

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Jupiter Energy Corporation

Docket No. CP03-11-000

ORDER ADDRESSING JURISDICTIONAL STATUS OF FACILITIES
AND DENYING REQUESTS FOR ABANDONMENT AUTHORITY
AND RESCISSION OF CERTIFICATES

(Issued May 16, 2003)

1. On November 4, 2002, Jupiter Energy Corporation (Jupiter) filed an application under Section 7(b) of the Natural Gas Act (NGA) seeking a Commission determination that its facilities located in the Gulf of Mexico offshore Texas are gathering facilities exempt from the Commission's NGA jurisdiction pursuant to Section 1(b) of the NGA. Jupiter requests that the Commission rescind Jupiter's NGA certificates and authorize Jupiter's abandonment of its rate schedules and certificated service. If the Commission grants the requested gathering determination and abandonment authority, the facilities would be transferred to Jupiter's parent company, Union Oil Company of California, (Unocal).

2. For the reasons discussed below, we find that Jupiter's pipeline facilities are transmission facilities subject to the Commission's jurisdiction under Section 7(c) of the NGA. Accordingly, we will deny Jupiter's request that the Commission rescind Jupiter's NGA certificate authorizations and approve Jupiter's abandonment of its rate schedules and certificated service.

I. Background and Proposal

3. Jupiter's natural gas pipeline facilities, the Jupiter System, extend from offshore Texas to a sub-sea interconnect with Transcontinental Gas Pipe Line Corporation (Transco) and a shoreline interconnect with Tennessee Gas Transmission Company (Tennessee). Jupiter states that the subject facilities operate at pressures ranging from 750-950 psig and include:

(1) a 10.2-mile, 10 3/4-inch diameter line that receives gas at Platform 39A and transports the gas to Tennessee's shoreline interconnect;¹

(2) a 3.2-mile, 8 5/8-inch diameter line that receives gas from Platform 39A and transports it to Transco's sub-sea interconnect; and

(3) separation and dehydration facilities located 22 miles downstream of Tennessee's shoreline interconnect.

4. Historically, Jupiter has used the subject facilities to provide transportation service under case-specific certificate authorization for three producers: Kerr-McGee, Phillips Petroleum Company (Phillips) and Jupiter's parent company, Unocal.² Jupiter has a separate rate schedule on file with the Commission for service for each of the three producers.³ However, by 1992, Kerr-McGee and Phillips Petroleum ceased receiving transportation service on Jupiter's system. Unocal is the only shipper currently served by Jupiter's facilities.

5. Jupiter requests that the Commission find that gathering is the primary function of Jupiter's facilities. If the Commission grants the requested jurisdictional determination, Jupiter requests that the Commission also rescind Jupiter's NGA certificate authorizations for its facilities and services and authorize Jupiter's abandonment of its rate schedules for certificated service. If the Commission grants this request, Jupiter states, the facilities would be absorbed into Unocal's connected gathering operations. Jupiter states that the elimination of Jupiter as a stand-alone entity and cessation of NGA regulation of its operations would result in increased efficiencies and cost savings for Unocal.

¹Platform 39A is owned by Unocal and receives gas from gathering facilities in offshore Texas.

²In 1990, the Commission held that Jupiter was not required to develop rates for Part 284 blanket transportation service because no other shippers were likely to seek service on its facilities. Jupiter Energy Corporation, 52 FERC ¶ 61,064 (1990).

³Jupiter's FERC Tariff includes Rate Schedule 2A for transportation service for Kerr-McGee; Rate Schedule 3A for transportation service for Phillips; and Rate Schedule 1A for transportation service for Unocal.

II. Interventions, Comments, Protests, and Answers

6. Jupiter's application for abandonment and request for determination was published in the Federal Register on November 19, 2002.⁴ Timely, unopposed motions to intervene were filed by Tennessee and El Paso Energy Partners, LP., which have stated no position on Jupiter's application.⁵

III. Discussion

7. In order to determine whether a facility is performing primarily a transmission or gathering function, the Commission considers physical and geographic characteristics of the facility in question. The Commission's "primary function" test was articulated in Farmland Industries, Inc. (Farmland),⁶ and considers the following factors to be relevant: (1) the length and diameter of pipeline; (2) the extension of 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) pipeline operating pressure. In addition to these criteria, we have included consideration of non-physical factors, such as the intended purpose, location, and operation of the facilities; the general business activity of the owner of the facility; and whether the jurisdictional determination is consistent with the objectives of the NGA and the Natural Gas Policy Act.

8. We have modified the application of these factors for facilities located offshore. In 1990, in Amerada Hess Corporation (Amerada Hess),⁷ we explained that offshore pipelines that perform primarily a production or gathering function may be larger and longer than onshore pipelines that perform the same function. In a 1996 Statement of Policy, we established a rebuttable presumption that facilities located in deep water of

⁴67 Fed. Reg. 69,730.

⁵Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214(d) (2002).

⁶23 FERC ¶ 61,063 (1983).

⁷52 FERC ¶ 61,268 (1990).

200 meters or more are engaged in production or gathering.⁸ In Sea Robin Pipeline Company (Sea Robin), we reformulated the primary function test with respect to offshore facilities by (1) adopting an additional analytical element applicable to systems that contain a centralized aggregation point; (2) adjusting the weight to be afforded the "behind-the-plant" criterion so that the location of processing plants is not necessarily determinative and can be outweighed by other factors; and (3) focusing primarily on physical factors.⁹

9. We recognize that the length, diameter and operating pressures of Jupiter's pipeline facilities may not necessarily be inconsistent with a gathering function. However, it appears that gas aggregation is complete once the gas reaches Unocal's Platform 39A. The Unocal facilities upstream of Platform 39A are a spider-web configuration consisting of lines ranging in diameter from 4 ½ inches to 8 5/8 inches. Following the aggregation of gas production at Unocal's platform, Jupiter's two pipelines move the gas to Tennessee's and Transco's systems, respectively, without collecting any additional gas. Further, there are compression facilities at Unocal's Platform 39A that bring the gas from low-level well pressures up to line pressures.

10. Based on the above considerations, we find that Unocal's Platform 39A is where a "marked change in the physical attributes and geographic configuration" occurs¹⁰ and that Unocal's platform serves as the central point of aggregation, delineating the point where gathering ends and jurisdictional transmission begins. Accordingly, Jupiter's facilities, which are located downstream of that point, primarily serve a transmission function.

11. In reaching this finding we have considered Jupiter's statement that its parent company, Unocal, is Jupiter's only shipper; that neither Jupiter nor Unocal own any other jurisdictional facilities; that Unocal's business activity is production and gathering; and that Unocal would integrate the subject facilities into its own gathering system. However, in Sea Robin v. FERC, the court emphasized that nonphysical factors, while relevant, remain "secondary to the physical factors."¹¹ In this case, the physical factors of Jupiter's pipeline facilities demonstrate that they are used primarily to transport gas. Thus, this is not a case

⁸Gas Pipeline Facilities and Services on the Outer Continental Shelf – Issues Related to the Commission's Jurisdiction Under the NGA and Outer Continental Shelf Lands Act, 74 FERC ¶ 61,222 (1996), order dismissing reh'g, 75 FERC ¶ 61,291 (1996).

⁹87 FERC ¶ 61,384 (1999), order denying reh'g, 92 FERC ¶ 61,072 (2000).

¹⁰87 FERC ¶ 61,384 at 62,430.

¹¹127 F.3d 365, at 370 (5th Cir. 1997), reh'g denied, (5th Cir., February 2, 1998).

where the physical factors are so ambiguous that we need to consider nonphysical factors, such as the nature of the prospective owner's business, in order to reach a finding regarding the primary function of facilities.

12. In view of our jurisdictional finding, we will deny Jupiter's request for rescission of its NGA certificate authorizations and to abandon its rate schedules and certificated services.

13. At a hearing held on May 14, 2003, the Commission on its own motion received and made a part of the record in these proceedings all evidence submitted, including the application and exhibits supporting the authorization sought, and after consideration of the record,

The Commission orders:

(A) Jupiter's pipeline facilities are found to be jurisdictional transmission facilities.

(B) Jupiter's request for rescission of its certificate authorizations and authorization to abandon its rate schedules and certificated service is dismissed.

By the Commission. Chairman Wood concurring with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

(Issued May 16, 2003)

Wood, Chairman, concurring:

I write separately to express my dissatisfaction with the current definition of gathering as developed in the *Sea Robin* line of cases. I was persuaded after our October 25, 2002 Natural Gas Markets Conference in Docket No. PL02-9-000 that we should reexamine our gathering policies, and the Commission will open a forum to determine whether our gathering policies provide sufficient incentives to develop offshore gas supplies needed to meet the country's demand for natural gas. In this order, applying the current definition, we conclude that the facilities at issue are jurisdictional transmission facilities, which is appropriate based on the facts of this case.

Pat Wood, III
Chairman