

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**[Docket Nos. EL03-137-000, *et al.*]**American Electric Power Service Corp., Docket Nos. EL03-137-000, *et al.*; Notice of Second Plenary Conference**

August 14, 2003.

In the matter of EL03-137-000, EL03-138-000, EL03-139-000, EL03-140-000, EL03-141-000, EL03-142-000, EL03-143-000, EL03-144-000, EL03-145-000, EL03-146-000, EL03-147-000, EL03-148-000, EL03-149-000, EL03-150-000, EL03-151-000, EL03-152-000, EL03-153-000, EL03-154-000, EL03-155-000, EL03-156-000, EL03-157-000, EL03-158-000, EL03-159-000, EL03-160-000, EL03-161-000, EL03-162-000, EL03-163-000, EL03-164-000, EL03-165-000, EL03-166-000, EL03-167-000, EL03-168-000, EL03-169-000, EL03-170-000, EL03-171-000, EL03-172-000, EL03-173-000, EL03-174-000, EL03-175-000, EL03-176-000, EL03-177-000, EL03-178-000, EL03-179-000; Aquila, American Electric Power Service Corporation Inc., Arizona Public Service Company, Automated Power Exchange, Inc., Bonneville Power Administration, California Department of Water Resources, California Power Exchange, Cargill-Alliant, LLC, City of Anaheim, California, City of Azusa, California, City of Glendale, California, City of Pasadena, California, City of Redding, California, City of Riverside, California, Coral Power, LLC, Duke Energy Trading and Marketing Company Dynegy Power Marketing, Inc., Dynegy Power Corp., El Segundo Power LLC, Long Beach Generation, LLC, Cabrillo, Power 1 LLC and Cabrillo Power II LLC, Enron Power Marketing, Inc. and Enron Energy Services, Inc., F P & L Energy, Idaho Power Company, Los Angeles Department of Water and Power Mirant Americas Energy Marketing, LP, Mirant Americas Energy Marketing, LP, and Mirant Potero, LLC, Modesto Irrigation District, Morgan Stanley Capital Group, Northern California Power Agency, Pacific Gas and Electric Company, PacifiCorp, PGE Energy Services, Portland General Electric Company, Powerex Corporation, (f/k/a British Columbia Power Exchange Corp.), Public Service Company of Colorado, Public Service Company of New Mexico, Puget Sound Energy, Inc., Reliant Resources, Inc., Reliant Energy Power Generation, and Reliant Energy Services, Inc., Salt River Project Agricultural, Improvement and Power District San Diego Gas & Electric

Company, Sempra Energy Trading Corporation, Sierra Pacific Power Company, Southern California Edison Company, TransAlta Energy Marketing (U.S.) Inc. and TransAlta Energy Marketing (California), Inc., Tucson Electric Power Company, Western Area Power Administration, Williams Energy Services Corporation.

Take notice that the Trial Staff of the Federal Energy Regulatory Commission (Commission) will convene a second plenary conference in the above-referenced cases on Tuesday, August 26, 2003 at 10 a.m. in Hearing Room 1 at the offices of the Commission, 888 1st Street, Washington, DC 20426. The conference will continue to be held as a settlement conference pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602. Therefore, participation at the conference will be limited to the Identified Entities listed above, interveners in the instant dockets, and Trial Staff.

At the conference, Trial Staff plans to initially meet with the Identified Entities and all interveners to discuss the overall status of the proceeding. In that regard, Trial Staff plans to discuss with all the parties procedures that can be adopted to streamline the discovery and trial phases of the instant case for those entities that cannot be removed from the case by means of settlement or dismissal prior to September 3, 2003. It would be Trial Staff's aim to find a way to preserve fruitful settlement discussions for those cases that do not settle or are not dismissed before September 3, 2003. Similarly, Trial Staff is mindful of the numerous petitions for rehearing and requests for clarification that have been filed and would like to discuss the ramifications of those pleadings and potential Commission action on those filings.

Thereafter, Trial Staff proposes, as necessary, to meet with the Identified Entities and the Intervener Groups. As time permits, Trial Staff would also be willing to meet with individual Identified Entities about the particular status of their cases.

All parties with questions regarding this second plenary conference may contact Joel M. Cockrell at 202-502-8153, Edith A. Gilmore at 202-502-8632, or Janet K. Jones at 202-502-8165.

Magalie R. Salas,*Secretary.*

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[Docket Nos. ER02-1656-000, ER03-1046-000, RT01-85-000, RM01-12-000]

California Independent System Operator Corp.: Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design; Notice of Technical Conference

August 15, 2003.

Take notice that a technical conference for California ISO will be held on November 6, 2003, from approximately 10 a.m. to 4 p.m. Pacific Standard Time in the auditorium of the California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California. Members of the Commission will attend and participate in the discussions.

This conference shall be one in a series of regional technical conferences announced in the White Paper issued in this docket on April 28, 2003. The Commission intends to use these conferences to discuss with states and market participants in each region reasonable timetables for addressing wholesale market design issues discussed in the White Paper and ways in which to tailor the final rule in this proceeding to benefit customers within each region.

The Commission is inviting selected panelists to participate in this conference; it is not entertaining requests to make presentations. Further details of the conference, including the agenda, will be specified in a subsequent notice. All interested persons may attend the conference, and registration is not required. However, in-person attendees are encouraged to register on-line at http://www.ferc.gov/whats-new/registration/smd_1106-form.asp

Transcripts of the conference will be immediately available from Ace Reporting Company (202-347-3700 or 1-800-336-6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via Real Audio or a Phone Bridge Connection for a fee. Persons interested in making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703-993-3100) as soon as possible or visit the Capitol Connection Web site at <http://>

www.capitolconnection.org and click on "FERC."

For more information about the conference, please contact Sarah McKinley at (202) 502-8004 or sarah.mckinley@ferc.gov.

Magalie R. Salas,
Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01-12-000 and RT01-95-000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, New York Independent System Operator, Inc.; Notice of Technical Conference

August 15, 2003.

Take notice that a technical conference for the New York Independent System Operator, Inc. will be held on October 20, 2003, from approximately 1 p.m. to 5 p.m. Eastern Daylight Time at the offices of Consolidated Edison Company, 4 Irving Place, 19th floor auditorium, New York City, New York. Members of the Commission will attend and participate in the discussion. An agenda will be issued at a later time.

This conference is one in a series of regional technical conferences announced in the White Paper issued in Docket No. RM01-12-000 on April 28, 2003. The Commission intends to use these conferences to discuss with states and market participants in each region reasonable timetables for addressing wholesale market design issues and ways to tailor the final rule in this proceeding to benefit customers within the region.

The Commission is inviting selected panelists to participate in this conference; it is not entertaining requests to make presentations. Further details of the conference, including the agenda, will be specified in a subsequent notice. All interested persons may attend the conference, and registration is not required. However, in-person attendees are encouraged to register on-line at http://www.ferc.gov/whats-new/registration/smd_1020-form.asp

Transcripts of the conference will be immediately available from Ace Reporting Company (202-347-3700 or 1-800-336-6646) for a fee. They will be

available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity to remotely listen to the conference via the Internet or a Phone Bridge Connection for a fee. Persons interested in making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703-993-3100) as soon as possible or visit the Capitol Connection Web site at <http://www.capitolconnection.gmu.edu> and clicking on "FERC."

For more information about the conference, please contact Sarah McKinley at (202) 502-8004 or sarah.mckinley@ferc.gov.

Magalie R. Salas,
Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03-13-000]

Application of the Primary Function Test for Gathering on the Outer Continental Shelf; Notice of Public Conference

August 14, 2003.

Take notice that on September 23, 2003, the Commission will convene a public conference in the above captioned proceeding. The purpose of the conference will be to explore whether the Commission should reformulate its test for defining nonjurisdictional gathering in the shallow waters of the Outer Continental Shelf (OCS) and if so what the new test should be.

The Commission has considered its offshore gathering policy a number of times in the past decade.¹ Nevertheless,

¹ See generally *Natural Gas Gathering Services Performed by Interstate Pipelines and Interstate Pipeline Affiliates—Issues Related to Rates and Terms and Conditions of Service*, Docket No. RM94-4-000, Notice of Public Conference, 65 FERC ¶ 61,136 (1993); *Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act*, Docket No. RM96-5-000, Policy Statement, 74 FERC ¶ 61,222 (1996) (1996 Policy Statement); *Chevron U.S.A., Inc. v. FERC*, 193 F. Supp. 2d 54 (D.D.C., January 11, 2002), appeal pending sub nom. *Williams Companies, et al. v. FERC*, No. 02-5056 (DC Cir.) (appeal of district court ruling on motion that FERC did not have authority under the Outer Continental Shelf Lands Act (OCSLA) to issue regulations requiring gas service providers on the Outer Continental Shelf (OCS) to submit quarterly reports of services provided).

a satisfactory definition of gathering under the Natural Gas Act has remained elusive. A clear, consistent approach to offshore gathering is needed to protect producers and customers from the market power of third party transporters and to avoid different jurisdictional outcomes for companies that perform essentially the same economic function.

Background

A. Evolution of the Primary Function Test

Although section 1(b) of the Natural Gas Act states that the provisions of that act do not apply "to the production or gathering of natural gas," the act itself does not define those terms. The Commission has defined gathering as "the collecting of gas from various wells and bringing it by separate and several individual lines to a central point where it is delivered into a single line."² The Supreme Court has added that "production" and "gathering" are terms "narrowly confined to the physical acts of drawing the gas from the earth and preparing it for the first stages of distribution."³ These definitions have been useful in describing gathering as a concept. Nevertheless, as the courts have recognized, "the line between gathering and transportation is inherently elusive."⁴ Attempts to establish a functional test, useful in the context of specific proceedings, resemble the pursuit of a desert mirage. Historically, the tendency has been to announce a particular physical characteristic that could be used to identify nonjurisdictional gathering, only to substitute other criteria later to reflect changes in the industry or in the evolution of Commission policy.⁵ In

² *Lomak Petroleum, Inc. v. FERC*, 206 F.3d 1193, 1196 (DC Cir. 2000), quoting from *Barnes Transportation Company*, 18 FPC at 372 (1957). See also *Conoco, Inc. v. FERC*, 90 F.3d 536, 539 n.2 (DC Cir. 1996) ("Gathering is the process of taking natural gas from the wells and moving it to a collection point for further movement through the pipeline's principal transmission system.") (quoting *Northwest Pipeline Corp. v. FERC*, 905 F.2d 1403, 1404 n.1 (10th Cir. 1990)).

³ *Northern Natural Gas Co. v. State Corp. Comm'n*, 372 U.S. 84, 90 (1963).

⁴ *Exxon Mobil Gas Marketing Company v. FERC (Exxon)*, No. 00-1355 (DC Cir. August 6, 2002) (Judge Edwards dissenting) slip op. at 18, citing *Conoco, Inc. v. FERC* 90 F. 3d 536 at 542 (DC Cir. 1996).

⁵ For many years, the Commission employed two principal tests to differentiate (primarily onshore) transportation from gathering facilities. The "behind-the-plant" test presumes that all facilities located between the wellhead and a processing plant are non-jurisdictional gathering lines, while facilities downstream of the processing plant are presumptively transportation facilities. See *Phillips Petroleum Co.*, 10 FPC 246 (1951), rev'd in part on other grounds sub nom. *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954). For gas that