

105 FERC ¶ 61, 243  
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. CP03-11-001

ORDER ON REHEARING

(Issued November 20, 2003)

1. On June 12, 2003, Jupiter Energy Corporation (Jupiter) filed a request for rehearing of the Commission's May 16, 2003, order finding that Jupiter's natural gas pipeline facilities are jurisdictional transmission facilities and denying Jupiter's request for rescission of its certificates and authority to abandon its rate schedules and certificated services.<sup>1</sup> On May 30, 2003, Transcontinental Gas Pipe Line Corporation (Transco) and Williams Gas Processing-Gulf Coast Company, LP (Williams Gas Processing) filed a joint motion for late intervention.<sup>2</sup> On June 16, 2003, Williams Gas Processing filed a request for rehearing.

2. For the reasons discussed herein, the Commission will deny Transco's and Williams Gas Processing's joint motion for late intervention and dismiss Williams Gas Processing's rehearing request. The Commission is affirming its May 16 order's finding that Jupiter's gas facilities are transmission facilities subject to the Commission's jurisdiction under the Natural Gas Act (NGA). Therefore, the Commission will deny Jupiter's request for rehearing.

**Background**

3. Jupiter's natural gas pipeline facilities extend from offshore Texas to a sub-sea interconnect with Transco's system and a shoreline interconnect with Tennessee Gas Pipeline Company (Tennessee). Jupiter's facilities include (1) a 10.2-mile 10 3/4-inch

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<sup>1</sup> Jupiter Energy Corporation, 103 ¶ FERC 61,184 (2003).

<sup>2</sup> Transco and Williams Gas Processing are wholly-owned subsidiaries of The Williams Companies, Inc.

diameter line that receives gas from Platform 39A owned by Jupiter's parent company, Unocal Oil Company of California (Unocal), and transports the gas to Tennessee's shoreline interconnect; (2) a 3.2-mile, 8 5/8-inch diameter line that receives gas from Unocal's Platform 39A and transports the gas to Transco's sub-sea interconnect; and (3) separation and dehydration facilities located 22 miles downstream of Tennessee's shoreline interconnect.

4. Jupiter's application requested that the Commission find that Jupiter's pipeline facilities are non-jurisdictional gathering facilities exempt from the Commission's jurisdiction pursuant to section 1(b) of the NGA. Jupiter stated that upon the Commission's finding that the facilities are non-jurisdictional, the facilities would be transferred to Jupiter's parent company, Unocal.

5. For the reasons affirmed below, the Commission's May 16 order found that Jupiter's facilities downstream of Platform 39A provide jurisdictional transmission service. Therefore, the May 16 order denied Jupiter's request that the Commission find that the primary function of Jupiter's facilities is non-jurisdictional gathering.

### **Motion for Late Intervention and Requests for Rehearing**

6. In their joint motion for late intervention, Transco and Williams Gas Processing state that they only became aware that their interests might be affected upon reviewing the Commission's May 16 order. They state that they have an interest in this proceeding because Transco owns downstream facilities that the Commission has found to be non-jurisdictional gathering facilities, a finding which could be affected by the Commission's findings in this proceeding.<sup>3</sup>

7. The Commission finds Transco's and Williams Gas Processing's assertion of inadequate notice to be without merit. The Commission's notice in this proceeding stated that Jupiter's application was for a determination that its facilities are non-jurisdictional gathering facilities and authorization to abandon its facilities. The notice of Jupiter's application was published in the Federal Register on November 19, 2002, with motions to intervene due by December 4, 2002.<sup>4</sup> The other downstream pipeline company, Tennessee, filed a timely motion to intervene on December 4, 2002.

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<sup>3</sup> Citing Transcontinental Gas Pipe Line Corporation, 96 FERC ¶ 61,246 (finding some of the facilities at issue to be non-jurisdictional gathering facilities and other facilities to be jurisdictional transmission facilities), order on reh'g, 97 FERC ¶ 61,298 (2001) (pending judicial review in DC Cir. Nos. 02-1006 and 02-1072).

<sup>4</sup> 67 Fed. Reg. 69,730 (Nov. 19, 2002).

8. Transco and Williams have failed to show good cause for not filing their motion to intervene until after the Commission issued its May 16, 2003, order addressing Jupiter's application. Further, Jupiter makes the same argument regarding the Commission's prior jurisdictional finding relating to Transco's downstream facilities, and, as discussed below, this order rejects that argument as a basis for granting rehearing of the May 16 order in this proceeding. Accordingly, we will deny Transco's and Williams Gas Processing's joint motion to intervene out of time and dismiss Williams Gas Processing's request for rehearing for lack of standing.

9. Jupiter's arguments on rehearing are addressed below.

### Discussion

10. As explained in the Commission's May 16 order in this proceeding, gas aggregation is complete once the gas reaches Unocal's Platform 39A; after that point, Jupiter's two pipelines move the gas to Tennessee's and Transco's systems without collecting any additional gas. Since there is no additional gas being collected downstream of Unocal's Platform 39A, the Commission found that this is the point where gathering ends and transmission begins.

11. Jupiter states that the Commission erred because it made a determination based only on the central aggregation criterion instead of considering all six physical factors in the Commission's primary function test and other non-physical factors. The Commission finds this argument to be without merit, as it also applied the primary function test's other physical criteria and non-physical criteria, including the nature of the prospective owner's business, which must be secondary to the physical factors, consistent with Sea Robin v. FERC.<sup>5</sup> While Jupiter emphasizes that the length, diameter and operating pressure of the pipeline facilities at issue are comparable to those of other facilities the Commission has found to be gathering facilities, the Commission found that these considerations were outweighed by other physical factors in this case.

12. In particular, the record shows that there are compression facilities at Unocal's Platform 39A that bring the gas from low-level well pressures up to line pressures. The compression facilities are not owned by Jupiter, but by Unocal. More importantly, however, the presence of these facilities that compress production volumes to

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<sup>5</sup> 127 F.3d 365 at 370 (5<sup>th</sup> Cir. 1997), reh'g denied, (5<sup>th</sup> Cir. Feb. 2, 1998), aff'd sub nom., ExxonMobil Gas Marketing Company v. FERC, 297 F.3 1071 (D.C. 1071 2002).

transmission pressures indicates that gathering ends at that point.<sup>6</sup> The Commission also gave weight to the fact that there are no wells or gathering lines connecting to any of the subject pipeline facilities.

13. Jupiter argues that its facilities are upstream of facilities owned by Transco that the Commission has found to be gathering facilities.<sup>7</sup> In the Transco proceeding, however, the record did not indicate that the facilities at issue were located downstream of Jupiter's transmission facilities. Further, the status of Transco's facilities at issue in that docket is not the subject of this proceeding. The determination made in that Transco proceeding cannot now be the basis for claiming that Jupiter's facilities should also be declared to be gathering.<sup>8</sup>

14. Jupiter further argues that the Commission misapplied the central aggregation criterion because, in other cases, the Commission has found that the central aggregation points were points to which gas had been gathered from numerous production platforms. Jupiter objects to the Commission's finding that a single production platform, such as Unocal's Platform 39A, can be the central point of aggregation because, Jupiter asserts, it makes it more likely that a facility will be found a jurisdictional transmission facility if it is owned by a small producer rather than an interstate pipeline company with an extensive system.

15. The Commission finds this argument to be unpersuasive. In reaching a jurisdictional determination regarding any specific facilities, the Commission's determination is based on its findings regarding the facilities' function, regardless of whether the facilities are owned by a large company or a small company. The physical configuration and characteristics of the subject facilities are indicative of their function. In this case, the factor bearing the greatest weight is the location of Jupiter's pipeline

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<sup>6</sup>See *Columbia Gas Transmission Corporation*, 99 FERC ¶ 61,086 (2002), in which the Commission found a compressor station located upstream of higher pressure transmission facilities and downstream of gathering and local production that is used to compress production volumes to transmission pressures to be gathering.

<sup>7</sup> *Transcontinental Gas Pipe Line Corporation*, 96 FERC ¶ 61,246, order on reh'g, 97 FERC ¶ 61,298 (2001) (pending judicial review in DC Cir. Nos. 02-1006 and 02-1072).

<sup>8</sup> If anything, the analysis should be reversed. The presence of upstream transmission facilities determines the classification of downstream facilities, not the opposite. See, e.g., *Questar Pipeline Company*, 84 FERC ¶61,076 at 61,313 (1998).

facilities downstream of Unocal's Platform 39A, which is both the last point at which gas is collected and the point at which gas is compressed to transmission pressures before entering Jupiter's two pipelines which transport the gas to shore.

16. Further, contrary to Jupiter's suggestion, the Commission has not applied its central aggregation criterion in a manner indicating that the demarcation between gathering and transmission is necessarily a point at which gas is collected from numerous production platforms. Since gas is often aggregated at a production platform from wells without any gas flowing to the platform from other production platforms, a single platform may, depending on other relevant factors, be a central aggregation point signifying the end of non-jurisdictional gathering. In any event, gas from numerous other production platforms *is* collected at Unocal's Platform 39A, the point which the Commission has determined to be the central aggregation point in this case. Jupiter acknowledges in a data response filed on September 22, 2003, that gas currently flows from 10 other production platforms to Platform 39A.

17. In view of the Commission's findings, as discussed above, Jupiter's request for rehearing is denied.

The Commission orders:

(A) Transco's and Williams Gas Processing's joint motion for late intervention is denied.

(B) Williams Gas Processing's request for rehearing is dismissed.

(C) Jupiter's request for rehearing is denied.

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

( S E A L )

Linda Mitry,  
Acting Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Jupiter Energy Corporation

Docket No. CP03-11-001

(Issued November 20, 2003)

Nora Mead BROWNELL, Commissioner *dissenting*:

1. I voted for the May 16 Order that determined that Jupiter Energy Corporation's (Jupiter) pipeline facilities were jurisdictional transmission facilities. However, upon further consideration of additional facts, I am persuaded that the Commission should grant rehearing.
2. Since the issuance of the May 16 Order, the Commission has held a conference on September 23, 2003 to explore whether it should reformulate the test for defining nonjurisdictional gathering in the shallow waters of the Outer Continental Shelf. See, Re-evaluating FERC's Policy on Gathering on the Outer Continental Shelf (Docket No. AD03-13-000). Further, the Commission was made aware that Jupiter's facilities are upstream of Facilities that the Commission has found to be gathering. See, Transcontinental Gas Pipe Line Corporation, 96 FERC ¶61,246, order on reh'g, 97 FERC ¶61,298 (2001) (pending judicial review in DC Cir. Nos. 02-1006 and 02-1072).
3. We lay out our analytical approach for determining whether a facility is performing primarily a transmission or gathering function in the May 16 Order. In short, we consider the physical and geographic characteristics of the facilities in question. We also have included consideration of nonphysical factors, such as intended purpose, location and operations of the facilities and the general business activity of the owner of the facility. For offshore facilities, we adopted an additional analytical element applicable to systems that contain a centralized aggregation point; gave less weight to the location of processing plants; and focused primarily on physical factors. Our May 16 Order relied almost entirely on the finding that Platform 39A was the central point of aggregation. Upon reconsideration, I believe that we failed to give adequate weight to factors other than the central point of aggregation.
4. Jupiter consists of a ten mile 10-inch line and a three mile 8-inch line that extend from Platform 39A to a sub-sea interconnection with Transcontinental Gas Pipe Line (Transco) and a shoreline interconnection with Tennessee Gas Transmission Company. Union Oil Company of California (Unical), Jupiter's parent, owns a series of gathering facilities that feed into Platform 39A and then into Jupiter. In the May 16 Order, we

stated that “the length, diameter and operating pressures of Jupiter’s pipeline facilities may not necessarily be inconsistent with a gathering function”. 103 FERC ¶61,184 at 61,713. The entire system of Jupiter consists of two short, small-diameter lines. Jupiter has no compression and is located upstream of any processing plants. These characteristics are all indicative of a gathering function.

5. The nonphysical factors include: (1) its parent company, Unical, is Jupiter’s only shipper; (2) neither Jupiter or Unical own any other jurisdictional facilities; (3) Unical’s business activity is gathering and production; and (4) Unical would integrate the subject facilities into its own gathering system. Although we acknowledge that, in Sea Robin v FERC, the court emphasized that nonphysical factors while relevant remain secondary to the physical factors, we stated “this is not a case where the physical factors are so ambiguous that we need to consider nonphysical factors”. 103 FERC ¶61,184 at 61,713.

6. Moreover, even the evidence on the central point of aggregation is mixed. The Commission has described the central point of aggregation as “a point where small lines carrying gas from various wells converge and deliver their collective volumes into a single large line for transportation on shore”. 95 FERC ¶61,396 at 62,479. See also, Sea Robin Pipeline Co., 87 FERC ¶61,384 at 62,431 (1999). The configuration of Jupiter is two short, small-diameter lines with no compression or processing. Sea Robin’s configuration was sixty six miles of 36-inch diameter pipeline with two 12,500 hp compressors. 87 FERC ¶61,384 at 62,430. Jupiter’s system simply does not fit with our description of the central point of aggregation. In fact, the characteristics of the Jupiter system are much more analogous to Transco’s Central Louisiana facilities that we determined to be gathering. See 96 FERC ¶61,246 at 61,966-7.

7. For the above stated reasons, I would grant rehearing.

Nora Mead Brownell  
Commissioner