

167 FERC ¶ 61,207  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

Shell Pipeline Company LP and  
Enbridge Offshore Facilities, LLC

Docket No. CP19-139-000

DECLARATORY ORDER

(Issued June 5, 2019)

1. On April 23, 2019, Shell Pipeline Company LP (Shell Pipeline) jointly with Enbridge Offshore Facilities, LLC (Enbridge Offshore) filed a petition<sup>1</sup> requesting the Commission declare that a planned and an existing pipeline will be used primarily to produce or gather natural gas, and thus will not be subject to the Commission's jurisdiction under the Natural Gas Act (NGA).<sup>2</sup> For the reasons discussed below, the Commission grants the parties' unopposed petition.

**I. Background**

2. Shell Pipeline is a common carrier oil pipeline company transporting crude oil and petroleum products, primarily in the Gulf of Mexico and Louisiana.

3. Enbridge Offshore owns and operates gas and oil gathering facilities in the Gulf of Mexico and Louisiana. It does not own or operate interstate or intrastate gas transmission pipelines. Enbridge Offshore has an affiliate relationship with Mississippi Canyon Gas

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<sup>1</sup> The Shell Pipeline and Enbridge Offshore *Petition for a Declaratory Order (Petition)* was submitted pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207 (2018).

<sup>2</sup> 15 U.S.C. §§ 717-717z (2012). NGA section 1(b) specifies that the Commission's jurisdiction "shall not apply" to "the production or gathering of natural gas."

Pipeline, LLC, which owns the Mississippi Canyon System, and with Enbridge Offshore (Gas Gathering) LLC, which operates the Mississippi Canyon System.<sup>3</sup>

4. The jurisdictional Mississippi Canyon System consists of a 30-inch-diameter, 45-mile-long pipeline that extends from the onshore Venice Processing Plant in Plaquemines Parish, Louisiana, to an offshore platform in West Delta Block 143.<sup>4</sup> From the West Delta 143 Platform, the 16-inch-diameter Olympus Pipeline extends southwest to the Olympus Platform.<sup>5</sup> Petitioners assert the Olympus Pipeline and Platform are nonjurisdictional gas gathering facilities.

5. The undeveloped Vito Field, located seaward of the Olympus Platform, is expected to produce gas in association with oil. Petitioners plan to construct the Vito Platform and the 10-inch-diameter, 17-mile-long Vito Pipeline, which will extend from the Vito Platform to an interconnection along the existing Olympus Pipeline. When these facilities go into service, gas is expected to flow from the Vito Platform, through the Vito Pipeline, to the Olympus Pipeline, to the West Delta 143 Platform – a distance of approximately 34 miles – and from there be transported to shore via the Mississippi Canyon System pipeline.

6. Shell Pipeline and Enbridge Offshore anticipate there will be three main phases in the development of the Vito Field. The first phase, depletion, is expected to last six months to three years, during which oil production will be self-sustaining, i.e., all gas produced in association with oil will flow from the Vito Platform north to shore. Thereafter, petitioners plan to inject gas into wells to sustain oil production. The second phase, gas lift assist, is expected to last three to five years, during which gas will be injected into wells as needed, particularly for well start-ups. During the final

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<sup>3</sup> Enbridge Offshore, Mississippi Canyon Gas Pipeline, LLC, and Enbridge Offshore (Gas Gathering) LLC are subsidiaries of Enbridge, Inc.

<sup>4</sup> In 1996, in response to a request by Shell Pipeline that the Commission declare that its planned Mississippi Canyon Gathering System would be nonjurisdictional, the Commission found facilities on and upstream of the West Delta 143 Platform would be nonjurisdictional gathering facilities, and the pipeline from that platform to the Venice Processing Plant (now known as the Mississippi Canyon System) would be a jurisdictional interstate pipeline. *Shell Gas Pipeline Company*, 74 FERC ¶ 61,219 (1996), *reh'g denied*, 78 FERC ¶ 61,192 (1997).

<sup>5</sup> Shell Offshore Inc. and BP Exploration & Production Inc. jointly own the Olympus Pipeline, which is operated by Shell Pipeline. Shell Offshore Inc. and Shell Pipeline are subsidiaries of Royal Dutch Shell plc.

phase, which will last until the Vito Field is exhausted, oil production will be dependent on gas lift.

7. Petitioners explain that at the end of the first phase, the Vito Pipeline will be used to flow gas bidirectionally, whereby gas flowing northwest from the Olympus Platform through the Olympus Pipeline will be diverted as needed into the Vito Pipeline and carried south, i.e., seaward, to the Vito Platform. Petitioners further explain that every three to five years the Olympus Platform is shut in for turnarounds, a process that takes 30 to 45 days. During these shut-ins no gas is shipped from the Olympus Platform. Petitioners state that in the second and third phases of the development of the Vito Field, when gas injections will be needed for oil production, oil production could not continue for more than a few days without an ongoing supply of gas.

8. During periods when the Olympus Platform is shut in for maintenance (or due to an emergency), and is thus not delivering gas to the Olympus Pipeline, petitioners intend to obtain alternative gas volumes at the West Delta 143 Platform. These alternative volumes will flow seaward from the Mississippi Canyon System to the Vito Platform, being transported from the West Delta 143 Platform on the Olympus Pipeline to the interconnect with the Vito Pipeline, which will carry the gas to the Vito Platform. Petitioners aver that all gas transported from the Mississippi Canyon System to the Vito Platform will be used to enhance hydrocarbon production and operate the platform.

## **II. Requested Declarations**

9. Shell Pipeline and Enbridge Offshore ask the Commission to declare that the Vito and Olympus Pipelines will be engaged primarily in production or gathering, and thereby exempt from the Commission's NGA jurisdiction.

## **III. Notice**

10. Notice of the Shell Pipeline and Enbridge Offshore petition was published in the *Federal Register* on April 29, 2019, with interventions and protests due on or before May 14, 2019.<sup>6</sup> No motions to intervene, comments, or protests were filed.

## **IV. Commission Response**

11. The NGA provides the Commission with jurisdiction over the transportation and sale for resale of gas in interstate commerce. However, NGA section 1(b) exempts from the Commission's NGA jurisdiction facilities used to produce or gather gas.

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<sup>6</sup> 84 Fed. Reg. 18,018.

12. Because the NGA does not define production or gathering, to determine the primary function of an existing or planned facility, we apply the criteria articulated in *Farmland Industries, Inc.*,<sup>7</sup> which describe several physical and geographic factors to be considered. In terms of these factors, the Olympus and Vito Pipelines are similar to other offshore nonjurisdictional pipelines. We may also consider the purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and Natural Gas Policy Act (NGPA).<sup>8</sup> No single factor is deemed to be determinative and not all factors apply in all situations. Given that operational differences can cause offshore facilities to be larger and longer than those onshore, we modify the primary function test when applied to facilities located offshore,<sup>9</sup> and we presume facilities offshore are engaged primarily in production or gathering if they are located in deep water of 200 meters (656 feet) or more.<sup>10</sup>

13. In a prior assessment of facilities that Shell Pipeline proposed to construct in the Mississippi Canyon Area, we determined that its 14-inch-diameter, 45-mile-long Mars Prospect Line, and its 12-inch-diameter, 68-mile-long Mensa Prospect Line – both of which would bring gas from deep water production fields to the West Delta 143 Platform – would be production or gathering facilities.<sup>11</sup> In reaching this determination, we found

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<sup>7</sup> 23 FERC ¶ 61,063 (1983).

<sup>8</sup> 15 U.S.C. §§ 3301-3432 (2012).

<sup>9</sup> For offshore facilities we adopt an additional factor for systems with a centralized aggregation point; adjust the weight afforded the ‘behind-the-plant’ criterion so the location of processing plants is not necessarily determinative and can be outweighed by other factors; and focus primarily on physical factors. *See Amerada Hess Corporation*, 52 FERC ¶ 61,268 (1990) and *Sea Robin Pipeline Company*, 71 FERC ¶ 61,351 (1995), *order on reh'g*, 75 FERC ¶ 61,332 (1996), *remanded sub nom. Sea Robin v. FERC*, 127 F. 3d 365 (5th Cir. 1997), *reh'g denied* (February 2, 1998), *order on remand*, 87 FERC ¶ 61,384 (1999), *order denying reh'g*, 92 FERC ¶ 61,072 (2000), *order denying stay*, 92 FERC ¶ 61,217 (2000).

<sup>10</sup> *See Gas Pipeline Facilities and Services on the Outer Continental Shelf – Issues Related to the Commission’s Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act*, 74 FERC ¶ 61,222, at 61,756 (1996), adding as a factor to the primary function test a presumption that facilities “designed to collect gas produced in water depths of 200 meters or greater ... qualify as gathering facilities up to the point or points of potential connection with the interstate pipeline grid.”

<sup>11</sup> *See* note 4.

“there is little point in attempting to distinguish between new projects of this kind based on their physical features” because “[s]uch deep water projects perform essentially the same function and they are all primarily engaged in production and gathering.”<sup>12</sup> We concluded “that the better approach is to consider all such facilities as production and gathering facilities up to the point where they duplicate or are in proximity to established transmission facilities.”<sup>13</sup>

14. The existing Olympus and the planned Vito Pipelines, like the previously reviewed Mars and Mensa Prospect Lines, are located in deep water seaward of established transmission facilities and are similar in size. In view of this, following our approach with respect to Mars and Mensa, we presume such facilities qualify as production or gathering and find no cause to undertake a detailed review of their physical features. In terms of non-physical features, the Olympus, Vito, Mars, and Mensa facilities (1) serve the same purpose of bringing gas from deep water production fields to the West Delta 143 Platform, which is the nearest point of interconnection with the interstate grid, that being the Mississippi Canyon System pipeline; (2) are owned by companies that produce and gather gas (and oil); and (3) can be classified as nonjurisdictional consistent with the objectives of the NGA and NGPA. Accordingly, we find the Olympus and Vito Pipelines will be providing production or gathering services – at least during the first phase of the Vito Field’s development.

15. However, the Olympus and Vito Pipelines will operate differently from the Mars and Mensa Prospect Lines during the second and third phases of the Vito Field’s development, in that gas will not only flow from deep water wells to the West Delta 143 Platform, but will also flow from that platform through the Olympus and Vito Pipelines back out to the Vito Platform. Petitioners seek assurance that this bidirectional flow of gas will not cause the Commission to view the Olympus and Vito Pipelines as transporting gas in interstate commerce.

16. In a previous proceeding, Enbridge Offshore proposed to flow gas bidirectionally between an offshore production field and onshore interstate facilities.<sup>14</sup> We deemed this previous proceeding to be a case of first impression, and found that because “the primary function test assumes the subject pipeline facilities will be used to transport gas *from* a production area to the interstate pipeline system,” the “test’s criteria are not useful in determining” the primary function of a pipeline transporting gas from interstate facilities

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<sup>12</sup> 74 FERC at 61,734.

<sup>13</sup> *Id.*, referencing the contemporaneously issued statement of policy cited in note 10.

<sup>14</sup> *Enbridge Offshore Facilities, LLC*, 150 FERC ¶ 61,103 (2015).

to a production field.<sup>15</sup> We noted that in considering operations onshore, we had not required certificate authorization for pipelines receiving gas in interstate commerce and transporting it to production sites for use in enhanced oil recovery operations.<sup>16</sup> Since Enbridge Offshore was proposing to do the same, albeit offshore rather than on, we reached the same result, concluding that the pipeline it intended to use to move gas from an interstate facility to a production field “would not be engaged in jurisdictional transportation of gas in interstate commerce” and would “therefore [be] exempt from certification requirements and the Commission’s jurisdiction under section 7 of the NGA.”<sup>17</sup>

17. Petitioners comment that here, unlike *Enbridge Offshore*, the “movement of gas” from the jurisdictional Mississippi Canyon System pipeline to the Vito Field “will only happen on a contingency basis” when the Olympus Platform is shut in.<sup>18</sup> Whether gas flows consistently or intermittently is immaterial; our determination here rests on the fact that, as stated in *Enbridge Offshore*, “the only potential offshore use for the gas” transported from the interstate system to the production field is for “production activities and powering platform operations.”<sup>19</sup> Accordingly, we find that when the Olympus and Vito Pipelines are transporting gas which will be used to extract hydrocarbons, the pipelines are being used for production or gathering, and are thus exempt from the Commission’s jurisdiction under NGA section 1(b).

## V. Conclusion

18. For the reasons discussed above, we find the Olympus and Vito Pipelines will be engaged in production or gathering when transporting gas (1) from the Vito Platform to the West Delta 143 Platform; (2) from the Olympus Platform to the Vito Platform; and (3) from the Mississippi Canyon System to the Vito Platform to enhance production.

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<sup>15</sup> *Id.* at P 12. This included the primary function test’s presumption that facilities collecting gas from deep water wells are engaged in gathering.

<sup>16</sup> *Id.* at P 14, citing *East Cheyenne Gas Storage, LLC*, 132 FERC ¶ 61,097 (2010) and *Golden Gas Service Company*, 126 FERC ¶ 61,094 (2009).

<sup>17</sup> *Id.* at P 21.

<sup>18</sup> *Petition* at p. 10.

<sup>19</sup> *Id.* at 13. In this earlier proceeding, Enbridge Offshore planned to take processed gas from the onshore Venice Processing Plant to an offshore Mississippi Canyon production site; in the instant proceeding, petitioners plan to take unprocessed gas from an offshore interconnection with a jurisdictional pipeline to an offshore Mississippi Canyon production site.

Given that NGA section 1(b) states that the provisions of the statute “shall not apply” to “the production or gathering of natural gas,” we declare the Olympus and Vito Pipelines, if operated as described in the *Petition*, will not be subject to the Commission’s jurisdiction.

The Commission orders:

The Shell Pipeline and Enbridge Offshore petition for a declaratory order is granted.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.