To the extent that the reconstructed notes below do not reasonably portray the oral comments of the individuals associated with those comments, the individual's or represented entities' written comments submitted in response to the Federal Register notice announcing this workshop shall prevail as to each person's/entity's position.

SUMMARY OF COMMENTS
OCSLA Policy Workshop
Washington, D.C.—May 11, 2004

Panel Members: **George Triebsch, Ken Vogel, Sarah Inderbitzen, Martin Grieshaber, Veronica Larvie, Bob Mense**
Opening Remarks: **George Triebsch**
Note Taker: **Scott Ellis**

Commentators:

Jay Costan
Producer Coalition[1]

- Concerning rights-of-way, what do the Outer Continental Shelf Lands Act (OCSLA) statutes intend to accomplish? . . . The 1978 OCSLA Amendments included section 5(f) to strengthen existing section 5(e). Because of the non-redundant infrastructure of the offshore environment, natural monopolies exist. Thus, Congress intended that the statute provide the authority to avoid bottleneck monopolies for shippers seeking to use the available transportation facilities. Congress also intended to:

    · Maximize development of OCS resources.

    · Avoid economic distortion and environmental harm resulting from multiple pipelines.

    · Provide a competitive economic climate for OCS resource development.

- Two concepts are key to understanding Congress' intent in granting right-of-way interests under OCSLA. One concept is the open physical access to transportation facilities on reasonable economic terms. The other concept is the non-discriminatory access to transportation facilities. By non-discriminatory access, that means shippers must be treated the same whenever they are similarly situated (entities possess the same economic leverage). Non-discriminatory access provides protection against the division of markets for owner and non-owner shippers.

- A light-handed regulatory regime, similar to the Federal Energy Regulatory Commission's (FERC) approach when it implemented Orders 639 and 639A, is the minimum necessary to ensure the fulfillment of open and non-discriminatory access to transportation facilities on the OCS.

[1] Devon Energy Corp., Dominion Exploration & Production, Inc., Forest Oil Corp., The Houston Exploration Co., Newfield Exploration Co., Spinnaker Exploration, and Total E & P, Inc.

- One desirable component of FERC's light-handed approach is transparency. The reporting regimen adopted by FERC is a reasonable regulatory means of ensuring the transparency of service provider's treatment of shippers.

- Another desirable component of FERC's regulatory approach is enforcement. The complaint procedure FERC implemented provides the teeth necessary to compliment the reporting regimen. A complaint procedure without a reporting regimen is meaningless and vice versa.

- Similarly, transparency and enforcement are key to having a light-handed program.

• Under OCSLA, a reporting requirement may cover both oil and gas.

- FERC needs to control gathering exemptions that may be invoked under the Natural Gas Act (NGA).

- With regard to the Bonito Pipeline decision, the FERC made a similar decision with respect to oil. Many oil pipelines are not covered under the Interstate commerce Act (ICA).

- The scope of jurisdiction under OCSLA is meant to extend from the wellhead to shore and include all production handing facilities.

- Reporting must include prices and economic terms, be updated quarterly, and provide full public transparency. The FERC did not provide full public disclosure and the Producer Coalition views this as a flaw in FERC's orders.

- It is important to enforce reporting requirements. We would consider two exemptions to the reporting requirement: facilities regulated under the NGA and oil pipelines under ICA jurisdiction.(FERC covers these)

• A formal complaint procedure is necessary to complement the reporting requirements.

- Service providers need to know that shippers can resort to a complaint procedure in lieu of mutual resolution.

- The formal complaint procedure would complement alternative dispute resolution or other informal mediation procedures.

- FERC tried to implement this type of complaint resolution procedure as part of Orders 639 and 639A.

- Another useful tool is the Hotline. We recommend following the FERC model.

- In order to implement a complaint procedure the OCSLA does not require a demonstration of need. If no information is reported, we don't know if a violation has occurred. Anecdotal evidence exists to show that violations have occurred; one such case is the North Padre Island (NPI) spindown. The NPI situation involved two issues: the rates were so high so as to deny economic access (8¢ new rate versus a 1.9¢ cost base rate) and discrimination with an increase in the overall rate (to a rate in excess of 20¢).

- The NPI situation should be studied as a model.

The commentator then responded to the panel's following questions:

- What is the citation for the North Padre Island case?

    - Shell Oil Co. v. FERC, 103 FERC ¶ 61,177.

- Has FERC looked at any other cases similar to the NPI situation?

    - Yes, we will discuss those in our written comments.

- Have any other cases occurred that are not OCS-related, or in general?

    - There is selective discounting that occurs under the NGA. There may be no specific justification for the discount, just a rational basis.

- When speaking of rates and discounting, is there any other case law in this regard?

    - Not related to discrimination per se. There is a large difference in the terms of the services provided. Thus, access is implicated through the rates because rates are so high so as to deny economic access.

- In regard to NPI and the lack of open access issue, was there a required dedication of reserves to a fully-depreciated pipeline?

    - Yes, Williams Field Services violated OCSLA. Yes, it required a dedication, and that is when Shell decided to shut-in their production due to unreasonable economic access.

Tom White
Vision Resources / Walter Oil & Gas

- We market Walter Oil and Gas production. We operate more than 90 facilities in the Gulf of Mexico (GOM). We also purchase third-party oil and sell it. We market 25,000 BOPD.

- Our focus is on oil pipelines, and we wanted to emphasize that this is not just a gas gathering and transportation issue.
- There are two principle issues that I want to address: the first is the non-discrimination issue and open access, and the second is tariff rates.

- The first issue has two sub-issues: one, production quality, and two, pipeline ownership– common carrier v. proprietary pipelines.

    · I don't believe there is open and non-discriminatory access relating to oil on the OCS.

    · One of our main concerns is the deep water GOM where most of the oil discovered is lower gravity and sour in nature. In fact, this is the current trend for the entire GOM.

    · Oil production quality varies from 40 degrees API gravity downward. When you get to 32 degrees API, you are entering the area where sulfur becomes a problem. Oil with sulfur content of 0.5% or higher is considered sour.

    · Due to significant quality differences (gravity and sulfur, that is whether oil is sweet (less than .5%) or sour), prices for oil can result in substantial differences of between $8-9 per barrel.

    · Where large differences between API gravities exist, a pipeline company may not allow low-gravity production to be transported on their pipeline. Similarly, a 0.5% sulfur content could prevent a shipper form using a pipeline.

    · In one instance, our low-gravity oil production has been shut-in for over 18 months because we were denied access to the pipeline because of the quality differential.

    · In another instance, an inequitable situation is occurring because a shipper commingles sour oil into a pipeline with our sweet oil, thereby reducing the value of our production. Because the sweet oil becomes sour from the commingling, the producer does not get a fair return for his sweet production.

    · This situation may also become compounded where onshore pipelines and refineries are unwilling to accept the commingled quality production.

    · It is not economically feasible to batch and transport different qualities of oil because sufficient storage capacity does not exist along the transportation route won't support this activity.

    · Shippers using pipelines operated at less than full capacity are often subject to rate increases.

- Vision's solution would be for the jurisdictional authority to require all pipelines to accept all oil. At the same time, the pipelines would be required to implement quality banks that require adjustments for oil gravity and sulfur content.

- Another means of mitigating the problem is to make offending producers, whose poor quality oil causes onshore pipelines to reject commingled production, contribute to a capital account to otherwise dispose of that production.

- In regard to open access, all pipelines should be required to act as common carriers.

- Operation as a common carrier provides transparency where operation of a pipeline on a proprietary basis lacks transparency.

- Whether it is feasible to mandate that all pipelines operate as common carriers is an unresolved issue.

- The second major issue is that the only oil pipelines under jurisdictional authority are those with direct transit across the OCS that also cross a State boundary. Too many oil lines go unregulated in terms of rates.

    - Changes in rates are "at will," and are unrelated to changes in direct pipeline costs.

    - Vision is not proposing that MMS necessarily get into these issues, but FERC is a non-participant and regulation of rates is non-existent.

    - There is a need for independent oversight to establish standards. For FERC to have that authority, would probably require legislation. In any event, someone needs to do it.

    - The impact due to unregulated rates results in deferred drilling by independents and deferred workover activity on existing wells. The uncertainty with rate increases needs to be eliminated.

    - The solution is for a jurisdictional agency to establish financial standards for reasonable tariff rates. Any attempt to self-regulate simply will not work.

The commentator then responded to the panel's following questions:

- From your perspective, what effect would a FERC-style reporting requirement have on independents, the net result?

    - I am not sure that it is beneficial to independents, however, we need someone to adjudicate issues.

- Is it appropriate for shippers to provide information?

- Perhaps, it is good way to accomplish information reporting, however, not all shippers pay the same rates. Also, posted rates are not used consistently, particularly within proprietary pipelines. Who is to say what rate is OK?

- Are you saying that the adjustments to value associated with oil quality as they relate to transportation should be part of the issue of open access as opposed to costs of conditioning the oil for market?

  - All producers must place oil in an acceptable condition for the pipelines. All pipelines require a particular quality range in order for the production to be marketed. All pipelines have historically distinguished between sweet and sour crude. The amount of sweet crude from the OCS continues to decline, however, pipelines have not changed the quality parameters for shipment.

  - Standards are needed for pipelines where substantially different quality crudes are combined. The standards would include establishment of a quality bank that would fairly treat all shippers. I don't know why this is not already a universal requirement.

- Is the reason that the pipeline will not transport oil with a 0.5% sulfur content not a safety issue, but rather because the refinery at the end of the pipeline will not accept the crude with a 0.5% sulfur content?

  - Yes, it will not take low-quality sour crude. As a pipeline company, you need to look at the market being served. New OCS production is predominately sour production. Refiners may have to find other sources of oil, such as a tanker of foreign crude.

  - Segregating sweet from sour crudes is costly and would result in an increase in the cost of transportation. Where these costs are incurred, we must ask whether the refinery must compensate the shippers. But, the answer is that the costs of segregating oil cannot be absorbed by the refining sector.

- Do you have any examples of cases that involved the quality issue that have been taken to court?

  - To my knowledge, there are no court cases. However, FERC addressed the quality issue in the Shell Bonito Pipeline case. There was a FERC ruling involving Chevron Pipeline and intervenors. At issue, was whether to force the pipeline to receive sour oil. Whether FERC has the authority to make such a demand is unknown. Regardless FERC issued a decision and I don't know if FERC really understands the issue. Due to uncertainty, there is need for clarification in this area.

Thomas Eastment

Indicated Producers[2]

- MMS must recognize the limitations of the OCSLA statutory authority contained in sections 5(e) and (f).
    - The activities over which the Department has authority is the transportation of offshore resources by pipeline.
    - Production and exploration activities take place under the Federal oil and gas lease.
    - By their nature, the contractual arrangements for oil and gas production activities are complex and constantly changing.
    - None of these arrangements implicate the transportation of the production to shore.
- Regarding pipeline transportation of production, the Department must balance the burdens with the problems being addressed.
    - The Department would not be served by the burdens of an oppressive reporting regime.
    - The Department should use a two-tier, complaint-based process.
    - The first tier of the process would be a hotline.
    - If the first tier should fail, then a formal complaint process should be used to resolve the issue.
    - An example is the process used in the North Padre Island situation that included both discovery and a hearing.
    - The OCSLA does not suggest that a reporting mechanism is required. If one is employed, production-related facilities should be exempt.
    - If reporting is required of all production facility operators, the burden would be onerous. A quarterly reporting requirement would require significant resources due to the constantly changing conditions of agreements at the platform level.
    - There are simply no examples of production-related problems that would justify including these facilities. Production-related facilities and agreements are effectively self-policed.
    - Formerly, FERC reached beyond the statutory authority to include some production-related activities.

[2] BP, ChevronTexaco, Exxon Mobil, and Shell Offshore.

- The MMS is better informed than FERC was as to the differentiation between the transportation- and production-related aspects of OCS oil and gas production.

- Problems will arise under an oppressive regulatory reporting and formal complaint regime rather than under the two-tier process.

The commentator then responded to the panel's following questions:

- Will you be providing written comments by June 11?
  - Yes.

- What is your view of the quality-bank issue and will your written comments respond to this issue?

  - My comments focus on gas. This is a gas issue—an aftermath of the spindown problem. Thus, the focus should be on gas. I have no comment at this time on the oil quality-bank issue.

- Disputes between shippers and pipelines can be characterized three ways, as cases where: 1) there is complete transparency without discrimination, 2) there are problems that are settled commercially, or 3) there is extreme discrimination resulting in production shut-in. Is the middle category (when the dispute is not so onerous to cause a shipper to shut-in) a place where MMS should look for discrimination, referencing Ken Vogel's repeating Judge Ginsburg's characterization (during oral argument in Williams v. FERC the previous day) of three categories of shipper/service provider disputes?

  - The North Padre Island situation is an NGA dispute rather than an OCSLA issue. Thus, I need to emphasize that any categorization of dispute by the court is expressed in terms of the specific regime whose authority resides in the NGA. That regime prohibits undue discrimination and provides for a specific command and control authority as well as for a specific rate-making mechanism. When a violation occurs under these conditions, that cannot be equated to what constitutes a possible violation under differing statutory standards, such as those that exist under OCSLA.

  - OCSLA's statutory standard requires that rights-of-way holders will provide open access and will not discriminate between shippers seeking access to their pipelines. By open access the statute means that rates cannot be so high as to deny access. However, non-discriminatory access does not mean the "undue discrimination" standard contained in the NGA.

  - A lot of the distinctions will be addressed in our written comments. For the mid-category situation, the question of discrimination must be a question of whether "reasonable" discrimination occurred. There is good reason to differentiate between

levels of discrimination and why a complaint-based process is a reasonable variant. Congress chose the particular words for a reason.

- Over many years, FERC and the courts have determined what discrimination means. However, it is clear that those determinations exist only on a case-by-case basis. I defy anyone to provide a description of what discrimination is that will serve all situations without distinction. There are material differences between the statutory authorities of the NGA and the OCSLA. There will be somewhat of a struggle to identify the fundamental differences that exist with the authority of the OCSLA, and to provide a framework for adjudication that will reasonably remedy violations.

Jay Costan - reprise
Producer Coalition

- Regarding the mid-category question raised by Ken Vogel, I believe that is an issue better addressed in the written comments and must include discussion on all three categories.

- The heart of the matter, however, is the issue of total transparency and how critical it is to include access to information in any contemplated process or scheme.

    - Transparency fosters accountability.

    - Transparency creates a better structure to transactions.

    - Transparency helps to promote, and provides a means to achieve, compliance.

    - Transparency results in little need to file formal complaints.

- In regard to the category where price increases are not so great as to cause a shut-in of production, it still may be possible to find that a violation of OCSLA has occurred.

    - Even price increases within a nominal range may be a reasonable denial of access.

    - One question that may be pertinent is whether the increase in price is a sheer exercise of monopoly power.

    - Otherwise, an increase in the range of 50-200% in price should automatically warrant a look at whether the OCSLA was violated.

The commentator then responded to the panel's following questions:

- Between right-of-way pipelines and lease-term pipelines, what is the distinction bearing on open and non-discriminatory access?

- If there was a distinction, the statute would provide for it. It does not; it includes all interests in the [OCS] land.

- Does the statute include access on platform facilities?

  - We will address this question further in our written comments. The statute deals with transportation of oil and gas on pipelines across the OCS. The transportation starts at the wellhead under the statute. Included within this transportation are production services. This includes separation, dehydration, compression, and water disposal that is occurring under the production handling agreements.

  - The structure of the statute simply addresses transportation regardless of its form. As Congress empowered it to do under the statute, FERC aptly exempted feeder lines. Feeder lines consist of those lines from the wellhead that feed to the production facilities.

- Do you believe that a broad regulatory concept implementing OCSLA would tip the scale toward shippers?

  - Absent enforcement of the statute, pipelines have an unfair advantage, an economic monopoly. Pipeline access is critical to resource development of the OCS. Enforcement of the statute provides a level playing field. That playing field consists of everything from the point of production to shore. There is no inherent advantage to shippers, only MMS will ultimately decide what is fair.

- Who should report? Would publishing data ensure transparency versus collecting similar data at another level (lessees already provide data via MMS Form-2014 reporting)?

  - I am not sure what information is presently being collected or whether that information is in a useable format for the public. It is important to go to pipelines and to identify terms of conditions to others at the receipt points. Other levels of information would not be useful.

Thomas Eastment - reprise
Indicated Producers

- Beware of the slippery slope you are heading down by including everything from the wellhead within the purview of the statute as transportation.

  - Such a broad interpretation would include subsea wellheads and the complex arrangements that they encompass.

  - Congress did not intend to include exploration and production activitites within the reach of this statute.

- To include all production facilities would improperly place a great a burden on many entities.

- A rate for pipeline service is pretty straight forward. However, when you include all of the complex arrangements of platform partners the difficultly increases exponentially. You cannot simply slice and dice the activities that occur incident only to production versus those incident to transportation on the platform.

- There is a risk associated with capitalizing the investment of a platform that is not reflected in the incremental price associated with the subsequent demand of access to platform facilities.

- You cannot benefit shippers with a cost-based rate when they did not share in the up-front capital risk of the platform. You are asking to compare platform owner's full-share, risk-based costs with shipper's marginal-cost-based rates.

- Please refer to the comments of Jeff Holligan with British Petroleum at the Houston meeting.

- Any regulatory regime must be restricted to pipelines and transportation, all other activities are not amenable to access discrimination.

The commentator then responded to the panel's following questions:

- When a pipeline operator (Williams) installs a platform and has no ownership in production, how do you propose drawing the line for open and non-discriminatory access purposes?

    - Our distinction remains at the point where pipeline transportation services occur versus facilities where production-related services occur. However, we will have to confer with our clients before providing a firm response.

    - Also, there is a question of enhancing production and well workovers, even if this is part of the "so-called" pipeline facility. Regardless, even where these processes occur downstream of production facilities, they should not be part of the [access] program.

- Does the court-decreed 3-mile line end OCSLA jurisdiction?

    - Technically, yes; practically, no.

Dan McVay
Williams Companies

- The relationships that occur on the OCS are extremely complicated, there is no black and white.

    · Which was one of the problems we had with the FERC order, which has resulted in the current litigation in Shell].

    · The contract for service contained a variety of things so a denial of access determination based strictly on rates is unfair. Dedication of reserves was one of the contractual factors. From the producer's perspective, they do not want to have to dedicate to the pipeline. The pipeline needs the assurance of throughput dedication otherwise the pipeline investment becomes a poor decision. The inclusion of reserve dedication in a shipping contract is not an unreasonable demand by the service provider. Absent reserve dedications, pipelines must rely on demand charges to ship production.

The commentator then responded to the panel's following question:

- What are your thoughts on the burdens versus the benefits of reporting?

    · Reporting the terms of service as well as the rates would require an extreme effort. Some transportation is simply from point "A" to point "B." For others, there may be processing and other services that would require filing and updating the terms of 3 or more contracts. I am not a fan of reporting. There is too much to look at and there is no real transparency for anyone.

    · A level playing field requires confidentiality.