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Proteus Oil Pipeline Co.
Order on Petition for Declaratory Order
102 FERC ¶ 61,333 (2003)

Proteus Oil Pipeline Company, L.L.C. (Proteus Company) filed a petition for a declaratory order, requesting authorization to act as a contract carrier, hold open seasons, enter into long-term transportation contracts reflecting contract carriage principles, give those contracts precedence in allocation capacity, and contract on a first-come, first-served basis for capacity that remained available after the close of the open season. The issue presented in this case was whether an oil pipeline subject to the anti-discrimination provisions of Section 5 of the Outer Continental Shelf Lands Act (OCSLA) may operate as a contract carrier, *i.e.* hold an open season for the purpose of entering into long-term contracts, give those contracts preference in allocating capacity, and contract on a first-come, first-served basis for remaining capacity. Specifically, Proteus sought assurances that it would not be required to allocate capacity on a common carrier, *pro rata* basis.

As the issue with regard to oil pipelines was one of first impression for the Commission, Proteus Company relied heavily on the Commission's prior interpretations of Section 5 of the OCSLA as it related to gas pipelines. Proteus Company stated that the Commission had previously held that "it [could] and should implement the nondiscriminatory access mandate in Section 5 of the OCSLA without generically imposing, by rule, a *pro rata* allocation scheme on all OCS pipelines," and it had the authority to permit contract carriage in implementing that nondiscriminatory access mandate. (Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Gas Pipelines on the Outer Continental Shelf, Order No. 509, FERC Stats. & Regs. [Regs. Preambles, 1986-1990] ¶ 30,842 (1988). Proteus Company also stated that in Bonito Pipe Line Co., 61 FERC ¶ 61,050 (1992), the Commission held that Order 509's analysis regarding the OCSLA's anti-discrimination provisions applies equally to oil pipelines and natural gas pipelines.

Proteus Company also relied on public policy arguments. It claimed that its proposal would benefit the public interest because it would allow it to raise sufficient funds to develop the deepwater Gulf of Mexico for oil production.

The Commission found that Proteus Company's proposal was supported by precedent; the Commission also found Proteus Company's public policy arguments compelling. The petition for declaratory order was granted.

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COMM-OPINION-ORDER, 102 FERC ¶61,333, Proteus Oil Pipeline Company, LLC, Docket No. OR03-3-000, (March 27, 2003)

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Proteus Oil Pipeline Company, LLC, Docket No. OR03-3-000

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[¶61,333]

Proteus Oil Pipeline Company, LLC, Docket No. OR03-3-000

Order on Petition for Declaratory Order

(Issued March 27, 2003)

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

1. On December 6, 2002, Proteus Oil Pipeline Company, LLC (Proteus Company) filed a petition for declaratory order. Proteus is planning to construct an oil pipeline system (Proteus System) to provide transportation from the deepwater Gulf of Mexico to a receiving facility on the Outer Continental Shelf (OCS). The issue presented is whether an oil pipeline subject to the anti-discrimination provisions of Section 5 of the Outer Continental Shelf Lands Act (OCSLA)[1] may operate as a contract carrier. Proteus Company requests authorization to function as a contract carrier, hold

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an open season, enter into long-term transportation contracts reflecting contract carriage principles, give those contracts precedence in allocating capacity, and contract on a first-come, first-served basis for capacity that remains available after the open season closes. For the reasons discussed below, the Commission grants Proteus Company's petition. This order is in the public interest because it will enable Proteus Company to provide open and nondiscriminatory access to its transportation system that will both permit and encourage optimal development of oil production in the deepwater Gulf of Mexico.

Factual Background

2. The Proteus System is owned by Proteus Company, which is comprised of Mardi Gras Transportation System Inc. (Mardi Gras) (a subsidiary of BP America, Inc.) (75%) and ExxonMobil Pipeline Company (25%).

3. The Proteus System is designed to transport oil from deepwater production facilities in the Mississippi Canyon and Atwater Valley areas of the deepwater Gulf of Mexico to a receiving facility at South Pass Block 89 (SP89). The Proteus System will commence at a sub-sea connection to the Thunder Horse floating production facility (Thunder Horse Facility), which facility will be located in the Mississippi Canyon area at a water depth in excess of 6,000 feet. From the Thunder Horse Facility the Proteus System's deepwater 24-inch diameter trunkline will extend for approximately 9 miles and then expand to a 28-inch diameter pipeline for the remaining distance of approximately 62 miles to a platform to be owned by Proteus Company located at SP89. The terminus of the Proteus System is at SP89, which will be in approximately 400 feet of water and will be designed with future expansion capabilities. At SP89 the Proteus System will connect to an oil pipeline system to be constructed and owned by Endymion Oil Pipeline Company, LLC. The Endymion Pipeline will transport oil from SP89 to LOOP LLC's storage terminal near Clovelly, Louisiana. It is anticipated to commence service in 2005 and will serve areas of the deepwater Gulf of Mexico that at this time have little or no available transportation capacity on existing oil pipelines.

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4. Initial production to be transported on the Proteus System is expected to come from the Thunder Horse field, which is scheduled to commence production in 2005 and is reported to be the largest producing field in the Gulf of Mexico. The Thunder Horse Facility will be the largest semi-submersible producing/drilling unit in the world. In addition to Thunder Horse, Proteus Company anticipates that other oil fields yet to be discovered or developed could utilize the Proteus System. Based on the large number of active leases, existing producing fields, and leases with Exploration Plans and Development Operations Coordination Documents filed with the Minerals Management Service (MMS), it appears that the Mississippi Canyon and Atwater Valley areas will be a prolific supply basin.

5. The Proteus System has been sized to serve not only the currently identified transportation requirements of the estimated proven reserves from the Thunder Horse field, but also future discoveries in the Mississippi Canyon and Atwater Valley areas of the deepwater Gulf of Mexico. Given these considerations, the Proteus System will be built to carry the maximum capacity that is technologically feasible with currently existing equipment. The Proteus System is designed to transport approximately 420,000 barrels of oil per day, and with the addition of pumps at SP89 the capacity can be increased to approximately 580,000 barrels of oil per day. The Proteus System wil be one of the largest-diameter pipelines for its water depth in the world.

6. Proteus Company will install two sub-sea access connection facilities on the Proteus System to allow future production facilities to connect to the Proteus System. One sub-sea access connection facility will be placed at a water depth of more than 5,000 feet, and the other sub-sea connection facility will be placed at a water depth of more than 4,000 feet. Without these sub-sea access connection facilities future access would be limited to the existing production facilities at the extremity of the Proteus System since hot tap techniques at these water depths have yet to be developed.

7. The Proteus System, the Thunder Horse production field, and the Thunder Horse Facility are among investments of more than $8 billion in the deepwater Gulf of Mexico being made by Mardi Gras, its producing affiliate, BP Exploration & Production, Inc., and their respective asset co- owners. The Proteus System alone is expected to cost in excess of $175 million.

8. An investment of this magnitude is the result of Proteus Company's affiliation with the Thunder Horse producers, which allowed it to secure commitments for the transportation of production from the Thunder Horse field for the life of that field. However, the Proteus System will need to attract producers of fields in addition to the Thunder Horse field to reach its full potential, and to encourage the Proteus Company investors and others to make investments in the deepwater Gulf of Mexico pipelines in the future. The designed incremental capacity in the early life of the Proteus System and the freed capacity as the Thunder Horse field declines will provide the Proteus System with the necessary transportation capacity to provide service to development projects in the Mississippi Canyon and Atwater Valley deepwater areas, as well as beyond.

Petition for Declaratory Order

Introduction

9. Proteus Company asks the Commission to authorize the Proteus System to function as a contract carrier, hold an open season, enter into long-term transportation contracts reflecting con

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tract carriage principles, give those contracts precedence in allocating capacity, and contract on a first-come, first-served basis for capacity that remains available after the open season closes. Proteus Company intends to hold a formal open season in which it would offer firm life of lease contracts for transportation service on a non-discriminatory basis, based on projected production profiles. The open season process for the Proteus System would be patterned on the open season process utilized by jurisdictional interstate natural gas pipelines. Capacity that remains available after the open season closes would be made available on a first-come, first-served basis. The capacity priorities on the Proteus System would be consistent with these contractual commitments.

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10. The long-term transportation contracts proposed by Proteus Company would provide that when a shipper under contract is faced with short- term upswings in production regarding dedicated acreage, the shipper would be able to secure transportation for those additional volumes at the contractual tariff rate, provided there is capacity available on the Proteus System --capacity that could be available either as a result of uncontracted long-term capacity or short-term production cutbacks from other shippers.

Jurisdictional and Procedural Issues

11. Proteus Company states that the Proteus System will transport oil from the Thunder Horse Facility to a receiving facility at SP89. Proteus Company states that the Proteus System's origin and destination points are in the OCS. Proteus Company states that the Commission has held that the OCS does not come within the ICA's jurisdictional language and, thus, the ICA "does not expressly cover pipelines transporting oil solely on or across the OCS."[2]

12. Proteus Company states that consideration of a petition for declaratory order is within the Commission's discretion.[3] Proteus Company states that Section 554(e) of the Administrative Procedure Act provides that an agency in its sound discretion may issue a declaratory order to terminate a controversy or remove uncertainty.[4] Proteus Company states that specifically with regard to the anti-discrimination provisions of the OCSLA, the federal courts characterized the Commission's granting of a petition for declaratory order in order to enforce Sections 1334(e) and 1334(f)(1)(A) as a "remedy" within the scope of Commission's discretionary power.[5]

13. Proteus Company states that Commission precedent supports use of the declaratory order mechanism for advance approval to confer certainty where uncertainty would otherwise persist with respect to oil pipelines to be constructed. Proteus Company states that the Commission has employed this regulatory tool in several similar cases involving the need for regulatory certainty for proposed construction of pipeline facilities and should do so here.[6]

Interpretation of Section 5 of the OCSLA

14. Proteus Company states that it filed its petition in order to negate any potential that the Proteus System might be required to allocate on a common-carrier, *pro rata* basis due to the nondiscrimination language of Section 5(e) of the OCSLA, 43 U.S.C. §1334(e), which requires transportation in such proportionate amounts as the Federal Energy Regulatory Commission may determine to be reasonable. Proteus Company states that slightly different language prohibiting discrimination appears in Section 5(f) of the OCSLA, 43 U.S.C. §1334(f)(1)(A), although it does not specifically refer to "proportionate" takings.

15. Proteus Company states that in Order No. 509[7] the Commission determined that it was not required to and would not require interstate gas pipelines to prorate capacity. Instead it would allow shippers with firm contracts to have precedence over shippers without firm contracts. Proteus Company states that the Commission held that: (1) "it can and should implement the nondiscriminatory access mandate in Section 5 of the OCSLA without generically imposing, by rule, a pro rata allocation scheme on all OCS pipelines," and (2) it has authority to permit contract carriage in implementing the nondiscriminatory access mandate of Section 5 of the OCSLA.[8]

16. Proteus states that it is the ICA --not the OCSLA --which imposes a common carrier obligation on oil pipelines and thus subjects them to prorationing. Since the ICA is not applicable in this instance, there is no legal requirement that a new oil pipeline should be less entitled to contract carriage than a new gas pipeline. Accordingly, the Commission's determination in Order No. 509 that

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pro rata allocation is not required and that contract carriage and capacity allocation based on contractual entitlements are permissible under the OCSLA applies equally to oil and gas pipelines subject to the OCSLA.

17. Proteus Company states that the Commission in *Bonito Pipe Line* stated, "there is nothing in the legislative

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history of the OCSLA that persuades us that the nondiscrimination provisions of that act were intended to apply to oil pipelines in a different fashion than they apply to natural gas pipelines."[9] The Commission in Bonito further stated that Order No. 509's analysis regarding the OCSLA's anti-discrimination provisions applies with equal force to OCS oil pipelines.[10]

Public Policy Arguments

18. Proteus Company states that investing in deepwater production facilities in the Mississippi Canyon and Atwater Valley deepwater Gulf of Mexico areas, and elsewhere, entails substantial risk, which discourages production and development projects. Proteus Company asserts that contract carriage can significantly reduce much of this risk, thus promoting deepwater development.

19. Proteus Company submits that its proposal for contract carriage meets the transportation security needs of both initial field developers and prospective subsequent field developers looking for transportation, thus encouraging development of production in the deepwater Gulf of Mexico. Due to its massive investment in the Proteus System, it is imperative to Proteus Company that the Mississippi Canyon and Atwater Valley areas be developed so that the Proteus System will be fully utilized. Accordingly, Proteus Company argues that the large investment in the Proteus System has sent the signal to producers that the Proteus System has every incentive to provide reliable transportation service.

20. Proteus Company contends that insecurity in the availability of transportation for a field's production amplifies the downside risk of an investment in deepwater production facilities and discourages investment. Proteus submits that contract carriage alleviates this risk by providing security of transportation for the life of the lease to field owners contracting with the Proteus System. In contrast, *pro rata* allocation would not provide security of transportation, since under *pro rata* allocation latecomers for a fully subscribed pipeline system have the potential to push existing shipper volumes off the pipeline. Accordingly, Proteus Company argues that the likely results of *pro rata* allocation will be that: (1) certain investments in development of the deepwater Gulf of Mexico will not be undertaken; and (2) common carriage will create incentives for wasteful overbuilding of transportation facilities as insurance against being pushed off the Proteus System due to prorationing.

21. Proteus Company states that the Proteus System will be built to the maximum size that is technologically feasible with currently existing equipment, thereby taking advantage of economies of scale in pipeline construction. Proteus Company points out that importantly, the Proteus System is being designed to provide for sub-sea connection facilities in order to allow future sources of production to connect to the Proteus System.

22. Proteus Company submits that firm contract carriage will encourage all shippers to take advantage of the economies of scale inherent in the Proteus System before shippers choose to build additional field-specific deepwater pipelines. Proteus Company contends that contract carriage ensures efficient utilization of the Proteus System and avoids wasteful duplication of facilities. Proteus Company states that maximum use of the Proteus System is also encouraged by the fact that the firm transportation contracts will provide flexibility for a shipper to secure shipment of additional volumes from dedicated acreage at the contractual tariff rate, when capacity is available.

23. Proteus Company submits that under the contract carriage proposal, until the Proteus System is full, the economy's needs are being met with the existing pipeline infrastructure. At the time the Proteus System begins to fill up, the contract carriage arrangement will send the signal that additional pipeline capacity needs to be built. Under the *pro rata* allocation, on the other hand, the signal to build additional pipelines gets sent too early (*e.g.*, due to the prospect of prorationing, producers construct pipelines to serve their isolated fields as insurance against being pushed off the Proteus System rather than utilize the existing and available Proteus System), or too late (*e.g.*, due to prorationing, producers that invested in oil field developments in reliance upon shipment on the Proteus System find their oil production shut out from transportation when latecomer shippers to the Proteus System bump such earlier producers' production off the pipeline), making the *pro rata* alternative for organizing deepwater pipeline systems a more costly one to the nation's economy.

24. Proteus Company states that contract carriage will provide Proteus Company with the assurance that the Proteus System will be fully utilized, thus furnishing Proteus Company with appropriate incentives to build and expand with both current and potential future volumes (including known developments and anticipated future

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developments) in mind. According to Proteus Company, building pipelines with prudent quantities of additional capacity, as Proteus Company plans to do, maximizes the use of the transporta

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tion system's resources, as the available capacity will force the company to compete for transportation contracts for newly developed fields (such as in Proteus Company's case, fields to be developed in the Mississippi Canyon and Atwater Valley areas).

25. Proteus Company argues that *pro rata* allocation would provide a latecomer shipper who seeks shipment on a pipeline that is fully subscribed with the opportunity to "free-ride" on the initial investment and risk-taking of earlier shippers who contracted to use the pipeline system. Proteus Company contends that access to an already-built common carriage system is an attractive option for a latecomer's transportation needs, as the latecomer knows that it can ship some, if not all, of its production by bumping production currently being shipped by earlier shippers.

26. Proteus Company argues that while this "bumping" option is attractive to a latecomer, it imposes costs and risks on shippers already utilizing a system like the Proteus System, thus discouraging development of the deepwater Gulf of Mexico. Given that the latecomer is the marginal buyer of transportation services, it is appropriate that the latecomer, not the earlier shippers, (1) bear the risk of a lack of transportation on the Proteus System should the Proteus System become fully subscribed and (2) consequently, bear the burden of coordinating the construction of a new pipeline system that will serve the transportation needs of the latecomer's field and other latecomers' fields that will require a new pipeline system if the Proteus System is fully subscribed.

Request for Expedited Action

27. As part of their planning for initial production when the Proteus System commences service in 2005 (as currently scheduled), Proteus Company and the shippers to be served by the Proteus System at start-up would like to have in place transportation agreements reflecting contract carriage principles and be confident that those agreements are mutually binding and enforceable. Proteus Company states that the uncertainty regarding the applicability of contract carriage makes this impossible. Moreover, in order for the Proteus System to be fully utilized, Proteus Company must obtain future transportation commitments from current and prospective producers in the applicable areas, who are at this time assessing: (1) whether they should pursue development of oil field production opportunities in the applicable deepwater Gulf of Mexico areas; (2) whether the Proteus System will be able to meet their requirements for transportation of production; and (3) whether they must construct their own isolated oil pipelines to serve their production fields. Accordingly, Proteus Company requests that the Commission issue an expedited decision on this petition no later than the end of March 2003.

Public Notice and Interventions

28. Public notice of the filing was issued on December 13, 2002. Interventions and protests were due by January 10, 2003. Pursuant to Rule 214 (18 C.F.R. §385.214 (2001)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or comments were filed.

Discussion

29. At the outset, the Commission finds that Proteus Company's petition is appropriately analyzed under the OCSLA rather than the ICA since the Commission has found that "[i]t is clear that the ICA does not expressly cover pipelines transporting oil solely on or across the OCS."[11]

30. Section 554(c) of the Administrative Procedure Act provides that an agency in its sound discretion may

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issue a declaratory order to terminate a controversy or remove uncertainty.[12] Rule 207 of the Commission's Rules of Practice and Procedure provides that a person must file a petition when seeking a declaratory order.[13] The rule does not include any requirement that a person have "standing" before filing a petition for a declaratory order. Thus, whether to consider providing declaratory relief under this provision is discretionary with the Commission.[14]

31. The Commission finds, in the exercise of its discretion, that, as a general matter, in order to provide definitive guidance for all interested parties, it would be appropriate to address the issues raised by Proteus Company in the context of a declaratory order proceeding. It is better to address these issues in advance of an actual tariff filing rather than to defer until the rate filing is made, when the decisionmaking process would be constrained by the deadlines inherent in the statutory filing procedures. The public interest is better served by a review of the issues presented before a filing to put the rates into effect. Further, because of the importance of developing oil production in the deepwater Gulf of Mexico to the nation's economy, and the magnitude of the financial commitments that will be made by the Proteus Company, the Commission finds that it is appropriate to exercise its discretion to provide declaratory relief in order to provide certainty to Proteus Company and all other interested parties.

32. Whether an oil pipeline subject to the anti- discrimination provisions of Section 5 of the OCSLA may operate as a contract carrier is an issue

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of first impression for the Commission. However, the Commission finds that an analysis of the relevant cases interpreting Section 5 of the OCSLA supports the relief requested by Proteus Company. Section 5(e) of the OCSLA gives the Commission certain responsibilities on the OCS by providing that every right-of-way on the OCS be granted:

[U]pon the express condition that oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas, produced from submerged lands or outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.

Further, Section 5(f) of the OCSLA states in part:

(f)(1) Except as provided in Paragraph (2) every permit, license, easement, right-of-way, or other grant of authority for the transportation by pipeline on or across the outer Continental Shelf of oil or gas shall require that the pipeline be operated in accordance with the following competitive principals:

(A) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers.

33. In Order No. 509, which interpreted Section 5 of the OCSLA and issued regulations with respect to natural gas pipelines, the Commission found that *pro rata* allocation was not required for natural gas pipelines in the OCS. The order stated:

[T]he Commission has concluded that it can and should implement the nondiscriminatory access mandate in Section 5 of the OCSLA without generically imposing, by rule, a *pro rata* allocation scheme on all OCS pipelines. We believe that it may well be possible to remedy the problems of access on the OCS through less sweeping regulatory access, as discussed below. If, however, access problems on the OCS continue to exist as OCS pipelines implement the requirements of this rule, the Commission will not hesitate to consider *pro rata* allocation of capacity on a case-specific basis, taking into account the specific factual context in which such problems arise.[15]

34. In Order No. 509, the Commission recognized that the language of Section 5(f) was different than that in Section 5(e). The Commission stated that it could not implement Section 5 of the OCSLA as if the adoption of the "open and nondiscriminatory access" language in Section (f) added nothing to the general nondiscrimination provisions of Section 5(e). The Commission found that the open-access requirement of Section 5(f) was satisfied by the Commission issuing blanket certificates to OCS gas pipelines that contained a nondiscriminatory access

provision that was the same as the condition imposed on onshore pipelines through Order Nos. 436 and 500. The order also recognized that Section 5(f) also did not require *pro rata* allocation. The Commission cited the Attorney General's comments which stated:

While the FERC's authority to determine what "proportionate amounts" of gas must be transported is broad enough to allow the FERC to require proration, it does not necessarily mean that proration is required by Section 5(e) in all cases. To the contrary, the debate on Section 5(f), which was added in 1978, indicates that both proration and first-come, first-served were considered to be possible means of allocation under the statute. *See, e.g.*, 123 Cong. Rec. S.23, 257 (July 15, 1977) (statements of Sen. McClure and Sen. Johnston). The Department thus believes the FERC's authority is broad enough to require proration of capacity on OCS pipelines, but such allocation system is not compelled by the statute.[16]

This interpretation of Section 5 of the OCSLA applies to oil pipelines in the OCS. In *Bonito Pipe Line Company*, 61 FERC ¶61,050, at p. 61,221 (1992) the Commission determined "that there is nothing in the legislative history of the OCSLA that persuades us that the nondiscrimination provisions of that act were intended to apply to oil pipelines in a different fashion than they apply to natural gas pipelines."

35. The Commission finds that Proteus Company's contract carriage proposal is supported by applicable legal precedent. In addition, the Commission finds that granting Proteus Company's petition is appropriate for a number of public policy reasons. As Proteus points out, the deepwater Gulf of Mexico is potentially a significant source of oil production. However, because of the technology required to develop production and pipelines in this location, significant investments are required. Producers and pipelines are unlikely to make financial commitments without adequate assurance that their investments can be recouped. In the Commission's view, contract carriage will provide this assurance. Proteus Company will be guaranteed that certain supplies of oil will be shipped on its pipeline and producers will have the security of knowing that they have an outlet for their production. The Commission further believes that Proteus Company's contract carriage proposal along with its intention to build its pipeline up to the capacity technologically feasible to in order to accommodate future production will send the appropriate economic signals to encourage development in the deepwater Gulf of Mexico.

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36. The Commission's issuance of a declaratory order in this proceeding is based on the facts and circumstances presented by the petition. If any of the facts supporting this petition were to change significantly, Proteus Company should make a filing with the Commission to determine whether the ruling here would still be applicable. Moreover, the issuance of a declaratory order here does not relieve the Commission of its responsibility under Section 5 of the OCSLA to investigate claims of discriminatory behavior made in a future complaint. In the event the Commission found that Proteus Company was engaging in discriminatory conduct in the future, the Commission would have the authority under Section 5 of the OCSLA and Order No.509 to impose the appropriate remedies.

The Commission orders:

Proteus Company's petition for declaratory order is granted, as discussed in the body of this order.

[1] 43 U.S.C. §1334(e)-(f) (2002).

[2] *Citing, Bonito Pipe Line Co.*, 61 FERC ¶61,050, at p. 61,221 (1992); *Oxy Pipeline, Inc.*, 61 FERC ¶61,051, at pp. 61,227-28 (1992). *See also Ultramar, Inc. v. Gaviota Terminal Co.*, 80 FERC ¶61,201, at p. 61,810 (1997).

[3] *Citing, Express Pipeline Partnership*, 76 FERC ¶61,245, at p. 62,253 (1996); *Phillips Petroleum Co. and Marathon Oil Co.*, 58 FERC ¶61,290, at p. 61,932 (1992).

[4] *Citing, Express Pipeline Partnership*, 76 FERC at p. 62,253 (1996).

[5] *Citing, Chevron U.S.A., Inc. v. FERC*, 193 F. Supp. 2d 54, 72 (D.D.C. 2002); *Shell Oil Co. v. FERC*, 47 F.3d 1186, 1200 (D.C. Cir. 1995); *ICC v. American Trucking Assoc., Inc.*, 467 U.S. 354 (1984).

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[6] *Citing Express Pipeline Partnership*, 76 FERC ¶61,245 (1996), *order on reh'g*, 77 FERC ¶61,188 (1996); *Colonial Pipeline Co.*, 89 FERC ¶61,095 (1999); *Plantation Pipeline Co.*, 98 FERC ¶61,219 (2002).

[7] *Citing Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Gas Pipelines on the Outer Continental Shelf, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000* ¶30,842 (December 9, 1998).

[8] *Citing* Order No. 509 at pp. 31,272-3 and 31,279.

[9] *Citing Bonito Pipe Line Co.*, 61 FERC ¶61,050, at p. 61,221 (1992).

[10] *Id.* at pp. 61,220-21.

[11] *Bonito Pipe Line Company*, 61 FERC ¶61,050, at p. 61,221 (1992).

[12] 5 U.S.C. §554(c) (1988).

[13] 18 C.F.R. §385.207 (2002)

[14] See, *e.g.*, *Phillips Petroleum Company and Marathon Oil Company*, 58 FERC ¶61,290 (1992); and *Longhorn Partners Pipeline*, 73 FERC ¶61,355 (1995).

[15] Order No. 509 at p. 31,273.

[16] Order No. 509 at p. 31,282.

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