

169 FERC ¶ 61,259
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Ship Shoal Pipeline Company

Docket No. IS20-83-000

ORDER ACCEPTING AND SUSPENDING TARIFF AND ESTABLISHING
TECHNICAL CONFERENCE

(Issued December 30, 2019)

1. On November 25, 2019, Ship Shoal Pipeline Company (Ship Shoal) filed FERC Tariff No. 14.18.0¹ (Tariff) canceling a route and associated rate from Ship Shoal Block 28 in the Outer Continental Shelf (OCS) to points in Louisiana. On December 10, 2019, Interested Parties² filed a protest to the instant tariff filing. As discussed below, we accept and suspend the Tariff for seven months to become effective August 1, 2020, subject to the outcome of a technical conference and further order of the Commission.

I. Background

2. Ship Shoal's FERC Tariff No. 14 establishes the rules and rates for crude oil transportation service from Ship Shoal's offshore receipt point at Ship Shoal Block 28 to its delivery points onshore at Gibson and St. James, Louisiana.

3. On September 30, 2019, in Docket No. IS19-803-000, Ship Shoal filed FERC Tariff No. 14.17.0 (September Tariff), introducing a new origin point called the Federal/State Water Line, Ship Shoal Block 15, Offshore Louisiana for deliveries to Gibson Station, Louisiana (route 04) and St. James, Louisiana (route 05).³ This tariff was not protested and went into effect by operation of law on November 1, 2019.

¹ Ship Shoal Pipeline Company, FERC Oil Tariff, Ship Shoal Tariffs, [2010 FERC Index Tariff, Ship Shoal Tariff 14, 14.18.0](#).

² Interested Parties include Arena Energy, LP; Castex Offshore, Inc.; Cox Oil, LLC; Fieldwood Energy LLC and GoMex Energy LLC.

³ Ship Shoal Pipeline Company, FERC Oil Tariff, Ship Shoal Tariffs, [2010 FERC Index Tariff, Ship Shoal Tariff 14, 14.17.0](#).

4. On November 25, 2019, Ship Shoal filed FERC Tariff No. 14.18.0 to cancel route 01 and the associated rate of 29.67 cents per barrel from Ship Shoal Block 28 to Gibson, Louisiana, and to cancel route 03 and the associated rate of 50.73 cents per barrel from Ship Shoal Block 28 to St. James, Louisiana (Tariff). Ship Shoal states that the routes' origin point—Block 28—is located offshore in the OCS. Ship Shoal states that the Commission previously determined that offshore pipeline movements are not subject to the Interstate Commerce Act (ICA) and Commission jurisdiction until the movements cross the OCS seaward boundary to the offshore state destination(s). Ship Shoal states that the boundary between the OCS and Louisiana (Federal/State Water Line) occurs in Ship Shoal Area Block 15 and states that the Commission does not have jurisdiction over oil shipments on its system from its receipt point at Ship Shoal Block 28 to the Federal/State Water Line at Ship Shoal Block 15.⁴

II. Protest and Answers

A. Protest

5. On December 10, 2019, Interested Parties filed motions to intervene and a protest to the Tariff. Interested Parties argue that Ship Shoal's Tariff is contrary to applicable precedent regarding the Commission's authority under the ICA to regulate pipelines and movements that start on the OCS. Interested Parties request that if the Tariff is not rejected outright, then it should be suspended for the maximum seven-month period and set for further proceedings.⁵

6. Interested Parties argue that the ICA applies to transportation within the OCS for “[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.”⁶ Interested Parties argue that Commission jurisdiction applies to a pipeline system that starts on the OCS and transports oil through the Federal/State Water Line to shore for further movement in interstate commerce.⁷

⁴ Transmittal Letter at 1 (citing *Shell Pipeline Co. L.P.*, 157 FERC ¶ 61,158 (2016); *Bonito Pipe Line Co.*, 61 FERC ¶ 61,050 (1992); *Ultramar, Inc. v. Gavoita Terminal Co.*, 80 FERC ¶ 61,201 (1997)).

⁵ Interested Parties Protest at 1-2.

⁶ *Id.* at 5-6 (quoting *Bonito*, 61 FERC at 61,221 n.22).

⁷ *Id.* at 6 (citing *S. Timbalier Pipeline Sys.*, 29 FERC ¶ 61,345, at 61,727 n.2 (1984)).

7. Interested Parties state that it is not clear from the September Tariff or the instant Tariff whether there are any origin or destination facilities (e.g., a platform or any third-party pipeline connections) at Ship Shoal Block 15. Interested Parties state that it appears that Ship Shoal Block 15 is merely a virtual line of demarcation (Federal/State Water Line) on Ship Shoal's continuous pipeline system between its existing receipt and delivery points, where no volumes exit or enter the system and where no operational changes occur.⁸ Interested Parties assert that Ship Shoal does not terminate on the OCS, but rather the crude oil continues into interstate commerce.⁹

8. Interested Parties argue that if the Tariff is accepted, Ship Shoal's pipeline would not be subject to the Commission's rate regulation from its receipt point at Ship Shoal Block 28 to the Federal/State Water Line. Interested Parties note that if the Tariff is not rejected, Ship Shoal's shippers could be required to pay a two-part rate for service on the system—an unregulated and potentially excessive rate for service from Ship Shoal Block 28 to Ship Shoal Block 15, and a Commission-regulated rate for service from Ship Shoal Block 15 to Gibson and St. James.¹⁰ Interested Parties posit that Ship Shoal could contract for firm service at its unregulated Ship Shoal Block 28 receipt point, which would effectively convert Ship Shoal's entire system to firm service in contravention of Commission precedent.¹¹

B. Response to Protest

9. On December 16, 2019, Ship Shoal filed a response to the protest arguing that Interested Parties misstated law and fact. Ship Shoal argues that the critical issue is whether the transportation occurs solely over the OCS, because "ICA jurisdiction attach[es], if at all, only at that point where the oil crosses the seaward boundary."¹² Ship Shoal asserts that the Commission stated in *Bonito* that while the OCS appertains to the United States, the OCS is not a State or Territory of the United States, and therefore movements exclusively within the OCS do not come within the jurisdiction established by the ICA.¹³ Ship Shoal argues that Interested Parties' argument that the movement

⁸ *Id.* at 3.

⁹ *Id.* at 8-9.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 3-4 (citing *Colonial Pipeline Co.*, 146 FERC ¶ 61,206, at P 37 (2014)).

¹² Ship Shoal Answer at 5 (quoting *Ultramar*, 80 FERC at 61,810).

¹³ *Id.* at 4 (citing *Bonito*, 61 FERC at 61,221).

over the OCS/State line boundary in interstate commerce makes all upstream rates or transportation movements ICA jurisdictional is inconsistent with *Bonito* and *Ultramar*.¹⁴ Ship Shoal argues that it is not relevant that the oil being moved over the OCS is part of a continuous transportation flow in interstate commerce; the key is that the movement from Ship Shoal Block 28 to Ship Shoal Block 15 is occurring only within the OCS.¹⁵

10. Ship Shoal also notes that the movements in question are not unregulated, but rather are subject to regulation under the Outer Continental Shelf Land Act (OCSLA) and any pertinent regulations of the United States Bureau of Safety and Environmental Enforcement.¹⁶ Ship Shoal argues that the rates and services apply to Block 15 because it is at the boundary between different jurisdictional services (OCS transportation under OCSLA, and ICA transportation pursuant to Commission regulation). Ship Shoal states that rate origins and destinations on liquids pipelines often do not represent specific physical connections.¹⁷

11. On December 18, 2019, Interested Parties filed an answer to Ship Shoal's answer. On December 19, 2019, Ship Shoal filed an answer to Interested Parties' answer.

III. Discussion

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), all unopposed and timely filed motions to intervene and any unopposed motion to intervene out of time filed before this order issues are granted. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.213(a)(2) (2019), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Interested Parties' answer and Ship Shoal's answer to the answer and will, therefore, reject them.

13. Based upon review of the record, we find that Ship Shoal's filing raises a number of issues requiring additional clarification that can best be addressed at a technical conference. Following the technical conference, the parties will have an opportunity to file comments that will be included in the formal record of the proceeding. Accordingly,

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 9.

¹⁷ *Id.* at 11.

we accept and suspend the Tariff for seven months to become effective August 1, 2020,¹⁸ subject to the outcome of a technical conference and further order of the Commission.

The Commission orders:

(A) The Tariff is accepted and suspended, to become effective August 1, 2020, subject to the outcome of a technical conference and further order of the Commission, as discussed in the body of this order.

(B) Commission staff is directed to convene a technical conference to explore the issues raised by Ship Shoal's filing.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁸ 49 U.S.C. app. § 15(7) (permitting a maximum suspension of seven months).