

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF INTERIOR
MINERALS MANAGEMENT SERVICE**

**CHEVRON PIPE LINE COMPANY'S COMMENTS IN RESPONSE TO THE
NOTICE OF PROPOSED RULEMAKING ON THE OPEN AND NON-
DISCRIMINATORY MOVEMENT OF OIL AND GAS AS REQUIRED BY THE
OUTER CONTINENTAL SHELF LANDS ACT**

The Minerals Management Service ("MMS"), Department of Interior, published a Notice of Proposed Rulemaking on the open and non-discriminatory movement of oil and gas as required by the Outer Continental Shelf Lands Act ("OCSLA") in the Federal Register on April 6, 2007 ("Notice").¹ The Notice requested comments from interested parties on the MMS' proposed regulations to establish a process for a shipper transporting oil or natural gas from Federal leases on the Outer Continental Shelf ("OCS") to follow if the shipper believes it has been denied open and non-discriminatory access to pipelines subject to regulation by the MMS under the OCSLA.

Chevron Pipe Line Company ("CPL") operates oil pipelines on the OCS under right-of-way grants from the MMS. Some of these pipelines are located wholly on the OCS, while others transport crude oil from the OCS and State waters to onshore. Affiliates of CPL, Sabine Pipe Line LLC and Chandeleur Pipe Line Company, which are operated by CPL, provide natural gas pipeline transportation on the OCS and from the OCS to onshore. CPL is therefore knowledgeable about the regulatory environment in which such pipelines operate, and it and its subsidiaries will be affected by any

¹ 72 F.R. 17047 (2007). The Notice was preceded by an Advance Notice of Proposed Rulemaking ("Advance Notice"). 69 F.R. 19137 (2004). CPL submitted comments in response to the Advance Notice.

regulations adopted by the MMS. These comments are submitted on behalf of each of the named pipelines.

CPL supports, in general, the regulatory process proposed by the MMS. Specifically, it supports the establishment of both the informal (“hot-line”) and formal dispute resolution approaches the MMS has proposed. It also supports the MMS’ proposal to presume that any pipeline subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”) under either the Interstate Commerce Act (“ICA”) or Natural Gas Act (“NGA”) is providing open and non-discriminatory access and accordingly not to accept complaints relating to such pipelines. CPL also supports the decision not to impose reporting requirements on OCS pipelines.

These comments will focus on three issues: (1) contract carriage; (2) public access to complaints, answers to complaints and MMS decisions; and (3) rate discrimination remedies. Because the OCSLA applies to both oil and natural gas pipelines, without distinguishing between the two for open access and non-discrimination purposes, these comments are directed to the MMS process for both types of pipelines.

1. Contract Carriage

The MMS has decided not to attempt to define “open access” and “non-discriminatory access” as part of this NOPR process, viewing those terms as fact-specific. 72 F.R. at 17048. CPL supports that decision and suggests that it would be beneficial if the MMS were to explicitly note that whether OCS pipelines operating as contract carriers are providing the statutorily required access will depend upon the specifics of the contract carriage program. CPL is not suggesting that the MMS determine in advance the specifics of what an individual contract carriage program must be in order to be viewed

as providing open and non-discriminatory access, but does suggest that the MMS recognize that contract carriage is not intrinsically at odds with the access provisions of the OCSLA.²

Historically, oil pipelines regulated under the ICA and natural gas pipelines regulated under the NGA have operated differently with respect to providing shipper access to their facilities. ICA oil pipelines have generally been operated as common carriers, required to provide transportation to any qualified shipper. As common carriers, they cannot refuse service to a new, qualified shipper on the basis that the pipeline is full. When demand for transportation exceeds the pipeline capacity, such pipelines traditionally have prorated capacity to all the shippers. NGA gas pipelines, on the other hand, have generally been operated as contract carriers, entering into contracts with shippers. If the firm capacity of the pipeline is fully subscribed, an NGA gas pipeline does not have to provide space for a new shipper and the shippers' right to transportation is governed by their contracts and the applicable tariff.

The issue of contract carriage for pipelines operating on the OCS is likely to be very important in the future development of the oil and natural gas resources in the OCS. Most future new OCS oil and gas development is likely to be in deepwater. The cost of constructing deepwater pipelines to serve the producing fields is so enormous that a pipeline cannot undertake such a project without obtaining financial commitments from

² FERC has already approved contract carriage for three oil pipelines operating on the OCS. Caesar Oil Pipeline Co., 102 FERC ¶ 61,339 (2003) (“Caesar”); Proteus Oil Pipeline Co., 102 FERC ¶ 61,333 (2003) (“Proteus”); and Enbridge Offshore Facilities, LLC, 116 FERC ¶ 61,001 (2006) (“Enbridge”). While CPL recognizes that MMS has stated in the Notice that it will not be bound by FERC precedent, CPL suggests that the FERC's rationale in approving contract carriage in these instances is supportive of an MMS determination that contract carriage may meet the open access requirements of the OCSLA.

the producers in the fields to be served. The producers, very understandably, are reluctant to provide the necessary financial commitments unless they are assured that they will have reliable access to sufficient capacity to transport their oil or gas to onshore. Contract carriage, which allows a pipeline to secure the necessary financial backing and the producers to secure the necessary capacity rights, serves the interests of those parties, as well as the broader public interest in developing the OCS oil and natural gas reserves.

2. Public Access to Complaints, Answers and MMS Decisions on Complaints

The Notice proposes a formal complaint process under which an entity may file a complaint with the MMS alleging that an OCS pipeline is not providing open and non-discriminatory access. The pipeline has the right to file an answer to the complaint and the MMS Director will issue a decision including appropriate remedial actions. The MMS Director's decision may, under certain circumstances, be appealable to the Interior Board of Land Appeals. 72 F.R. at 17050-17051, 17055.

The Notice is silent, however, on public access to the complaint, answer and MMS Director decision. In CPL's view, it is very important that MMS provide timely and easy public access to such documents, to the extent that a party has not requested and received confidential treatment for certain information. It would certainly aid pipelines subject to the OCSLA's open access requirements to have knowledge of what specific acts parties are alleging as violations of the statutory obligations and the MMS' resolutions of those allegations. It would help pipelines to guide their operations and remain in compliance with the statute and regulations. The knowledge gained from these documents would also assist potential complainants to judge whether their complaints may or may not have merit. Such knowledge may also assist parties to resolve their

issues informally, including through the MMS hot-line process or alternative dispute resolution.

MMS should provide for the posting on its website of the complaints and answers filed with it and of the MMS Director decisions. To the extent that portions of such documents are confidential information, such information can be redacted from the publicly-posted documents. Providing for timely and easy public access to these documents will serve the interests of all parties involved in OCS oil and gas production and transportation, as well as the MMS itself.

3. Rate Regulation

MMS states in the Notice that for a complaint to be brought on the basis of rate discrimination, the complainant must allege that it is being charged a higher rate than other similarly situated shippers—simply stating dissatisfaction with allegedly high rates would not be sufficient. 72 F.R. at 17050. CPL supports this position. The Notice does not give any indication, however, what remedies MMS believes it could order if it such a rate discrimination complaint to be meritorious. As CPL noted in the comments it submitted in response to the Advance Notice, the OCSLA does not explicitly include any rate-setting authority for any agency, whether it be MMS or FERC.

The MMS should be wary of reading more into its open access and non-discrimination authority than the plain language of the statute provides, for a simple reason. Rate regulation of oil or gas pipelines was not a new concept when the Congress enacted the OCSLA in 1953 or significantly amended it in 1978. If Congress had intended for rate regulation to be a facet of the OCSLA, it could have provided so in clear language. Congress has demonstrated, for more than a century, that it knows how to

provide an agency with rate regulatory authority. Starting with the passage of the ICA in 1887 and continuing with the NGA, the Federal Power Act, the Federal Communications Act, the Federal Aviation Act, and the Natural Gas Policy Act, Congress has shown that it understands the need to provide explicit rate regulatory authority when it wants an agency to have that authority. Congress did not provide any such authority in the OCSLA.

The FERC examined this very issue in the rulemaking that led to the issuance of Order No. 639, the FERC Order that was at issue in Williams. FERC came to the conclusion that any rate authority under the OCSLA was, at best, limited. FERC recognized that the OCSLA does not provide for the imposition of cost-based rates and concluded that it could not inquire into rates as long as the rates charged customers were comparable and not inequitable. Where differences were found to exist, and the OCS service provider could present an acceptable rationale for offering its customers the different rates and/or services, FERC determined that it could find such differences acceptable.³

The Court of Appeals decision, Williams Cos. v. FERC, 345 F.3d 910 (D.C. Cir. 2003), reflects a narrow reading of FERC's authority under the OCSLA. It would be unwise for MMS to adopt an expansive interpretation of its authority under that statute. CPL submits that it would be a vastly expansive interpretation of the OCSLA for MMS to conclude that it could undertake a cost-based examination of rates or engage in rate-setting for OCS pipeline transportation.

³ Order No. 639-A, 65 FR 47294, 47302-47303 (2000).

CONCLUSION

Chevron Pipe Line Company, as the owner and/or operator of both oil and gas pipelines on the OCS appreciates the opportunity to provide these comments to the MMS. CPL generally supports the approach MMS has proposed and respectfully requests MMS to give due consideration to CPL's concerns expressed herein regarding contract carriage, public access to documents and rate discrimination remedies.

Respectfully submitted,

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