121 FERC ¶ 61,157
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Transcontinental Gas Pipe Line Corporation	Docket No. CP01-368-006
Williams Gas Processing – Gulf Coast Company, L.P	Docket No. CP01-369-004
Jupiter Energy Corporation	Docket No. CP03-11-006

ORDER ON REMAND

(Issued November 15, 2007)

1. The United States Courts of Appeals for the Fifth Circuit and the D.C. Circuit have vacated and remanded the Commission's orders in two proceedings addressing the jurisdictional status under the Natural Gas Act (NGA) of certain natural gas pipelines owned by Jupiter Energy Corporation (Jupiter) and Transcontinental Gas Pipe Line Corporation (Transco), respectively.[1] As discussed below, upon reconsideration, the Commission finds that Jupiter's facilities perform a gathering function exempt from the Commission's jurisdiction under NGA section 1(b). Additionally, the Commission finds the Transco pipeline performs a transmission function subject to the Commission's NGA jurisdiction.

Background

2. In 2001, Transco filed an application seeking Commission approval to transfer certain facilities to its gathering affiliate Williams Gas Processing – Gulf Coast Company, LP. (Williams). The facilities consisted of approximately 380 miles of 2-inch to 24-inch pipeline located both offshore and onshore Louisiana. The Commission

[1] *Jupiter Energy Corp. v. FERC*, 482 F.3d 293 (5th Cir. 2007); *Williams Gas Processing-Gulf Coast Co. v. FERC*, 475 F.3d 319 (D.C. Cir. 2006).

determined that while some of the facilities performed a gathering function, the 16-inch diameter and 20-inch diameter looped spine lines from the Cow Island junction to the upstream Vermilion Block 67 platform and the onshore portion of a 24-inch diameter pipeline that joins the 16- and 20-inch diameter pipelines at the shoreline perform a transmission function and, thus, remained subject to the Commission's jurisdiction. The Commission found that gathering was the primary function of the other facilities at issue, including the 12.43 miles of 24-inch diameter pipeline immediately upstream of the 24-inch diameter onshore pipeline found to be jurisdictional. The D.C. Circuit upheld the Commission's jurisdictional determinations regarding Transco's facilities.[2]

3. In 2002, Jupiter filed an application seeking Commission approval to transfer a 10.2-mile long, 10.75-inch diameter pipeline and a 3.2-mile long, 8.625-inch diameter pipeline located offshore Louisiana to Jupiter's parent company, Union Oil Company of California (Unocal), to use as part of its gathering system. In May 2003, the Commission denied Jupiter's application, concluding that Jupiter's two pipelines perform a transmission function. On rehearing in that proceeding, it came to light that Transco's above-described 12.43 miles of 24-inch diameter pipeline determined to perform a gathering function is downstream of one of Jupiter's pipelines. Jupiter argued that the Commission's prior finding that Transco's downstream pipeline is a gathering facility precluded a finding that Jupiter's upstream facilities are jurisdictional transmission facilities. In denying rehearing, the Commission stated that "[i]f anything, the analysis should be reversed. The presence of upstream transmission facilities determines the classification of downstream facilities, not the opposite."[3] Upon review of the Commission's determination in the Jupiter proceeding, the Fifth Circuit vacated and remanded the case, finding that because the Commission had previously classified the downstream Transco line to be non-jurisdictional gathering, the Commission could not reasonably find the upstream Jupiter line to be jurisdictional. The court did not address further the merits of the Commission's decision.

4. While the *Jupiter I* appeal was pending before the court, the Commission revisited the classification of Transco's downstream pipeline and issued an order finding that jurisdictional transmission is the primary function of Transco's 12.43-mile long, 24-inch

[2] *Transcontinental Gas Pipe Line Corp.*, 96 FERC ¶ 61,246, *order on reh'g*, 97 FERC ¶ 61,298 (2001), *aff'd, Williams Gas Processing–Gulf Coast Co. v. FERC*, 331 F.3d 1011 (D.C. Cir. 2003) (*Transco I*).

[3] *Jupiter Energy Corp.*, 103 FERC ¶ 61,184, *reh'g denied*, 105 FERC ¶ 61,243 at n.8 (2003), *reh'g denied*, 106 FERC ¶ 61,170 (2004), *Jupiter Energy Corp. v. FERC*, 407 F.3d 346 (5th Cir. 2005) (*Jupiter I*).

diameter pipeline segment downstream of Jupiter's system.[4] The Commission based its determination mainly on the fact that Jupiter's jurisdictional facility was upstream of Transco's 24-inch diameter pipe. The Commission did not disturb its prior gathering determination for Transco's 12-inch pipeline upstream of the interconnection with Jupiter.

5. On June 28, 2005, the Commission issued an order addressing the court remand in the *Jupiter I* proceeding. In that order, the Commission found that because it had now determined that Transco's downstream facilities were transmission facilities subject to the Commission's NGA jurisdiction, the inconsistency identified by the court in *Jupiter I* no longer existed, and the Commission affirmed its jurisdictional determination regarding Jupiter's facilities.[5]

***Jupiter II* Remand**

6. On March 15, 2007, the Fifth Circuit remanded for the second time the Commission's orders finding that Jupiter's facilities are jurisdictional transmission facilities. As discussed above, the court issued its first remand in *Jupiter I* because it concluded that the Jupiter orders created an anomalous situation because at that time Transco's downstream pipeline facilities had been determined to perform a gathering function. Although the Commission subsequently cured that infirmity by issuing an order reversing its gathering determination for Transco's downstream facilities, the court remanded the proceeding again, finding in *Jupiter II* that the Commission erred by basing its determination that Jupiter's facilities are jurisdictional primarily on its findings that Jupiter's two pipelines are downstream of a central aggregation point -- *i.e.*, Platform 39A owned by Jupiter's parent Unocal -- and no gas is received by Jupiter's pipelines downstream of that platform, while dismissing or giving "short shrift" to the primary function test's other physical and non-physical factors. [6]

7. In particular, the court found in *Jupiter II* that the length, diameter and operating pressure of Jupiter's pipelines indicate a gathering function, and that the Commission should have considered the non-physical factors that point toward a gathering function, *i.e.*, that Jupiter's only remaining shipper is its parent Unocal, neither Jupiter nor Unocal

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[4] *Transcontinental Gas Pipe Line Corp.*, 111 FERC ¶ 61,090 (2005), *reh'g denied*, 111 FERC ¶ 61,498, *vacating and remanding, Williams Gas Processing-Gulf Coast Co. v. FERC*, 475 F.3d 319 (D.C. Cir. 2006)(*Transco II*).

[5] *Jupiter Energy Corp.*, 111 FERC ¶ 61,497, *reh'g denied*, 113 FERC ¶ 61,103 (2005), *vacating and remanding, Jupiter Energy Corp. v. FERC*, 482 F.3d 293 (5th Cir. 2007) (*Jupiter II*).

[6] *Jupiter II*, 482 F.3d at 296-8.

owns any other jurisdictional facilities, Unocal's business activity is gathering and production, and Unocal is seeking to integrate Jupiter's facilities into Unocal's own gathering system.[7] The court found that the Commission had not adequately explained how these factors supporting a gathering determination were outweighed by the identification of Unocal's Platform 39A as a central aggregation point and the absence of any gas receipts by Jupiter's two pipelines downstream of that point. The court said that, on remand, the Commission must adequately consider all relevant factors.

***Transco II* Remand**

8. On December 19, 2006, the D.C. Circuit vacated and remanded the Commission's orders in *Transco II* in which the Commission reversed its prior gathering determination for 12.43 miles of Transco pipeline. The court stated that although the Commission said that its finding that Jupiter's upstream facilities were jurisdictional was determinative in reclassifying Transco's downstream pipeline as jurisdictional, the Commission did not explain why. The court surmised that the Commission's decision regarding Transco's downstream pipeline was an unstated endorsement of the two long-standing principles that: (1) there is a point on every pipeline where gathering stops and transportation begins; and (2) a transportation facility cannot feed into a gathering facility. However, the court found that the Commission failed to acknowledge that it has in the past departed from these principles by finding, and convincing the court to affirm, facilities to be non-jurisdictional gathering facilities, notwithstanding a prior Commission's finding that upstream facilities were jurisdictional transmission facilities.[8] The court stated that the Commission needs to decide whether it really is an inviolate principle that facilities cannot be gathering facilities if they are downstream of jurisdictional facilities. If so, the Commission's finding in *Transco II* that Transco's facility was jurisdictional would be supportable. If not, the Commission cannot simply rely on the jurisdictional status of Jupiter's upstream facilities to find that Transco's downstream facilities are jurisdictional.

[7] The court acknowledged that it has previously held that non-physical factors are "secondary to the physical factors". *Sea Robin Pipeline Co. v. FERC*, 127 F.3d 365 at 371 (5th Cir.1997). However, in its decision remanding the Jupiter orders, the court states that non-physical factors cannot be ignored and must be considered when relevant to determining where gathering ceases and jurisdictional transmission commences.

[8] The court cited its decision in *ExxonMobil Gas Mktg. Co. v. FERC*, 297 F.3d 1071 at 1087 (D.C. Cir. 2002), affirming the Commission's orders finding that certain facilities owned and operated by Sea Robin Pipeline Company were gathering facilities, notwithstanding that they were downstream of facilities that the Commission had found to be jurisdictional transmission facilities.

Discussion

Primary Function Test

9. Under NGA section 1(b), the Commission's jurisdiction does not extend to facilities used for the production or gathering of natural gas or to gathering services. The Commission has, over the years, refined its legal test for determining which facilities are non-jurisdictional gathering facilities and which facilities are jurisdictional transmission facilities.[9] To determine a facility's jurisdictional status, the Commission currently applies a sliding scale to the physical attributes of a facility. Specifically, it relies on its modified "primary function test," which includes the consideration of several physical and geographical factors, including: (1) the length and diameter of pipeline(s); (2) the extension of the facility beyond the central point-in-the-field; (3) the facility's geographical configuration; (4) the location of compressors and processing plants; (5) the location of the wells along all or part of the facility; and (6) the operating pressure of the pipeline(s). The Commission applies this multi-factor test to the unique facts and circumstances of each case without any one factor deemed as outcome determinative.[10]

10. In *Sea Robin Pipeline Company* (*Sea Robin*),[11] the Commission reformulated the primary function test with respect to offshore facilities by: (1) adopting an additional analytical element applicable to systems that contain a centralized aggregation point; (2) adjusting the weight to be afforded the "behind-the-plant" criterion so that the location of processing plants is not necessarily determinative and can be outweighed by other factors; and (3) focusing primarily on physical factors.

11. When a jurisdictional natural gas company comes before the Commission to request that the function of certificated facilities it owns and operates be deemed non-jurisdictional gathering or production, the starting point for determining whether the subject facilities are performing primarily a gathering or production function under NGA section 1(b) is to consider the physical characteristics of the subject facilities. While the courts have sanctioned giving some weight to non-physical factors when applying the primary function test, including the purpose, location, and operation of the facility, and the general business activities of the owner of the facility, non-physical factors are

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[9] *See, e.g., Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990) and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

[10] *EP Operating Co. v. FERC*, 876 F.2d 46, 48 (5th Cir. 1989) (*EP Operating)*.

[11] 87 FERC ¶ 61,384 (1999), *order denying reh'g*, 92 FERC ¶ 61,072 (2000).

secondary, and generally only come into play if application of the physical factors results in a close call.[12]

Jupiter's Upstream Facilities

12. In the *Jupiter II* remand, the court stated that the Commission order, while emphasizing the importance of the central point of aggregation factor, had given short shift to other physical factors, including the length, diameter, and operating pressures of Jupiter's facilities. The court also stated that the Commission failed to articulate reasons for dismissing the non-physical factors that the court found relevant, including the facts that Jupiter's only remaining shipper is its parent, Unocal, neither Jupiter nor Unocal owns any other jurisdictional facilities, Unocal's business activity is gathering and production, and Unocal is seeking to integrate Jupiter's facilities into Unocal's own gathering system. The court found that all of these other physical and non-physical factors weighed in favor of a gathering function.[13] As discussed below, after analyzing Jupiter's facilities in light of the court's discussion, the Commission finds that, upon transfer to Unocal, Jupiter's pipeline facilities will be non-jurisdictional gathering facilities.

13. As stated, one of Jupiter's pipelines is 10.2 miles long and 10.75 inches in diameter. Jupiter's other pipeline is 3.2 miles long with an 8.625-inch diameter. As the court noted, these lengths and diameters are consistent with a gathering function offshore.[14] While neither of Jupiter's pipelines collects any gas downstream of Unocal's

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[12] *See, e.g., Sea Robin Pipeline Co. v. FERC*, 127 F.3d at 370, and *Lomak Petroleum, Inc. v. FERC*, 206 F.3d 1193 (D.C. Cir. 2000).

[13] 482 F.3d at 297-8.

[14] *See, e.g., Murphy Exploration & Production Company v. Quivira Gas Company*, 76 FERC ¶ 61,076 (1996) (finding that, assuming Tennessee Gas Pipeline Company's 2.5-mile upstream pipeline in the Outer Continental Shelf qualified as a gathering facility, Quivira's downstream 22-mile long, 12-inch diameter pipeline beginning in shallow Louisiana state waters would qualify as a gathering facility, since Quivira had no compression facilities, its pipeline was no longer than necessary to reach the nearest appropriate connection with an interstate pipeline onshore, and Quivira's system was directly attached to production platforms; *Cavallo Pipeline Company*, 71 FERC at 61,197-98 (finding that gathering was the primary function of a 21.3-mile long, 16-inch diameter pipeline downstream of another company's short gathering lines; and *Pacific Offshore Pipeline Co.* (*POPCO*), 64 FERC ¶ 61,167 at 62,508-09 (1993) (finding that gathering was the primary function of an 8.2-mile long, 12-inch diameter pipeline that transported gas from another company's offshore production platform to POPCO's onshore processing facilities).

Platform 39A, the court correctly pointed out that the Commission has stated that the absence of wells along a pipeline is not uncharacteristic of offshore gathering facilities.[15]

14. The operating pressures of Jupiter's pipelines are limited to a range of 750-950 psig, and there are no compression facilities on Jupiter's system. While gas from some wells with low flows and pressures is compressed by Unocal to bring the gas to sufficient pressure to be delivered into Jupiter's facilities and then into Transco's and Tennessee's downstream systems, this compression by Unocal is limited, affecting only some of the gas entering Jupiter's facilities, and the compression occurs in Unocal's upstream production areas. Thus, the 750-950 pounds per square inch gauge (psig) operating pressures of Jupiter's pipelines primarily reflect wellhead pressures. Such pressures are not inconsistent with the operating pressures of other offshore systems found to be gathering,[16] though, as is noted below, they are also not dispositive of the determination of function.

15. Given the factors discussed above, the Commission concludes that the previous orders addressing Jupiter's jurisdictional status placed too much significance on Unocal's Platform 39A as a central aggregation point. In the *Sea Robin* proceeding announcing the central aggregation point as an additional criterion, the Commission indicated that the weight given to any identified central aggregation point would depend, in part, on the extent to which there was a "marked change in the physical attributes and geographic configuration" at that point.[17]

16. On the Sea Robin system, one of the most pronounced changes at the Vermillion 149 Compressor Station, which was identified as the central aggregation point, was that the two pipelines feeding into the compressor station were 24 inches in diameter, whereas the trunkline downstream of the station was 36 inches in diameter.[18] The difference in diameter between Jupiter's pipelines (10.75 inches and 8.625 inches) and Unocal's upstream gathering lines that feed into Platform 39A (ranging from

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[15] *See POPCO*, 64 FERC ¶ 61,167 at 62,509 (1993).

[16] *See, e.g., Amerada Hess Corp.*, 52 FERC at 62,019-23. *See also POPCO*, 64 FERC at 62,508-09 (1993) (after weighing all of the primary function test's criteria, the Commission concluded that gathering was the primary function of POPCO's pipeline, notwithstanding that gas was delivered into the pipeline at a relatively high maximum delivery pressure of 1,000 psig. The Commission also noted that 1,000 psig was nonetheless lower than the pressures of other facilities declared to be non-jurisdictional gathering facilities).

[17] 87 FERC ¶ 61,384 at 62,430.

[18] 92 FERC ¶ 61,072 at 61,291.

4.5 inches to 8.625 inches) is not so pronounced. Further, at the Vermilion 149 Station, gas was compressed by two 12,500 horse power (hp) compressors. This level of compression was typical of that found on large diameter transportation lines transporting high volumes of gas over relatively long distances, and was not field compression needed to deliver gas from production platforms into Sea Robin's system.[19] As discussed above, the operating pressure here is the result of Jupiter compressing the gas, using Unocal's equipment, to a pressure sufficient to move the gas downstream towards the interconnects with Transco and Tennessee. As such, we do not find it dispositive of function.

17. As discussed above, the court found the Commission must articulate reasons for dismissing the import of the non-physical factors that the court believes support a gathering determination for Jupiter's facilities. These include the facts that Jupiter's only remaining shipper is its parent Unocal, neither Jupiter nor Unocal owns any other jurisdictional facilities, Unocal's business activity is gathering and production, and Unocal is seeking to integrate Jupiter's facilities into Unocal's own gathering system.[20]

18. In proceedings where the issue was whether a certificated facility's primary function was actually gathering rather than jurisdictional transmission, the Commission generally has not found it useful to inquire into the historical and prospective use of the facilities at issue because in most cases, those facilities were constructed along with other facilities under NGA section 7 certificates and were never scrutinized separately under the primary function test.[21] Jupiter's original system, however, was not constructed under the Commission's jurisdiction and its facilities were considered non-jurisdictional gathering facilities and operated as such for over 15 years before the Commission's predecessor, the Federal Power Commission (FPC), determined that they performed a

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[19] *Id.*

[20] The Commission has repeatedly held that the nature of the general business activity of the owner or operator of a facility is a relevant consideration in determining a facility's primary function. *See, e.g., TOMCAT*, 59 FERC ¶ 61,340 (1992) where the Commission took into consideration that the primary business activity of each of the owners of the various segments of the integrated TOMCAT system was either to explore for, produce or sell gas. *See also Tom Brown, Inc.*, 57 FERC ¶ 61,103, at 61,400 (1991); *Exxon Corp.*, 45 FERC ¶ 61,436 (1988); and *Superior Oil Co.*, 13 FERC ¶ 61,218, at 61,496 (1980).

[21] *Transco I*, 97 FERC at 62,401.

transmission function.[22] What remains of Jupiter's system today are two pipelines: the 10.2-mile long pipeline that was one of Jupiter's original pipelines and interconnects with Tennessee and the 3.2-mile long pipeline constructed in 2000 to interconnect with Transco. Since 1992, Jupiter's remaining lines have been used solely to transport gas produced by its parent Unocal to Transco's and Tennessee's systems.[23] Thus, what remains of the Jupiter system are two pipelines that move gas from production areas to the nearest interstate transporters.[24] Those factors support a finding that Jupiter's pipeline will perform a gathering function when integrated with Unocal's existing production and gathering system.

Transco's Downstream Facilities

19. On May 18, 2001, Williams filed a petition for a declaratory order requesting that the Commission determine that approximately 380.225 miles of 2- to 24-inch diameter pipeline located on and offshore Louisiana performs a gathering function exempt from the Commission's jurisdiction. Included in the application were numerous maps

[22] In 1949, The Pure Oil Company (predecessor-in-interest to Unocal) brought in several gas wells from a platform about nine miles from the Louisiana coastline. At that time, there were no offshore gas lines and, because of the gravity of the risks, the onshore pipelines were unwilling to attempt to construct the required facilities. Marine Gathering Company (predecessor-in-interest to Jupiter) constructed the pipelines to transport the gas from the offshore platform and commenced operation in 1950. In 1953, Jupiter extended the system to an additional platform and commenced service for Kerr-McGee and Phillips Petroleum Company (Phillips). Jupiter operated its pipelines as non-jurisdictional gathering facilities until 1966, when the FPC determined that the facilities performed a jurisdictional transmission function after initiating an investigation into the different rates Jupiter charged Pure and Phillips for a similar service. *See The Jupiter Corp.*, 35 FPC 1091 at 1100 (1966) and 28 FPC 942 (1962).

[23] In 1992, the Commission determined that it was unlikely that any other potential shippers would want capacity on Jupiter's system. *Jupiter Energy Corp.*, 60 FERC ¶ 61,044 at 61,162 (1992). Unocal acquired Jupiter in 1997 and has been unsuccessful in attracting other shippers to Jupiter's facilities.

[24] In *EP Operating Co. v. FERC*, 876 F.2d 46, 49 (5th Cir. 1989), the Fifth Circuit Court found that although the pipeline at issue was 51 miles long, a gathering determination was supported by the fact the pipeline nevertheless was no longer than necessary to traverse the distance between the point of gas production and the nearest appropriate connection with an interstate pipeline. The court also relied on the fact that the pipeline was being used only to transport gas for the producer-owners of the pipeline. The court declined to predict how the primary function might be affected if the pipeline was used to transport gas for shippers other than the producer-owners of the pipeline.

depicting the facilities at issue. As depicted on the maps, several long, single pipelines, including the 16-, 20-, and 24-inch pipelines at issue here – have an onshore segment and an offshore segment. The 16- and 20-inch pipelines travel from Vermilion Block 67 to the Cow Island plant. The offshore and onshore portions of the 16- and 20-inch diameter pipelines travel in straight, parallel lines. In the Commission's August 31, 2001 Order in Transco's spin-down proceeding, the Commission determined that the 16- and 20-inch diameter pipelines in their entirety perform a jurisdictional function.[25]

20. The 24-inch diameter pipeline travels from Vermilion Block 22 to the Cow Island plant. Unlike the straight 16- and 20-inch diameter pipelines, the 12.43-mile long offshore portion of the 24-inch diameter pipeline meets the 24.62-mile onshore portion of that pipeline at an angle, causing the 12.43-mile offshore segment to appear on the maps supplied by Transco to be a separate lateral. Consequently, the August 31, 2001 Order found that the 24.62-mile onshore segment of the 24-inch pipeline performed a transmission function and that the 12.43-mile offshore portion of that pipeline qualified as a gathering facility.[26]

21. Transco and Williams filed the same maps in their answer to the May 6, 2004 show cause order issued by the Commission after it came to light in the Jupiter proceeding that Transco's downstream pipeline had been declared gathering.[27] Subsequently, Commission staff requested that Transco and Williams provide "maps and/or drawings of sufficiently large scale to clearly identify all relevant pipeline connections and appurtenant facilities."[28] A review of the maps provided in response to this data request revealed that the 12.43-mile long segment of pipeline at issue is but a portion of one continuous 37-mile long, 24-inch diameter pipeline that includes the 24.62 miles of onshore pipe which runs, beginning at the shoreline, parallel to the 16- and 20-inch diameter pipelines determined, in their entirety, to perform a transmission function in *Transco I*.

22. For the purposes of addressing the court's remand, the Commission will apply the primary function test to the entire 37 miles of 24-inch pipeline. Under the first prong of the primary function test, the large diameter and the length of the pipeline is typical of a

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[25] Specifically, the 16-inch pipeline was depicted as a 17.25-mile offshore segment and a 24.633-mile onshore segment. The 20-inch pipeline was depicted as a 17.109-mile offshore segment and a 24.618-mile onshore segment.

[26] *Transco I,* 96 FERC at 61,976.

[27] *Transcontinental Gas Pipe Line Corp.*, 107 FERC ¶ 61,122 (2004).

[28] Commission October 28, 2004 data enclosure at 1, Docket No. CP01-368-004.

shallow waters transmission facility.[29] While the Commission has found the function of significantly longer lines to be gathering, those lines generally are needed to access deep water production.[30] That is not the case here.

23. The second prong of the primary function test considers whether the facilities extend beyond a central field point, or, with reference to offshore pipelines, whether the facilities extend beyond a central point of aggregation.[31] The 24-inch pipeline at issue interconnects with a 12-inch pipeline at the Vermilion 22 platform where there is a marked change in the physical attributes and geographic configuration of the system.[32] At that point, the production from numerous gatherers' pipelines, ranging in diameter from 4 inches to 12 inches, converges and is aggregated for delivery into the 24-inch pipeline.[33] The increase in diameter makes the 24-inch pipeline capable of transporting a significantly greater volume of gas than interconnecting gathering lines. Thus, that junction represents a central point of aggregation where gathering ends and transmission

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[29] *See e.g. Venice Gathering Co.*, 97 FERC ¶ 61,045 at 61,250 (2001) (finding a 20-mile, 22-inch pipeline, among others, that extends from an West Delta Block No. 79 to shore performs a transmission function.) (*Venice*). *See also, Dauphin Island Gathering System,* 79 FERC ¶ 61,391, at 62,666 (1997) (finding that 9.6-mile, 20-inch pipeline that extends from Alabama State Block 73 to shore and a proposed 13-mile, 24-inch line that would loop the 9.6 mile line function as single large lines that transport gas volumes to shore).

[30] *Sea Robin,* 87 FERC ¶ 61,384.

[31] In *Sea Robin,* 92 FERC at 61,290, the Commission stated that the order on remand in that proceeding explained that the centralized-aggregation-point criterion is analogous to the central-point-in-the-field criterion as that concept has been applied in the onshore context. Given the court's directions and guidelines for determining at what point gathering ends, the Commission determined that the coincidence of several smaller lines at a centralized location where the gas carried is delivered into a single, larger-diameter line for further delivery to market is the most logical point of demarcation.

[32] *Id., see also, Venice,* 97 FERC at 61,250. The facilities determined to perform a transmission function in *Venice* included a 26-inch spine pipeline downstream of a platform where several producer-owned lines and two Venice-owned lines converge and the production is aggregated for delivery into the 26-inch spine. The Commission stated that the analysis of the second prong of the primary function test suggests that Venice's pipelines upstream of that platform may qualify as gathering.

[33] A geographic configuration where smaller diameter pipelines aggregates into a large diameter downstream pipeline is indicative of a pipeline that performs a transmission function. *Id.*

begins.[34] Gas gathered at the point is transported through the 37-mile long, 24-inch diameter trunkline for processing onshore.

24. The third and fifth prongs of the primary function test, geographic configuration and location of wells, respectively, also support a finding that the pipeline performs a transmission function. The entire 37-mile long, 24-inch diameter pipeline is a spine-like, trunkline facility that collects gas from Transco's upstream 12-inch pipeline, other gathering systems, including Jupiter, and wells in the Vermilion Block 22 area. Other than the wells in the Vermilion Block 22 area, there are no wells along the length of the 37-mile pipeline.

25. The fourth factor of the primary function test takes into account the location of compression and processing. While compression is performed at offshore production platforms by third-parties who inject gas into the pipeline, there are no compression facilities located along the length of the 37-mile pipeline itself, and all 37 miles of pipeline are located upstream of the Cow Island processing plant. In any event, the Commission has determined that the location of processing and/or compression facilities onshore should not be dispositive of the jurisdictional status of offshore pipeline facilities because the generally greater difficulty and expense of constructing and operating processing and compression facilities offshore provides an incentive for such facilities to be placed onshore to the extent possible. Thus, the lack of compression on the pipeline at issue and the downstream location of the onshore Cow Island processing plant are not dispositive of the function of the line.[35]

26. The sixth factor is the operating pressure of the pipeline. The Commission has noted that offshore facilities tend to operate at higher pressures – regardless of whether their function is gathering or transportation. Thus, as noted above, operating pressures are not necessarily dispositive of the function determination for offshore facilities.[36] The 750-1,000 psig operating pressure of Transco's 24-inch diameter pipeline is not inconsistent with the operating pressures of other offshore systems found to be gathering,

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[34] *See e.g. Trunkline Gas Co.,* 95 FERC ¶ 61,337 *order denying reh'g,* 97 FERC ¶ 61,169, 61,794 (2001) (determining that platform functioned as aggregation point after which two 24-inch diameter jurisdictional pipelines carry aggregated volumes toward shore).

[35] *Venice,* 97 FERC at 61,251.

[36] *See Enron Gulf Coast Gathering Limited Partnership,* 79 FERC ¶ 61,039, 61,178 (1997) (*Enron)*(finding that high operating pressures can be a neutral criteria in applying the primary function test to OCS facilities), *see also, Sea Robin Pipeline Co.,* 71 FERC ¶ 61,351, 62,400-01 (1995).

including the Jupiter's facilities discussed above.[37] However, it is also not inconsistent with the operating pressures of offshore systems found to be transmission.[38]

27. Whereas we find above that other factors on Jupiter's system also support a gathering determination, the other physical characteristics of Transco's downstream pipeline indicate a jurisdictional transmission function, outweighing the similarity in operating pressure of the lines. As discussed above, we have found that, although Unocal's Platform 39A constitutes a central point of aggregation, the differences in diameter between Jupiter's pipelines downstream of the platform (10.75 inches and 8.625 inches) and Unocal's upstream gathering lines feeding into the platform (ranging from 4.5 inches to 8.625 inches) do not reflect a sufficiently marked change in physical attributes to clearly identify the platform as the point at which gathering ends and jurisdictional transmission begins.

28. On the other hand, Transco's 24-inch pipeline, in addition to receiving gas from Jupiter's 8.625-inch diameter pipeline and other producer-owned small diameter pipelines, is connected to the upstream 12-inch pipeline determined in 2001 to be gathering. Thus, the differences in diameter between the subject Transco facility and the upstream pipelines is 12 inches or more, similar to the situation in *Sea Robin* where we found that the 12-inch difference in diameter at the aggregation point where Sea Robin's 24-inch upstream facilities fed into its 36-inch downstream trunkline reflected a sufficiently marked change to signify the end of gathering. Further, the subject 37-mile long Transco facility is significantly longer than Jupiter's 10.2-mile long and 3.2-mile long pipelines and consistent with the length of other facilities that the Commission has found to be jurisdictional.[39] Thus, while neither the Transco facility nor the Jupiter pipelines collect any gas along their lengths, the Transco facility traverses a significantly greater distance without receiving any additional gas.

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[37] *See, e.g., Northern Natural Gas Company*, 93 FERC ¶ 61,101 (2000) (offshore facilities operating at pressures between 1,050 and 1,200 psig found gathering) and *Tarpon Transmission Company*, 78 FERC ¶ 61,278 (1997) (offshore facilities operating at pressures between 1,100 and 1,250 psig found gathering).

[38] *See e.g. Enron,* 79 FERC at 61,178 (facilities operating at pressures less than 1,200 psig found to be transmission) and *Sea Robin Pipeline Co.*, 71 FERC at 62,402 (laterals operating at pressures between 1,200 – 1,300 psig found to be transmission).

[39] *See, e.g., Seahawk Transmission Co*., 93 FERC ¶ 61,097 (2000), *order denying reh'g*, 95 FERC ¶ 61,342 (2001) (finding that a 24-inch, 24.3-mile pipeline, among others, located in shallow waters offshore Texas performs a transmission function).

29. Non-physical factors, while secondary to the physical factors, also indicate that all of the 37-mile long Transco line should be jurisdictional. While Transco's affiliate, Williams, is a gathering company and seeks to acquire the pipeline, it does not own any of the production shipped through the 24-inch pipeline. Moreover, whereas Jupiter's facilities only transport gas produced by its parent, Unocal, gas produced by numerous third-party shippers is transported through Transco's 24-inch pipeline. The Commission has held that the presence of such third-party interests weigh on the side of jurisdictional transportation.[40] Moreover, because the physical factors strongly weighs toward a determination that the 37-mile, 24-inch diameter pipeline functions as a transmission facility, there is no close call that would warrant further inquiry into the non-physical factors.[41] In conclusion, under the primary function test's criteria, the Commission finds Transco's 37-mile, 24-inch pipeline, which runs from Vermilion Block 22 to the Cow Island plant, performs a transmission function subject to the Commission's jurisdiction.[42]

The Commission orders:

(A) Jupiter's facilities will be non-jurisdictional gathering facilities upon transfer to Unocal and integration with its existing production and gathering system.

[40] *Venice*, 87 FERC at 61,252.

[41] While the courts have sanctioned giving some weight to non-physical factors, including the purpose, location, and operation of the facility, and the general business activities of the owner of the facility when applying the primary function test, non-physical factors are secondary, and generally only come into play if application of the physical factors results in a close call. *See* note 12, *supra*.

[42] As discussed above, on remand we are finding the primary function of Jupiter's facilities to be gathering. In addition, our finding that Transco's facilities are jurisdictional is based on application of the Commission's primary function test to the physical and non-physical aspects of those facilities. Consequently, we do not reach the question of how much weight we would accord the existence of upstream jurisdictional facilities, in determining the jurisdictional status of downstream facilities.

(B) Transco's approximately 37-mile long, 24-inch diameter pipeline facilities from Vermilion Block 22 to the Cow Island plant are jurisdictional transmission facilities.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.