

128 FERC ¶ 61,292
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

High Island Offshore System, L.L.C.

Docket No. CP09-91-000

ORDER DETERMINING JURISDICTIONAL
STATUS OF FACILITIES

(Issued September 30, 2009)

1. On March 31, 2009, High Island Offshore System, L.L.C. (High Island) filed a petition for a declaratory order requesting that the Commission determine that all existing High Island facilities located in and upstream of High Island Area (HIA) Block A-264 in the Gulf of Mexico are gathering facilities exempt from the Commission's jurisdiction pursuant to section 1(b) of the Natural Gas Act (NGA).

2. For the reasons discussed below, the Commission finds that the subject pipeline facilities, with the exception of the compression-related facilities located in HIA Block A-264, perform a gathering function and are therefore exempt from the Commission's jurisdiction under section 1(b) of the NGA. The Commission finds that the subject compression-related facilities perform a jurisdictional transmission function.

I. Background

3. High Island, a wholly-owned subsidiary of Enterprise Products Partners LP, is a natural gas company as defined in the NGA engaged in the open-access transportation of natural gas in interstate commerce. High Island's interstate transmission system extends from supply areas in the High Island Area of the Outer Continental Shelf of the Gulf of Mexico to West Cameron (WC) Block 167 located offshore Louisiana.

4. High Island states that in 1976, the Commission authorized the construction and operation of High Island's offshore pipeline system.¹ High Island's system resembles a three-legged inverted Y, with three 41- to 54-mile segments of 30- to 36-inch diameter

¹ *High Island Offshore System, L.L.C.*, 55 FPC 2674 (1976).

pipe converging at a compression and liquid handling complex consisting of three platforms located in HIA Block A-264. Gas from this complex is discharged into approximately 66 miles of 42-inch diameter mainline which connects with three interstate pipelines for onshore delivery at WC Block 167.² The capacity of the High Island system is 1.8 Bcf per day.³

5. High Island requests that the Commission determine that all facilities in and upstream of HIA Block A-264 are gathering facilities exempt from the Commission's jurisdiction, including: (1) compression-related facilities in HIA Block A-264, consisting of two 12,200 horsepower (hp) compressors and one 29,200 hp compressor, a liquid separation and reinjection facility, and crew quarters located on three platforms; (2) the 54-mile, 30-inch diameter west leg of High Island's system, which runs from a manifold platform in HIA Block A-582 to HIA Block A-264; (3) the 41-mile, 30-inch diameter center leg of High Island's system, which runs from a manifold platform in HIA Block A-573 to HIA Block A-264; (4) the 41-mile, 30- and 36-inch diameter east leg of High Island's system, which runs from two manifold platforms in HIA Block A-343 and HIA Block A-330 to HIA Block A-264; (5) an 8.32-mile, 24-inch diameter lateral which HIOS co-owns with Transcontinental Gas Pipe Line Company, LLC (Transco) and ANR Pipeline Company (ANR) and which runs from HIA Block A-370 to an interconnection with High Island's east leg in HIA Block A-330; and (6) a 0.07-mile, 20-inch diameter lateral located in HIA Block A-350, which is co-owned with Transco and connected to the 24-inch HIA Block A-370 lateral referenced above. There are 24 production platforms and 29 laterals connected along the length of High Island's west leg; 10 production platforms connected by 10 laterals along High Island's center leg; and 11 production platforms and 16 laterals connected along the east leg of High Island's system.

II. Interventions, Protests, and Answers

6. Notice of High Island's petition was published in the *Federal Register* on April 14, 2009.⁴ Timely, unopposed motions to intervene were filed by Apache Corporation

² High Island states that on March 31, 2009, it acquired the non-jurisdictional East Breaks Gathering System, which consists of an approximately 86-mile long, 20-inch diameter line originating in the deepwater of the Gulf of Mexico at Alaminos Canyon Area Block 25 and interconnects with the center leg of High Island's system in HIA Block A-573.

³ See High Island's June 16, 2009 response to Staff Data Request No. 5.

⁴74 Fed. Reg. 17,191.

(Apache), Badger Oil Corporation (Badger), BP America Production Company and BP Energy Company, Chevron U.S.A. Inc. (Chevron), Enbridge Offshore Pipelines (UTOS) L.L.C ExxonMobil Gas & Power Marketing Company, Mariner Energy, Inc. (Mariner) and Walter Oil & Gas Corporation.⁵

7. Arena Energy, L.L.C. (Arena), Beryl Oil and Gas L.P., LLOG Exploration Offshore, Inc. (LLOG), and the Producer Coalition⁶ filed motions to intervene out-of-time. We will grant the late motions to intervene, as we find that to do so will not delay, disrupt, or otherwise prejudice these proceedings.⁷

8. Arena, the Indicated Shippers,⁸ and LLOG filed protests to High Island's petition. High Island filed a motion for leave to answer and answer to the protests. Although the Commission's Rule 213⁹ prohibits answers to protests, we will waive the rule to admit High Island's answer because it has assisted in our decision-making process. We will address the protests below.

III. Discussion

The Primary Function Test

9. Under section 1(b) of the NGA, the Commission's jurisdiction does not extend to facilities used for "the production or gathering of natural gas." The NGA, however, does not define the term "gathering." As a result, the Commission has developed a legal test, known as the "primary function test,"¹⁰ to determine which facilities are non-jurisdictional gathering facilities and which facilities are jurisdictional transmission facilities. The "primary function test" includes consideration of several physical and geographic factors including: (1) the length and diameter of the line; (2) the extension of

⁵ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c)(1) (2009).

⁶ The Producer Coalition members are W&T Offshore, Inc. and McMoRan Oil & Gas L.L.C.

⁷ 18 C.F.R. § 385.214(d) (2009).

⁸ The Indicated Shippers are Apache, Badger, Chevron, and Mariner.

⁹ See Rule 213(a)(2) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.213(a)(2) (2009).

¹⁰ See *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990) and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

the facility beyond the central point in the field; (3) the facility's geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facility; and (6) the operating pressure of the line.

10. The Commission also considers the purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978.¹¹ The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.¹²

11. In *Sea Robin Pipeline Co. (Sea Robin)*,¹³ the Commission adopted a central aggregation point criterion to assist in the analysis of where gathering ends and transportation begins with respect to offshore facilities. In applying its central aggregation point criterion, the Commission looks at whether there is a given point on an offshore system where gas is received from multiple upstream areas and at which there is a marked change in physical attributes, e.g., significantly larger diameter pipe downstream of that point, the presence of a production platform, or high horsepower compression facilities. If there is such a central point of aggregation, the Commission still reviews the traditional factors of the primary function test – i.e., the overall geographic configuration of the system, the physical dimensions of the facilities, and the locations of compression facilities and connections with supply laterals, wells, and productions platforms – in deciding whether the identified central point of aggregation is where non-jurisdictional gathering ends and jurisdictional transmission begins.¹⁴ While the courts have sanctioned giving some weight to non-physical factors, e.g., the original purpose of the subject facilities or the general business activities of the owner, and have agreed that they may be relevant considerations in determining the demarcation point between transmission and gathering facilities, such non-physical factors must be

¹¹ 15 U.S.C. §§ 3301-3432 (2006).

¹² See, e.g., *TOMCAT*, 59 FERC ¶ 61,340, at 62,239 (1992).

¹³ *Sea Robin Pipeline Co., order on remand*, 87 FERC ¶ 61,384 (1999) (*Sea Robin*).

¹⁴ See *Sea Robin*, 87 FERC at 62,430-31.

secondary to the physical factors. Thus, non-physical factors “generally only come into play if application of the physical factors results in a close call.”¹⁵

High Island’s Pipeline Facilities

12. Arena, LLOG, and Indicated Shippers argue that the lengths and diameters of the three legs of High Island’s system are consistent with a transmission function. Arena and LLOG further state that the three legs are not significantly smaller than High Island’s mainline, which, they maintain, also supports a finding that the facilities are all part of an integrated transmission system.

13. The Commission has previously stated, “[w]e adhere to no bright line test regarding size and operating pressure of offshore facilities. Facilities as large as typical transmission lines may nevertheless be found to be gathering when other primary function factors demonstrate characteristics consistent with gathering.”¹⁶ In this particular case, the 41- to 54-mile lengths reflect the fact that long lateral pipelines are necessary to connect offshore gas wells to the nearest available interstate pipeline. With respect to the 30- to 36-inch diameters, the size of the facilities reflects the productivity of the wells and large volumes of gas that were to be collected at the time the lines were

¹⁵ *Transcontinental Gas Pipe Line Corporation et al. (Jupiter)*, 121 FERC ¶ 61,157, at P 11 (2007). In *Jupiter*, the Commission found on remand that its previous orders had placed too much significance on the identification of a central point of aggregation as the basis for finding that offshore facilities owned and operated by Jupiter Energy Corporation were jurisdictional. On remand, the Commission acknowledged that in the *Sea Robin* proceeding announcing the central aggregation point as an additional criterion when addressing offshore facilities, the Commission had indicated that the weight given to any identified central aggregation point would depend, in part, on the extent to which there was a “marked change in the physical attributes and geographic configuration” at that point. After analyzing Jupiter’s facilities in light of the court’s discussion that other physical and non-physical factors should be given appropriate weight, the Commission found that Jupiter’s pipeline facilities would be non-jurisdictional gathering facilities upon transfer to Jupiter’s parent, Unocal, which sought to integrate the facilities into its own gathering and production system. *Jupiter*, 121 FERC ¶ 61,157 at PP 12-17, citing *Sea Robin*, 87 FERC ¶ 61,384, at p. 62,430.

¹⁶ *Trunkline Gas Co. and Trunkline Field Services, Inc.*, 95 FERC ¶ 61,337, at 62,238 (2001).

authorized for construction and operation.¹⁷ Therefore, the size of the facilities is not inconsistent with a gathering function.¹⁸

14. The Indicated Shippers argue that the operating pressures, ranging from 850 psig to 980 psig, and the lack of direct well connections are consistent with a transmission function. They state that Stingray Pipeline Company and Texas Eastern Transmission, LP have facilities configured similarly to High Island's system that are functionalized as transmission.

15. High Island counters that the geographic configuration of the subject facilities is similar to the configuration of facilities found to be gathering in *Sea Robin*,¹⁹ and that the other physical characteristics of the subject facilities are also consistent with a gathering function.

16. We find that while there are no wells directly connected to the lines at issue, this is attributable to the nature of offshore drilling, where the practice is to aggregate gas from numerous wells onto individual platforms for delivery downstream. Consistent with *Sea Robin*, the legs of High Island's system upstream of HIA Block A-264 intersect with supply laterals throughout their length. This configuration is consistent with a gathering function.²⁰ Further, operating pressures ranging from 850 psig to 980 psig are consistent with the higher operating pressure of offshore gathering facilities and are a function of the well head pressures.²¹ We find that the location of compression in HIA Block A-264 is indicative of a central point of aggregation. In addition, there are no processing plants located on or connected to the subject pipeline facilities.

¹⁷ Estimated reserves at the time of construction were over 5,000 Bcf, and the three legs were designed to transport 988,000 Mcf per day. *See High Island Offshore System, L.L.C.*, 55 FPC 2674 (1976).

¹⁸ *See, e.g., Tennessee Gas Pipeline Co.*, 124 FERC ¶ 61,128 (2008).

¹⁹ *Supra.* Sea Robin's system resembles an inverted Y, with two 103- to 106-mile legs of 20- to 30-inch diameter pipeline operating at pressures of 700 psig to 1,300 psig converging at a 24,700 hp compression and liquid handling complex located in Vermilion Block 149, which discharges into approximately 66 miles of 36-inch diameter mainline.

²⁰ *See also Transcontinental Gas Pipeline Corp.*, 96 FERC ¶ 61,118, at 61,459 (2001), *order on reh'g*, 97 FERC ¶ 61,300 (2001).

²¹ *See, e.g., Tennessee Gas Pipeline Co.*, 124 FERC ¶ 61,128 (2008).

17. The Commission has previously held that under the primary function test “[i]f the purpose of the facility can be categorized as being primarily the collection of gas, its principal or primary function is gathering.”²² In this case, the subject pipeline facilities receive gas from various production platforms located at various points along their lengths. The collection of gas continues until the lines deliver gas to a single, central aggregation point at HIA Block A-264. This collection of multiple production streams to one or more central points is entirely consistent with a gathering function.²³ We find that HIA Block A-264 exhibits a marked physical change from the upstream facilities, as was the case in *Sea Robin*, and functions as an aggregation point that may be interpreted as indicating a demarcation between gathering and transmission functions.²⁴

18. Arena, LLOG, and Indicated Shippers argue that there has been no change in circumstances or in the nature or operation of the facilities since High Island’s original certificate was issued that would justify reclassification of the subject facilities. Arena, the Indicated Shippers, and LLOG state that High Island’s recent acquisition of the East Breaks Gathering System does not support refunctionalization of High Island’s pre-existing system.

19. In the past, when a pipeline applied for a certificate to construct facilities, the Commission did not inquire into the pipeline’s prospective use of the facilities before issuing the certificate. Consequently, many facilities that actually may perform a gathering function originally were constructed under NGA section 7 certificates. Therefore, until, as here, the Commission scrutinizes the facilities under the primary function test, the primary function of the facilities cannot be definitively determined.²⁵

20. Arena, LLOG, and the Indicated Shippers also claim that refunctionalization of the subject facilities would not be consistent with the public interest. Arena and LLOG state that High Island’s proposed rates in Docket No. RP09-487-000 are more than three times

²² *Sea Robin*, 87 FERC at 62,432.

²³ *See Viosca Knoll Gathering System*, 66 FERC ¶ 61,237, at 61,579 (1994).

²⁴ There are 55 laterals connected to 45 active production platforms along the three High Island legs upstream of HIA Block A-264. In contrast, gas from only four supply laterals and three platforms enters the system along the mainline downstream of HIA Block A-264. *See also, Transcontinental Gas Pipe Line Corp., et al.*, 96 FERC at 61,458-59 and *Transcontinental Gas Pipe Line Corp., et al.*, 96 FERC ¶ 61,115, at 61,440 (2001).

²⁵ *See, e.g., CNG Transmission Corp.*, 67 FERC ¶ 61,330, at 62,177 (1994).

its existing rates. The Indicated Shippers state that most of the supply connected to High Island's system is captive, with no available reasonably-priced alternatives. The Indicated Shippers suggest that without Commission regulation of the subject facilities, High Island may be in a position to collect monopoly profit, which, the Indicated Shippers maintain, could have an adverse impact on further development and exploration in the region.

21. In response, High Island states that the Commission will retain the authority to review its gathering rates as part of the Commission's jurisdiction under NGA section 4. High Island also states that its proposed rate increase in Docket No. RP09-487-000 is due to decreased revenues (from its declining throughput) and increased costs, and is unrelated to the proposed refunctionalization. High Island states that refunctionalization will not discourage exploration and development in the region because production from supply sources connected to its system has declined even under the current functionalization.

22. The protestors' arguments regarding potential impacts of a refunctionalization of High Island's facilities on exploration and development of resources in the region are speculative and unsupported by any empirical evidence or market analysis. Moreover, such factors have little or no bearing on a determination as to the current function of the subject facilities. Likewise, High Island's pending request to increase its rates is unrelated to the proposal presented herein. In any event, as acknowledged by High Island, the Commission will retain authority to review its gathering rates.

23. For the foregoing reasons, we find that gathering is the primary function of the subject pipeline facilities, and the facilities are therefore exempt from Commission jurisdiction under NGA section 1(b).²⁶ ANR and Transco must also functionalize their ownership interests in the jointly-owned lateral lines in HIA Block A-350 and HIA Block A-370 as gathering.

²⁶ Stingray Pipeline currently receives gas from an interconnection with the east leg of the subject facilities in HIA Block A-330, but may also deliver gas into High Island's facilities at that interconnection point on an emergency basis. The Commission notes that, as part of High Island's non-jurisdictional gathering facilities, that interconnection point may continue to be used as a delivery point, but may only be used as a receipt point on an emergency basis pursuant to Part 284, Subpart I of the Commission's regulations.

High Island's Compression Facilities

24. In *Sea Robin*, the Commission found compression facilities located at the central point of aggregation in Vermilion Block 149, where the two upstream legs found to be gathering delivered gas, to be jurisdictional transmission facilities, stating, “[t]he location of compressors often serves as an indicator of transportation because compression is usually required to transport large volumes of gas over substantial distances.”²⁷ Like the compression facilities in *Sea Robin*, the compression on HIA Block A-264 has physical and geographical characteristics typical of compression found on large diameter transportation lines transporting high volumes of gas over relatively long distances. The HIA Block A-264 compression is located, not on a production platform,²⁸ but at a central point of aggregation. In addition, there is twice the installed horsepower of the compression in *Sea Robin*,²⁹ with similarly large suction/discharge pressure differences.³⁰ The compression in HIA Block A-264 enables the transportation of large volumes of gas a relatively long distance, over 66 miles, from a central aggregation point, through a large diameter pipeline, in a straight line to an interconnection with onshore pipeline companies.³¹

25. High Island argues that the compression located in HIA Block A-264 is not needed to permit delivery of gas from HIA Block A-264 through High Island's mainline

²⁷ *Sea Robin*, 87 FERC at 62,430.

²⁸ Compare *Southern Natural Gas Co.*, 81 FERC ¶ 61,051 (1997) and *Seagull Interstate Corp.*, 61 FERC ¶ 61,174 (1992) (finding compression facilities on production platforms that enable gas to enter jurisdictional pipelines to be gathering facilities).

²⁹ The installed horsepower of High Island's HIA Block A-264 compression facilities is 54,200 hp, compared to 24,700 hp in *Sea Robin*.

³⁰ The design average suction/discharge pressure difference of High Island's HIA Block A-264 compression facilities is 562 psig (1,412 psig discharge pressure minus 850 psig suction pressure). *Sea Robin*'s pressure differences across each of two compressor units were 166 psig and 296 psig after the abandonment of a third compressor unit. Before that abandonment, the pressure differences across each of the three compressor units, totaling 37,050 hp, was 480 psig, 276 psig, and 337 psig. See Exhibit V of *Sea Robin*'s application in Docket No. CP98-628-000.

³¹ The capacity of High Island's system is 1.8 Bcf per day, compared to 1.1 Bcf per day in *Sea Robin*. High Island's mainline is a 42-inch diameter, 66-mile long pipeline, compared to *Sea Robin*'s 36-inch diameter, 66-mile long pipeline.

to the terminus/interconnect in WC Block 167, and therefore does not perform a transmission function. High Island states that the main purpose of that compression is to reduce upstream line pressure on the three legs of the system so more gas can flow into the system from the production platforms. Therefore, High Island contends, those compression facilities perform a gathering function.

26. In the absence of the HIA Block A-264 compression, the operating pressures on the three upstream legs of High Island's system are 1,168 psig and the operating pressure of High Island's downstream mainline is 1,149 psig. As High Island states, the HIA Block A-264 compression facilities reduce the operating pressures on the three upstream legs from 1,168 psig to 905 psig to enable more gas to enter those lines from the production platforms.³² However, contrary to High Island's claims, we find that the HIA Block A-264 compression facilities are necessary, under normal operating conditions, to boost the pressure of the gas received at HIA Block A-264 to a level that allows the gas to flow into High Island's mainline. Considering all the above, we find that High Island's compression-related facilities located on the three platforms in HIA Block A-264 primarily perform a transmission function, and thus, are subject to the Commission's jurisdiction under the NGA as transportation facilities.

27. Environmental review of this proposal confirms that this action qualifies as a categorical exclusion under section 380.4(a)(31).

28. The Commission on its own motion received and made a part of the record in these proceedings all evidence, including the application and exhibits thereto, submitted in support of the authorization sought, and upon consideration of the record,

The Commission orders:

(A) The subject pipeline facilities located in and upstream of HIA Block A-264, except for the compression-related facilities located in HIA Block A-264, are gathering facilities exempt from the Commission's jurisdiction pursuant to NGA section 1(b). The subject compression-related facilities and downstream 66-mile pipeline facilities are jurisdictional transmission facilities.

(B) The late motions to intervene are granted.

³² High Island states that with the compression offline, some producers are shut in.

(C) High Island's answer is accepted.

(D) The protests are denied, for the reasons discussed in this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.