

II. Communications and Correspondence

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III. Post-Conference Comments

NGSA applauds the Commission's decision to hold the October 25, 2002 public conference. The Commission correctly perceived that now is the time to address and reassess its regulatory initiatives affecting the natural gas industry, and to consider both the nature of the problems and issues facing the industry and how the Commission best can help the industry grow to meet anticipated increased consumer demand.

A. Supply and Demand Issues: Overview and Recommended Regulatory Actions

At the public conference, Mike Stice, Chairman of NGSA's Issues Committee, presented the producer perspective on issues affecting the long-term growth of natural gas supplies.¹ Several additional issues relating to the availability of increased natural gas supplies were raised during the public conference. NGSA would like to supplement Mr. Stice's presentation to address those issues.

1. Why Have \$4.00 Prices Not Stimulated A Greater E&P Reaction?²

As a threshold matter, NGSA notes that market prices have stimulated development projects in many areas of the country. In fact, the interest in LNG projects is a consequence of this phenomenon. However, this trend admittedly has been far from

¹ Mr. Stice is President, Gas & Power for ConocoPhillips. A copy of Mr. Stice's remarks is attached.

² See Tr. 32:18-32:20 (Commissioner Massey).

uniform. In addition, in some regions of the country, producers cannot obtain anywhere near \$4.00 per Mcf for natural gas. The absence of adequate export pipeline transportation capacity in the Rocky Mountain region has depressed producer prices in that region far below Henry Hub index prices.³

The question remains, in many areas of the country, why higher natural gas prices have not triggered a more widespread increase in E&P activities. Several factors explain this phenomenon. First, uncertainty regarding long-term pricing fluctuations remains a concern for investors and other market participants.⁴ Second, prices in the range of \$4.00 prices are a relatively recent phenomenon. Almost a year ago, prices were only in the range of \$2.00 per Mcf. Prices were depressed when current development budgets were under review, which can create lags in the response time to put economically feasible projects in place. Third, substantial declines in market liquidity effectively have limited opportunities for natural gas producers to hedge current natural gas prices for a duration sufficient to support substantial E&P expenditures over a protracted period of time.⁵ Fourth, the producing industry faces higher finding and operation costs, greater difficulties in securing capital for long-term investments and higher overall development costs. Fifth, land access restrictions in the Rockies, the Eastern Gulf of Mexico and the offshore East and West Coasts eliminate access to additional sources of potential natural gas production.⁶ Even in those areas where lands are accessible, project inventory is

³ “There’s a glut of gas in the Rocky Mountains, at least two Bcf a day is shut in. ... [Rocky Mountain] prices at the hubs are more than \$2 an Mcf below Henry Hub. The reason why drilling is down in the Rockies is that you can’t get the gas out of there and the prices are depressed. That’s why I said I think that, in my view, that’s one of the most important near-term actions that you could take, even ahead of citing LNG terminals or other actions.” Tr. 33:6-18 (Kuuskraa).

⁴ See, e.g., Tr. 44. (Stringham).

⁵ Tr. 50 (Stice).

⁶ Tr. 36 (Stice).

constrained (that is, there are fewer E&P prospects already in the pipeline and ready for implementation). Sixth, the industry faces longer lead times to characterize producing reservoirs and sharp production declines.⁷

2. How Can the Commission Foster Development of New Natural Gas Supplies?

All industry segments appear to agree that the Commission can and should foster development of new natural gas supplies by continuing to expedite review and approval of new pipeline construction projects, particularly those (such as the potential pipeline projects serving producing areas in the Rockies) that promise access to new markets. Infrastructure development should be a paramount concern. We commend the Commission for its recent steps toward streamlining review of new certificate applications and hope that it will continue these efforts in the future.

3. Why Don't Producers Build or Finance Pipelines to Bring Gas to Markets?

One short answer to this question is that producers do, in some circumstances. That said, several factors make it difficult to expect natural gas producers generically to underwrite new pipeline construction projects, either as pipeline owners or baseload shippers. First, producers need to focus on E&P activities, rather than on pipeline operations. Second, producers sometimes find it difficult to know the volumes needed for the pre-investment required when signing long-term contracts. For example, determining the production profile for coalbed methane is unpredictable given the uncertainties in its development process. Third, producers face a dilemma when evaluating signing up for new long-term pipeline capacity to move gas out of a region. In

⁷ “Basin exhaustion is a serious problem, and it’s occurring also in both the mid-Continent and Texas, the three largest producing regions in today’s production.” Tr. 36 (Stice).

an area where capacity has been constrained, all shippers benefit once new pipeline capacity has been built. The first shipper underwriting the project, however, will have to pay demand charges to support the project on a long-term basis. This requires the producers to develop in advance adequate long-term downstream markets to support the commitment to the pipeline.

Unlike producers, LDC's have the familiarity with projected long-term system needs and with load growth to make such commitments to satisfy their load-serving obligations under state law; however, many state commissions discourage LDC's from making the long-term contractual commitments necessary to support substantial pipeline expansions, regardless of the potential benefit to consumers. NGSA encourages the Commission to enter into a dialog with state agencies to ensure that LDC's have the requisite regulatory incentives—including protections against imprudence challenges—to provide the long-term contractual commitments upon which expansion of the natural gas infrastructure depends.

4. Should the Commission Grant Pipelines Even Higher Rates of Return in Light of Current Capital Market Conditions?

In his comments, Mr. Stice noted on behalf of NGSA that pipeline returns should be limited to just and reasonable levels commensurate with the risks pipelines take. In response, pipeline industry representatives point to recent market performance of integrated energy companies involved in both unregulated marketing activities and regulated natural gas pipeline transportation.

The pipeline position is without foundation. The Commission does not have, nor should it have, the responsibility to adjust pipeline returns upward, or to allow pipelines to maintain excessive returns, in order to bail out pipeline parent companies that have

engaged in risky investments in non-regulated businesses. The best way to “disincentivize” pipelines from doing this is to enforce return levels that are commensurate with the risks associated with the regulated business. In this way, capital can continue to be attracted to pipeline projects based on the risk/reward profile of those projects, without creating a freestanding fund of ratepayer dollars that then can be diverted to other non-regulated ventures. While enforcing reasonable returns may be difficult for many pipeline companies at this time, doing so absolutely is necessary to restore confidence in the pipeline industry and to help assure pipeline investors that capital infusions are targeted primarily, if not exclusively, at projects that are part of the still robust regulated pipeline industry.

Pipeline customers should not be held responsible for the misfortunes of pipeline parent companies associated with their forays into non-jurisdictional activities. Far from providing any justification for a retreat by the Commission from its fundamental role to protect pipeline shippers, current capital market conditions underscore the need to insulate regulated pipeline activities from the risk inherent in non-jurisdictional operations. The fact that pipeline parent companies face higher capital costs now because of their unregulated activities is not the responsibility of the regulated entity’s customers.

B. Enhancing Natural Gas Supplies through LNG Terminal Development

If the natural gas industry is to attain the increases in demand forecasted for the next ten years, new LNG terminal facilities will be essential.⁸ Prompt action by the Commission in clearly stating its policy on LNG terminal access issues could expedite the decision-making process by project sponsors on whether to move forward with the

⁸ Tr. 30:11-14.

multi-billion dollar long-term investments required to bring substantial LNG projects to fruition.

C. Enhancing the Development and Availability of Offshore Natural Gas Supplies

OCS supplies of natural gas are a vital element of domestic production. To ensure access to these supplies, the Commission should reevaluate its policies affecting natural gas pipeline operations in the shallow waters in the OCS. The Commission should adopt a policy that considers the consequences of relinquishing jurisdiction over historically regulated OCS pipelines by adopting a presumption that a currently certificated, NGA jurisdictional pipeline shall remain subject to NGA jurisdiction unless the pipeline can demonstrate that (a) the criteria for gathering are satisfied; and (b) a change in jurisdictional status will not be economically detrimental to shippers on the system, or that viable competitive alternatives exist.

1. OCS Supplies are a Crucial Component of National Natural Gas Production

Natural gas produced on the outer continental shelf in the Gulf of Mexico contributes over 5 Tcf/year (14 Bcf/d) to domestic natural gas supplies. This represents over 20% of current U.S. supply. Seventy percent of existing OCS production remains in non-deepwater areas of the OCS. This production contributes 3.6 Tcf/year (10 Bcf/d) of domestic natural gas supplies.

The potential future contribution of OCS supplies to meeting projected increased demand for natural gas is vast. Potential reserves in deepwater areas of the OCS are extensive. New deepwater production technology may extend the economic life of existing OCS production in shallow waters.

In light of these facts, no other single area of FERC regulation will have a greater impact on future gas supply than how the Commission deals with offshore gas pipelines. Any decision by the Commission to relinquish jurisdiction over NGA regulated offshore pipelines in the shallow waters of the OCS would inhibit the effective and economic development of OCS supplies. An informal survey of a number of NGSA members indicates that, using conservative assumptions, at least 1,160 MMcf/d (or over 1 Bcf per day) of existing offshore production would be subject to “rate stacking” were the Commission to deregulate existing NGA jurisdictional pipelines in the OCS. This number is probably a very low estimate inasmuch as it represents data from only a small fraction of producers active in the OCS.

2. Review of Crucial Regulatory Issues Affecting OCS Reserve Development

The Commission’s resolution of the following issues will have a material impact on the scope and scale of development of future OCS reserves:

- The criteria to be used to determine under the NGA whether a gas pipeline system (or a portion thereof) is to be considered non-jurisdictional gathering or jurisdictional transportation;
- Whether OCSLA can serve as a substitute for NGA regulation;
- How to handle deepwater gas pipeline regulation; and
- How to deal with existing, certificated jurisdictional lines that may be subject to re-classification as gathering.

3. Evolution of Current OCS Policies

The Commission has struggled in recent years with how to define its jurisdiction in the offshore. The trend following the *EP Operating* decision⁹ was to view new,

⁹ *EP Operating Co. v. FERC*, 876 F.2d 46, 48-49 (1989).

deepwater gas lines as performing more of a gathering function than a transportation function. This concept was reflected in the Commission's 1996 Policy Statement determination that gas lines in water depths of 200 meters or more should be subject to a rebuttable presumption that they perform gathering "up to the point where they duplicate or are in proximity to facilities that are established as transportation facilities."¹⁰

The Commission confronted further difficulties in applying its changing criteria for determining whether offshore facilities were "gathering" or "transmission" in the context of historically regulated offshore transportation systems. In 1995, Sea Robin Pipeline Co. petitioned the Commission to declare its entire offshore system as exempt "gathering," notwithstanding its longstanding status as a jurisdictional transportation facility. The Commission denied the petition, finding that the facilities remained transmission facilities subject to the Commission's jurisdiction under the NGA.¹¹

The Fifth Circuit remanded the Sea Robin decision to FERC, not on the basis that the result was wrong, but that FERC had not properly applied the relevant criteria that it had historically employed in its gathering test.¹²

On remand, the Commission's adopted a new test, the "central aggregation point test," and declared a significant part of Sea Robin's system to be gathering. Notwithstanding this, FERC indicated that it "share[d] the Producer Group's concern that the reformulated primary function test ... could result in some OCS service providers

¹⁰ *Gas Pipeline Facilities and Services on the Outer Continental – Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act*, 74 F.E.R.C. (CCH) ¶ 61,222, at 61,757 (1996).

¹¹ 71 F.E.R.C. (CCH) ¶ 61,351, at 62,385 (1995).

¹² *Sea Robin Pipeline Co. v. FERC*, 127 F.3d 365 (5th Cir. 1997).

being able to use their natural monopoly position to exercise their market power over essential OCS facilities in a discriminatory manner...”¹³

The Commission argued that these concerns would be mitigated by the Commission’s assumed authority under OCSLA to regulate offshore gas lines. However, after FERC promulgated rules under OCSLA, a United States District Court held that the Commission lacked the legal right to issue regulations implementing the provisions of OCSLA.

In the interim, FERC approved some offshore “spindown” requests, where portions of jurisdictional systems were declared to be gathering and were transferred to pipelines’ unregulated affiliates. In none of these cases (nor in *Sea Robin*) did the Commission ever undertake a substantive evaluation of whether the removal of the facilities and services from jurisdictional to non-jurisdictional status was in the public interest.

The D.C. Circuit in the latest *Sea Robin* decision (which still is subject to potential review by the United States Supreme Court) upheld FERC’s “central point of aggregation” test, not because it was necessarily the correct result, but because the court found that the Commission has wide discretion in this area, and thus saw no reversible legal error.

Subsequently, FERC decided the Shell North Padre Island case where, following a spindown, a pipeline was found to have exercised market power in raising rates on the non-jurisdictional portion of its system.¹⁴ In the *Shell* decision, the Commission

¹³ *Sea Robin Pipeline Co.*, 92 F.E.R.C. (CCH) ¶ 61,072, at 61,296 (2000).

¹⁴ *Shell Offshore Inc. v. Transcontinental Gas Pipe Line Corp.*, 100 F.E.R.C. (CCH) ¶ 61,254, slip op. at 43 (2002).

reasserted jurisdiction over the gathering facilities at issue because the pipeline had acted in concert with an affiliated gathering company to abuse their joint market power and thus frustrate effective Commission regulation under the NGA. In so doing, the Commission acknowledged that a “reclassified” OCS gathering facility had the power to charge monopoly rates that would frustrate the Commission’s ability to regulate jurisdictional interstate transportation. *Id.* at 61,912, para. 43. The Commission further held that price gouging directed at OCS producers would harm consumers:

[E]ven if the most direct victim of such behavior may be Shell and other producers on the NPI [pipeline] system, if such behavior happens repeatedly it may have a significant cumulative effect on downstream consumers by distorting producers’ price signals. The public would thereby suffer from the reduced competition in the interstate transportation and sale of natural gas. Further, these distortions of production and development decisions could also have a negative economic impact.

Id. at 61,914 (footnote omitted).

In sum, the Commission’s current regulatory policies affecting OCS production have been in flux. To a substantial extent, those policies have been based on two fundamentally flawed assumptions: first, the assumption that the Commission possessed the ability to enforce the OCSLA and that such regulation could possibly be an effective substitute for NGA regulation; and second, that interstate pipelines and their affiliates would not exercise coordinated monopoly power.¹⁵ Both assumptions have proven to be incorrect, dramatically. The Commission policies spawned by those assumptions now threaten the viability of OCS natural gas development.

4. NGSA’s Recommendations for Reform of Commission OCS Policy

a. The Appropriate Gathering Test

¹⁵ *Id.* at 61,912.

The collapse of two key assumptions underlying the Commission’s current OCS policy warrants a reevaluation of that policy. Such a reevaluation should begin with an examination of the impact of Commission regulation on OCS development. A “bright line test” (where one or two clear factors determine jurisdiction) is superficially alluring but does not provide the flexibility to deal with the many considerations that may be relevant in determining whether or not gathering is being performed.

The D.C. Circuit has made clear that FERC has extremely wide discretion in how it makes gathering determinations. Physical factors are still the primary criteria, but significantly, the Court re-acknowledged the long-standing proposition that the Commission can take into account non-physical factors. It follows that the Commission clearly can alter its criteria for determining whether facilities perform a gathering function (as it did in *Sea Robin*) so long as the Commission articulates sound reasons for doing so.

A test combining clear criteria with flexible application was proposed by virtually all major offshore producers in Docket No. RM98-8 during an earlier FERC inquiry on how to regulate offshore pipelines. The Commission, unfortunately, never adopted this test, whereas the subsequent *Sea Robin* and spindown cases established a very liberal approach, enabling existing, jurisdictional offshore lines to escape NGA jurisdiction.

NGSA submits that the Commission should adopt the Producers’ test as set forth in their Docket No. RM98-8 comments. That test was stated as follows:

1. Rebuttable Presumption That Deep Water Facilities Are Non-Jurisdictional Gathering Consistent with the Existing OCS Policy Statement

The 200 meter test, as provided in the OCS Policy Statement, would be retained as a rebuttable presumption. Offshore facilities located in

water depths of 200 meters or more would be presumed to be gathering “up to the point or points of potential connection with the interstate pipeline grid.”

2. Physical And Operational Factors to Be Considered in Determining the “Primary Function” of OCS Facilities

For offshore facilities not located in water depths of 200 meters or more (or in order to rebut the 200 meter presumption), the following five revised “primary function” criteria would be considered:

- (a) The extent to which offshore facilities are integrally related to natural gas production, facilities and activities, including, but not limited to, such considerations as (i) the presence and proximity of oil and gas wells, and (ii) the presence and proximity of primary separation facilities (*i.e.*, those which separate free water, oil and gas to achieve gas quality necessary to enter interstate pipelines). Pipelines, platforms or other equipment would reflect a production/gathering function where the foregoing types of facilities and uses were a prominent and integral part of their operations;
- (b) The diameter and length of the pipeline (with “sliding scale” considerations allowing for larger diameter and longer pipe to be considered gathering the farther out from shore);
- (c) The function of compression in relation to the offshore facilities at issue. For example, compression indicates a production function where it is used by producers to facilitate wellhead production or to raise pressure so that gas can enter a gathering line or the capacity of a gathering line can be increased. Conversely, compression indicates a jurisdictional purpose where it is used to increase pipeline pressure or capacity;
- (d) The physical location (*e.g.*, proximity to the interstate pipeline grid is indicative of transmission); and
- (e) The extent to which facilities (including pipeline laterals) are operationally integrated with mainline transmission or production facilities.

b. The Role of OCSLA

The United States Court of Appeals now faces the task of defining the scope of the Commission's regulatory jurisdiction under OCSLA. A lower court decision has cast significant doubt about the FERC's claimed broad scope of authority under OCSLA.

In light of this, the Commission's reliance on OCSLA as a regulatory "back-up" to the NGA is seriously in doubt. Even if not in doubt, producers do not view OCSLA as an adequate substitute for FERC authority under the NGA because there is no comparable ratemaking authority under OCSLA and enforcement of FERC's OCSLA authority would involve a burdensome and time-consuming process of bringing complaints.

NGSA recommends that the Commission defer further action involving OCSLA pending resolution of the court proceeding in order to better define the extent of FERC's OCSLA authority. In the interim, the Commission's decisions on gathering and spindown requests should not be based on the assumption that OCSLA is a sufficient, substitutable authority for the NGA.

c. Deepwater Regulation

The Deepwater differs from the Shelf in that there are few if any, NGA jurisdictional lines that have been in place and operating in the Deepwater area for a long period of time, as is generally the case in the Shelf. Therefore, producer reliance on a particular jurisdictional status is less significant in the Deepwater than in the Shelf. Indeed, many new Deepwater lines have been constructed and are being operated by the producers themselves, as an integrated part of major, highly expensive production projects. To the extent Deepwater lines are owned and operated by traditional pipeline

companies, services on these systems have often been negotiated and established in an environment of equal bargaining power, as producers retain the option to build competing lines. This contrasts with the shallow water, Shelf area, where production is mature and declining, is usually captive to one transmission system, and where construction of, or access to, alternative systems is seldom economic.

The Commission described the situation correctly in the 1996 Policy Statement.

Referring to Deepwater projects, FERC stated:

“...there is no significant reliance by investors, producers, or shippers on an established regulatory scheme. Further, the companies who are sponsoring pending projects are large companies that intend to produce, gather, and transport their own gas and who appear less in need of regulatory protection than others closer to shore. ... [T]hese producers closer to shore have relied on regulated interstate pipelines to transport most, if not all, of their gas onshore and may be captive to these pipelines if Commission oversight were suddenly withdrawn. In sum, it is our view that under current circumstances the need for NGA regulation of deepwater projects far offshore is significantly less than it is elsewhere.”¹⁶

This statement remains true today.

Accordingly, NGSA recommends that the Commission retain the 200 meter water depth presumption of gathering for Deepwater gas lines.

d. Regulatory Treatment of Existing Certificated Pipelines (Primarily on the Shelf)

A failure by the Commission to consider the consequences of relinquishing jurisdiction over existing certificated pipeline facilities on the OCS has the greatest potential negatively to impact the maintenance of OCS production. Several factors explain this fact:

¹⁶ *Gas Pipeline Facilities and Services on the Outer Continental – Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act*, 74 F.E.R.C. (CCH) ¶ 61,222, at 61,757 (1996).

- Financial returns are very sensitive to increases in transportation rates;
- Higher transportation rates resulting from pipeline spin downs may reduce attractiveness of Shelf investments;
- Reduced investment will shorten the economic life of existing wells;
- Production declines may accelerate; and
- Shelf production is largely captive and few, if any, viable economic alternatives to existing pipelines are present.

If the Commission does not prevent the exercise of market power (occurring by means of unregulated gathering rates resulting from spindowns or other Sea Robin-type gathering findings), it will significantly jeopardize the ability of producers to invest further in Shelf production and thereby inhibit the development of additional supplies.

Despite its acknowledgement in *Sea Robin* that its action in that case could result in the exercise of market power, the Commission incorrectly relied on uncertain authority under OCSLA as a backstop. Also, the Commission simply has assumed that separating gathering from transportation represents an important step in the “unbundling” process, whereby offshore shippers using spundown gathering facilities will somehow enjoy a selection of more and/or better service options. Nothing of the sort has happened. The only outcome experienced from such “unbundling” is the ability of the pipeline to raise rates on the gathering portions of its system through the exercise of market power. This clearly was evidenced in the North Padre Island case referenced above.

Up to this point, the Commission has refused to undertake pre-spindown evaluations of how such action impacts the public interest, preferring instead to await the filing of complaints if problems arise. (This is how the North Padre Island case was pursued). Producers have argued that the FERC has a clear statutory responsibility under the abandonment provisions of NGA section 7(b) to evaluate whether a change in

jurisdictional status is in the public convenience and necessity before it occurs. The Commission did not do this in *Sea Robin*, nor in the spindown cases.¹⁷

NGSA believes that the Commission should adopt a new element in its offshore gathering test that would account for the need to assess the impact of a change in jurisdictional status. This would not be in the nature of a section 7(b) finding, but a new criterion, in the form a presumption, (conceptually similar to the 200 meter Deepwater presumption) that would factor in the potential impact of a change in jurisdictional status.

The presumption would be that a currently certificated, NGA jurisdictional pipeline shall remain NGA jurisdictional unless the pipeline can demonstrate a) that the criteria for gathering are satisfied, and b) that a change in jurisdictional status will not be economically detrimental to shippers on the system, or that viable competitive alternatives exist.

This added element in the gathering test would of course be a significant addition to the more traditional physical and non-physical criteria that have been utilized for gathering determinations and would probably be challenged for that reason. However, as stated above, the Commission's discretion in this area is wide, and a significant policy change affecting how gathering determinations are made could be accomplished if accompanied by sound reasoning.

During the public conference, a spokesman for the Producer Coalition characterized this presumption as a proposal that would result in one legal test for new systems and a separate legal test for "old" systems. This reflects a misunderstanding of NGSA's position. The same physical criteria would be applied to both new and old systems. The only difference is that, in the case of historically regulated systems,

¹⁷ Producers continue to pursue this issue on appeal before the Commission and the courts.

pipelines would be required to make a further showing that a change in jurisdictional status would not harm existing shippers or that viable competitive alternatives exist.

The reasons why this addition to the gathering criteria is supportable are compelling. They are as follows:

- The Fifth Circuit in the first *Sea Robin* decision explicitly stated that “prior certification is relevant.” Thus, the jurisdictional status of a system is an appropriate consideration in determining whether gathering status is warranted;
- FERC itself justifiably expressed its fear about post-Sea Robin exercises of market power in its order denying rehearing in that case;
- Also, in Order No. 639, FERC expresses concerns about market power (“shippers using such (reclassified) facilities will no longer enjoy the formal protection against the exercise of market power afforded by the NGA”);
- Under the NGA, the Commission must take no action inconsistent with its duty to ensure that no harm to the public interest results from its decisions;
- The D.C. Circuit Court’s finding concerning the lack of a need for evaluating a change in gathering status under NGA section 7(b) abandonment, if not reversed, creates a situation where FERC would be powerless to assess the public interest impact of a change in jurisdictional status unless it was to adopt the presumption articulated above as part of the gathering test itself;
- It is difficult to conceive that any gathering test that could result in harm to the public interest could not accommodate a criterion that specifically addresses the public interest impact;
- Adoption of the proposed presumption would also protect against the possibility that actual physical service could be discontinued without obtaining section 7(b) authority (the Commission and the Court both assumed in *Sea Robin* that abandonment did not apply because physical service would continue). Where non-jurisdictional status is conferred by FERC, it then loses its NGA authority over the facility and related services. Having lost that authority pursuant to the gathering finding, there would be nothing (other than any remaining contractual obligation) to prevent the pipeline from then physically discontinuing service without any exercise of the FERC’s abandonment authority, which would be clearly called for in that circumstance. The proposed presumption would forestall any harm from this situation because the pipeline would have to demonstrate before any change in

status that no economic harm would befall any present or future shipper on its system or that transportation alternatives were available; and

- The presumption would also facilitate negotiations to establish mutually beneficial long-term arrangements for transportation on spundown gathering facilities, since such arrangements would likely satisfy the “no harm” provision in the presumption.

IV. Conclusion.

NGSA urges the Commission to act now to foster secure and reliable growth of natural gas supplies. NGSA submits that the specific steps outlined above will assist the Commission in these efforts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2001), I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 15th day of November 2002.

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