

## **Chairman Joseph T. Kelliher's Statement on Offshore Gathering Facilities**

In 2004, the D.C. Circuit vacated Commission orders that granted a complaint by Shell Offshore. In the vacated orders, the Commission had reasserted jurisdiction over rates charged for gathering services on Transco's North Padre Island gathering facilities. The Court held that the Commission misapplied the criteria set forth in *Arkla Gathering Service Company*.

In a February 2005 order, the Commission found it lacked sufficient basis to reassert Natural Gas Act jurisdiction or to assert jurisdiction under the Outer Continental Shelf Lands Act over gathering rates and services of the facilities in question. Today we are denying rehearing of that earlier order, which is on remand from the D.C. Circuit.

Today we are instituting a Notice of Inquiry (NOI) in Docket Nos. PL05-10-000 and RP02-99-010, to evaluate possible changes to the *Arkla* test. We are undertaking this action because we are interested in re-evaluating both our legal authority to reassert jurisdiction and policy considerations in deciding whether to do so.

The Shell case is one in a series of court cases where the Commission has sought to prevent monopoly rents in offshore gathering. That has been the policy goal. And we have suffered a number of rebuffs in the courts. Our goal, I think, is pure but the courts have found that we have overreached in pursuing it.

The Natural Gas Act provides that the Commission has jurisdiction over interstate transportation and that states have jurisdiction over local distribution and gathering. When Congress wrote the Natural Gas Act, there was very little offshore production. As gathering and production increasingly moved offshore, a regulatory gap was created, since states cannot regulate offshore gathering outside state waters. The Natural Gas Act makes no provision for regulation of offshore gathering and offshore gathering companies are free to collect monopoly rents. This has long been a problem.

Earlier this year, I asked Congress to grant us clear authority over offshore gathering; it did not make it into the final Energy Policy Act of 2005, however.

Under its current legal authority, the Commission has tried to prevent monopoly rents in offshore gathering. It has tried different legal theories and suffered a series of court defeats, and we may have actually run out of theories. The NOI is an attempt to find out if there is one theory standing. If the law permits monopoly rent, perhaps it is time to change the law.

This is a particular concern in the wake of Hurricane Katrina, because nearly 40 percent of all offshore gas production is not operating currently and restoration of production is

very important to mitigating high natural gas prices this winter. Allowing monopoly rents in offshore gathering may actually retard restoration of offshore gas production, which is so critical. I think the time has come for Congress to close the regulatory gap for offshore gathering and end monopoly rents in offshore gathering and help expedite restoration of offshore gas production in a timely manner.

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