



March 17, 2008

Department of the Interior
Minerals Management Service
Attn: Regulations and Standards Branch
381 Elden Street, MS-4024
Herndon, Virginia 20170-4817

Re: Comments on RIN 1010-AD11

El Paso Corporation (EP) is the parent company of the largest natural gas transmission pipeline system in the United States. Its operating companies – Colorado Interstate Gas Company, El Paso Natural Gas Company, Southern Natural Gas Company, and Tennessee Gas Pipeline Company – safely operate over 43,000 miles of federally regulated natural gas transmission pipelines. As an integral part of that pipeline network, Southern Natural Gas Company and Tennessee Gas Pipeline Company operate 1,100 miles of pipelines on the Outer Continental Shelf. These pipelines are managed in accordance with the DOT pipeline safety regulations for design, construction, operations and maintenance and are subject to the jurisdiction of the Federal Energy Regulatory Commission.

EP shares the Department of the Interior's commitment to pipeline safety and the environment and appreciates the opportunity to provide our comments on the proposed Notice of Proposed Rulemaking (NPRM). In addition to the concerns discussed in detail below, EP provided input to and is supportive of the comments submitted to the docket on behalf of INGAA members. EP believes the proposed rule is not justified by the facts, exceeds DOI jurisdictional authority, and appears to violate the 1996 Memorandum of Understanding between DOI and DOT. Accordingly, EP requests that DOI either elect not to enact this rule or modify it as suggested in this comment.

DOI technical reports have identified the pipeline infrastructure most at risk for future damage; due to limited offshore resources and the high cost of offshore activities, all stakeholders would benefit by refocusing the NPRM on only DOI jurisdictional facilities with the greatest potential for future damage, risers and pipelines, six inches in diameter or less. After extensive review of the NPRM and available technical documents, EP identifies no reason for the NPRM's scope to extend beyond existing DOI facilities. The remainder of this submittal will support this statement as well as provide background and further information on other related technical issues.

1. Summary

The Federal Register of October 3, 2007, contained a Proposed Rule for “Oil and Gas and Sulphur Operations in the Outer Continental Shelf – Pipelines and Pipeline Rights-of-Way”. The proposed rule completely revises the DOI’s Outer Continental Shelf (OCS) pipeline and rights-of-way (ROW) regulations. The proposed rule incorporates parts of several new and revised industry standards into regulations. It also incorporates several conditions of approval for pipelines, plus guidance from various Notices to Lessees and Operators (NTLs).

A. Comment on the “Summary”

While the NPRM completely revises the DOI Outer Continental Shelf (OCS) pipeline and rights-or-way (ROW) regulations, it also adds several new and costly requirements for both Lease Holder pipelines and ROW pipelines; included are wide-ranging requirements for integrity management, inspections, design, construction and the operation and maintenance of pipelines. The proposed rules either blur or eliminate the distinction between lease holder pipelines, which are typically not subject to DOT regulation, and Right of Way pipelines which frequently are. In so doing, the proposed rules exceed the legal authority of the DOI to promulgate, implement and enforce. The proposed rules far exceed current industry practices and neither the technology or infrastructure is available to sufficiently support implementation.

2. Supplementary Information

DOI has issued several NTLs and one LTL to clarify the regulations and to provide guidance. In most cases, the industry has complied with these conditions and followed the guidance in the NTLs for several years. Even though these requirements are outside the regulations and did not receive full notice-and-comment consideration, they are generally not new to the industry. This is not to concede that, in every instance, the NTLs were appropriately issued; nor is it to concede that in every instance the NTLs are issued under appropriate legal authority.

A. Comment on “Supplementary Information”

A significant regulatory tool utilized by DOI is the “Notice to Lessees” (NTL) contained in Subpart A-General, Sec. 250.103, declaring that “MMS may issue Notices to Lessees and Operators (NTLs) that clarify, supplement, or provide more detail about certain requirements. NTLs may also outline what you must provide as required information in your various submissions to MMS.” Existing section 30 CFR 250.103 was added in 1999 revisions.

In 1988, DOI noted that it was using NTLs as interpretative devices:

...Standards are documents developed by MMS and referenced in the OCS Orders, thereby becoming requirements. Standards included statements of recommended practices adopted by the offshore industry and trade associations, such as API, or

professional standards writing organizations, such as the American National Standards Institute (ANSI). Initially, NTL's were used to inform lessees of DOI's interpretations of its requirements. The NTL's were not intended to impose new requirements. However, NTL's and the conditions placed upon required approvals occasionally imposed new requirements. In this restructuring and consolidation of MMS's multitier system of rules into a new expanded 30 CFR Part 250, efforts were made to eliminate any inconsistency and redundancy in the current rules. References to incorporated material were eliminated or the materials referenced specifically identified as narrowly as possible. (53 FR 10596, April 1, 1988)

Interstate Gas transmission pipeline operators have never accepted or complied with DOI's published NTLs that pertain to activities that conflict with the Memorandum of Understanding (MOU) between DOT and DOI (1996) or otherwise intrude in the jurisdiction of DOT or FERC. That is not to say that they are not, on occasion, useful safety guidance. However, DOI has mischaracterized the NTLs in the rule as recognized and accepted practices that operators already agree with. The intent of NTLs is to provide interpretation and clarification of DOI rules as they are applicable to the appropriate identified constituency.

3. Background

Background information has not been provided in the NPRM to identify specific problems that the agency is seeking to correct. The NPRM does state most of the changes are designed to enhance safety and protect the environment. These are matters that, for pipelines subject to DOT jurisdiction, have already been addressed in other regulations promulgated by other federal agencies pursuant to clear federal statutory mandates. The DOI Pipeline Tactical Plan 2007-2020 encompasses the following:

- Assess risk and reliability of existing pipelines and infrastructure. Focus specific attention to hurricane damage, recovery, and damage prevention.
- Study and streamline operational issues (i.e., inspection, integrity assessment, and maintenance and repair).

The Tactical Plan and the NPRM coincide on these issues.

The greatest threat to the oil and gas infrastructure in the Gulf of Mexico, with respect to safety, the environment, and system reliability, is the resultant damage from hurricanes. DOI has sponsored multiple workshops and reports to identify the cause of the damage and steps that may be taken to prevent reoccurrence. This concern was raised most recently in the NPRM Public Meeting on February 22, 2008. Reports sponsored by DOI indicate an average of 85% of pipeline failures are due to platforms, risers and outside force damage. Pipelines six inches in diameter or less represent an average of 75% of the damages incurred. Platforms, risers, and the vast majority of pipelines of diameter six inches or less are all jurisdictional to DOI regulations. There is no compelling statistical reason to include DOT jurisdictional facilities in this proposed rule since the incident data, collected by DOI, does not support the rule encompassing DOT facilities.

Therefore, due to limited offshore resources and the high cost of offshore activities, all stakeholders would benefit by refocusing the NPRM on only DOI jurisdictional facilities with the greatest potential for future damage, which historically and statistically has been platforms, risers and pipelines six inches in diameter or less.

Hurricane Pipeline Damage Summary

Hurricane	Year	Cause of pipeline damage identified as Platforms, Risers, Outside Force ¹	Percentage of Damaged Pipelines 6" diameter or less
Rita	2005	90%	70% ²
Katrina	2005	91%	70% ³
Ivan	2004	80%	45% ⁴
Lili	2002	80%	93% ⁵
Andrew	1992	75%	90% ⁶

Since the above table indicates in a statistically significant manner that the vast majority of damaged facilities were subject to DOI jurisdiction, it can be readily concluded that the Final Rule should be limited to facilities subject to DOI jurisdiction. There is no compelling or statistical reason for facilities subject to DOT jurisdiction to be subject to the Final Rule.

Mobile Drilling Unit (MODU) Performance during Exposure to Hurricane Force Winds⁷

Hurricane	Year	Percentage of MODU's that Failed to remain on station
Rita	2005	90%
Katrina	2005	75%
Ivan	2004	85%
Lili	2002	50%
Andrew	1992	75%

During Hurricanes Katrina and Rita, a total of twenty three MODUs broke loose from their mooring and were set adrift, causing extensive damage to pipeline systems and platforms in their paths. This damage is identified as “outside force” within the DOI reports. DOI and the American Petroleum Institute worked together to develop recommended practices and standards to improve stationkeeping. NTLs were issued thirty days prior to the 2006 hurricane season. This is a concern that should be permanently addressed through formal rulemaking procedures with the inclusion of inspections for MODUs prior to Hurricane season. This data does not support inclusion of DOT facilities in the Final Rule.

¹ MMS Project No. 44814183, rev. 1 pg. 30

² MMS Project No. 44814183, rev. 1 pg. 42

³ MMS Project No. 44038570, rev. 2 pg. 21

⁴ MMS Project No. 44814183, rev. 1 pg. 11

⁵ MMS Project No. 503, rev. A pg. 3

⁶ MMS Project No. 44814183, rev. 1 pg. 10

⁷ MMS Report No. 44814183, rev. 1 pg. 66

4. Pipeline Performance and Hurricanes

Technical Report (#44814184) issued on January 22, 2007, by Det Norske Veritas (DNV) states in its Conclusions:

“The conclusions reached during the performance of the study of the pipeline damage reports generated as a result of Hurricanes Katrina and Rita is that by and large, the pipelines are performing very well during Hurricane events, and that design code changes are not necessary.

The majority of pipeline damage experienced after Hurricanes Katrina and Rita occurred at risers and platforms, and as a result of outside forces. These threats are best managed through damage prevention and improved performance of the associated structures, and not design code changes to the pipelines.

Therefore, it is DNV’s conclusion that the vast majority of the pipelines performed very well as a result of the hurricane forces, and pipeline damages would have been significantly reduced had there not been such significant impacts to platforms, risers, or the impact related outside force”.

It is apparent that DNV’s findings, which were at the direction of DOI, conclude strongly that the causes of facility failures on the OCS are due to the significant impacts to platforms, risers, or the impacts related to the outside forces of DOI-jurisdictional facilities during weather events.

Therefore, it should be readily concluded that DOT facilities should not be included in the Final Rule.

5. Issues of the Proposed Rule

The new regulations are significant and lengthy. They add several new and costly requirements for both Lease Holder pipelines and ROW pipelines. The new regulations, as proposed, eliminate the boundary for jurisdiction as previously agreed to in a Memorandum of Understanding between DOI and DOT dated December 10, 1996.

A. NPRM Violates Terms of the MOU

The new DOI proposed rule violates the terms of the DOI/DOT MOU. The details of why the MOU was created in 1976 and updated in 1996 are discussed in detail below.

The MOU was designed to accomplish the primary goals of establishing a jurisdictional boundary and avoid duplicative regulations. The proposed rule violates both of these goals and also indicates the MOU was designed with the flexibility to allow the new authority in the proposed rule. The MOU and regulations that implement it, include explanations which directly conflict with DOI’s interpretation of flexibility. In 1996, DOT and DOI entered into a revised MOU to replace the pre-existing May 6, 1976, MOU governing their respective responsibilities on the OCS. The intention was expressed in the Federal Register notice of February 14, 1997:

The MOU places, to the greatest extent practicable, producer Operated pipelines under DOI responsibility and transporter operated pipelines under DOT responsibility. Producers are companies which are engaged in the extraction and processing of hydrocarbons on the OCS. Transporters are companies which are engaged in the transportation of those hydrocarbons. As a result of this revision, some pipelines, predominantly producer operated pipelines, currently under DOT responsibility, will be under DOI responsibility...the changes described in the MOU will substantially reduce the burden of overlapping Federal jurisdictions and inconsistencies between agency requirements This will substantially increase the efficiency of governmental resources on the OCS without compromising safety. 62 Fed Reg. No. 31 February 14, 1997.

The 1996 MOU correctly implemented Congressional intent to avoid duplication and conflict between Federal agencies having authority to regulate pipelines on the OCS:

In recognition of each of the parties' respective regulatory responsibilities for OCS pipelines, DOI and DOT agree that an MOU is needed to avoid duplication of regulatory efforts regarding OCS pipelines, to assure coordination and consultation during the development and implementation of regulatory requirements, to facilitate compatible regulatory requirements for all OCS pipelines whether under DOI or DOT jurisdiction, and to promote safety and environmental protection on the OCS.

B. The NPRM Exceeds DOI Legal Authority

The Department of Interior is expressly prohibited from affecting the authority provided by Law to the Secretary of Transportation with respect to Pipeline Safety by 43 USC 1347(d) and is charged with consulting with other departments to prevent inconsistent or duplicate requirements in 43 USC 1347(f). 43 USC 1348 (a) makes clear that the Secretary can only enforce regulations promulgated "...pursuant to this subchapter." To the extent the new rules exceed the authority granted to the Secretary, they may not be enforced.

An example of this stretch of DOI authority is illustrated by the proposed rule intruding on the authority and jurisdiction of both the Department of Transportation, and the Federal Energy Regulatory Commission and the Natural Gas Act, in violation of 43 USC 1334 (f)(4). By usurping authority to declare forfeit and expired a pipeline right of way grant supporting a pipeline subject to the Natural Gas Act and the Federal Energy Regulatory Commission, the new rules in effect abrogates the abandonment authority under the Natural Gas Act that is the exclusive province of FERC.

The new rules create, for the first time, the threat that a pipeline right of way grant may be terminated, at the sole discretion of DOI, because of a temporary interruption of gas flow. This contravenes the due process protections found in 43 USC 1334(e).

To the extent the new rules threaten the continuing viability of existing right of way grants because of a temporary cessation of gas flow, they are inconsistent with the Congressional declaration of policy [see 43 USC 1332 (3)] favoring expeditious and

orderly development of energy resources in the outer continental shelf. It is axiomatic that the needless elimination of necessary transportation options would negatively impact the development of natural resources.

To the extent the rules contemplate the termination of rights of way grants and the decommissioning of pipelines that retain economic and developmental utility, the new rules have the effect of requiring new pipelines to be installed in new rights of way grants which would do no more than replace those pipelines which by DOI regulation were taken out of service before there was practical justification to do so. This would have a negative environmental impact on the outer continental shelf and would thus make more likely the very circumstances that Congress has declared should be avoided [see 43 USC 1332 (6)].

A failure to comply with regulations validly promulgated under these limitations of authority do, by this statute, result in forfeiture of the grant; but only after a hearing before a United States district court. The NPRM exceeds the authority granted to the Secretary by this statute in that they intrude into areas not reserved to the Secretary. The NPRM also deprives right of way grant holders of the due process they can find before a federal judge [see 43 USC 1349 (b)].⁸

6. Intent of the Proposed Regulations

The intent of the DOI NPRM is unclear as to how it applies to natural gas transmission and gathering offshore pipelines. EP could construe from the NPRM that DOI is asserting this rule applies to all DOT pipelines for all aspects of the rule. It also seems the DOI is asserting that they have safety jurisdiction over DOT pipelines. If these two assertions are the intent of DOI in this NPRM, then EP disagrees with these assertions. A discussion of why EP believes this follows.

A. Clarification Points

The NPRM language is unclear and confusing as to DOI's intent.

- In 250.1003 the NPRM reads:

Which departments have jurisdiction over OCS pipelines?

An OCS pipeline is under the jurisdiction of either the Department of Interior (DOI) or the Department of Transportation (DOT).

- In 250.1004 the NPRM reads:

⁸ The authority granted to the Secretary of the Interior to prescribe rules and regulations is circumscribed by 43 USC 1334 (e). That section gives the Secretary the authority to grant rights of way:

- For pipeline purposes for the transportation of natural gas [and other substances] or
- Under such regulations as may be prescribed by the Secretary, or where appropriate the Secretary of Transportation.
- Including assuring maximum environmental protection by using safe technologies...including safe practices for pipeline burial...

What are the criteria for determining jurisdiction?

- (a) *DOI jurisdiction criteria. An OCS pipeline is under DOI jurisdiction if it is:*
- (1) *A lease term pipeline that is not subject to regulation under 49CFR, parts 192 and 195, and does not cross into State waters; or*
 - (2) *An ROW pipeline that is operated by an identified pipeline operator (the person or entity identified by the pipeline ROW holder as authorized to control or manage the pipeline's operations), and that is either:*
 - i. *A producing pipeline operator (the identified pipeline operator of an ROW pipeline that is a lessee or designated lease operator of one or more OCS leases), unless it is subject to regulation under 49 CFR, parts 192 and 195, and crosses into State water or;*
 - ii. *A transporting pipeline operator (the identified operator of an ROW pipeline that is not a lessee or designated lease operator of an OCS lease), and the pipeline is not subject to regulation under 49 CFR, parts 192 and 195.*
- (b) *DOT jurisdiction criteria. An OCS pipeline that is not under DOI jurisdiction (see paragraph (a) of this section) is under DOT jurisdiction.*
- (c) *Jurisdiction transfer. You may request that a pipeline under DOI jurisdiction be transferred to DOT jurisdiction, or that a pipeline under DOT jurisdiction be transferred to DOI jurisdiction, by submitting a written petition of approval to the Regional Supervisor and DOT Office of Pipeline Safety (OPS) Regional Director. In the petition, you must provide sufficient justification for the transfer. The Regional Supervisor and the DOT OPS Regional Director will decide jointly whether to approve the petition.*

EP believes the language mentioned above is clear as to jurisdictional boundaries between DOI and DOT. EP understands that the 1996 MOU between DOI and DOT is still in place and has not been modified or renegotiated by agency.

Given the clear and unambiguous language in 250.1003 and 250.1004, EP believes the subsequent language in the NPRM is intended to apply to DOI, not DOT, pipelines, unless DOT pipelines are explicitly mentioned. EP would like DOI to clarify the language specifically in 250.1006 which reads:

When must I submit the applications, requests, plans, and reports, and make the notifications required by this subpart?

- (a) *Applications and requests. For all OCS pipelines you must submit applications to DOI, and receive approvals, according to the following table...*

In paragraph (a), EP respectfully requests DOI to clarify which pipelines the words "all OCS pipelines" refer to - DOI pipelines only or both DOI and DOT pipelines? EP believes the wording should say "all DOI OCS pipelines," based on the MOU intent, the statistics not supporting inclusion of DOT facilities in the Final Rule, and the to-be-discussed cost-benefit analysis. "All DOI OCS pipelines" would be consistent with the definitions mentioned only a few paragraphs, 250.1003 and

250.1004, earlier in the NPRM. For these reasons, the proposed rule should be limited to DOI pipelines only.

7. Regulatory Language Concerns

The DOI Notice of Proposed Rule (NPRM) states that DOI does not consider the rulemaking as significant. The depth and breadth of the response of the companies who would be affected by the proposed rules shows that this is not so. EP believes that the proposed Rule is significant, that the annual impact to industry will be in excess of \$100 million and that Executive Order 12866 does apply. In addition, the proposed new rules confuse and blur the distinctions agreed upon in two MOU's (the latest in 1996) by the DOI and the DOT about sharing jurisdiction.

Almost all of the Permits require Regional Supervisor Approval granting him broad authority without adequately defining what decision criteria will be used nor what recourse is available the Operator, should the Operator disagree. Because MMS must approve the granting of right of ways and production of natural resources by the pipeline industry under its OCSLA authority, under the proposed rules it would assume the authority to impose various design, construction, operational, maintenance, and repair requirements without rulemaking and due process.

A. Boundary Between Production and Transporter Pipelines

The proposed new rules confuse and blur the distinctions agreed upon in two MOU's (the latest in 1996) by the DOI and the DOT which delineates jurisdiction. The existing regulations in Part 250 Subpart J specifically refer to the DOI regulations. For example, sections 250.1002 through 250.1006 specifically refer to DOI pipelines in the application of those regulatory requirements. The new proposal by DOI in the October 3, 2007, NPRM removes this distinction.

B. DOI Regulatory Activity

One of the fundamental problems with the DOT regulated pipelines' efforts to deal with DOI regarding offshore pipelines is exemplified in the recent history of regulatory activity by DOI going back as far as 1988.

In a 1988 rulemaking, DOI issued a Final Rule regarding 30 CFR Part 250 (53 Fed Reg 63, April 1, 1988) that made an effort to distinguish between the application of DOI rules between DOI pipelines and DOT pipelines. One of the specific issues involved the installation and modification of pipelines under DOI'S jurisdiction in accordance with the earlier 1976 MOU between DOI and DOT. As a result of comments, the resulting understanding in the 1988 final rule was that DOT pipelines (primarily ROW pipelines) would only fall under DOI jurisdiction modifications of the Right Of Way (ROW) NOT for repair or modification of the pipeline itself.

The 1988 DOI Rulemaking specifically and intentionally described the DOI authority in response to questions and concerns of commenter wants clarification, which are shown in the preamble of the 1988 Final Rule. DOI issued a Final Rule regarding 30

CFR Part 250 (53 Fed Reg. 63, April 1, 1988) that made an effort to distinguish between the application of DOI rules between DOI pipelines and DOT pipelines:

This rule restructures and consolidates into one document the existing multi-tier rules of the Offshore program of the Minerals Management Service (MMS) that govern oil, gas, and sulphur exploration, development, and production operations in the Outer Continental Shelf (OCS). The new rule is intended to eliminate redundant, burdensome, unnecessary, and counterproductive requirements imposed by the existing rules; introduce more performance standards; introduce new and updated requirements; and simplify the language of the rules.

One of the specific issues involved the installation and modification of pipelines under DOI's jurisdiction in accordance with the earlier 1976 MOU between DOI and DOT. As a result of DOT pipeline company comments the understanding in the 1988 final rule was that DOT pipelines (primarily ROW pipelines) would only fall under DOI jurisdiction for modifications of the right of way (ROW) not for repair or modification of the pipeline itself.

The October 3, 2007, DOI NPRM refers to the last comprehensive update of the DOI regulations in 1988.

In an August 28, 2001, (FR Vol. 66, No. 167) Notice of Proposed Rule Making DOI proposed requirements that all lease holders and ROW pipeline operators obtain approval from DOI before initiating any pipeline repair. Comments to the NPRM revealed the NPRM infringed on the jurisdiction of DOT.

In response to public comments to the 2001 NPRM, DOI published a withdrawal of the NPRM in February 21, 2003, (FR Vol. 68, No. 35) explaining that:

“the review of our internal permitting procedures pointed out the need for increased clarification regarding our overlapping responsibilities with DOT for OCS pipelines. The respective responsibilities of DOI and DOT regarding OCS pipelines are defined in a 1996 Memorandum of Understanding between the two Departments.” ... “MMS will rewrite the new subpart J in close cooperation with DOT's Office of Pipeline Safety to ensure, to the extent possible, that the two agencies have compatible regulations governing OCS pipelines. MMS will subsequently publish the new subpart J as a proposed rule. The withdrawal of this rule will not diminish the safety of offshore operations.”

With the 2001 NPRM and the 2003 withdrawal of the NPRM the following observations are apparent:

- DOI did not have the authority to approve or disapprove proposed pipeline repairs under the existing 2001 regulations, which required the implementation of regulations to establish new authority that is not provided for in the applicable laws and regulations. If the authority is provided within the applicable DOI Laws (OCS Land Act) it is a tenuous interpretation that was never included or intended in any previous rule makings. It is difficult to discern how DOI authority over

pipeline repairs of DOT regulated operators has not been provided for in a previous regulation and has arrived as a result of a new interpretation of authority of the OCS Lands Act.

- DOI's agreement in the 1996 DOT/DOI MOU that DOT has authority over design, construction, operations, and maintenance of DOT regulated pipelines is still in effect, and no applicable laws on DOT authority have changed to support an apparent new regulatory position of DOI.
- The goals of working in close cooperation with DOT to ensure the development of compatible regulations was clearly intending that "compatible regulations" meant duplicative regulations and overlapping regulatory authority, which is incompatible with the MOU, DOI laws, or DOT Pipeline Safety Laws.⁹

C. Approval Requirements Imposed by DOI

Because DOI has the power to approve or disapprove the granting of right of ways and production of natural resources to industry under its OCSLA authority, it has been tempted to assert that it has the authority to impose various design, construction, operational, maintenance, and repair requirements without rulemaking. These requirements are usually imposed by issuing a Notice To Lessees (NTL). Because the DOI holds this ultimate authority to permit land rights and the extraction of minerals from the OCS, pipeline operators often succumb to this implicit compulsion, and accept the NTL pronouncements as regulations.

The DOI NTL requirements requested of DOT regulated operators often directly conflict with DOI regulations. As an example, under 30 CFR 250.1000(c)(9), a pipeline segment is not subject to DOI regulations for design, construction, operation, and maintenance if:

- It is downstream (generally shoreward) of the last valve and associated safety equipment on the last production facility on the OCS; and
- It is subject to regulation under 49 CFR parts 192 and 195.

DOI has also asserted authority to impose application and permission requirements on DOT regulated transporter pipelines for repairs of pipeline facilities on the OCS. EP pipelines are constructed, operated and maintained under the applicable DOT regulations. The requirement to obtain written permission for pipeline repairs would be burdensome and offer no benefits for pipeline safety or protection of the environment.

D. Executive Order (EO) No. 12866

⁹ A provision of the MOU gives MMS authority over certain right of way pipeline operators who choose to be under MMS, such as production operators who want to avoid complying with both DOT regulations for their ROW pipelines and MMS regulations for their lease term pipelines. Prevention of duplicative compliance requirements in regard to design, construction, operation, and maintenance functions is a logical and essential provision of the MOU

In a 1993 Executive Order (EO), President Clinton stated that the American people deserve a regulatory system that works:

- A regulatory system that protects and improves their health, safety, environment, and well-being;
- A regulatory system that improves the performance of the economy without imposing unacceptable or unreasonable costs on society;
- Regulatory policies that recognize that the private sector and private markets are the best engine for economic growth;
- Regulatory approaches that respect the role of State, local, and tribal governments;
- Regulations that are effective, consistent, sensible, and understandable.

The Executive Order was intended to make the regulatory process more efficient.

One of the Objectives of this Executive Order was to enhance planning and coordination with respect to both new and existing regulations – the 1996 MOU is a prime example of compliance with Executive Order 12866.

In the *Statement of Regulatory Philosophy* the EO stated that “Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need ...”

It went on to say that “In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits...”

EP believes that the proposed Rule is significant, that the annual impact to industry will be in excess of \$100 million and that Executive Order 12866 does apply. In this case, the principle issues are not clear, since the problem being addressed is not identified. The available alternatives to Rulemaking have not been assessed, including the alternative of not regulating. The Cost/Benefit analysis is inaccurate and the proposed rulemaking both duplicates and is inconsistent with other Regulations.

8. Comments to specific paragraphs of the proposed regulations

The DOI Notice of Proposed Rulemaking (NPRM) creates numerous conflicting and duplicative requirements between the Department of Transportation (DOT) and the Department of Interior (DOI). Consequently, EP believes the NPRM creates confusion, inconsistencies, and redundancy for the natural gas transmission offshore operators. Additionally, the conflicting and duplicative requirements will create jurisdictional overlaps and conflicts between DOI, DOT and the FERC.

A. Maintaining approved burial depth (250.1078)(d)

DOT requires burying pipelines in shallow water (12 feet or less) except in the Gulf of Mexico where pipelines in water depths less than 200 feet must be buried. DOT also requires gas pipeline operators to inspect their pipelines in the Gulf of Mexico in water depths up to 15 feet and rebury pipelines found to be exposed or which are a hazard to navigation. The NPRM would require burial of pipe in water less than 200'. Additionally, it requires that the pipeline remain buried at its approved burial depth throughout the life of the pipeline.

DOI Report No. 440 38570 Comments

“DNV is not suggesting that a cover maintenance program should be initiated, as this is not practical from a maintenance standpoint for constantly shifting sediments in the shallow Gulf water.”

EP recommends DOI follow the recommendations of their study conducted by DNV.

B. Integrity Management Program (250.1079)(b)

As required by the Pipeline Safety Improvement Act of 2002, DOT promulgated broad and comprehensive regulations for Gas Transmission Pipeline Integrity Management Programs (IMP) for High Consequence Areas (HCA's) (49 CFR 192 Subpart O). These regulations required gas transmission pipeline operators to develop and implement an integrity management program for pipelines in HCA's by December 17, 2004. Subpart O requires an operator's IMP to include provisions for HCA identification, risk assessment, conducting baseline assessments and reassessments, remediation of conditions discovered by assessments, preventive and mitigating measures, performance measures, and reporting requirements. Any offshore areas meeting the definition of a HCA would fall under the DOT IMP. The NPRM calls for a written pipeline integrity management plan for all OCS pipelines that includes numerous components including pigging all pipelines. Today, the DOT IMP requires that only HCA's fall under an integrity management plan. The DOT integrity management program is logically targeted at protecting the general public in HCA areas where the risks and consequences are the greatest. An offshore integrity management program serves no such public safety concern (beyond any offshore HCA areas) and would be impractical with little or no perceived benefit in terms of safety or efficiency. Furthermore, DOI's own study identifies the impracticalities of implementing their proposed requirements.

EP recommends DOI follow the recommendations of their study, which does not recommend further integrity management requirements offshore.

DOI Report No. 44811520 Comments

“Gulf of Mexico Operators are currently using risk-based approaches and practices for the integrity management of offshore pipelines. The approaches focus on

preventive and monitoring measures due to the high cost of offshore pipeline intervention and the inability to significantly change the consequence of failure.”¹⁰

*“In-line inspection is commonly performed onshore, but there are a number of reasons why it is less attractive offshore. One example is verification. Verification inspections are common onshore, but they are difficult if not impossible offshore.”*¹¹

*“Whereas the technology (ILI) appears to be practical for enabling the inspection of land-based pipelines, there will be many technical and commercial challenges in making this a practical methodology for inspecting offshore pipelines.”*¹²

*“Hydrostatic pressure testing used to assess the integrity of in-service pipeline systems requires the contents of the pipeline to be removed and replaced with water. There are a number of reasons why operators are reluctant to conduct hydrostatic pressure tests: This necessitates a disruption in the use of a pipeline, which can have a significant commercial impact. The introduction of untreated water into the pipeline system poses a potential for additional corrosion that can impact the integrity of the pipeline if the water is not completely removed from the pipeline within a very brief period of time. Any water remaining within the pipeline can serve as the electrolyte and facilitate the corrosion mechanisms. Any oxygen, which was dissolved within the water, may be introduced into the system, and corrosion will occur until that oxygen is depleted. Also, the water may contain some microorganisms, which could result in microbiologically influenced corrosion.”*¹³

EP recommends DOI follow the results of this DOI-commissioned study.

C. Taking a pipeline out of service (250.1086)

The NPRM defines out of service as “a pipeline that has not been used to transport oil, natural gas, sulphur, or produced water for more than 30 consecutive days. The out of service period begins on the 31st day of inactivity.” This is almost the same language in current DOI requirements, which are only applicable to DOI pipelines. On the 31st day of inactivity, the NPRM requires a company to immediately equip the out-of-service pipeline with either a blind flange or block valve locked in the closed position at each end. After a year but less than 3 years, a company must flush and fill the pipeline with inhibited seawater and after 5 years the pipeline has to be decommissioned.

However, the current language related to out-of-service pipelines is targeted to pipelines under the jurisdiction of DOI and the required actions are only for DOI pipelines. The proposed rule removes the distinction between DOI or DOT pipelines, implying that pipelines currently under DOT jurisdiction would be required to follow this proposed requirement.

¹⁰ MMS Report No. 44811520, rev. 2, page 6

¹¹ MMS Report No. 44811520, rev. 2 pg. 34

¹² MMS Report No. 44811520, rev. 2 pg. 40

¹³ MMS Report No. 44811520, rev. 2 pg. 40

It is not unusual for natural gas pipelines to temporarily have lines that are not flowing. The proposed rule seems to be oblivious to the well known realities of interstate transmission pipelines. Sometimes, because of temporary market or production dislocations, interstate pipelines that are ready willing and able to transport gas have no gas to transport. To require an operator of a line that is able to transport gas for, in some cases, many upstream producers to physically make it impossible to do so after 31 days simply makes no sense, and is contrary to sound economic and environmental policy.

Transportation pipeline abandonment and deactivation requirements are adequately covered by DOT regulations. Under DOT regulations, a pipeline is not considered abandoned, unused or “out of service” if it is periodically transporting gas or being actively maintained with reasonable anticipation of future use.

Since much of the above discussion is in direct conflict with FERC requirements for DOT facilities, and if implemented as drafted in the NPRM would result in a major conflict between regulatory agencies, EP recommends that the abandonment and deactivation requirements be removed from the NPRM if they apply to DOT facilities.

D. DOI suspension or prohibiting pipeline operations (250.1091)

The proposed rule gives the Regional Supervisor unilateral authority to suspend or temporarily prohibit any pipeline operations if the Supervisor determines that continued activity would threaten or result in serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, mineral resources, or the marine, coastal or human environment. Also, if the Regional Supervisor determines a company has failed to comply with a provision of the OCSLA or any other applicable law, a provision of this part or other applicable regulations, or a condition of a pipeline application approval or of a pipeline ROW grant the Regional Supervisor can unilaterally suspend or temporarily prohibit any pipeline operations. Such a decision could be wrong or unsupported, and the consequences extremely severe, including but not limited to damage to property and other rights. Neither a hearing before an impartial tribunal nor any type of an appeal process is provided for.

The judgment of safety and operations of DOT pipeline activities is covered under the Pipeline Safety Act and not the OCLSA. Response to spills from transportation pipelines is subject to OCSLA and DOI authority under 30 CFR 254. The proposed rule is unnecessary and if promulgated the results could be both draconian and ultimately unconstitutional.

E. Pipeline Modifications and Repair (250.1093-250.1097)

The NPRM requires a company to submit an application to the Regional Supervisor for approval before any modifications or repair work on a pipeline can commence. With respect to DOT pipelines, this proposed requirement is a clear intrusion into what has, up to now, been by its own rules outside the scope of DOI jurisdiction [see 30 CFR 250.1000(9)]. What is unclear is what ill DOI is trying to address by this

proposed extension of its authority from its traditional authority of rights of way into the actual operations of the pipelines within those rights of way. DOT already has that jurisdiction, and DOT exercises it.

It should be noted as the DOI rules are currently written, repairs would be reportable under 1008(e) if it involves a right-of-way modification, so there is a situation where a repair is now reportable to DOI. Section 1009(c)(1) states: “Department of Interior pipelines, as defined in 250.1001, must meet the requirements in 250.1000 through 250.1008.”

Today, sections 1000 through 1008 specifically apply to DOI pipelines as defined in 1000(c)(1). Section 1009(a) requires DOT operators to comply with the applicable sections of 1000-1008, which are sections relating to right-of-way approval and modification, or sections of 1009-1019 that cross reference 1000-1008. The NPRM goes well beyond the current requirements for repairs.

EP recommends the existing language be retained for clarity and the elimination of conflict between regulatory agencies.

F. Pipeline Right-of-Way (ROW) Grants Category (250.1115-250.1138)

The proposed financial security requirements are more detailed than in the current regulations. Currently, pipeline companies must furnish an area bond in the amount of \$300,000 to hold pipeline ROW grants in a DOI OCS region. The proposed rule would allow a pipeline ROW holder the option of choosing to cover the pipeline ROW with either a \$300,000 pipeline ROW grant individual bond or a \$1,000,000 pipeline ROW grant bond. The \$1,000,000 area bond will cover all pipeline ROW grants held by a company in one DOI OCS region.

It is unclear to EP why the area bonding requirements were raised. The NPRM does not describe or justify this action. Without specified reasons, EP respectfully requests this requirement to be eliminated from the Final Rule.

The NPRM includes an initial 500% increase in the rental fees for pipeline Right-of-Ways, stating DOI would prefer an increase of 850% but are proposing the increases in two phases. DOI stated that this is a minor cost when compared to the costs of installing, operating and maintaining ROW pipelines.

EP does not agree this is a minor cost and disagrees with the inclusion of this cost in the Final Rule. Furthermore, the NPRM does not provide a justification of why this cost increase is included, what the incremental collected funds will be used for or what pipeline safety improvement is expected by this fee increase.

G. Temporary cessation and cessation of pipeline operations (250.1133)

As stated earlier in these comments, EP believes these new rules intrude on the authority and jurisdiction of both the Department of Transportation and the Federal Energy Regulatory Commission, in violation of 43 USC 1334(f)(4). By usurping

authority to declare forfeit and expired a pipeline right of way grant supporting a pipeline subject to the Natural Gas Act and the Federal Energy Regulatory Commission, the new rules in effect abrogate the abandonment authority under the Natural Gas Act that is the exclusive province of FERC on DOT jurisdictional facilities.

- The new definitions for temporary cessation and cessation of pipeline operations go beyond the intended meaning of the original DOI regulation that initiated the requirements.
- The NPRM establishes a new operational paperwork burden, accelerated maintenance requirements, and new permit expenses with no measurable benefit offered for justification.
- Most transportation right of way pipelines are governed by the requirements of the Federal Energy Regulatory Commission (FERC) for economic regulation. Any undue modifications to what DOI currently constitutes as “out of service” conditions may severely impact a pipeline operator’s ability to meet its obligations in continuing service to its customers.

The existing language in 250.1014 provides the intended flexibility for the variety of operating conditions the pipelines are subjected to. Interpreting this section to conflict with its intended meaning is unwarranted. The definitions for “cessation of pipeline operations” and “temporary cessation of operations” both reference a time period of more or less than 180 consecutive calendar days for a pipeline being out of service.

This period seems arbitrary and impractical. Following storm damage, for example, a producer may easily be out of service for more than 180 days. This does not necessarily mean that associated pipelines are “not being used for a purpose other than for which the grant was made...” Circumstances may dictate that the pipeline operators must wait for the producer to come back on line. Safety and integrity during this time is by no means compromised.

There are circumstances where more than one pipeline operator provides transportation services to a production platform. When one pipeline is transporting product, the other pipeline may be idle or inactive while its purpose remains to be available to transport product when needed. The inactive pipeline may be used during high demand periods of the year or for other reasons where transportation flexibility is desired or needed. Maintaining the pipeline in a state of readiness would be impeded by the permit waiting periods at various time intervals that would be required to deal with ROW matters.

The proposed NPRM would define a condition “no longer being used for the purpose the grant was made” as being “out of service” (not flowing product for a period of 180 days or more), which concludes that “temporary cessation of operations” must be requested before the pipeline is out of service (the 30 day limit) and not being “used for the purpose the grant was made” to avoid ROW grant expiration under 250.1014. EP believes the new applications of terms in the NPRM conflict with the original intended meaning of the regulation that initiated the requirements. The following information is offered in support of this conclusion.

History: Temporary Cessation of Operations

The “temporary cessation of operations” language in 250.1014 originated in a 1979 rule making (Federal Register/Vol. 44, No. 127/ Friday, June 29, 1979/ Rules and Regulations/ page 38274). The preamble states that:

*“A sentence was added to section 3340.1(c) that authorizes **temporary cessation of use for proper maintenance when a pipeline segment becomes corroded or otherwise worn and needs replacement.**”*

The final regulatory language states:

*“Any right-of-way granted under the provisions of this subpart remains in effect as long as the associated pipeline is properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. **Temporary cessation or suspension shall not terminate the grant. Where pipeline segments become corroded or otherwise worn and need replacement, proper maintenance may be performed under temporary cessation of use.** If the purpose of the grant ceases to exist or use of the associated pipeline is permanently discontinued for any reason, the grant shall be deemed to have expired.”*

The language above in bold was modified for simplification purposes in an April, 1988, rulemaking (Federal Register, April 1, 1988, 53 FR 10756-10761) that comprehensively restructured the Subpart J regulations and is the basis for the present day language in 250.1014. The 1988 modification did not propose to change the original intent.

EP believes the guidance offered in the original rule making that established the “temporary cessation” concept should be consistent with the new definition or clarification. As a result, if the original intent of “temporary cessation of use” term applied to conditions when pipelines are worn, corroded and need repair/replacement, which prevent the grant from expiring, a reasonable determination should conclude that a lesser condition such as a period of inactive service, while being properly maintained, would not cause the grant to expire.

The original intent of the temporary cessation concept was to prevent the ROW grant from expiring when the pipeline needs repair/replacement. The new proposed definition of “temporary cessation of operations” is clearly in disproportion to its original intended meaning, which should have significant influence on the how it is defined.

In addition, the self evident connotation of 250.1014 is that a “temporary cessation of operations” is intended to prevent conditions such as repair/replacement from falling under the criteria listed in 250.1014 that cause the grant to expire (i.e., “not being used for the purpose the grant was made;” “the purpose of the grant ceases to exist;” and “the use of the pipeline is permanently discontinued”). Therefore, the conditions that

meet the criteria for ROW expiration have a much higher initiation threshold than a simple period of pipeline inactivity.

The ROW pipeline is used for the purpose the grant was made as long as the producer is capable of producing natural gas and the pipeline is capable of safely transporting the gas. The pipeline operator is beholden to the producer, as to when the pipeline has gas flow. Periods of inactive gas flow should not constitute a forfeiture or relinquishment of the ROW, provided, that the inactive gas flow is due to circumstances not within the ROW holder's control.

In cases where the existing gas source is depleted and the operator chooses to maintain the pipeline for other potential exploration and production finds, the pipeline right of way grant should remain active, if properly maintained under the applicable pipeline safety regulations. There is no apparent logical reason why a properly maintained pipeline or associated platform that doesn't present a hazard to safety, environment or other OCS activities should have substantial resources spent toward unnecessary modification and decommissioning, when there may be future useful utility for the pipeline.

To summarize EP's position, EP believes the guidance offered in the original rule making that established the "temporary cessation" concept should be consistent with the new definition or clarification.

H. Accessories to Right-of-Way (ROW) Pipelines (250.1140 – 250.1147)

Platform Jurisdiction

A pipeline facility, as used in the safety standards under 49 CFR Part 192, includes "new and existing pipe rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation". Offshore platforms are equipment used to structurally support, operate, and maintain offshore pipelines and therefore are "used in the transportation of gas." Thus, they are included in the definition of "pipeline facilities." Part 192 does not contain standards that are specifically applicable to platforms; however, if the equipment is used in the transportation of gas by pipeline, it would have to meet applicable Part 192 regulations that govern pipeline facilities in general. Companies follow the design and construction standards of ASME B31.8 and the industry standard inspection and maintenance requirements under API RP 2A, which meets the performance based standards of DOT 192. Platforms (design, construction, operation and maintenance of) in offshore state waters are clearly under DOT jurisdiction.

The fundamental pipeline safety regulations applicable to DOT pipelines do not change when crossing into federal waters.

9. EP Cost and Benefit Analysis

The DOI Notice of Proposed Rule (NPRM) asserts that the proposed rule is not a significant rule as determined by OMB and is not subject to review under EO 12866. EP disagrees with this assertion.

The proposed rule will have an annual effect of \$100 million or more to the national economy. EP is providing preliminary estimated costs to implement the rule in the details in this document. EP estimates show a potential annual compliance cost of approximately \$70.7 million per year over the next ten years and a one time cost of \$5.4 million to develop the required program, plans and procedures.

The DOI has not provided any information in the NPRM that states the benefit of the new regulations. For the years 2006 and 2007, as reported to DOT for OCS pipeline incidents, there was approximately \$600,000 of gas loss per year, \$11.3 million of company costs to effect repairs per year and no cost or effect to the public. This is for the approximately 14,000 miles of DOT jurisdictional pipe. The costs for 2005 were significantly higher due to two major hurricanes in the Gulf of Mexico. The gas loss cost that year was \$11.4 million with the company costs of repairs being \$74.6 million and no costs or effects to the public. A four year average (2004 to 2007) shows an average per year gas loss cost of \$4.3 million, an average per year for company repair and any clean up cost of \$29.5 million with no costs to the public. During this period there were no fatalities or injuries reported to DOT.

If incidents could be reduced by 20% (two-thirds of the corrosion related incidents), this would relate to an estimated cost savings of approximately \$2.4 million (20% of \$11.9 million, 2006 and 2007 average gas loss and company repair costs). A cost benefit can be determined based on these numbers with the cost exceeding the benefit by a factor of approximately 29 (\$70.7 million divided by \$2.4 million).

Information on reportable incidents submitted to DOT shows the following as causes:

- 31% due to internal corrosion with most of these being small pits
- 27% due to heavy rains and floods with most of these during the 2005 hurricanes
- 11% were categorized as miscellaneous or unknown
- 9% due to damage by aquatic vehicle
- 6% were component failures
- 16% due to several other causes

Information on the annual leak report information submitted to DOT shows the following causes:

- 40% due to corrosion with most of these being small internal corrosion pits
- 27% due to natural forces with most of these during the 2005 hurricanes
- 11% due to excavation damage
- 9% due to materials and welds
- 13% due to several other causes

A. Cost Analysis

The information discussed in this section is based on a review of the DOI cost analysis and input from several EP departments that would be impacted by the NPRM. The cost information provided by DOI does not agree with company experience and expectations for the identified activities. EP believes the hours were significantly underestimated as was the per hour cost. In addition, the DOI analysis of costs only addressed expected administrative burden and did not address the costs to actually perform the identified activities such as patrolling, burying pipelines, and integrity assessment. The following cost data is provided and applies to all EP OCS pipelines:

Reporting

EP estimates the total hour burden to develop systems, reports and records, perform quality control, and obtain management approval and legal review to be 3960 hours with an associated cost of \$297,000 per year. This cost is based on average hours as shown below with a \$75/ hour rate:

- 20 hours for general departure and compliance requests
- 500 hours to retain all records and make available to DOI
- 400 hours to generate a petition to change jurisdiction
- 20 hours to mark DOI/DOT interface and note of records

Forms

EP estimates the total hour burden to complete forms, perform quality control, and obtain management approval and legal review to be 1320 with an associated cost of \$100,000 per year. This cost is based on an average hours as shown below with a \$75/hour rate:

- 20 hours for each notice under 1041(c), 1058(b) and 1093(f)
- 10 hours for completion and submission of form MMS-2030
- 120 hours to submit form MMS-2030
- 120 hours to submit form MMS-1049

Applications for New Pipelines

EP estimates the total hour burden to develop applications, perform quality control, and obtain management approval and legal review to be 4,480 hours with an associated cost of \$336,300 per year. This cost is based on average hours as shown below with a \$75/ hour rate:

- 800 hours to prepare and submit applications
- 20 hours impacted lessees
- 300 hours to submit third party review

Pipeline Design and Construction

EP estimates the total hour burden to develop agreements and notifications, perform quality control, and obtain management approval and legal review to be 1,650 hours with an associated cost of \$125,000 per year. This cost is based on average hours as shown below with a \$75/ hour rate:

- 20 hours to prepare notifications to military
- 40 hours for buoy hazards
- 100 hours to enter into agreements with command headquarters
- 120 hours to submit construction reports

Pipeline Risers Connected to Floating Platforms

EP estimates the total hour burden to develop, perform quality control, and obtain management approval and legal review to be 480 hours with an associated cost of \$36,000 per year. This cost is based on average hours as shown below with a \$75/ hour rate:

- 240 hours to develop and submit riser verification plans
- 240 hours to submit final reports on design and construction

Pipeline Testing, Safety, Leak Detection, Operations and Maintenance

EP estimates the total hour burden to develop the required programs and plans, perform quality control, and obtain management approval and legal review to be 72,000 hours with an associated cost of \$5,420,000. This is a one time cost and is based on average hours with a \$75/ hour rate.

In addition EP estimates that the ongoing annual cost associated with these sections of the regulations is based on an hour burden of 1,720 with an associated cost of \$2,540,00 per year for the ongoing administrative burden to carry out the tasks and document.

Not mentioned by DOI is the cost to maintain cover to the amounts specified in proposed section 250.1078. The cost to rebury pipeline is estimated at \$50,000 per mile. Based on an estimated re-burial need every ten years and considering the amount of pipe in the OCS, the annual cost is estimated at \$7,000,000.

Not mentioned by DOI is the cost to perform the required activities that will be required once the Pipeline Integrity Program is developed. Our cost information is based on actual costs incurred by EP for our DOT required integrity management program and applying our offshore cost factors. EP anticipates costs of \$510,000 per mile for 1,100 miles of pipe at a total cost of \$561,000,000. EP estimates that there will be a \$56,000,000 annual cost over a ten year period (\$510,000 per mile times 1100 miles of OCC pipe is \$561,000,000 million divided by 10 years is \$56.1 million per year) to make the pipeline piggable, to conduct pigging with In-line inspection devices and perform prevention and mitigation tasks as may be necessary. This cost is based on actual costs that EP has encountered implementing pipeline integrity programs for DOT. The costs for the integrity management program include

modification of facilities to accommodate smart pigs, and performing the pigging operations.

EP estimates that many new valve platforms will need to be installed to provide for pigging operations. The cost for such a platform is estimated at \$10,000,000 and includes the platform, launchers, receivers, necessary valves and controls. The costs of platforms are part of the overall costs shown above. These costs may in fact be conservative as it is very difficult to project vessel cost over an extended period of time. No one in industry would ever have anticipated the rise in vessel costs experienced in the last 10 years.

Pipeline Modifications and Repairs

EP estimates the total hour burden to develop applications and notifications, perform quality control, and obtain management approval and legal review to be 2,400 hours with an associated cost of \$180,000 per year. This cost is based on average hours as shown below with a \$75/ hour rate:

- 120 hours to submit application for modification
- 40 hours to submit modification report, application to repair and repair report
- 240 hours to analyze pipeline failures

Pipeline Surveying, Monitoring and Inspection

DOI did not account for the cost of equipment such as boats, barges and aircraft to perform the surveys and inspections. This type of work is difficult to estimate based on hours and therefore, EP estimated the costs based on typical service charges. For example the cost to patrol using aircraft is approximately \$100 per mile. Performing the survey 24 times per year for 1,100 mile of pipe equates to a cost of \$2,600,000 per year.

Inspection of the various portions of pipeline risers involves vessels, equipment and personnel. The costs associated with the activities include vessel rental, diving and other equipment rental, diver and other personnel costs and involve many hours of transit time to and from the platforms. Based on a daily cost and the number of platforms involved, the cost for these inspections is estimated at \$1,500,000 per year.

Pipeline Decommissioning

EP estimates the total hour burden to develop decommissioning plans and applications, perform quality control, and obtain management approval and legal review to be 880 hours with an associated cost of \$66,000 per year. This cost is based on average hours as shown below with a \$75/ hour rate:

- 80 hours to submit application
- 40 hours to submit decommissioning report
- 120 hours to submit application to re-commission
- 120 hours to submit re-activation report

The costs to purge, flush and fill pipelines and maintain associated records are not fully explained in the DOI cost estimate. The costs to develop a decommissioning plan, purge the pipeline, flush the pipeline, dispose of the flushing material, filling the pipeline, and isolating from sources of product is estimated to be approximately \$120,000. The total costs based on 10 events are estimated at \$1,200,000 per year.

Pipeline ROW Grants

EP estimates the total hour burden to develop applications and submissions, perform quality control, and obtain management approval and legal review to be 1,320 hours with an associated cost of \$100,000 per year. This cost is based on average hours as shown below with a \$75/ hour rate:

- 240 hours to submit the application
- 120 hours to submit arguments
- 40 hours to survey the pipeline
- 120 hours to submit application to modify grants and relinquish grants

Accessories to ROW Pipelines

EP estimates the total hour burden to develop applications and notifications, perform quality control, and obtain management approval and legal review to be 1,100 hours with an associated cost of \$82,000 per year. This cost is based on average hours as shown below with a \$75/ hour rate:

- 240 hours to submit application
- 240 hours to submit annual report
- 2,920 hours to inspect accessories for pollution

30 CFR Part 256

EP estimates the total hour burden to develop reports, perform quality control, and obtain management approval and legal review to be 400 hours with an associated cost of \$30,000 per year. This cost is based on average hours as shown below with a \$75/ hour rate:

- 20 hours to develop and submit report

B. Benefit Analysis

EP has reviewed the information on gas transportation incidents and leaks reported to DOT. Incidents are reported in writing within 30 days of the incident. Leak information is reported annually.

Over the time period 2004 to 2007 which includes the hurricanes of 2005, there were no fatalities reported, nor were any injuries reported. The incidents were reported to DOT were all reported because of the cost threshold of \$50,000.

The average cost of gas lost for this time period was \$4.3 million per year. The average cost to repair facilities due to incidents was \$29.5 million per year. The average for two years, 2006 and 2007 (exclude 2005 when two major hurricanes cause damage), were \$600 thousand per year for gas lost and \$11.3 million per year for company cost to affect repairs.

If incidents could be reduced by 20% (two-thirds of the corrosion related incidents), this relates to an estimated benefit of only \$2.4 million per year for the gas transportation pipelines.

C. EP Cost and Benefit Comparison

EP estimates:

- The total annual costs to perform the annual administration and record requirements of the NPRM: \$1.2 million
- The total one time cost to develop programs, plans, procedures, etc. based on the requirements of the NPRM: \$5.4 million
- The total annual cost of the administration, operations, maintenance, etc. requirements of the NPRM not counting the costs for integrity assessments: \$13.5 million
- The total annual cost for performing integrity assessments, which includes modifications of pipeline facilities: \$56 million per year over ten years, or a total cost of \$560 million
- Administration and records: \$1.2 million
- Operations and Maintenance: \$13.5 million
- Integrity management: \$56 million
- One time cost year one for plans and procedures: \$5.4 million
- The cost for year one totals \$76.1 million. The cost for subsequent years totals \$70.7 million.
- The cost/benefit for year one is 32 to 1 and for subsequent years 29 to 1.

There were no fatalities or injuries during the analysis years.

10. Recommended Changes to Proposed Regulations

DOI technical reports have identified the pipeline infrastructure most at risk for future damage. Risers and pipelines six inches in diameter or less account for 75% of damages incurred during hurricanes. Due to limited offshore resources and the high cost of offshore activities, all stakeholders would benefit by refocusing the NPRM on only DOI jurisdictional facilities within this higher risk group.

Generally the clearest description of jurisdiction should be set forth in the opening section(s) of a new rule, i.e., an Applicability or a Scope Section which is the format in DOT's Parts 190-199. Whether DOI considered this approach remains unknown. EP has reviewed the proposed rule and recommends that the language be amended to specify which pipelines (DOT or DOI) are covered by each of the proposed rules.

El Paso Corporation appreciates the opportunity to provide comments to the docket on this issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. B. Martin". The signature is written in a cursive style with a small horizontal line at the end.

D. B. Martin
Senior Vice President, Operations
Colorado Interstate Gas Company
El Paso Natural Gas Company
Southern Natural Gas Company
Tennessee Gas Pipeline Company