

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 5/20/04
Department Name: Planning & Development
Department No.: 053
Agenda Date: 6/1/04
Placement: Administrative
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Continued Item: NO
If Yes, date from:

F:\GROUP\ENERGY\WP\POLICY\Interagency Misc\MMS-Open Access Pipelines\Board Agenda Letter.6-1-2004

TO: Board of Supervisors

FROM: Valentin Alexeeff, Director
Planning and Development Department

STAFF CONTACT: Doug Anthony, Energy Specialist
Energy Division, 568-2046

SUBJECT: Comments in Support of Proposed Federal Rulemaking for Open, Non-Discriminatory Access to Pipelines on the Outer Continental Shelf

Recommendation(s):

That the Board of Supervisors: Authorize the Chair to sign and submit the letter of comments (Exhibit A) in support of proposed rulemaking by the Minerals Management Service for open, non-discriminatory access to pipelines.

Alignment with Board Strategic Plan: The recommendation primarily aligns with Goal No. 2. *A Safe and Healthy Community in Which to Live, Work, and Visit.*

Executive Summary and Discussion: The Minerals Management Service (MMS) issued an advanced notice of proposed rulemaking on April 12, 2004. The MMS seeks comments on potentially amending Title 30 of the Code of Federal Regulations, Part 200, to provide open and non-discriminatory access to oil and gas pipelines on the Outer Continental Shelf (OCS) by both owner and non-owner shippers; i.e., requiring that all such pipelines be operated as common carriers. The comment letter recommended by staff fully encourages the MMS to follow through with its intent to improve its regulations so it may fully enforce the open and non-discriminatory access provision of the OCS Lands Act and minimize environmental impacts of offshore oil and gas development.

Open, non-discriminatory access to OCS oil and gas pipelines by all shippers has long been required by the OCS Lands Act (section 5f)¹, and has historically been enforced by the Federal Energy Regulatory Commission (FERC). A recent decision by the U.S. Court of Appeals, however, affirmed a lower court finding that the OCS Lands Act grants only limited authorities to FERC to enforce section 5 of the OCS

¹ See United States Code section 1334(f).

Lands Act, but noted that the Act grants broader authorities to the MMS for such enforcement.² Hence, the MMS is proposing to amend its regulations so it may enforce the open access to pipelines requirements of Federal law.

Open and non-discriminatory access by all shippers to OCS pipelines is critical to achieving compliance with the County's Local Coastal Program and Comprehensive Plan policies that require consolidation of oil and gas facilities. Relevant components of Policy 6-14A of the County's Coastal Plan, require equitable and non-discriminatory access to the onshore segments of oil and gas pipelines as follows:

Impacts of new pipelines outside of industry facilities shall be minimized by requiring the use of available or planned common carrier or multiple-user pipelines to the maximum extent feasible. New pipeline construction shall be permitted only if the Planning Commission determines that the use of available common carrier or multiple-user pipelines is not feasible or is not the environmentally preferred alternative. New pipelines that are permitted shall be constructed, operated, and maintained as common carrier or multiple-user pipelines unless the Planning Commission determines that is not feasible. New multiple-user pipelines shall provide equitable access to all shippers with physical compatible stock on a nondiscriminatory basis. ... The design of new common carrier and multiple-user pipelines shall take into account the reasonable, foreseeable needs of other potential shippers.

Similarly, Policy 6-6E of the Coastal Plan, requires equitable and non-discriminatory access to processing facilities, which are part of the transportation system, as follows:

Operators and owners of County-designated consolidated facilities and sites shall make their facilities and property available for commingled processing and consolidation of oil and gas facilities on an equitable and nondiscriminatory basis. If existing processing capacity is insufficient to accommodate proposed production and new facilities are not permissible pursuant to the County's consolidation policies, operators of consolidated facilities shall reduce throughput on a pro-rata basis to accommodate other developers.

Open and non-discriminatory access to OCS pipelines also reflects conventional practice for development of oil and gas reserves offshore Santa Barbara County. The foregoing policies and conventional practice of requiring common-carrier pipelines often substantially reduces the need to install additional pipelines – one for each shipper – thereby minimizing significant, adverse impacts to coastal resources.

Mandates and Service Levels: Without this rulemaking, the County would likely find more difficulty in enforcing its policies requiring consolidation of oil and gas pipelines and processing facilities.

Fiscal and Facilities Impacts: None. Expenses incurred in analyzing and preparing comments on this rulemaking by NOAA are budgeted in Fund 0001, Program 5080, Project PKS2 as shown on page D-298 of the County's FY 03-04 budget book, under expenditure item *Long Range Planning*. These expenses are offset by revenue from the Coastal Impact Assistance Program of 2001 administered by the National Oceanic and Atmospheric Administration, as shown on page D-298 of the County's FY 03-04 budget book, under the revenue source listed as *Grants*.

² See Exhibit B, which contains the advanced notice of rulemaking (pp. 19138 and 19139) for details. Also see *Williams Cos. V. FERC*, 345 F.3d 910 (D.C. Cir. 2003).

Special Instructions: Clerk of the Board will secure the Chair's signature, and Energy Division staff will ensure the executed comment letter reaches NOAA by the due date.

Concurrence: None.

Exhibit A

Staff-Recommended Comment Letter

June 1, 2004

Ms. R.M. Burton, Director
Minerals Management Service
Attention: Policy and Management Improvement
1849 C Street, N.W., Mail Stop 4230
Washington, D.C. 20240-0001

RE: Advance Notice of Proposed Rulemaking for Open, Nondiscriminatory Access to Pipelines

Dear Ms. Burton:

On behalf of Santa Barbara County, I fully endorse rulemaking that retains and expands fair, equitable, and nondiscriminatory access to pipelines on the OCS, as well as platforms that serve as transport terminals. Such rules conform to Santa Barbara County's policies that require equitable and nondiscriminatory access to onshore segments of pipelines that carry offshore oil and gas as well as to onshore processing facilities. Application of these policies since the mid-1980s has substantially reduced unnecessary environmental impacts that would occur if every offshore operator installed their individual set of pipelines and separate processing facilities. Fair, equitable, and non-discriminatory access to pipelines and processing facilities has been instrumental in finding coastal-dependent industrial projects consistent with the California Coastal Act and Santa Barbara County Local Coastal Program requirements that all such projects are mitigated to the maximum extent feasible.

Open access regulations generally include provisions under which a pipeline carrier may deny access to products that are incompatible with those carried in the pipeline (e.g., natural gas and crude oil). While such provisions should also be included in the proposed rulemaking, we urge you to set a high threshold for such determinations. To point, any determination of product incompatibility must be valid and balanced against the significant environmental impacts of installing new pipelines. Additionally, product incompatibility should not be applied where oil and oil emulsions from different fields differ in quality (e.g., API gravity, sulfur content, etc.).

We also firmly believe that access should not be denied solely on a basis of limited pipeline capacity. In such cases, we urge you to reconcile limited capacity by either prorating access among shippers or delaying the commencement of some production.

Ms. R.M. Burton
June 1, 2004
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I thank you for your consideration. Please contact Mr. Doug Anthony of the County's Energy Division at (805) 568-2046 if you have any questions.

Sincerely,

Joseph Centeno, Chair

CC: Senator Dianne Feinstein
Senator Barbara Boxer
Representative Lois Capps
Peter Douglas, Executive Director, California Coastal Commission
Paul Thayer, Executive Director, California State Lands Commission

Exhibit B

Advanced Notice of Proposed Rulemaking for Open & Non-Discriminatory Access to OCS Oil & Gas Pipelines

[Federal Register: April 12, 2004 (Volume 69, Number 70)]
[Proposed Rules]
[Page 19137-19139]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr12ap04-17]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 200

The Open and Non-Discriminatory Movement of Oil and Gas as
Required by the Outer Continental Shelf Lands Act

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Advance notice of proposed rulemaking and announcement of
public meetings.

SUMMARY: The MMS requests comments and any suggestions to assist us in potentially amending our regulations regarding how the Department of the Interior (DOI) should ensure that pipelines transporting oil or gas under permits, licenses, easements, or rights-of-way on or across the Outer Continental Shelf (OCS) ``provide open and non-discriminatory access to both owner and non-owner shippers'' as required under section 5(f) of the Outer Continental Shelf Lands Act (OCSLA). The MMS is the bureau in the DOI charged with fulfilling the Secretary of the Interior's (Secretary) responsibility under the OCSLA. We encourage the public and other interested parties to participate in planned public meetings and to provide comments and suggestions to help us clearly define changes to the appropriate MMS programs and regulations that may be necessary. The MMS is committed to making changes that reflect the Secretary's ``4C's'' philosophy of ``consultation, cooperation, and communication all in the service of conservation.'' The MMS is issuing this Advance Notice of Proposed Rulemaking to give the public and interested parties an opportunity to provide input to the MMS regarding what actions or processes the public and interested parties believe the Secretary should initiate to ensure that pipelines provide open and non-discriminatory access.

DATES: You must submit your comments by June 11, 2004. The MMS may not necessarily consider or include in the Administrative Record for any proposed rule comments that MMS receives after the close of the comment period or comments delivered to an address other than those listed below (see ADDRESSES). See the SUPPLEMENTARY INFORMATION section for the dates of the public meetings.

ADDRESSES: By mail: Director, Minerals Management Service, Attention: Policy and Management Improvement, 1849 C Street, NW., Mail Stop 4230, Washington, DC 20240-0001. By personal or messenger delivery: 1849 C

Street NW., Room 4223, Washington, DC 20240-0001. The MMS is currently connected to the internet and able to receive e-mails. However, before e-mailing your comments during the comment period to ensure the MMS is connected, please contact Mr. Martin Grieshaber at 303-275-7118.

FOR FURTHER INFORMATION CONTACT: Martin Grieshaber at 303-275-7118 for information relating to the purpose of the meetings, the issues raised in this document, or for information relating to the rulemaking process. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the above individual.

SUPPLEMENTARY INFORMATION: Comments, including names and street addresses of respondents, will be available for public review on request to Martin Grieshaber at the above

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telephone number. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. However, we will not consider anonymous comments. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. If you wish to submit confidential or proprietary information that the MMS may consider in determining the extent of the potential issues covered by this notice without that information being available for public review, you must state this prominently on the pages you believe to contain such proprietary or confidential information. Such requests will be honored to the extent allowed by law.

I. Public Comment Procedures

Your written comments should:

1. Be specific;
2. Explain the reason for your comments and suggestions;
3. Address the issues outlined in this notice; and,
4. Where possible, refer to the specific provision, section or paragraph of statutory law, case law or existing regulations which you are addressing.

The comments and recommendations that are most useful and have greater likelihood of influencing decisions on the content of a possible future proposed rule are:

1. Comments and recommendations supported by quantitative information or studies.
2. Comments that include citations to and analyses of the applicable laws and regulations.

We are particularly interested in receiving comments and suggestions about the topics identified in Section II, ``Description of Information Requested,`` and Section III, ``Definitions and Other Topics.``

We will hold meetings during which the public will be able to comment on the scope, proposed action, and possible alternatives the

MMS should consider. The purpose of the meetings is to gather comments and input from a variety of stakeholders and the public.

Any resulting program changes will assist the MMS in fulfilling its responsibility of assuring open and non-discriminatory access to pipelines in the OCS. Our goals are to:

1. Manage the development of mineral resources found under the OCS within the jurisdiction of the DOI;
2. Develop and implement effective and fair MMS business practices; and
3. Protect the environment while assuring the Nation's OCS resources are produced efficiently and equitably.

The meetings will be held on the following dates at the specified locations and times:

meeting	Location Contact person	Date and time	Address of
	Houston, Texas..... InterContinental Hotel, Martin C. Grieshaber,	4/27/04, 9 a.m.....	2222 West Houston, TX
	Loop South, 303-275-7118. 77027.		
	Washington, DC..... Department of the Martin C. Grieshaber,	5/11/04, 9 a.m.....	U.S. Interior, Auditorium, Floor, 1849 NW., 20240-0001.
	Yates 303-275-7118. First C Street, Washington, DC		
	New Orleans, Louisiana..... Management Martin C. Grieshaber,	5/14/04, 9 a.m.....	Minerals Service, 1201 Elmwood Blvd., New Orleans, LA 70123.
	Room 111, 303-275-7118. Park		

Due to increased security requirements, attendees at the Washington and New Orleans meetings will need a picture ID in order to be admitted to the meeting. Additionally, for security reasons, we request that the New Orleans meeting attendees contact Cathy Moser at 504-736-2690 at least 48 hours prior to the meeting.

The sites for the public meetings are accessible to individuals with physical impairments. If you need a special accommodation to participate in one or all of the meetings (e.g., interpreting service,

assistive listening device, or materials in alternative format), please notify the contact person listed in this notice no later than 2 weeks prior to the scheduled meeting. Although we will make every effort to accommodate requests received, it may not be possible to satisfy every request.

If you plan to present a statement at the meetings, we will ask you to sign in before the meeting starts and identify yourself clearly for the record. Your speaking time at the meeting(s) will be determined based upon the number of persons wishing to speak and the approximate time available for the session. You will be provided at least 3 minutes to speak.

If you do not wish to speak at the meetings but you have views, questions, or concerns with regard to the MMS's responsibilities under OCSLA related to open and non-discriminatory access to pipelines, you may submit written statements at the meeting for inclusion in the public record. You may also submit written comments and suggestions regardless of whether you attend or speak at a public meeting. See the ADDRESSES section of this document for where to submit comments.

II. Description of Information Requested

On October 10, 2003, the U.S. Court of Appeals for the District of Columbia Circuit, in *Williams Cos. v. FERC*, 345 F.3d 910 (D.C. Cir. 2003), affirmed the district court decision which found that sections 5(e) and (f) of the OCSLA, 43 U.S.C. 1334 (e) and (f), grant the Federal Energy Regulatory Commission (FERC) only limited authority to enforce open access rules on the OCS. (Specifically, FERC's role is essentially limited to what are commonly known as "ratable take" orders and capacity expansion orders.) According to the circuit court's decision, FERC's authority does not include the regulatory oversight described in FERC Orders 639 and 639A. As a result, the FERC regulations issued under 18 CFR Part 330 are not valid, and, therefore, not enforceable. \1\ The court stated that OCSLA section 5(f) "simply requires the Secretary of the Interior to condition grants of rights-of-way on the holder's agreeing to non-discriminatory transportation duties."

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345 F.3d at 913. The court further said, "Without some explicit provision to the contrary (as exists for quantification of the ratable take duty), Congress presumably intended that enforcement would be at the hands of the obligee of the conditions [i.e., a person transporting oil or gas through the pipeline], the Secretary of the Interior (or possibly other persons that the conditions might specify)." Id. At 913-914.

\1\ The FERC regulations that the court held invalid required owners of OCS gas pipelines to file information indicating the rates the pipelines charged, the conditions of the service they provided, and whether they were affiliated with any of the shippers using their pipelines. The FERC regulations addressed OCS natural gas facilities that perform production or "gathering" functions, and do not fall within the FERC's jurisdiction under the Natural Gas Act (NGA) of 1938. (The term "gathering" has different meanings with respect to OCS pipelines, depending on whether it is used in the

context of MMS royalty valuation regulations, or if it is used with reference to the NGA.) The FERC withdrew its regulations on March 17, 2004. 69 FR 12539-12540.

The MMS has authority to regulate open and non-discriminatory access to pipelines operating under rights-of-way on the OCS, and is interested in hearing what you think ``open and non-discriminatory access'' means. Comments and suggestions from any party are welcomed and encouraged. The MMS is particularly interested in receiving responses from entities that have a right-of-way grant for one or more pipelines regulated by the MMS under OCSLA, entities that ship production through these pipelines, and purchasers and end-users of production shipped through these pipelines.

The MMS is interested in determining the scope, magnitude, and seriousness of any instances where access or discrimination problems were encountered by service providers or shippers of natural gas, both for lines that do not operate under the jurisdiction of the NGA and those that do. (We are also interested in whether the lack of NGA-regulatory oversight has had or may have potential positive or negative impacts). The MMS also is interested in the circumstances under which a service provider would deny service to a shipper. We solicit comments from any party that feels it has been denied open and non-discriminatory access to pipelines on the OCS, and suggestions for actions that could have been taken or should be taken to prevent this from happening.

A record of access issues that arise between shippers and service providers would help the MMS to gain a better perspective on the need for a regulatory framework to ensure open and non-discriminatory pipeline access. The MMS is giving consideration to establishing a hotline which could be used by both shippers and service providers to report concerns and perceived instances of open and non-discriminatory access violations. A hotline could be one way for MMS to document relevant complaints that occur.

The MMS would like comments regarding the types of complaints that it might receive if it did establish a hotline. The MMS would like input concerning the advantages and disadvantages of resolving the complaints through an informal negotiation or a more rigorous dispute resolution process. The MMS would appreciate a discussion regarding the possible structure of either an informal or formal complaint resolution process. In the event the complaint escalated into a more formal dispute, the MMS would like comments on what the resolution process could look like and how it might differ from an informal complaint resolution process. The MMS also would like comments on whether interested parties would be more likely to participate in one type of complaint resolution process over another and what circumstances might affect this decision.

Beyond questions of documenting complaints and methods for resolving disputes, the MMS would like comments concerning what factual information or data would be necessary to make a determination that open access has been denied or that discrimination has occurred, what mechanisms MMS could use to gather such information, and the extent to which the information should be made public. The MMS is interested in comments regarding whether this mandate can be accomplished in the absence of information collection and the dissemination of some or all of the information.

III. Definitions and Other Topics

The MMS is committed to carrying out the Secretary's objectives and the requirements established by the OCSLA. We encourage the public to participate in the planned public meetings and to provide comments and suggestions to help us determine where changes are needed in the regulations. We are requesting input for defining terms used in this notice, and comments on other topics which are not identified in this notice but should be considered in a proposed rule. These include, but are not limited to, the following:

A. Definitions: We are considering revising or creating definitions of the following terms:

- Non-discriminatory access
- Open access
- Pipelines subject to OCSLA
- Service provider
- Shipper

B. Other specific topics that may be addressed at the meetings: The MMS is interested in receiving comments on any other issues relevant to the DOI's mandate under the OCSLA to assure ``open and non-discriminatory access'' to pipelines on the OCS.

Dated: March 29, 2004.

R.M. ``Johnnie'' Burton,
Director, Minerals Management Service.
[FR Doc. 04-8247 Filed 4-7-04; 3:28 pm]