

DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Open and Nondiscriminatory Movement) RIN 1010-AD17
Of Oil and Gas as Required by the)
Outer Continental Shelf Lands Act)

COMMENTS OF ARENA ENERGY, LLC

Arena Energy, LLC (“Arena”) hereby respectfully submits these comments on the Proposed Rule issued by the Minerals Management Service (“MMS”) in the above-styled proceeding and published in the Federal Register on April 6, 2007. As set forth more fully below, Arena generally supports the MMS’ Proposed Rule and the goal of ensuring that existing and prospective shippers receiving or seeking transportation service on the Outer Continental Shelf (“OCS”) are treated in a non-discriminatory manner with respect to access to oil and gas pipelines. However, Arena believes that the MMS should clarify that smaller-diameter lateral or “feeder” pipelines that move gas only on behalf of their owners are exempt from the final open-access regulations issued by the MMS in this proceeding. In support of these comments, Arena respectfully states as follows:

I.

Communications

The names and addresses of the individuals who are to be served with future notices, orders, pleadings, correspondence and other documents in this proceeding are stated below:

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II.

Interest of Arena

Arena Energy, LLC is a Delaware limited liability company. Arena's primary business address is 4200 Research Forest Drive, The Woodlands, Texas, 77381. Arena is a producer of oil and natural gas supplies that are transported on and across the OCS on the facilities of various pipelines. As a producer of oil and gas on the OCS, Arena is interested in ensuring that it has non-discriminatory access to those pipelines necessary to transport its oil and gas to the market.

III.

Comments

As a general matter, Arena supports the Proposed Rule and urges the MMS to expeditiously issue a final rule incorporating most of the proposed regulations. In particular, Arena believes that it is appropriate for the MMS to first establish an informal, hotline dispute resolution process followed by a more formal complaint-based enforcement mechanism, rather than establish regulations that impose onerous reporting requirements on OCS pipelines, their customers, and other segments of the industry.

However, Arena is concerned with the apparent broad scope of the Proposed Rule

insofar as it appears to cover both large-diameter, longer-line facilities that transport oil and gas for third parties for a fee **and** smaller-diameter, lateral or “feeder” pipelines that only move oil or gas for their owners from their leases to these larger pipelines for subsequent transportation to the market area. If this in fact is the intent of the MMS, Arena urges the MMS to reconsider and narrow the scope of which pipelines will be covered by any final rule to exempt these lateral or “feeder” pipelines.

It has been Arena’s experience that, as a prospective shipper, the potential for encountering discriminatory behavior is greatest when an existing, larger-diameter OCS pipeline: (a) is unregulated by the Federal Energy Regulatory Commission (“Commission”); (b) has a monopoly on the pipeline infrastructure/capacity capable of delivering a shipper’s oil or gas to a desired market; and (c) insists, as a condition of access, on high transportation or gathering rates and/or onerous terms and conditions for service. As set forth below, small-diameter, lateral lines owned and operated by producers to deliver their lease production to larger-diameter pipelines do not raise the same concerns. Moreover, exempting lateral or “feeder” lines from the scope of the proposed regulations is consistent with the OCSLA.

In the Proposed Rule, the MMS, for purposes of defining which pipelines would be subject to the Proposed Rule, proposes an expansive definition of “Transportation”:

“Transportation” would mean, for purposes of this part only, the movement of oil or gas through an OCSLA pipeline.

The Proposed Rule does not distinguish between different categories of OCSLA pipelines and whether, for example, they perform a “gathering” or “transportation” function.

Rather, the MMS stated:

MMS is not proposing a definition of “gathering” in this proposed rule because

we believe that MMS has jurisdiction over all pipelines for which it has issued a permit, license, easement, right-of-way or other grant of authority, whether or not those pipelines would be considered “gathering” lines under the FERC’s regulations.

Thus, under the Proposed Rule, any OCS pipeline moving oil or gas would be subject to the proposed regulations, even if a pipeline only moved oil or gas on behalf of its producer/owners with no fee charged, and even if such movement was prior to the oil or gas entering a larger-diameter pipeline owned by a third-party.

Arena submits that the proposed definition of “transportation” is overly broad, as it would appear to subject the owner(s) of a small-diameter lateral or “feeder” line moving only owner production to the Proposed Rule’s open-access requirement, even if the lateral line had never been utilized to provide “transportation” service for a fee to third parties.

For example, if, as part of the development of an OCS lease, four producers that were working interest owners in the developed production constructed a lateral pipeline from their production platform to an interstate pipeline, it would appear that, pursuant to the Proposed Rule, such lateral pipeline would be considered to be engaged in “transportation” and, therefore, subject to the open-access requirement. Such an outcome would be problematic for two primary reasons.

First, most producers that construct a lateral or “feeder” pipeline to move their own oil and gas only construct a pipeline sufficient in size and capacity to move their projected production once their well(s) are completed and producing. Accordingly, if third-parties were permitted access to the lateral pipeline, it would likely mean that a portion of the owners’ own production would be curtailed to permit the third-party oil or gas to move on the lateral pipeline. This is not the case with OCS pipelines that transport

third-party gas for a fee, as they are designed for such third-party service with the necessary capacity to accommodate future gas discoveries and reserves.

Second, the construction and operation costs associated with the development of an OCS lease are enormous. These costs include the construction costs for the lateral pipeline and appurtenant facilities (including tie-in and metering facilities to interconnect with a larger transportation pipeline). To grant a third-party subsequent access to the lateral pipeline would result in the owners of the pipeline spending millions of dollars on pipeline and other infrastructure development, with the third-party being granted access without incurring these upfront costs. Even if a fee were charged the third-party, issues likely would arise as to what costs would be recovered through such fee and what would be considered reasonable compensation for the service provided vis-à-vis the capital costs involved with the entire project. This is not the case with larger-diameter OCS pipelines that transport third-party gas for a fee, as reasonable compensation for such service is logically comprised of a cost-of-service plus reasonable return rate based only on the costs incurred to construct and operate the pipeline.

Arena is further concerned by the MMS' decision not to define what circumstances would result in a finding that a pipeline owner failed to provide "open access" or "nondiscriminatory access." Arena agrees that the circumstances leading to a complaint are fact-specific and do not lend themselves to broad categorization. But, by the same token, it is impossible to determine what types of behavior would be held to be discriminatory absent some guidance from the MMS, given the lack of any precedent under the new regulations and the MMS' decision not to use FERC precedent vis-a-vis a "reasonableness" standard as a barometer to judge potential violations.

In particular, and with respect to producer-owned lateral lines, would the denial of a third-party request for access despite a lack of capacity result in a violation of the MMS' open-access regulations? Arena submits that the MMS, at a minimum, should clarify in any final rule that a pipeline that only moves gas on behalf of its owners will not be held to have acted discriminatorily if it denies **all** third-party requests for capacity.

Arena does not contest the MMS' statement that it has jurisdiction "extends to every pipeline transporting oil or gas on or across the OCS even when those pipelines are also regulated by FERC." However, Arena believes that its requested clarification is consistent with 43 U.S.C. 1334(f)(2), which states:

The Federal Energy Regulatory Commission may, by order or regulation, exempt from any or all of the requirements of paragraph (1) of this subsection any pipeline or class of pipelines which feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed.

While the above quoted language references the Commission,¹ Arena believes that the MMS could similarly grant Arena's requested exemption. If the MMS is the entity that creates and enforces open-access regulations pursuant to 43 U.S.C. 1334(e) and (f)(1), it logically follows that the MMS could first establish an exemption from such regulations consistent with the Commission's authority to grant the identical exemption pursuant to 43 U.S.C. 1334(f)(2).²

¹*Regulations under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf*, 93 FERC P61,274, 61,889 (2000) ("1334(f)(2) of the OCSLA grants the Commission the discretion to exempt feeder lines from the competitive principles expressed in OCSLA 1334(f)(1)").

²*The Williams Cos. v. FERC*, 345 F.3d 910, 913-14 (2003) (Congress intended that enforcement of OCSLA open-access requirement vested in Secretary of Interior).

In summary, Arena believes that the MMS should clarify that smaller-diameter lateral or “feeder” pipelines that move gas only on behalf of their owners are exempt from the final open-access regulations issued by the MMS in this proceeding.

IV.

Conclusion

WHEREFORE, Arena hereby respectfully requests that these comments be made part of the record in this proceeding, and that the MMS clarify in any final rule issued that that smaller-diameter lateral or “feeder” pipelines that move gas only on behalf of their owners are exempt from the final open-access regulations issued by the MMS in this proceeding..

Respectfully submitted,
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