

I. Background

3. On August 31, 2001, the Commission issued an order in this proceeding addressing Transco's application pursuant to section 7(b) of the NGA to abandon numerous facilities located offshore and onshore Louisiana by transferring them to its gathering affiliate, Williams. The Commission held that non-jurisdictional gathering was the primary function of some of the facilities at issue. The order found that other facilities were jurisdictional transmission facilities, a determination upheld on judicial review.²

4. The Commission's findings in this proceeding with respect to those facilities found to be gathering facilities were called into question by the Commission's subsequent findings in a proceeding regarding the jurisdictional status of the offshore system owned and operated by Jupiter.³ In that proceeding, the Commission concluded that the physical characteristics and operation of Jupiter's system demonstrate that its primary function is jurisdictional transmission service, not NGA-exempt gathering service.

5. On rehearing in the *Jupiter* proceeding, Jupiter and Williams, jointly with Transco, introduced for the first time the fact Jupiter's system is upstream of the interconnected facilities that the Commission found to be gathering facilities in this proceeding and argued that Jupiter's facilities therefore also must be gathering facilities. The petitioners argued that the Commission must find that Jupiter's facilities are gathering facilities because it had previously found that Transco's downstream facilities are gathering facilities.

6. As noted by the Commission in its May 14, 2004 Order denying rehearing in Jupiter's proceeding, however, "if anything, the analysis should be reversed. The presence of upstream transmission facilities determines the classification of downstream facilities, not the opposite."⁴ Regarding the anomalous findings, the Commission pointed out that the record in this proceeding included no information indicating that there were jurisdictional upstream facilities being operated by Jupiter at that time. Based on application of its primary function test, the Commission affirmed its finding that Jupiter's facilities are jurisdictional transmission facilities, not exempt gathering facilities.

² *Transcontinental Gas Pipe Line Corporation (Transco)*, 96 FERC ¶ 61,246, order on rehearing, 97 FERC ¶ 61,298 (2001), affirmed, *Williams Gas Processing – Gulf Coast Company LP v. FERC*, 331 F.3d 1011 (D.C. Cir. 2003).

³ *Jupiter Energy Corporation*, 103 FERC ¶ 61,184, order on rehearing, 105 FERC ¶ 61,243, order denying rehearing, 106 FERC ¶ 61,170 (2004).

⁴ *Jupiter Energy Corporation*, 106 FERC ¶ 61,170 at n. 3.

7. Based on the developments in Jupiter's proceeding, it also appeared that the previous gathering determination for Transco's downstream facilities was made on the basis of incomplete information and that there may have been other jurisdictional upstream facilities that Transco did not identify in its spin-down proceeding, potentially affecting the Commission's findings regarding other Transco facilities. Accordingly, the Commission issued an order in this proceeding directing Transco and Williams (1) to show cause why the Commission should not find that the facilities downstream of the interconnection with Jupiter's system should be classified as jurisdictional transmission facilities; and (2) to identify any other previously unidentified jurisdictional facilities that are upstream of facilities found to be gathering facilities in this proceeding.

II. Transco's and Williams's Answer

8. Transco and Williams assert that, as a result of the Commission's evolving policy regarding offshore facilities and inconsistent gathering determinations over the years, there currently is an irreconcilable hodgepodge of jurisdictional and non-jurisdictional offshore facilities. They argue that the situation has been exacerbated by the Commission's modification of the primary function test by adoption of the new "central aggregation point" criterion,⁵ and, most recently, by the Commission's application of that criterion in *Jupiter* to move the central aggregation point further upstream to the production platform.

9. Transco and Williams identify in their answer a number of upstream facilities that are owned by other companies that probably were originally constructed under the NGA and may still be functionalized, in some instances, as transmission facilities.⁶ However, they believe that the upstream pipelines facilities are gathering facilities and, therefore, that the current functionalization of those facilities should not be the basis for the Commission to disturb its prior findings regarding Transco's downstream facilities in this

⁵ The Commission adopted the central aggregation point criterion in the course of its proceeding addressing the jurisdictional status of the facilities owned and operated by Sea Robin Pipeline Company (Sea Robin). 71 FERC ¶ 61,351 (1995), *order on reh'g*, 75 FERC ¶ 61,332 (1996), *vacated and remanded*, *Sea Robin Pipeline Co. v. FERC*, 127 F.3d 365 (5th Cir. 1997), *order on remand*, 87 FERC ¶ 61,384 (1999) (order adopting central aggregation point criterion), *reh'g denied*, 92 FERC ¶ 61,072 (2000), *order denying stay*, 92 FERC ¶ 61,217 (2000), *aff'd sub nom. ExxonMobil Gas Mktg. Co. v. FERC*, 297 F.3d 1071 (D.C. Cir. 2002).

⁶ The Appendix to this order describes the upstream facilities identified by Transco and Williams in their July 6, 2004 Answer.

proceeding. They emphasize that the Commission has recognized it cannot simply rely on the prior certification or historical functionalization of facilities to determine their jurisdictional status.⁷

10. With respect to Transco's facilities downstream of Jupiter's system, Transco and Williams continue to argue, for the reasons discussed below, that the Commission should find that gathering is the primary function of both Jupiter's facilities and Transco's downstream facilities.

III. Other Pleadings

11. Indicated Shippers and the Producer Coalition filed comments on August 3, 2004 and July 21, 2004, respectively, in answer to Transco and Williams July 6, 2004 Answer to the Commission's May 6, 2004 Order reopening the record in this proceeding.⁸ Transco and Williams filed an answer opposing Indicated Shippers' and the Producer Coalition's comments. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits comments and answers unless otherwise ordered by the decisional authority.⁹ The Commission will accept these answers because they have provided information that assisted us in our decision-making process.

⁷ Citing *El Paso Natural Gas Co. (El Paso)*, 72 FERC ¶61,219 at 62,002 (1995). In *El Paso* the Commission discussed how, historically, the gathering/transmission distinction was not as important as it is in the post-Order No. 636 environment in which the Commission requires that interstate pipelines' gathering services be unbundled and that the rates for such services be separately stated. Because the Commission generally did not find it necessary prior to unbundling to determine that none of a pipeline's proposed facilities would provide a gathering function, many facilities that actually perform a gathering function were constructed under NGA certificates. For this reason, the Commission did not apply the primary function test in rate proceedings prior to unbundling to determine how a pipeline should functionalize the facilities for rate treatment purposes. In the post-unbundling environment, application of the primary function test is necessary in many instances to determine whether certificated facilities are actually gathering facilities.

⁸ Indicated Shippers and the Producer Coalition were parties in Transco's original spin-down proceeding in these dockets and thus have party status to participate in these further proceedings.

⁹ 18 C.F.R. § 385.213(a)(2) (2004).

12. Indicated Shippers and the Producer Coalition, unlike Transco and Williams, believe the Commission correctly found that Jupiter's facilities are jurisdictional transmission facilities. Indicated Shippers states that while the jurisdictional status of upstream facilities may not be conclusively determinative, it is relevant to a jurisdictional determination of downstream facilities. Therefore, Indicated Shippers agrees with the Commission that it should reassess its prior findings in this proceeding in light of its jurisdictional determination in the Jupiter proceeding and Transco's and Williams's identification of previously unidentified upstream facilities that may be jurisdictional facilities.¹⁰

IV. Discussion

13. As stated above, Transco and Williams have reviewed the Transco facilities found to be gathering facilities in the spin-down proceeding and have identified a number of upstream facilities owned by other companies that were probably constructed under NGA certificates. Based on the descriptions of these upstream facilities and the maps included in Transco's and Williams' answer, the Commission concludes that, except as discussed below, none of the upstream facilities perform any clear jurisdictional transmission functions that would precluding a finding that Transco's downstream facilities are non-jurisdictional gathering facilities.¹¹

14. Transco and Williams argue that gathering determinations for both Jupiter's

¹⁰ Indicated Shippers and the Producer Coalition, as well as Transco and Williams, emphasize that they and other parties filed extensive comments in response to the Commission's notice issued on August 14, 2003, in Docket No. AD03-13-000 seeking comments that would assist the Commission in reevaluating its current offshore gathering policy and primary function test. 68 *Fed. Reg.* 50,530 (Aug. 21, 2003). Transco and Williams argue that, rather than revisiting Transco's system in order to apply the current flawed policy to Transco's facilities on a piecemeal basis, the Commission should use the extensive record developed in Docket No. AD03-13-000 to formulate a coherent offshore gathering policy. Indicated Shippers and the Producer Coalition stress their position that the Commission should revise its current offshore gathering policy so that all facilities downstream of production treatment platforms are jurisdictional facilities.

¹¹ The Commission notes, however, in the event additional information regarding upstream facilities comes to light, as it did in the *Jupiter* proceeding, such information could alter the Commission's jurisdictional determinations regarding Transco's downstream facilities.

facilities and Transco's downstream facilities would be consistent with the Commission's determinations in *Sea Robin*, where the Commission found that gathering was the primary function of Sea Robin's facilities upstream of the junction of the two arms of the inverted "Y" configuration of Sea Robin's offshore system. Transco and Williams argue that Transco's line that receives gas from Jupiter's system is comparable to one of the gathering arms of Sea Robin's inverted-Y configuration, and that the Jupiter line feeding into the Transco line is comparable to the third-party gathering laterals that feed into Sea Robin's gathering arms. The Commission does not agree that Transco's and Jupiter's facilities are comparable to those that were issue in *Sea Robin*. The arms of Sea Robin's inverted-Y system collected gas from 67 production platforms located along the entire length of both arms. No gas is collected along the Jupiter pipeline that moves gas from Union Oil Company's production platform to Transco's downstream facilities.

15. In view of the above considerations, the Commission finds that jurisdictional transmission is the primary function of Transco's 12.43-mile long, 24-inch diameter lateral that receives gas from Jupiter's facilities in Vermilion Block 22 and transports it to shore, where it enters Transco's other downstream facilities, which the Commission has already found to be transmission in this proceeding.¹² Based on this finding, the Commission will vacate the abandonment authority granted to Transco with respect to this 12.43-mile long, 24-inch diameter pipeline facility.¹³

16. As noted above, Transco's and Williams' answer identifies previously unidentified jurisdictional facilities operated by Columbia upstream of the onshore Egan exchange point and facilities operated by Tennessee upstream of the onshore Crowley exchange point.¹⁴ Transco and Williams state that Transco has received gas at these exchange points only in rare emergency circumstances. They state that the Egan exchange point with Columbia received "minor" quantities during 2000 and 2001, and that the Crowley

¹² See Map Drawing No. 6 in Appendix D to Transco's and Williams' July 6, 2004 answer.

¹³ As stated above, Transco states that it owns this 12.43-mile long pipeline facility jointly with Sea Robin and Florida Gas Transmission Company. When the Commission found, in Transco's spin-down proceeding, that gathering was the primary function of this pipeline, the Commission stated that co-owners would need to refunctionalize their interests in their next NGA section 4 rate cases. See *Transco*, 96 FERC ¶ 61,246 at 61,977. In view of the Commission's changed finding in this order, if the co-owners have already functionalized their interests as gathering, they will need to refunctionalize their interests back to transmission again in their next NGA section 4 rate cases.

¹⁴ See Map Drawing No. 6 in Appendix D to Transco's and Williams' July 6, 2004 Answer.

exchange point with Tennessee has not been used for over 15 years.

17. Based on Transco's and Williams' representations that these exchange points are infrequently used to receive gas from Columbia's and Tennessee's transmission facilities, such transactions do not provide a sufficient basis for changing the Commission's determination that onshore gathering is the primary function of Transco's facilities downstream of these exchange points. Therefore, the Commission is not vacating Transco's authority to abandon these downstream facilities by transfer to Williams. If Transco proceeds with its transfer of these facilities to Williams, however, Williams will need to obtain a limited-jurisdiction certificate before it can use the facilities to transport gas received from Columbia's or Tennessee's transmission facilities.

The Commission orders:

(A) Transco's 12.43-mile long, 24-inch diameter pipeline facility downstream of the interconnection with Jupiter's system is found to be a jurisdictional transmission facility. The Commission affirms its jurisdictional determinations in this proceeding with respect to Transco's other facilities.

(B) Transco's abandonment authority with respect to its 12.32-mile long, 24-inch diameter pipeline facility downstream of the interconnection with Jupiter's system is vacated.

(C) The answers filed by Indicated Shippers, the Producer Coalition and Transco jointly with Williams are accepted.

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

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

Upstream Facilities Identified by Transco and Williams in their July 6, 2004 Answer

The upstream facilities identified by Transco and Williams in their July 6, 2004 Answer include Jupiter's 2.03-mile long, 8-inch pipeline that delivers gas to Transco's 12.43-mile long, 24-inch diameter lateral extending from Vermilion Block 22 to the shoreline. (See Map Drawing No. 6 in Appendix D to Transco's and Williams' July 6, 2004 Answer.) Transco and Williams state that this 12.43-mile pipeline is jointly owned by Transco with Sea Robin and Florida Gas Transmission Company. Transco and Williams state that this pipeline also transports gas that Jupiter's system receives from a 5.96-mile pipeline owned by Sea Robin jointly with ANR Pipeline Company (ANR) and El Paso Field Services. Transco and Williams state that Sea Robin has functionalized this 5.96-mile pipeline as gathering, like its various other short, small diameter laterals of the arms of its inverted-Y system.

Transco and Williams answer also identifies two previously unidentified upstream pipelines owned by Tennessee Gas Pipeline Company (Tennessee): a 5.18-mile long, 4-inch diameter pipeline and a 2.2-mile long, 6-inch diameter pipeline. Both of Tennessee's pipelines interconnect with Transco's facilities in Vermilion Block 67 at the same junction where several of Transco's facilities that were determined to be gathering facilities feed gas into Transco's downstream pipeline facilities that were found to be jurisdictional transmission facilities. (See Map Drawing No. 6 in Appendix D to Transco's and Williams' July 6, 2004 Answer.) Transco and Williams state that, while Tennessee's upstream facilities are "potentially certificated" facilities, they are similar to numerous producer-owned laterals converging with Transco's facilities at the point in Vermilion 67, which the Commission designated as the central aggregation point demarcating gathering from transmission on Transco's offshore system.

Transco's and Williams' answer also identifies a 1.57-mile long, 4-inch diameter pipeline and a 8.5-mile long, 8-inch diameter pipeline owned by Offshore Energy LLC (Offshore Energy). These pipelines also interconnect with Transco's facilities at the point in Vermilion Block 67 which the Commission found to be the central aggregation point in Transco's offshore system. Transco and Williams state that these pipelines were previously owned by Burlington Resources and may have been certificated by the original owner, United Gas Pipeline Company. (These facilities are shown as Burlington Resources' facilities on Map Drawing No. 6WA in Appendix A to Transco's and Williams' July 6, 2004 Answer.)

Transco and Williams also identify upstream facilities owned by ANR. ANR's 0.57-mile, 6-inch pipeline feeds gas into its 1.825-mile long, 8-inch diameter pipeline, which feeds gas into facilities owned by Transco and Dominion Transmission, Inc.

(Dominion). All of these facilities are upstream of the point that the Commission found to be the central aggregation point in Transco's spin-down proceeding.

Finally, Transco and Williams identify the onshore facilities operated by Columbia Gulf Transmission Company (Columbia) upstream of the Egan exchange point and facilities operated by Tennessee upstream of the Crowley exchange point. (*See* Map Drawing 6 in Appendix D to Transco's and Williams' July 6, 2004 Answer.) These exchange points are on Transco's facilities that transport gas to the Cow Island Junction, where a processing plant is located. The Commission found that Transco's onshore facilities upstream of the Cow Island Junction are gathering facilities. However, Transco and Williams state that in rare emergency circumstances Transco receives gas at these exchange points from Columbia's and Tennessee's jurisdictional transmission facilities, as discussed further herein. They state that the Egan exchange point with Columbia received "minor" quantities during 2000 and 2001 and that the Crowley exchange point with Tennessee has not been used for over 15 years.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Corporation

Docket No. CP01-368-004

Williams Gas Processing – Gulf Coast Company, LP

Docket No. CP01-369-002

(Issued April 19, 2005)

BROWNELL, Commissioner, dissenting in part:

Except for Transco's 12.43-mile, 24-inch diameter lateral that receives gas from Jupiter's facilities in Vermilion Block 22, the majority correctly concludes, again, that the numerous facilities in this spin-down proceeding are gathering. However, relying on its determination that the Jupiter system provides jurisdictional transmission service, the majority reverses itself and finds that the primary function of the Transco lateral is jurisdictional transmission. For the reasons set out in *Jupiter Energy Corporation*, 105 FERC ¶ 61,243 (2003), I believe the Commission mistakenly found Jupiter system to be jurisdictional transmission. Consequently, the decision here is in error.

For these reasons, I respectfully dissent.

Nora Mead Brownell
Commissioner

