47-mile long, 24-inch pipeline; and *Green Canyon Pipe Line (Green Canyon)*,⁵⁰ involving four pipeline segments ranging from 4.02 to 26.57 miles in length and 10.75 inches to 20 inches in diameter. For facilities located in deep water frontier areas of offshore production, the Commission's 1996 *OCS Policy Statement* established a rebuttable presumption that new facilities designed to collect gas in water of depths of 200 meters or greater qualify as gathering facilities up to the points of interconnection with the interstate pipeline grid.⁵¹

39. While the Commission determined the jurisdictional status of the facilities in *Viosca Knoll* and *Green Canyon* before it issued its *OCS Policy Statement*, in those cases the Commission determined the status of those facilities based on its decision in *Amerada Hess*, which recognized that the nature of gathering operations offshore may call for facilities that are longer and larger diameter than those normally associated with gathering onshore, particularly in frontier areas of offshore production.⁵² Again, the pipeline at issue here does not serve to access new, deep water reserves, so the gathering presumption established in these cases, the *OCS Policy Statement*, and in *EP Operating* and *Amerada Hess* does not apply here.

40. Other cases cited by Transco and Williams can be distinguished because they were decided prior to the Commission's formulation of the primary function test's central point of aggregation criterion. In *Pelican Interstate Gas System (Pelican)*,⁵³ the Commission addressed a system including six pipelines ranging from 1.535 to 27.57 miles in length and 4 to 16 inches in diameter and configured in an inverted Y. The trunk of the inverted Y going to shore was of a 27.57-mile long, 16-inch diameter pipeline. The Commission found that the diameters of the pipeline facilities were consistent with a gathering

⁴⁸ 66 FERC ¶ 61,237 (1994).

⁴⁹ 78 FERC ¶ 61,193 (1997).

⁵⁰ 59 FERC ¶ 61,109 (1992).

⁵¹ See *Statement of Policy, 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*, 74 FERC ¶ 61,222 (1996), *reh'g dismissed*, 75 FERC ¶ 61,291 (1996) (*OCS Policy Statement*).

⁵² *Amerada Hess*, 52 FERC at 61,988.

⁵³ 61 FERC ¶ 61,025 (1992).

function and that their lengths were a function of the location of the production platforms and the distance to an appropriate interconnection with existing pipeline facilities. Based on the lengths and diameters of the pipelines and the fact that gas was collected midway along the trunk of the inverted Y and at various locations along the entire length of the system, the Commission determined that all of the facilities performed a gathering function

41. In *Sea Robin*, the Commission determined that there was an “abrupt change in physical characteristics” where the legs of Sea Robin’s inverted Y system met at the Vermilion 149 Compressor Station with the trunk going to shore and that these changes marked a central aggregation point that demarcated the end of non-jurisdictional gathering.⁵⁴ The legs on Pelican’s facilities consist of two 12-inch diameter pipelines, one 23.5 miles long and one 16.38 miles long, feeding into a 27.57-mile long, 16-inch diameter pipeline. Thus, the abrupt change in physical characteristics contemplated in *Sea Robin* is not evident on Pelican’s facilities. On the other hand, as explained above, Transco’s 37-mile long, 24-inch diameter pipeline that originates in Vermilion Block 22 interconnects at or near its end with eight short, small diameter pipelines, most of which are owned and operated by third-parties, marking a change in character sufficient to identify the beginning of Transco’s 24-inch pipeline as the beginning of jurisdictional transmission. As also discussed above, there is no counter-balancing evidence that significant volumes of gas are collected along Transco’s 24-inch pipe. If the central aggregation point criterion had been in use at the time the Commission addressed Pelican’s facilities, the amount of gas received along the trunk of Pelican’s inverted Y going to shore would have been important in determining whether the trunk should be viewed differently from the shorter and smaller-diameter upstream facilities for jurisdictional purposes. While the Pelican order noted that gas was received at one point along the trunk, the order does not indicate how much gas was received at that point. Accordingly, we find that the Commission’s decision in *Pelican* does not provide any precedential value to support Transco’s and Williams’ argument that the 37-mile long, 24-inch diameter pipeline performs a gathering function.

42. The facilities in *Seagull Interstate Corporation (Seagull)*⁵⁵ were a 7-mile long, 6-inch diameter pipeline and a 5.57-mile long, 16 inch diameter pipeline. Thus, Seagull’s pipelines were significantly shorter and smaller than the Transco 37-mile long, 24-inch pipeline. We find no conflict between our gathering determination in *Seagull* and our transmission determination here.

⁵⁴ *Sea Robin*, 87 FERC at 62,431.

⁵⁵ 61 FERC ¶ 61,174 (1992).

43. In *Cavallo Pipeline Company (Cavallo)*,⁵⁶ the facilities are configured as an inverted Y. The western upstream leg is 15.7 miles long and 16 inches in diameter, and the eastern leg is 5.6 miles long and 16 inches in diameter. Cavallo's north/south trunk line to shore is a 16.4-mile long, 20-inch diameter pipeline, compared to Transco's 37-mile long, 24-inch diameter pipeline. Further, Cavallo's downstream trunk line's diameter is only four inches greater than that of its upstream legs, whereas Transco's 24-inch pipeline telescopes into its 12-inch diameter upstream pipeline and receives gas from even smaller-diameter third-party pipelines. While the Commission has given weight to the lack of evidence that any significant volumes of gas are received along the length of Transco's 24-inch pipeline, the Cavallo order did not reach this issue because the Commission had not yet formulated the central point of aggregation criterion.

44. In *Superior Offshore Pipeline Company (SOPCO)*,⁵⁷ there was a 38-mile long pipeline and a 73-mile long pipeline. The 73-mile long pipeline originates offshore Louisiana as a 12-inch diameter pipeline, turns into a 16-inch diameter pipeline while still offshore, and increases to 24 inches in diameter after making shore in Louisiana, where it terminates at the Lowry Processing Plant. The 38-mile long pipeline is 12 inches in diameter and begins offshore, terminating onshore at the Lowry Processing Plant.

45. The Commission's order describes SOPCO's pipelines as forming an inverted Y that collects gas both offshore and onshore.⁵⁸ However, the order does not indicate what portion of the SOPCO facilities are onshore, whether the interconnection between the legs of SOPCO's inverted Y system with the downstream pipeline facilities is onshore or offshore, or whether only onshore production is collected downstream of that point. Thus, there is no basis for a meaningful comparison of SOPCO's facilities with the Transco facilities at issue here.

46. The facilities in *Blue Dolphin Pipe Line Company (Blue Dolphin)*⁵⁹ include approximately 1.75 miles of 20-inch diameter pipeline between two offshore production platforms and 38.8 miles of 20-inch diameter pipeline from one of the platforms to Dow Chemical Company's facilities in Freeport, Texas.⁶⁰ Blue Dolphin is a wholly-owned

⁵⁶ 71 FERC ¶ 61,053 (1995).

⁵⁷ 67 FERC ¶ 61,253, *reh'g dismissed*, 69 FERC ¶ 61,300 (1994).

⁵⁸ 67 FERC at 61,835.

⁵⁹ 58 FERC ¶ 61,103 (1992).

⁶⁰ The facilities also include a segment of 16-inch pipeline totaling 9.2 miles between the Buccaneer Processing Plant and Dow's onshore intrastate pipeline facilities and plants.

subsidiary of Blue Dolphin Energy Company, and shares all of its nine employees with its parent company, which has a total of only eleven employees. Blue Dolphin Energy Company's primary focus is oil and gas exploration, production and development, and except for the pipeline neither Blue Dolphin nor its facilities are engaged in any activities subject to the NGA.

47. In finding that Blue Dolphin's facilities were gathering facilities, the Commission gave weight to the fact that all of the gas gathered by its system was used at Dow's chemical plant and, therefore, that none of the gas entered the interstate grid. The Commission also gave weight to the fact that Blue Dolphin is a small company whose other activities are non-jurisdictional and whose primary focus is production and gathering.⁶¹ None of these considerations are present in this case involving Transco's facilities.

48. *Tarpon Transmission Company (Tarpon)*⁶² involved a 49-mile long, 16-inch diameter offshore pipeline. At first the Commission determined that Tarpon's pipeline performed a transmission function based solely on a finding that it was located downstream of a jurisdictional facility owned by Trunkline Gas Company (Trunkline). The Commission only changed its determination after Tarpon acquired the upstream pipeline from Trunkline and sold its system to Leviathan Gas Pipeline Partners, L.P., a gatherer in the Gulf of Mexico.

The Commission orders:

Transco's and Williams' request for rehearing of the Commission's November 15, 2007 Order on Remand is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁶¹ 58 FERC at 61,362. As discussed above, the Fifth Circuit has recently held that the Commission cannot ignore non-physical factors that point toward a gathering function, such as whether the facilities at issue are owned by a company whose primary business is production and/or gathering and which seeks to integrate the facilities at issue with its upstream facilities. *Jupiter*, 482 F.3d at 296-8.

⁶² 78 FERC ¶ 61,278 (1997).