



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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ENERGY AND MINERALS  
DIVISION



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JANUARY 12, 1979

*[Outer Continental Shelf Pipeline Permitting and Regulating]*

The Honorable Charles B. Curtis  
Chairman, Federal Energy  
Regulatory Commission *AB 001452*

Dear Mr. Chairman:

*DOE*

We have recently completed a review of Outer Continental Shelf (OCS) pipeline permitting and regulatory functions within the Federal Government. We found that the Federal Energy Regulatory Commission (FERC) was not aware of certain pipelines which appeared to be subject to its responsibilities for enforcing nondiscriminatory oversight. This condition was due mainly to the lack of clarity under existing regulations for the classification of pipelines and the related split responsibilities between the U.S. Geological Survey and the Bureau of Land Management for granting permits--problems which are dealt with by the 1978 Amendments to the OCS Lands Act which expand FERC's regulatory authority.

Because of this Nation's increasing reliance on the OCS for oil and gas resources and the resulting need to transport these resources to onshore markets, we believe effective implementing regulations need to be developed by FERC--working with the Department of the Interior--to ensure that the intent of Congress concerning nondiscriminatory access to all OCS pipelines is carried out.

BACKGROUND

In 1953 the OCS Lands Act was enacted by the Congress to enable the United States to develop and extract the natural resources of the OCS, particularly oil and natural gas. Under the Act, the Secretary of Interior promulgated regulations which created two types of pipelines: "transportation lines" and "gathering lines." Transportation lines, which were authorized by section 5(c) of the Act, were subject to the requirement that they be operated "without discrimination" with respect to "oil and natural gas produced from...submerged lands in the vicinity of the pipeline." The task of determining the proportionate access by leaseholders was assigned to the Interstate Commerce Commission with respect to oil and the Federal Power Commission

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with respect to natural gas. <sup>1/</sup> Permits for rights-of-way for transportation lines were issued by the Bureau of Land Management (BLM), an agency within the Department of the Interior.

Gathering lines, which were permitted under section 5(a) of the Act, were not subject to the "without discrimination" provision. According to the regulations, the purpose of gathering lines was to enable the leaseholder to move the product, still in custody, to a central point where it could be made ready for the transfer of custody by treating, storing, or measuring it. Gathering lines could also be used to deliver the product to a point of sale, or a transportation company's pipeline, or to move fluids in connection with lease operations. It is worth noting that the "central point" could be on or offshore, and that under the "pooling" provision the leaseholder was permitted to commingle his production with the products of other leaseholders when it was transported through "gathering lines." Permits for easements pursuant to this section were issued by the U.S. Geological Survey (USGS), also an agency within the Department of the Interior.

Under the 1978 Amendments to the OCS Lands Act, section 5(e) preserves the Secretary of the Interior's authority to grant rights-of-way and to issue regulations governing the administration of OCS leasing operations. The major substantive change resulting from the Amendments vis-a-vis the administration of OCS leases concerns the question of access to pipelines. Section 5(f)(1) mandates that every permit, license, easement, right-of-way, or other grant of authority for the transportation by pipeline of oil or gas on or across the OCS shall require that the pipeline provide open and nondiscriminatory access to both owner and nonowner shippers.

Although the statute provides for nondiscriminatory access, section 5(f)(2) authorizes FERC to exempt from the requirement "any pipeline or class of pipelines which feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed." Thus, section 5(f)(2) maintains the distinction between transportation and gathering lines but requires a specific exemption by FERC from the nondiscrimination requirement.

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<sup>1/</sup>Under the Department of Energy Organization Act (Public Law 95-91) the relevant authority of the Interstate Commerce Commission and the Federal Power Commission was transferred to FERC.

PAST ENFORCEMENT OF NONDISCRIMINATORY  
ACCESS APPEARS INADEQUATE

We found that FERC has not aggressively carried out its responsibilities for enforcing nondiscriminatory access to OCS pipelines. FERC has made no formal attempt to inventory the OCS pipelines which might have been subject to its enforcement responsibility and only has reacted to company complaints or other filings in exercising its enforcement authority.

According to information provided by BLM and USGS, the two agencies have issued 72 and 42 permits, respectively, to a total of 61 companies for pipelines in the Gulf of Mexico which carry production to shore. We asked FERC officials to identify which of these pipelines were subject to its enforcement, but they were unable to do so. These officials told us that they do not rely on information from BLM and USGS to initiate the regulatory process, but exercise their authority when a company files for an approval of a transportation tariff or files a complaint against another company. FERC officials also told us that their information system is independent from that maintained by BLM and USGS. Their records show only 34 companies with pipelines transporting production to shore. Thus, it appears that FERC was unaware of 27 other companies with pipelines which very likely should have been subject to its enforcement authority.

This situation is mainly due to Department of Interior regulations which obscured the distinction between gathering and transportation pipelines and left unclear the pipeline permitting authority between BLM and USGS. Interior's regulations enlarged the original definition of gathering lines by allowing producers to commingle their product in a pipeline that may be located off their leases or even off the OCS. This pipeline could then transport the oil and gas to a central point which could be offshore or onshore. The BLM OCS Office in New Orleans and the USGS Office in Metairie, Louisiana, recognized this problem in a joint memo to their respective headquarters:

"An oil company, when seeking approval to install a flow or gathering line across a section of the OCS (part of which is not under their lease) has the option to apply either to USGS for a right of use and easement or to the BLM for a right-of-way."

"The permits approved by BLM are usually to major pipeline transmission companies and a few oil and gas companies who are willing to subject themselves to the provisions \* \* \* of the Act requiring the transportation of products of others \* \* \*."

Thus, Interior regulations made it possible to circumvent FERC authority by allowing USGS to grant a gathering pipeline permit for a line whose essential function was transportation--i.e., carrying the production of several leaseholders to shore.

As early as 1960, the BLM OCS Office in New Orleans advised its headquarters office that the criteria for differentiating between a transportation line and a gathering line permit were confusing both to the operators as well as the permitting agencies. In August 1974, BLM and USGS entered into a memorandum of understanding in an attempt to establish clear lines of departmental authority and provide an efficient mechanism for approving pipelines routed on and through the OCS. The agreement appears to have been ineffective, however, because the agencies were still in disagreement over the proper classification for some lines.

### CONCLUSIONS AND RECOMMENDATIONS

The OCS Lands Act Amendments provided FERC with increased authority over OCS pipelines by making the principle of non-discriminatory access applicable to all pipelines. Congress recognized that provisions for nondiscriminatory access are not ordinarily appropriate for pipelines to a facility where oil and are first collected, separated, dehydrated, or otherwise processed, i.e., gathering lines. Consequently, to eliminate the confusion which existed prior to passage of the Amendments and which has not yet been clarified by regulations implementing the Amendments, we believe that specific regulatory criteria are needed to clearly define and distinguish between transportation and gathering pipelines. In addition, we believe that procedures are needed which would provide FERC with information on pipelines permitted by BLM and USGS to facilitate the regulatory process. Without adequate enforcement, denial of access and other discriminatory practices could prevent producers from transporting their production to markets onshore, thus putting them at a competitive disadvantage.

We recommend that FERC:

--Develop definitive regulations which exempt from the competitive principles contained in the 1978 OCS Lands Act Amendments only those pipelines or class of pipelines clearly established as gathering or feeder lines, i.e., those lines that feed into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed. The regulations should include stipulations that gathering or feeder lines are restricted to the confines of a single lease or group of contiguous leases under unitized operation or under one operator. In developing such regulations, we believe FERC should consult with BLM

and USGS (through the Department of Interior) because of their past experiences in OCS operations to ensure that guidelines to be followed by all parties in the future are consistent.

--Establish procedures for obtaining information from the Department of Interior on OCS pipeline permitting operations which would ensure that FERC is aware of all pipelines--existing and proposed--that fall under its enforcement authority.

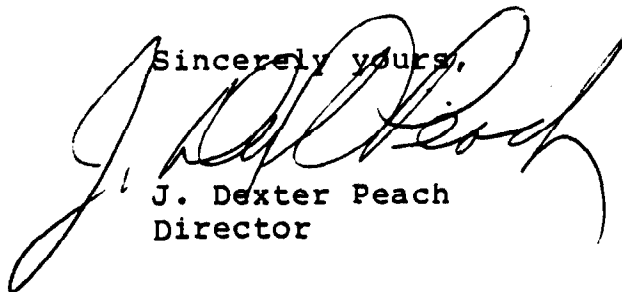
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We discussed this report with responsible officials at FERC and the Department of Interior, who expressed general agreement with the facts as well as with our conclusions and recommendations.

As you know, Section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions he has taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Secretary of the Interior; the Secretary of Energy; the Secretary of Transportation; the four committees identified above as well as appropriate energy committees; and to the Director, Office of Management and Budget.

Sincerely yours,



J. Dexter Peach  
Director