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
New Orleans, LA—May 14, 2004

Panel Members: George Triebsch, Ken Vogel, Sarah Inderbitzen, Martin Grieshaber, Bob Mense
Opening/Closing Remarks: George Triebsch
Background: Martin Grieshaber
Note Taker: Scott Ellis

Commentators:

Dan Sallee
BHP Billiton

• I am involved in the gas marketing group for BHP-Billiton. We are strictly a producer in the Gulf of Mexico only. We own an interest in some of the production marketed and contract for additional production. We feel that we are unbiased concerning this issue.

• BHP feels that new regulations under the OCSLA are unwarranted with respect to assuring open and non-discriminatory access, except when "spindowns" are involved.

- We think MMS is putting the "cart before the horse" since the historical approach has proven to be reasonable for producers.

- Open and non-discriminatory access is only required on common carrier pipelines.

- Producers should not be held responsible for providing open and non-discriminatory access to production and handling facilities.

- We think that before a company undertakes a project on the OCS they should (do) know many things in advance – particularly with regard to reserves, production facilities and pipeline opportunities. Economic decisions are made prior to development, not after. The MMS and its interpretation of the OCSLA should not affect the normal process.

- Additionally, the rates and the type of service offered in the area will be known. If the developer feels the existing options are unreasonable, they can always build their own or contract to have this done.

- The development plans submitted to the MMS require the identification of the transportation options.

- There is simply no rational reason to charge rates that are excessive for transportation of production. The rates to transport on lines that have capacity can be lower than the

existing rates on the pipeline because the shipper only requires an incremental return for that unused capacity.

- New satellite prospects will not be denied access. These prospects are the drive systems for facilities and platforms, and therefore, operators will not cut-off facility access simply to spite the pipelines.

- The MMS already requires the orderly and efficient planning and development of offshore resources in its regulatory scheme. That planning includes identifying the available transportation facilities in anticipation of their use.

- All economic decisions are made before, not after, development. OSCLA and MMS currently prevent the mentality of "build it and they will come" for production and transportation facilities.

- The reliability of the of the existing system of moving production is exhibited by the lack of incidents to the contrary.

- Once again, if the facilities are not common carriers, then they should not be subject to any regulation – unless they have been spundown. In spindowns, where there are no alternatives, the economics may make the project nonviable. In these situations, we see the potential need for regulation.

- We think the MMS should take a "wait and see" attitude. It is axiomatic that you "don't fix that which is unbroken." MMS needs to assure that the necessary competitive drivers are in place.

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

- Is there a difference between spindowns and spinoffs?

    - There is not an appreciable difference.

- Do competitive alternatives exist?

    - Only where there are facilities in competition.

- Are you aware of any instances where someone built a pipeline where there were no choices and the costs were less?

    - The likelihood of that circumstance is nil. From an economic standpoint, pipelines are in business to make money. For ownership gas, the cost should be less than non-ownership production flowing through the same line. Where competitive drivers are in existence, there is no need to regulate.

- Another issue exists in deep water where you have a specific volume and type of production. It may not be easy to connect to existing facilities and there may be a lack of economic drivers.

What about building an economic pipeline where the capacity already exists?

- Markets will help to avoid this because pipelines must attract shippers to keep up capacity.

James Lytal
Gulfterra Energy Partners
(Leviathan Pipeline Gatherers LLC)

- Gulfterra is the largest independent gatherer in the Gulf of Mexico (1.1 million BOPD and 3.5 BCFPD) Approximately $2B annually in revenue.

- We have new pipelines and platform infrastructure in deep water, including two deepwater hub platforms.

- In every project involving Gulfterra, there has been at least one third-party alternative.

- Gulfterra requires a life of reserves commitment and charges a fee for service. However, no production volume guarantee is required, which adds to the facility investment risk. Future shipping contracts and the amount of anchor production affect the size of the facility and the capital at risk. Gulfterra's ability to build new infrastructure would be hindered or encumbered by regulations.

- With respect to your scope/magnitude discussion request, in my 10 years of experience, I know of no instance of our denying service or being accused of discriminatory rates. Gulfterra wants repeat business. It is not unusual to negotiate rates with producers, due to the size of reserves, the potential of the reservoir, the water depth, and other factors, and to design facilities taking into account other's business needs.

- With respect to your question regarding regulatory oversight, we don't think there has been a lack of oversight. The light-handed approach works and there is no incentive to overbuild.

    - With respect to capacity, producers should contact the pipeline and if necessary, delay plans to develop a prospect.

- Concerning Alternative Dispute Resolution, no new process is required. An informal process would be preferable and we support the idea of a hotline. We believe that the informal process would work in all instances. Parties want speedy, low cost resolution.

- Gulfterra does not believe that the collection of data should be the goal. The burden would be greater than the benefit. As a service provider, Gulfterra would be hindered by the release of all data.

- Gulfterra does not think there is a need for periodic reporting. The light-handed approach is okay. Periodic reporting becomes an economic consideration affecting the decision-making for some Gulf producers.

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

- Do you believe that people will participate in an informal process or is there a need for greater government influence?

    - Gulfterra believes that parties will settle. Because of their prior agreements, the parties tend to work out the differences. A more formal resolution process may be necessary where there are more contentious conflicts.

Craig Rich
Williams Companies

- Williams has significant assets in the Gulf of Mexico. For example, an interstate pipeline (Transco), several non-NGA gathering lines and facilities, midstream assets, an oil pipeline, and Williams is a gas producer in the Rocky Mountains.

- Williams agrees with many of the comments made previously, but is surprised that the Williams case is the central point of discussion. We think there have been many mischaracterizations regarding this case (North Padre Island). We also think there have been mischaracterizations regarding spindowns.

- Williams agrees with Mr. Jay Costan in that Congressional intent with respect to section 5 of OCSLA must be the beginning point. Congress wanted to avoid economic inefficiencies and environmental degradation with duplicative pipelines. He correctly characterizes the economic effect and harm regarding oil and gas producers having an incentive to favor their own production, and that Congress provided a remedy for those instances.

- But, it is also important to recognize what Congress did not do. It did not impose a common carrier standard, nor did it expose all OCS pipelines to NGA regulations. Section 5(f) of the OCSLA is a flexible standard and Williams doesn't think that the more restrictive and well defined NGA requirements should be applied under it.

- Williams believes that open and non-discriminatory should not be separated similar to the NGA where the focus is on access. The NGA has an "undue discrimination standard." Under OCSLA, a violation occurs where a shipper is either 1) denied access or where 2) rates are excessively onerous. These violations are not the same as NGA non-discrimination.

- What facilities are covered under OCSLA? We believe that pipeline transportation is at issue. There is a question of whether OCSLA applies to upstream facilities. Upstream facilities may play a dual role, as gateways to pipelines, it would be difficult to apply access requirements. However, it is not necessary to reach a conclusion on these facilities. The FERC may enact exemptions from OCSLA for these types of facilities as Congress intended.

- There is also a question of whether additional regulatory mechanisms are needed. Shippers need to bring complaints to assess the need. The lack of examples exhibits that OCSLA is working as drafted, and provides little incentive to implement more regulatory mechanisms.

- Companies like Williams do not have an incentive to discriminate. We have not instituted demand charges because our revenues depend on the volumes that are moved. Williams encourages production and development.

- What about Williams and its conduct in the North Padre Island (NPI) case?

    · The NPI case was a debate concerning NGA gathering jurisdiction.

    · There was no OCSLA complaint filed before the FERC.

    · Shell elected to shut-in its gas.

    · We were completely surprised when the OCSLA violation was found. We believe this finding to be in error and that it will be reversed on appeal. The issue is NGA gathering jurisdiction.

    · There was no evidence of denial of access.

    · There was no evidence concerning the rate required to gather and the resulting economics.

    · There was no evidence that Shell's profitibility was in jeopardy. The administrative law judge rejected the introduction of that evidence..

    · There was no evidence presented of the rates charged to other shippers. Shell's rate was just higher.

    · The appropriate mechanism here is an OCSLA hearing, since Williams was not out-of-line.

- There is a question about the need for more regulatory mechanisms. Williams believes there is a lack of showing justifying any such need.

- Williams does not oppose the concept of a hotline as a further MMS obligation. Williams does not oppose an informal complaint process, but would argue that they are not necessary. However, an informal process would assist the parties in reaching resolution and help the MMS in the evaluation process.

- Williams does not think formal mechanisms are necessary. The OCSLA is clear in assigning enforcement to the Federal District Courts. Remedies and penalties are outlined in the OCSLA.
- A formal dispute resolution mechanism is inconsistent with the intent of Congress.

- With respect to the need to implement reporting requirements, Williams believes that the deregulation experience onshore which created more robust markets, would be of interest to MMS.

    - The States have not replaced the NGA regulatory scheme onshore.

    - It would be burdensome and could change the market dynamics.

    - The OCS is a more robust market, particularly at the gas plants and interconnects.

    - There is no need to impose reporting since it will result in burdensome requirements to service providers and regulatory agencies and it will change market dynamics.

- Regarding Mr. Eastment's prior statements, producers will know where circumstances require remediation; whether enforcement is required and whether discovery is necessary.

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

- What do you picture an informal process as looking like?

    - There are a number of ways to structure an informal process such as using mediators. The critical function of an informal process is to facilitate getting the parties' together. It is important that the process be voluntary and contain established standards.

- Like an ADR process?

    - Yes, that's what it would become.

- If one of the administrative remedies under OCSLA is revocation of the right-of-way, does there not need to be an administrative procedure prior to requesting revocation?

    - I would argue that the remedies available under OCSLA are extensive. OCSLA's teeth are its ability to invoke penalties for violations.

- The question of whether formal mechanisms are necessary may be answered by looking at FERC's experience. The formal structure under FERC shows that it is not really efficient nor does it provide greater value.

- Enforcement can be accomplished through the courts.

- What do you know about the existence of facilities serving a dual role as gateways to pipelines – facilities owned by the service providers – and any examples of these that have been exempted from FERC jurisdiction?

    - I am not aware of any specific examples. I am not aware of any FERC exemptions. I am not an expert in the structure of these type of facilities. This question would be appropriate to put before FERC.

Louis Schott
TDC Energy

- We operate 16 properties in shallow waters. We operate the marginal properties. We take over a property later in its life.

- In our experience, a pipeline is often spundown to an affiliate, near the end of the life of the reserves. I think the MMS would like to see these reserves produced. However, after the spindown, we can be charged as much as the service provider wants.

- We think this is truly discrimination and a violation of the access provision.

    - An example of this occurred in the Chandeleur area where Tetco spundown/spunoff (I don't know if it was an affiliate or not) the pipeline to Cedar Gas Company. Cedar announced that the new charge for movement would be $0.50 per Mcf. We finally negotiated the new rate down to $0.25 per Mcf, however, this is still 2.5 times more than we were paying Tetco to get the gas to shore.

    - The true issue is gathering versus transportation.

    - TDC does not think that this is the type of activity that should occur under OCSLA. The MMS must get involved to regulate these situations.

- There isn't the same problem in deep water.

- The biggest problem occurs when a property in near the end of its producing life. There are no economics for building a new pipeline. The only choices are to pay the monopoly price or to shut-in production. This is production that will probably never be brought back on-line if it is shut-in.

- There are companies that are actively looking to buy lines similarly situated to the one I have discussed. When these new companies apply for a right-of-way, we have urged MMS to deny the application. The MMS should assert its authority and address these issues. Currently, there is a lack of oversight which we see as a critical problem.

- There are thousands of pipelines in this category. Congress simply did not have these lines in mind when it passed OCSLA.

- An informal complaint process would be nice, but the FERC's hotline does not resolve all problems. As an alternative, ADR would be better, but it needs to be binding.

- There must be some form of regulation by a governmental agency to prevent the unnecessary curtailment of production.

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

- How does the $0.50/0.25 per Mcf rate compare to the Tetco pipeline tariff?

    · The Tetco regulated tariff was under $0.10 for the entire pipeline. That is, the agreement allowed for up to $0.10 per Mcf.

- Are there other producers on this line?

    • Yes, Fairway took a different approach. They had to shut-in their production because they need to commit to a contract to get on at the new rate. Apache, which is in a similar position, pays $0.10 per Mcf.

Thomas Eastment
Indicated Producers[1]

- Instead of repeating many of the points I have made at the previous two meetings, I would like to recap. We believe it can be summarized as a two-fold position.

- The MMS should look carefully at its statutory authority under section 5 of the OCSLA.

    · The MMS must recognize that section 5 provides open and non-discriminatory access requirements, but implementing it can be a slippery slope as evidenced by the Williams case.

    · The statute clearly involves the movement of production through pipelines. Production facilities fall under individual Federal oil and gas lease rights.

[1] British Petroleum, ChevronTexaco, Exxon Mobil, and Shell Offshore.

- Williams' rights arise through their right-of-way.

- Production facilities are incredibly complex. They defy instituting a reporting regime to assure open and non-discriminatory access.

- Production facilities are expensive and are constructed based on a risk assessment. These facilities are governed by the oil and gas lease, and there is a fundamental difference between that governance and the regulation of pipelines. In a literal sense, pipelines simply carry production through the processes occuring on other production facilities.

- At the time OCSLA was enacted, the only service that people had in mind was the movement of production to shore.

- With respect to what type of program the MMS should implement, we think that it would be wise to implement a complaint process.

    - Based upon experience, a hotline would work, and it provides a filter for complaints. A backup to the hotline is needed. A formal process, which may involve discovery, etc., could be implemented using a complaint-based program.

    - We think that implementing a reporting regime would be overkill. It would impose a burden on the industry and the affected agencies. We see the possibility of a "perfect storm" if imposed on production facilities because:
        - There is no statutory authority.
        - Production relationships between a shipper and a pipeline are not the same as betweenn the shipper and the production facility operator.
        - Quality issues need resolution.
        - Because of the constant change with production facilities agreements, reporting on a monthly or quarterly basis would be a nightmare.
        - Services provided under a production facility agreement are not unfair or discriminatory toward producers/shippers.
        - MMS already regulates producer activities associated with production conditioning and processing.

- I kind of feel that since Mr. Costan is not here today, that the producers are divided. However, we do have a common message. We agree with Jay Costan in that the spindown to an affiliate truly represents the core problem and the sole reason for some action.

- The FERC redefined gathering and facilities long after the pipeline was constructed and the connections were made. Shippers came to rely on a specific set of facts, and then the rug was pulled out from underneath them. The pipeline had complete market power.

    - The Shell case was an NGA case not an OCSLA case. How the Courts act in that case could dictate the regime that needs to be implemented.

- There is no need to duplicate FERC. If the Court determines that the FERC has jurisdiction for gathering under the NGA, the jurisdiction for spindowns, then the regulatory remedy falls under the NGA. If this is the case, then MMS need not include those situations in its regime.

- But we are not there yet since we do not know what the FERC will do. FERC's actions will instruct where the problem is and the regulatory regime needed where spindowns occur.

- In the 3rd Circuit, there is no question that the court went over-the-top. All they needed to do was just be to the point and explain to MMS where its authority lies, and when to step in.

- With respect to the NGA issue in Shell, intervention by the government was appropriate. Economic harm that occurs to shippers is derivative. If it grows on the OCS, it will have negative impacts on all production phases. The test for intervention should consider whether this is the only occurrence when service provider demands are over-the-top, but also when repeated action renders well shut-ins or unprofitability.

- This is not the place to argue the NGA. Under the NGA, FERC clearly has authority. The record will speak for itself. Shell didn't just shut-in, there was a pay-rate demand. The regulatory regime changed long after the service provider game changed. Then, we had to convince the regulatory agency after the fact. It was in our mutual interest not to shut-in, not to our mutual benefit.

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

- Do you think that a type of Office of Hearings and Appeals system should be established or should a hotline with a different process be instituted?

    - I think most issues can be resolved through a hotline. An ADR process may be necessary. It is essential to have a back-up since an informal process provides no incentives for resolution. A specific procedure may be useful as a hammer, and would be a forum that complainants could go to. There are two complaint regimes in IBLA. One, the process used for royalty disputes, which is paper only. Second, you can also have an Administrative hearing with an ALJ, discovery, etc. The fact that one of these is there provides an incentive for resolution.

- Do you prefer an ad hoc test as opposed to a bright-line test?

    - I think it is impossible to have a bright-line test on what amounts to discrimination. The body of law in this area dictates that discrimination will have to be determined on a case-by-case basis. That is why we have adjudication. The FERC has been doing

this since the 1930's and these cases are still dependent on the total record in each case.

- Even if you can enunciate a bright-line standard, you would not be able to regulate that standard fairly.

- With regard to proprietary oil pipelines and the fact that rights-of-way require open access, should the MMS require pipelines under ICA be regulated as a common carrier?

    - We have been focused on gas, but I am surprised that oil pipelines have not been addressed. I have nothing to offer on this point. You may have to look at the Vision Resources order and see what the FERC is doing.

- Does anyone have a feel for how many pipelines have been spundown by FERC? (A general question for anyone to answer.)

Craig Rich - reprise
Williams Companies

- In response to your question, spindowns began onshore in 1992 where the criteria were uniformly applied. They began on the OCS in the mid-1990's using FERC's primary function test. A number of facilities were built based on that definition. SeaRobin [case] began changing the definition of gathering and reduced the number of facilities.

- I would like to respond to Mr. Eastment. What happened on NPI pretty much brought an end to spindowns. The FERC approved an exception to the philosophy to extract the last cent, not to the philosophy of Williams (that of keeping regulated rates from the wellhead). Don't get embroiled in the NPI dispute.

Denise Matherne
TDC Energy

- I know of two other companies besides Cedar that have taken similar actions. With respect to the number of lateral lines, lines from the platform to the mainline, MMS has identified 4,380 of these lines.

- Other respectable companies have filed with the FERC, actively seeking segments for gathering.

George Triebsch closed the meeting by thanking everyone for their participation and encouraging the submittal of written comments by June 11, 2004.