

## LEXSEE 52 F.E.R.C. 61268

Amerada Hess Corporation; Alabama-Tennessee Natural Gas Company and Sun Operating Limited Partnership; Amoco Production Company; ARCO Oil and Gas Company, Inc.; Arkla Energy Resources; Columbia Gas Transmission Company; El Paso Natural Gas Company; Enron Oil & Gas Company; Forest Oil Corporation; Leapartners, L. P. and El Paso Natural Gas Company; Mitco Pipeline Company; NRM Operating Company, L.P., et al.; Panhandle Eastern Pipe Line Company; Pennzoil Company and United Gas Pipe Line Company; Ringwood Gathering Company; Shell Gas Pipeline Company; Shell Offshore, Inc. and Trunkline Gas Company; Shell Western E&P, Inc. and El Paso Natural Gas Company; Tennessee Gas Pipeline Company; West Texas Gathering Company; Western Gas Processors and El Paso Natural Gas Company;

Docket No. CP89-692-001; Docket No. CP90-804-000; Docket No. CP90-215-000; Docket No. CP90-504-000; Docket No. CP89-1753-000; Docket No. CP88-202-001; Docket No. CP88-244-000; Docket No. CI89-421-000; Docket No. CP89-2158-000; Docket Nos. CP90-1083-000 and CP90-1084-000; Docket No. CP89-1514-000; Docket Nos. CP88-428-000 and CP88-428-001; Docket No. CP89-800-000; Docket No. CP90-466-000; Docket No. CP89-1001-000; Docket No. CI89-191-001; Docket Nos. CI89-420-000 and CP89-921-000; Docket Nos. CP89-468-000 and CP89-483-000; Docket No. CP89-1883-000; Docket No. CP88-212-000; Docket Nos. CP89-1718-000 and CP89-1722-000 (not consolidated)

FEDERAL ENERGY REGULATORY COMMISSION - Commission

52 F.E.R.C. P61,268; 1990 FERC LEXIS 2205; 116 P.U.R.4th 350

Declaratory Order, Order on Rehearing, and Order Granting and Dismissing Requests for Abandonment Authorization

September 17, 1990

**PANEL:**

[\*1] Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

**OPINION:**

Applicants in the above-captioned dockets have requested the Commission to grant permission, pursuant to section 7(b) of the Natural Gas Act (NGA), to abandon certain natural gas facilities and/or to declare that certain natural gas facilities are exempt from the Commission's NGA jurisdiction by operation of the "production and gathering" exemption contained in section 1(b) of the NGA. n1 In this order we discuss the Commission's methodology for determining whether natural gas facilities are exempt from the Commission's NGA jurisdiction under the section 1(b) exemption generally, and resolve the above-captioned requests for abandonment authorization and jurisdictional determinations.

n1 Section 1(b) of the NGA reads as follows: 1(b)) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas. 15 U.S.C. § 717(b).

[\*2] BackgroundA. The Production and Gathering ExemptionUnder section 1(b) of the NGA the Commission is required to regulate the transportation and sale for resale of natural gas "in interstate commerce," and any "natural gas company" engaged in such transportation or sale. At the same time, section 1(b) exempts from the Commission's NGA jurisdiction "the production or gathering of natural gas." Nowhere does the NGA define either term. Accordingly, the Commission

has developed certain criteria which it applies to the particular facts and circumstances of each case in order to assist the Commission in making its jurisdictional determinations. These Commission-developed criteria have been applied and modified as the Commission's regulatory objectives and the nature and structure of the natural gas industry have continued to evolve. n2 While the emphasis of the differing tests has varied, the overriding principle in the Commission's jurisdictional determinations has been to fulfill the objectives of the NGA and the Natural Gas Policy Act of 1978 (NGPA). n3

n2 Historically, the Commission has employed three basic tests in determining whether particular facilities are exempt from the Commission's jurisdiction over the transportation of natural gas under the "production and gathering" exemption contained in section 1(b) of the NGA. These tests are commonly referred to as: (1) the "behind the plant" test, (2) the "central point in the field" test, and (3) the "primary function" test. These tests were initially formulated in *Phillips Petroleum Co.*, 10 FPC 246 (1951), rev'd on other grounds, *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954); *Barnes Transportation Co.*, 18 FPC 369 (1957); *Ben Bolt Gathering Co.*, 26 FPC 825 (1961), aff'd 323 F.2d 610 (Fifth Cir. 1963), respectively. The "behind the plant test" is a mechanical test under which classification is based on whether the facility involved is located behind a gas processing plant. Similarly, under the "central point in the field" test a mechanical determination is made whether gas from separate wells is collected by several gathering lines which converge at a single location in the producing field for delivery into a single line. Under the "primary function" test the Commission weighs all of the facts and circumstances in determining whether facilities are used primarily for "transportation" or "gathering," rather than relying on a single isolated factor.

[\*3]

n3 See, e.g., *Gulf Oil Corp. v. FERC*, 1 FERC P61,089, at p. 61,188, aff'd mem., 723 F.2d 97 (D.C. Cir. 1983).

B. The "Primary Function" Test For the past decade, the Commission has relied on the "primary function" test as the standard methodology to determine whether a particular facility is exempt from the Commission's jurisdiction over the transportation of natural gas under the "production and gathering" exemption contained in section 1(b) of the NGA. The "primary function" test is described in *Farmland Industries, Inc. (Farmland)*, 23 FERC P61,063 (1983) where the Commission stated that: "[T]he Commission considers a number of factors in analyzing the Section 1(b) gathering test. Although a variety of labels has been applied to these factors, the ultimate test is whether the primary function of the facility can be classified as transportation or gathering." 23 FERC at p. 61,143 (emphasis added). In *Farmland*, the Commission enumerated several physical and geographic criteria to be included in the analysis for determining the "primary function" of a particular facility. [\*4] n4 The criteria set out in *Farmland* are not meant to be all inclusive, n5 and in other cases the Commission has considered nonphysical criteria such as the purpose, location and operation of the facility, n6 the general business activity of the owner of the facility, n7 and whether the jurisdictional determination is consistent with the objectives of the NGA and the NGPA. n8

n4 (1) The length and diameter of the line, (2) the extension of the facility beyond the central point in the field, (3) the line's geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) the operating pressure of the line.

n5 See, e.g., *Williston Basin Interstate Pipeline Co.*, 38 FERC P61,133, at p. 61,343 (1987).

n6 See *Mid-Louisiana Gas Co.*, 25 FERC P61,001 (1983).

n7 *Superior Oil Co.*, 13 FERC P61,218, at p. 61,496 (1980), *Beacon Gasoline Co.*, 30 FERC P61,041, at p. 61,066 (1985), *Gulf Oil Corp.*, supra, 59 FPC 1230, 1231 (1977).

n8 *Gulf Oil Corp. v. FERC*, 1 FERC P61,089, at p. 61,188, aff'd mem., 723 F.2d 97 (D.C. Cir. 1983).

[\*5] In *EP Operating Company v. FERC (EP\_Operating)*, 876 F.2d 46 (5th Cir. 1989), the court reversed a Commission order which had declared that under the "primary function" test a 51-mile long, natural gas pipeline located on the Outer Continental Shelf (OCS) was a jurisdictional transmission facility, rather than an exempt "gathering or production" facility. n9 In light of the *EP Operating* case, the Commission has examined the requests for declaratory orders which are the subject of this order to enable the Commission to assess the impact of *EP Operating* as well as the continuing viability and relevance of the "primary function" test to current industry conditions and legal and regulatory climates.

n9 *Placid Oil Co.*, 43 FERC P61,210 (1988), reh'g denied, 44 FERC P61,029 (1988).

Discussion The Commission will continue to apply the "primary function" test as articulated in *Farmland* and subsequent decisions, but will modify its application in accord with *EP Operating*. Specifically, when applying the existing *Farmland* criteria, the Commission will consider, especially for offshore facilities, the changing [\*6] technical and geographic nature

of exploration and production. For example, because of recent advances in engineering and available technology, offshore drilling operations continue to move further offshore and further from existing interstate pipeline interconnections. Accordingly, for example, a relatively long pipeline on the OCS may be consistent with a primary function of "gathering or production" whereas an onshore pipeline of similar length would not. Therefore, in applying the modified "primary function" test to OCS pipeline facilities the Commission will apply, in effect, a sliding scale which will allow the use of gathering pipelines of increasing lengths and diameters in correlation to the distance from shore and the water depth of the offshore production area. This distinction is in accord with the reasoning of the court in EP Operating, which was based in part on considerations which only exist offshore. For instance, EP Operating considered, among other factors, that no interstate pipeline was willing to build a line out to the production platform due to its distance from shore and the corresponding water depth, and that the gas leaving the production platform was [\*7] not of pipeline quality because of the weight bearing limitations of the floating production platform. n10 Thus, the Commission intends to take the changing nature of offshore production into consideration in applying the length criteria of the "modified primary function test" for determining the eligibility of a facility for the section 1(b) "production and gathering" exemption. Other aspects of the gathering issue are pending judicial review in Northern Natural Gas Company, 43 FERC P61,473 (1988), reh'g denied, 44 FERC P61,384 (1988); appeal filed sub. nom., Northern Natural Gas Company v. FERC, No. 88-1042 (8th Cir. Jan. 7, 1988).

n10 Even as to this last point, the technology continues to evolve. For some deep water applications complete gas treating and gas conditioning needed to bring gas up to pipeline quality standards may take place on the platform without disqualifying the facilities for gathering status.

Application of These Factors1. Amerada Hess Corporation, Docket No. CP89-692-001a. Background On January 24, 1989, Amerada Hess Corporation (Amerada Hess) filed a petition for a declaratory order disclaiming [\*8] jurisdiction over certain natural gas facilities which Amerada Hess proposes to construct and operate in federal waters on the OCS, offshore Louisiana. On May 4, 1989, the Commission issued an order in this proceeding determining that the proposed facilities would be engaged in transmission subject to the Commission's certificate jurisdiction under the NGA. n11 Timely requests for rehearing of that order were filed by Amerada Hess, Chevron U.S.A. Inc. (Chevron), Phillips Petroleum Company (Phillips), and Marathon Oil Company (Marathon). n12 Each party requesting rehearing argues that the Commission's May 4 order asserting jurisdiction over the proposed facilities conflicts with prior Commission decisions in similar fact situations and that no explanation for the departure from precedent was given. The parties contend that the Commission erred in finding that the primary function of the proposed facilities is transmission rather than gathering. For the reasons discussed below, we will grant the requests for rehearing.

n11 47 FERC P61,187 (1989).

n12 On May 4, 1989, Phillips Petroleum Company (Phillips) filed a petition for review of the Commission's decision in this docket with the United States Court of Appeals for the Tenth Circuit, Phillips Petroleum Company v. FERC, Case No. 89-9950. On January 26, 1990, the Commission filed a motion to dismiss Phillips' petition for lack of jurisdiction. Accordingly, the Commission's decision herein in Docket No. CP89-692-001 is subject to the leave of the court.

[\*9] b. Proposed Facilities According to the petition for declaratory order, Amerada Hess, Marathon, Phillips, and Transco Exploration Company each own a 25 percent working interest in two federal leases covering South Timbalier Area Blocks 205 and 206 (ST Blocks 205 and 206). The blocks are located in federal OCS waters approximately 42 miles offshore Louisiana. All of the producing wells in the two blocks will be connected to production facilities located on a platform to be constructed in ST Block 206. Amerada Hess, as operator of the two blocks, is planning to construct a 16-inch line from the platform in ST Block 206 to a point of interconnection with either (1) Chevron Oil Company's 26-inch Venice Gathering System at ST Block 151, or (2) Trunkline Pipeline Company's (Trunkline) 24-inch transmission line in ST Block 175. The subject line will be approximately 13 miles long if it is constructed to interconnect with the Chevron Oil Company facilities. It will be approximately 11 miles long if it interconnects with Trunkline's transmission line. The proposed line will be owned by the working interest owners of ST Blocks 205 and 206 and will be operated by Amerada Hess. The subject [\*10] line will have a capacity of 150,000 Mcf per day, which the petition indicates is sufficient to transport all of the natural gas expected to be produced from ST Blocks 205 and 206, as well as volumes which the working interest owners might produce from the adjacent ST Block 225. The maximum allowable operating pressure of the subject line will be 1,440 psig. Initial operating pressure is anticipated to be approximately 1150 psig at the platform. No compression of the gas is contemplated either at the production platform at ST Block 206 or along the proposed line during the early years of well production. The petitioner indicates that compression may be necessary during the phase of reserve depletion to recover all of the economical reserves. Gas will be injected into the proposed line as it is

produced after separation of free water and condensate. The condensate will be recombined with the gas stream before it enters the line. From the interconnection of the proposed line with the facilities of either Chevron Oil Company or Trunkline, the gas will be transported to onshore processing facilities where water and condensate will be removed. The gas will then be processed for [\*11] removal of liquefiable hydrocarbons, if economical. Discussion Amerada Hess and the other parties seeking rehearing assert that the proposed line falls within the "gathering" exemption contained in section 1(b) of the Natural Gas Act. In our May 4, 1989 order in this proceeding, the Commission applied the "primary function" test as formulated in *Farmland* to the petitioner's proposed facilities. We concluded in that order that while the proposed line would arguably have some characteristics of a gathering facility, on balance the primary function of the line would be transmission, finding that the "line is essentially similar to the facilities found to be jurisdictional in *Shell Gas Pipeline Company*, CI89-191-000, 47 FERC P61,077 (1989) and *Placid Oil Company*, supra. Since the issuance of our May 4 order, the United States Court of Appeals for the Fifth Circuit issued its decision in *EP Operating*. In light of that ruling, we now find that the primary function of the proposed line is gathering. The diameter of the line proposed herein (16 inches) is the same as that involved in the *EP Operating* case and the length (11 or 13 miles versus 51 miles) is [\*12] much shorter. There is no compression proposed for the subject line and processing of the gas to transmission line quality will be done downstream of the proposed line. The geographical configuration of the system, the absence of wells along the proposed line, and the fact that the platform at ST Block 206 could be construed as the "central point in the field," mitigate against finding the proposed line to be a gathering facility. However, those factors are essentially similar to those found in the *EP Operating* case, where the court held that the primary function of the proposed facilities was, indeed, gathering.<sup>2</sup>

*Alabama-Tennessee Natural Gas and Sun Operating Limited Partnership*, Docket No. CP90-804-000a. Background On February 16, 1990, *Alabama-Tennessee Natural Gas Company* (Alabama-Tennessee) and *Sun Operating Limited Partnership* (Sun Operating) jointly filed a petition for a declaratory order. n13 The petitioners seek a determination that certain gas facilities in Tatum's Camp Field, Mississippi, will be gathering facilities exempt from Commission jurisdiction, under section 1(b) of the NGA, if sold by Alabama-Tennessee to Sun Operating. n14

n13 Alabama-Tennessee is a natural gas company engaged in jurisdictional transportation and sales of natural gas in interstate commerce. Sun Operating is engaged in nonjurisdictional gas exploration and production activities and has no interstate gas transmission facilities.

[\*13]

n14 On February 16, 1990, Alabama-Tennessee also filed an application in Docket No. CP90-805-000 for authority to abandon the Tatum's Camp Field facilities by sale to Sun Operating. Alabama-Tennessee states that it seeks abandonment authority only if the Commission makes a prior determination that the facilities will be gathering facilities within the exemption of NGA section 1(b) following the sale to Sun Operating.

b. Description of Facilities The Tatum's Camp Field facilities are located in Lamar and Forrest Counties, Mississippi. The facilities include: (a) wellhead gas measurement equipment; (b) gas treating and conditioning facilities to separate liquids and to remove carbon dioxide, sulfur, and water from the gas stream; (c) approximately 1 mile of 2" and 4" pipeline extending from two wells to the gas treating and conditioning facilities; and (d) approximately 17 miles of 8" pipeline extending from the outlet of the processing facilities to a point of interconnection with Tennessee Gas Pipeline Company. The Commission authorized construction and operation of these facilities by Alabama-Tennessee in 1978, n15 at which time gas production from Tatum's Camp Field was [\*14] under contract for sale to Alabama-Tennessee. Alabama-Tennessee used the facilities while its gas purchase contract was in effect to move gas supplies from Tatum's Camp Field to Tennessee Gas Pipeline Company, which redelivered the gas to Alabama-Tennessee's main transmission line. Alabama-Tennessee no longer purchases gas from Tatum's Camp Field.

n15 5 FERC P61,123 (1978).

There are two producing wells in Tatum's Camp Field. Sun Operating owns a 47.8-percent interest in one well and a 47.9-percent interest in the other well. n16

n16 Amoco Production Company owns 25 percent of the production from Tatum Camp Field. In 1981, the Commission certificated Alabama-Tennessee to transport Amoco's gas to a new interconnection with United Gas Pipe Line Company along Alabama-Tennessee's 17-mile Tatum's Camp Field pipeline. 15 FERC P61,143A (1981). Alabama-Tennessee's conditional application in Docket No. CP90-805-000 for authority to abandon the Tatum's Camp Field facilities by sale to Sun Operating also requests authority to abandon transportation of Amoco's gas production from Tatum's Camp Field. Alabama-Tennessee's abandonment application states that Amoco has not requested any transportation service since 1983 and that the transportation agreement has been terminated.

[\*15] c. Notice and Interventions Notice of the request for declaratory order was published in the Federal Register on March 12, 1990 (55 Fed. Reg. 9177). Timely motions to intervene in support of the requested declaratory order were filed by North Alabama Gas District and Tennessee Valley Municipal Gas Association, which are local distribution customers of Alabama-Tennessee. No protests or other motions to intervene have been filed. n17

n17 Timely, unopposed motions to intervene are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (1989).

d. Discussion The two producing wells in the field are located along a one-mile line to the processing plant, which is consistent with a gathering configuration. There are no compression facilities, and gas is gathered and moved at wellhead pressure. n18 Even though the 17-mile line is located downstream of the processing plant, the length and diameter (8") of the line are similar to other facilities that have been determined to be gathering.

n18 Mobil Oil Exploration & Producing Southeast, Inc., 46 FERC P61,014 (1989), at p. 61,096.

[\*16] Finally, Sun Operating states that it will not use the facilities to deliver gas for third parties, n19 and there is no evidence to suggest that any third parties have requested such service. In addition, no party has protested the instant petition. Therefore, Commission regulation is not required to ensure that the Commission's open-access and nondiscrimination policies will not be thwarted. Accordingly, following the sale to Sun Operating, we find that the facilities will be exempt from the Commission's jurisdiction under NGA section 1(b) of the NGA.

n19 Application at p. 11.

3. Amoco Production Company, Docket No. CP90-215-000a. Background On November 3, 1989, Amoco Production Company (Amoco) filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure n20 for a declaratory order disclaiming Commission jurisdiction over certain natural gas pipeline facilities in Colorado. Amoco contends that these are gathering facilities under section 1(b) of the NGA and are therefore exempt from the Commission's NGA jurisdiction. For the following reasons, the Commission finds that the facilities in question are "gathering" facilities exempt from the [\*17] Commission's NGA jurisdiction by operation of the "production and gathering" exemption contained in section 1(b) of the NGA.

n20 18 C.F.R. § 385.207 (1988).

b. Proposed Facilities Amoco is a major producer of natural gas currently in the process of drilling several wells to increase its production in southwest Colorado. Amoco plans to collect the gas from these and existing nearby wells and deliver it to a central point, namely the Section 25 Station, in La Plata County, Colorado. At that station, Amoco will remove the carbon dioxide and dehydrate and compress up to 100 MMcf of natural gas per day (MMcf/d). Compression of up to 150 MMcf/d of additional gas will be furnished by El Paso Natural Gas Company (El Paso). Amoco states that it may also arrange to purchase compression services from Northwest Pipeline Corporation (Northwest) or other parties in the immediate vicinity of the interconnect. Two pipelines are the subject of this petition. These lines will be utilized to collect and deliver gas approximately 0.76 miles from the Section 25 Station to the interstate transmission system of El Paso. One of these lines, referred to as the Converted Line, consists of a segment [\*18] of a 10-inch diameter line comprising part of El Paso's San Juan Basin gathering system and presently serving the Section 25 Station. This segment is to be conveyed to Amoco and converted into a spur feeding gas into El Paso's mainline system, carrying up to 70 MMcf of natural gas per day. Amoco states that, even after conversion, the segment may be used to carry gas to El Paso's gathering system. The other line, referred to as the New Line, will be constructed, owned and operated by Amoco and run parallel to the Converted Line. It will measure 16 inches in diameter and carry up to 180 MMcf of natural gas per day. Amoco asserts that these two lines will be nonjurisdictional facilities despite certain indicia characteristic of transportation. Citing EP Operating and recent FERC decisions, Amoco states that these facilities are a necessary and reasonable extension of a pipeline required to effectuate its production, gathering and treating activities. c. Interventions After due notice by publication in the Federal Register on November 21, 1989 (54 Fed. Reg. 48,138), El Paso, the Gas Company of New Mexico, Northwest and Transwestern Pipeline Company all [\*19] filed unopposed motions to intervene. n21 Conoco Inc. (Conoco) filed a motion to intervene out-of-time. For good cause shown, and because Conoco's motion will not disrupt or delay the proceeding or affect the interests of any party, we will grant Conoco's motion.

n21 Timely unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (1989).

d. Discussion Applying the "modified primary function" test as articulated above, we conclude that the subject facilities perform primarily a gathering function and are therefore exempt from the Commission's NGA jurisdiction. In this case, some of the criteria of the "modified primary function" test might suggest that the primary function of the Converted Line

and the New Line is transportation rather than gathering. Compression is planned at the Section 25 Station, the central point in the field, indicative of transmission. Also, the subject lines will be located beyond the central point in the field, characteristic of transportation. Further, no wells will be situated along the facilities in question. It appears, then, that the geographic features of [\*20] the system does not approximate the classic network-like configuration of a gathering facility. However, a determination of the "primary function" of a facility requires a weighing of all of the relevant factors and does not require that all of the criteria indicate a finding of "gathering" or "transportation". n22 In this regard, we observe that the diameter and length of the facilities are consistent with gathering. They are of modest size and very short. Their length, approximately 0.76 miles, is perhaps the most compelling factor in favor of characterizing the facilities as gathering. The lines also operate at relatively low pressure, typical of gathering. Although compression facilities will be located at the tailgate of the plant, it is significant to point out that additional compression is contemplated downstream in the area of the interconnect. In addition, Amoco will deliver gas from its own wells to a central point for compression and then through short extension lines to an interconnection with an interstate pipeline.

n22 See *Dorchester Gas Producing Company*, 32 FERC P61,409 (1985).

Accordingly, giving consideration to all of the elements [\*21] of the "modified primary function" test, we find that the subject facilities primarily perform a gathering function and are therefore exempt from the Commission's NGA jurisdiction.4. *ARCO Oil and Gas Company, Inc.*, Docket No. CP90-504-000a. Background On January 10, 1990, ARCO Oil and Gas Company, Inc. (ARCO) filed a petition for a declaratory order pursuant to Rule 207 of the Commission's Rules of Practice and Procedure. n23 ARCO seeks a determination that a compressor facility it will acquire from Southern Natural Gas Co. (Southern), pursuant to a settlement agreement (Settlement Agreement) entered into by the parties on March 31, 1989, resolving take-or-pay disputes, and the subsequent operation of that compressor facility in the Carthage Field, Panola County, Texas, pursuant to the Settlement Agreement is a gathering facility and function that will no longer be subject to Commission regulation in accordance with the "production and gathering" exemption contained in section 1(b) of the NGA. For the reasons stated below, the Commission finds that the primary function of the compressor facility in the Carthage Field is "gathering" and that it is therefore exempt from the Commission's [\*22] NGA jurisdiction under section 1(b) of the Act.

n23 18 C.F.R. § 385.207 (1989).

b. Description of Facilities ARCO is involved in the production, gathering and sale of natural gas. Although ARCO owns and operates wells in the Carthage Field, its production there is minimal and limited solely to the production, gathering, processing and sales of gas from 60 low pressure wells. ARCO presently performs no jurisdictional transportation functions. The Carthage Field compressor facility which ARCO plans to acquire from Southern will compress gas only from these 60 wells. The gas is transported from Southern's Carthage Field metering station on Southern's pipeline under transportation agreements between the end-user and Southern, or between Southern and ARCO. ARCO's operations at the Carthage Field includes producing the gas and removing the liquid hydrocarbons and dehydrating the gas so as to satisfy the quality specifications of Southern's FERC gas tariff. In order to complete these operations it is necessary to compress the natural gas to a pressure sufficient to permit it to enter into Southern's transmission system. The compressor ARCO proposes to acquire from Southern is [\*23] located adjacent to and downstream of ARCO's Carthage gas plant. On May 7, 1951, Southern and ARCO entered into a long-term Residue Gas Purchase and Sales Agreement (the "Purchase Contract") whereby Southern purchased ARCO's Carthage Field gas. The Purchase Contract, as amended, recognized the potential need to compress the gas and provided that either the seller or the purchaser could install compression. Initially, the wellhead pressure of ARCO's gas was sufficient to move the gas throughout the ARCO gas plant and the Southern Carthage Field metering station into Southern's pipeline. However, by 1984, the pressure of the gas received at and discharged from ARCO's processing plant had declined to a pressure of 300-350 psig and was no longer sufficient to buck Southern's pipeline pressure of approximately 800 psig. As such, Southern constructed the Carthage Field compressor station which increased the pressure of the gas by the additional 500 psig needed to enter Southern's pipeline. By the terms and provisions of the Settlement Agreement and a letter agreement dated April 12, 1989, ARCO and Southern terminated the Purchase Contract, effective March 31, 1989. The Purchase and [\*24] sale of gas by Southern under the Purchase Agreement was abandoned pursuant to Commission final order issued in Docket No. RM87-16-000. n24

n24 Order No. 490, FERC Statutes and Regulations P30,797 (1988).

Pursuant to an option in the Settlement Agreement, ARCO now proposes to acquire the Carthage Field compressor facility from Southern. Southern, in order to carry out this acquisition, will abandon the compressor facility pursuant to the Commission's blanket abandonment procedure. n25 ARCO will then acquire, take possession of and operate the facility.

n25 18 C.F.R. sections 157.201-218 (1989).

Under ARCO's operation, gas will flow directly from ARCO's Carthage Plant into the compressor facility at the tailgate of the plant. When the gas is discharged from the compressor, it will pass through a Southern metering station prior to entry into Southern's transmission pipeline. The transfer of custody of the gas will occur at Southern's Carthage Field metering station.<sup>c</sup> Interventions After due notice by publication in the Federal Register on February 1, 1990 (55 Fed. Reg. 3470) one timely motion to intervene was filed by Southern. <sup>n26</sup> No further [\*25] motions to intervene, notices of intervention or protests to the granting of the declaratory order sought herein were filed.

<sup>n26</sup> Timely unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1989).

d. Discussion Applying the "modified primary function" test articulated above, we conclude that the subject facility performs primarily a gathering function. Accordingly, the facility is exempt from the Commission's NGA jurisdiction. We observe that the compressor station in the Carthage Field will be both owned and operated by the producer, ARCO. Although the compressor station is located beyond the processing plant, we note that the Commission has rejected a mechanical application of the "behind-the-plant" test for distinguishing between gathering and transportation facilities. <sup>n27</sup> Finally, ARCO states that it will utilize the compressor station exclusively in the gathering of gas from its own low-pressure wells located in the Carthage Field.

<sup>n27</sup> Gulf Oil Corp., 1 FERC P61,089, at p. 61,188 (1977), aff'd mem., 723 F.2d 97 (D.C. Cir. 1983).

[\*26] 5. Arkla Energy Resources, a division of Arkla, Inc., Docket No. CP89-1753-000a. Background On July 10, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc., filed an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Rule 207 of the Commission's Rules of Practice and Procedure <sup>n28</sup> seeking abandonment authority to effect the conveyance to R. Lacy, Inc. (Lacy) of certain existing compressor and pipeline facilities and other appurtenances in the Beckville Field, Panola County, Texas, and a declaratory order confirming that Lacy's ownership and operation of the facilities to be abandoned, plus 25 additional field lines, following abandonment and conveyance, will be exempt from the Commission's NGA jurisdiction by reason of the "production and gathering" exemption contained in section 1(b) of the NGA. (The facilities to be abandoned, and the additional 25 noncertificated field lines collectively are referred to as the "Beckville Facilities.") All of the Beckville Facilities are used to move gas from 33 wells owned by Lacy. The conveyance to Lacy is part of the settlement of a take-or-pay (TOP) claim by Lacy and others who alleged that AER failed to take [\*27] gas or pay for gas not taken. Lacy intends to operate the Beckville Facilities as an integrated, nonjurisdictional gathering system.

<sup>n28</sup> 18 C.F.R. § 385.207 (1989).

b. Description of Facilities The Beckville Facilities to be conveyed by AER to Lacy and for which a declaratory order is sought are comprised of: (1) 37 field lines ranging in diameter from two inches to eight inches and ranging in length from .05 to 4.02 miles; (2) three field compressors; <sup>n29</sup> (3) AER's Beckville Compressor Station (Beckville Compressor); <sup>n30</sup> (4) AER's Line ST-12 from milepost 0.04 to milepost 6.88 (Main Segment), a 6.88 mile, ten-inch pipeline (less a 189 foot bypass) through which gas flows from the Beckville Compressor Station to the interconnection of AER's Line ST-2; <sup>n31</sup> and (5) various facilities appurtenant thereto. <sup>n32</sup>

<sup>n29</sup> The facilities which are the subject of AER's abandonment application were constructed by AER under budget certificate authority. Docket Nos. CP77-19 and CP77-501. The facilities to be abandoned include 7.64 miles of 4 inch to 8 inch diameter field lines. The three field compressors were certificated in Docket No. CP77-555.

<sup>n30</sup> The Beckville Compressor was certificated in Docket No. CP80-470, 13 FERC P61,194 (1980).

[\*28]

<sup>n31</sup> The Main Segment was certificated in Docket No. CP87-458, 47 FERC P61,342 (1989).

<sup>n32</sup> Lacy will not acquire 16 field laterals through which its gas does not flow nor will it acquire approximately 189 feet of the Main Segment which constitutes a bypass into AER's Line ST-2, a main transmission line.

c. Notice and Interventions Notice of the application was published in the Federal Register on August 7, 1989 (54 Fed. Reg. 32,382). Timely motions to intervene were filed by Oryx Energy Company and Lacy. <sup>n33</sup> Lacy supports the application. No protests were filed.

<sup>n33</sup> Timely unopposed motions to intervene are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (1989).

d. Discussion 1. Abandonment We will grant AER's abandonment request. The settlement agreed to between AER and

Lacy will enable AER to satisfy and terminate an outstanding take-or-pay dispute. Further, as explained below, AER and others will continue to receive the gathering and delivery service presently being performed by AER through the facilities to be abandoned. Finally, Lacy will acquire [\*29] facilities useful in maintaining and operating an efficient integrated gathering system.<sup>2</sup> JurisdictionApplying the criteria of the modified "primary function" test to evaluate the Beckville Facilities, we conclude that the subject facilities perform primarily a gathering function and accordingly, following abandonment and conveyance to Lacy, the facilities will be nonjurisdictional by reason of the "production and gathering" exemption contained in section 1(b) of the NGA.The eleven field lines to be abandoned range in diameter from four to eight inches and total approximately 7.64 miles in length. None of the lines in the Beckville Facilities are larger than eight inches in diameter, with the exception of the Main Segment which is comprised of 6.88 miles of ten-inch pipe (less the 189 foot bypass). All of the lines (except the Main Segment) and the three field compressors are connected to wells and laterals and are behind the Beckville Compressor, which is located at the central point in the field. While the Main Segment extends beyond the Beckville Compressor, it is behind the processing plant. At the tailgate of the processing plant, gas other than that owned by AER is [\*30] delivered to various interstate pipelines. The operating pressure at the inlet of the field compressors is 200 psi and the pressure at the outlet is 850 psi. The operating pressure is 190 psi at the inlet of the Beckville Compressor and 980 psi at the outlet; the function of that compressor has been to allow the low-pressure production to enter AER's interstate transmission line.Lacy is a small producer and does not intend to use the Beckville Facilities to make interstate sales or to render interstate transportation services. Rather, Lacy will use the Beckville Facilities merely to integrate its production and gathering function in the Beckville Field. Its production constitutes approximately 90 percent of the Beckville Field production. The remaining production is committed to AER or released by AER to the producers. In order to assure continued delivery of the gas committed to AER, Lacy has entered into a ten year contract with AER to gather and deliver such gas and will offer to gather released gas on the same terms.We find that approval of the proposed 7(b) abandonment does not constitute a major federal action significantly affecting the quality of the human environment. [\*31] For the reasons stated above we will approve AER's abandonment request. In addition, in view of the relatively short length of the lines which comprise the Beckville Facilities, the low operating pressures of the facilities behind the central point in the field, and the geographic configuration of the system, we find that the primary function of subject facilities is gathering and upon conveyance to Lacy the Beckville facilities will not be subject to our NGA jurisdiction.<sup>6</sup> Columbia Gas Transmission Company, Docket No. CP88-202-001a. BackgroundOn July 8, 1988, Arlington Exploration Company (Arlington) filed a request for rehearing of an order issued by the Commission on June 22, 1988, n<sup>34</sup> in Docket No. CP88-202-000. n<sup>35</sup> On July 22, 1988, National Fuel Gas Supply Corporation (National Fuel) also filed a request for rehearing of the June 22, 1988 order. n<sup>36</sup>

n<sup>34</sup> An order granting rehearing for further consideration was issued August 8, 1988.

n<sup>35</sup> 43 FERC P61,501 (1988).

n<sup>36</sup> An order granting rehearing for further consideration was issued August 16, 1988.

The June 22, 1988 order, pursuant to section 7(b) of the NGA, granted Columbia Gas [\*32] Transmission Corporation (Columbia) permission and approval to abandon certain pipeline facilities by sale to Arlington and to abandon its sales to National Fuel of natural gas produced from the Mullins and Sylvania #1 wells in the Thomas Corners Field, Steuben County, New York. The order dismissed Columbia's request that the Commission confirm that upon abandonment by sale to Arlington, the facilities would be considered "gathering" facilities which, therefore, would be exempt from the Commission's NGA jurisdiction pursuant to the "production and gathering" exemption contained in section 1(b) of the NGA.As a successor-in-interest to the Sylvania Corporation, National Fuel acquired rights to purchase natural gas from the Sylvania #1 well. Columbia purchased gas produced from the Mullins well. Based on a May 13, 1975, agreement between Columbia and Sylvania, Columbia purchased all the gas produced from both wells from May 13, 1975 to October 10, 1980, the date the Commission authorized an exchange of natural gas between Columbia and National Fuel and transportation of natural gas by Columbia for National Fuel. n<sup>37</sup> Since October 19, 1980, National Fuel has been purchasing all the [\*33] production from both wells. Based on the May 13, 1975, agreement, National Fuel is to take all gas from both wells until such time as the volumes taken by National Fuel equal those volumes previously taken by Columbia.n<sup>38</sup>

n<sup>37</sup> Docket No. CP76-19, 13 FERC P61,035 (1980). The exchange and transportation agreement is on file as Columbia's Rate Schedule X-101.

n<sup>38</sup> We note that the arrangement entered into by letter agreement dated May 13, 1975 between Columbia and the Sylvania Corporation is without certificate authorization. The unauthorized arrangement gives rise to the existing imbalance between Columbia and National Fuel. Columbia is hereby put on notice that it may not terminate its exchange agreement with National Fuel without first obtaining approval from the Commission to abandon that



exchange pursuant to section 7(b) of the NGA.

National Fuel in its motion to intervene and protest in Docket No. CP88-202-000 and Columbia in its answer to that protest indicated that 497,284 Mcf of natural gas remains due to National Fuel. In its answer to National Fuel's protest in Docket No. CP88-202-000, Columbia acknowledges that there may be insufficient [\*34] recoverable reserves in the Sylvania #1 and Mullins wells to make up for its overtake. On February 8, 1988, Arlington filed a certification in accordance with section 157.40(b)(6) of the Commission's regulations to continue sales to National Fuel from the Sylvania #1 and Mullins wells under its small producer certificate issued April 28, 1987, in Docket No. CS87-55-000.b. Rehearing Requests In its rehearing request Arlington seeks clarification of the statement in the June 22, 1988, order which indicates that in order for Arlington to discontinue sales to National Fuel, it either would have to comply with Order No. 490 n39 or obtain specific section 7(b) abandonment authorization. Arlington requests that the Commission confirm its right to discontinue sales to National Fuel if the good faith negotiation process is complete in accordance with Order Nos. 451 and 451-A. n40

n39 Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated or Modified Contracts, FERC Statutes and Regulations P30,797. appeal pending, Marathon Oil v. FERC, No. 88-3666 (6th Cir.)

n40 Ceiling Prices; Old Gas Pricing Structure; Order Granting Rehearing in Part, Denying Rehearing in Part, and Clarifying Final Rule, FERC Statutes and Regulations P30,701 and P30,720. vacated, Mobil Oil Exploration and Producing Southeast v. FERC, 885 F.2d 2095 (5th Cir. 1989), cert. granted, United Distributors v. FERC, No. 89-1453.

[\*35] Arlington further argues that the Commission erred by dismissing Columbia's request for a declaration that the facilities would no longer be considered jurisdictional upon abandonment by sale to Arlington. Arlington argues that the Commission had sufficient information to grant the disclaimer and that the dismissal of Columbia's request for declaration of the jurisdictional status of the facilities was arbitrary and capricious. Arlington claims that a Commission disclaimer of jurisdiction is most critical to the acquisition of the facilities. In its rehearing petition, National Fuel contends that the Commission's June 22, 1988 order is legally insufficient to sustain abandonment authorization. National Fuel claims that the Commission erred in approving the abandonment based solely on (1) a reduction of \$48,500 in operating costs to Columbia, and (2) Arlington's statement that sales service to National Fuel would not change. National Fuel contends that the Commission erred in authorizing Columbia to abandon its sales service when make-up gas is owed National Fuel under the exchange. National Fuel notes that it purchases gas from the Thomas Corners Field at prices ranging from [\*36] 99.1 cents to \$1.287 per MMBtu and that such production is among its lowest cost sources of supply. National Fuel avers that the abandonment of sales will impair National Fuel's ability to purchase the total make-up gas. National Fuel contends that if the abandonment is approved without modification, Arlington will undoubtedly discontinue sales to National Fuel pursuant to Order Nos. 490, 451 and 451-A.c. Discussion 1. Abandonment The Commission granted Columbia permission and approval to abandon a natural gas wellhead sale to National Fuel which Arlington, as an assignee of the subject production properties, agreed to continue. The July 26, 1989, Natural Gas Wellhead Decontrol Act (Decontrol Act) has deregulated these sales thereby exempting them from Commission jurisdiction. n41 The issues raised regarding the propriety of the Commission's approval of the abandonment under section 7(b) of the NGA and the applicability of Order Nos. 490, 451 and 451-A are moot in light of the Decontrol Act.

n41 The relevant section of the Decontrol Act states, "(f) Additional Decontrol.—The provision of subtitle A respecting the maximum lawful price for a first sale of natural gas shall cease to apply to natural gas described in paragraphs (1), (2), (3), and (4) as follows: '(1) Expired, terminated, or post-enactment contracts. — In the case of natural gas to which no first sale contract applies on the date of enactment of the Natural Gas Wellhead Decontrol Act of 1989, subtitle A shall not apply to any first sale of such natural gas delivered on or after the first day after such date of enactment.'

[\*37] Although the exchange between Columbia and National Fuel was not authorized by the Commission, the service was dedicated to interstate commerce once deliveries of natural gas commenced. n42 Therefore, the exchange is subject to the Commission's jurisdiction. Columbia cannot abandon the exchange with National Fuel without Commission approval. We are directing Columbia to pay back the gas imbalance, if any, to National Fuel under the same terms and conditions as the original uncertificated exchange. Columbia is directed to make arrangements with National Fuel to make up its exchange imbalance from any source acceptable to National under the same terms and conditions as the original uncertificated exchange and to make any appropriate filings with the Commission to effectuate delivery.

n42 Cf. Mountain Fuel Supply Company and Wexpro Company, Docket No. CP80-275, 24 FERC P61,120 (1983) affirmed sub. nom. 823 F.2d 1379 (10th Cir. 1987); and Valero Interstate Transmission Company v. FERC, 804 F.2d

1406 (1986).

2. Jurisdiction The major portion of the 7.4-mile, 8-inch pipeline extends downstream in [\*38] a straight line beyond the compressor facility and it terminates at an interconnection with Columbia's interstate pipeline. There are no wells along the pipeline and the two wells that the pipeline serves are almost depleted. In its rehearing request, Arlington states that it will continue to use the pipeline facilities to gather gas from the Mullins and Sylvania wells. Arlington, however, has stated in its purchase agreement with Columbia that it plans to purchase the producing properties, the Mullins and Sylvania wells, and the pipeline facilities to use as underground storage facility. Therefore, it is not entirely clear from the filings in this case for what purpose Arlington will use the abandoned facilities. However, applying the "modified primary function" test as enunciated above, on the basis of its limited function and relatively short length and diameter we conclude that to the extent that the subject facility will be used to move gas from the Mullins and Sylvania wells, the subject facility will perform primarily a gathering function. Alternatively, to the extent that the subject facility will be used for the storage of gas in interstate commerce it performs a transportation [\*39] function. Of course, if the facility will be used for storage in interstate commerce, Arlington must make the appropriate filings with the Commission. 7. El Paso Natural Gas Company Docket No. CP88-244-000 On February 18, 1988, El Paso Natural Gas Company (El Paso) filed an application in Docket No. CP88-244-000 requesting permission and approval to abandon certain facilities, which form part of facilities known as the Quinlin System. n43 For the reasons discussed below, we will permit and approve the abandonment of the facilities, subject to conditions.

n43 El Paso also requests authority to abandon the delivery of natural gas which is facilitated by movement through a 28.72 mile pipeline and meter station, parts of the Quinlin System, to a point of exchange with Northern Natural Gas Company, Division of Enron Corporation. As will be discussed in more detail, the exchange arrangement between El Paso and Northern will remain in effect after the abandonment of the facilities. El Paso, therefore, does not require authority to abandon its exchange with Northern. The gas will be delivered by another party for El Paso's account to the point of exchange.

Background El Paso [\*40] states that it desires to sell to Meridian Oil Production, Inc. (MOPI), the following facilities: (i) one 350 horsepower field compressor unit; (ii) approximately 28.72 miles of 6-5/8-inch diameter pipeline; (iii) approximately 23.3 miles of 4-1/2-inch and 6-5/8-inch diameter well-tie and other pipelines; (iv) one 10 MMcf per day dehydration facility; and (v) one dual 4-1/2-inch meter station. El Paso states that only the 6-5/8-inch diameter pipeline and the meter station are jurisdictional and require abandonment authority from the Commission. The construction and operation of these facilities was authorized in Docket No. CP73-220 in 1973 and 1974. n44 El Paso further states that it will abandon the field compressor pursuant to El Paso's blanket facilities certificate issued in Docket No. CP82-435. n45 El Paso asserts that the remaining facilities to be sold to MOPI are nonjurisdictional.

n44 50 FPC 148 (1973) and 52 FPC 1764 (1974).

n45 20 FERC P62,454 (1982).

The Quinlin System interconnects to Northern's system at a point in Woodward, Oklahoma, where El Paso delivers gas, produced from [\*41] the Northwest Quinlin Field, to Northern as part of an exchange agreement between the parties. n46 The exchange is performed pursuant to a 1963 Services Agreement which constitutes Rate Schedule Z-1 to El Paso's FERC Gas Tariff, Third Revised Volume No. 2, and Rate Schedule T-1 to Northern's FERC Gas Tariff, Original Volume No. 2.

n46 The exchange was authorized in Docket Nos. CP61-92 (El Paso) and CP61-139 (Northern), 33 FPC 34 (1965). On April 14, 1988, the certificate covering the exchange was amended to authorize the extension of the primary term of the service agreement. 43 FERC P61,050 (1988).

El Paso states that it has determined it is uneconomical for it to continue to own and operate the Quinlin System. El Paso explains that the Quinlin System has a maximum design capacity of approximately 8,470 Mcf of natural gas per day. Data developed in 1972 and 1973 indicated that the total proven recoverable gas reserves underlying a portion of El Paso's then present total dedicated leasehold acreage in the Northwest Quinlin Field was estimated at 26.4 Bcf. By 1975, however, it was necessary to install and operate a 350 [\*42] horsepower field compressor for the purpose of offsetting the rapidly declining reservoir pressures in the field. Based on data developed in 1986, El Paso estimates that the remaining recoverable reserves is 8.3 Bcf, a considerable decrease from 1973. El Paso states that these reserves equated to an estimated average daily availability of 2,400 Mcf, 2,300 Mcf, 2,300 Mcf and 2,200 Mcf for the years 1987, 1988, 1989 and 1990, respectively. With the lower volumes available from the Northwest Quinlin Field, El Paso states its unit cost for operation of the Quinlin System has continued to rise. El Paso states that based on data from 1987, the unit rate is \$0.3795. Additionally, El Paso states that its customers have reduced their purchases of commodity gas, so that

present market requirements no longer justify maintenance of high levels of gas supply availability with its associated take-or-pay exposure. Thus, El Paso concludes abandonment of the Quinlin System is warranted. MOPI has indicated an interest in acquiring the Quinlin System, which will facilitate its existing and future gas exploration and production, acquisition and marketing efforts in the proximity of the system. MOPI [\*43] has agreed to purchase the system for \$100,000. El Paso states that this amount reflects the sales price for all the facilities comprising the Quinlin System. It states it derived the sales price upon a discounted cash-flow computation that utilized its historical costs as the basis for forecasting the purchaser's future operating expenses and revenues to determine an estimated after tax discounted cash-flow for the ten-year period 1987 through 1997. The sales agreement between El Paso and MOPI provides that El Paso may assign directly to MOPI existing gas purchase agreements with producers where the gas is attached to the Quinlin System. Further, with regard to all gas purchased by El Paso under all existing gas purchase agreements not assigned or abandoned, MOPI has agreed to provide a gathering service, including metering, dehydration and delivery of such gas to Northern at the existing exchange point, for El Paso's account. El Paso will pay \$0.20 per dekatherm, plus escalations, for such service. In light of the above arrangements with MOPI, El Paso submits that abandonment of the Quinlin System will have very little effect upon its system gas supply activities, as well as [\*44] the existing exchange agreement with Northern. El Paso will retain the existing exchange point with Northern under the 1963 Services Agreement until such time as El Paso no longer has gas available for the exchange at the delivery point. In addition, El Paso asserts that the abandonment will have no significant effect on its ability to render natural gas service to its customers. El Paso further states that the proposed abandonment will not require any changes in its FERC Gas Tariff and no material change in its average cost of service will result. Interventions After public notice of El Paso's application by publication in the Federal Register on March 8, 1988, 53 Fed. Reg. 7392, Northern, Southwest Gas, and Windward Energy and Marketing Company filed timely, unopposed motions to intervene, which motions are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. n47 The Illinois Commerce Commission filed a timely notice of intervention. Pacific Gas and Electric Company (PG&E) filed a motion to intervene out of time. Because PG&E has shown good cause to intervene out of time and since late intervention will not delay [\*45] or otherwise prejudice these proceedings, we will grant PG&E's motion. PG&E also protested the application and requests that a technical conference be held. Southwest Gas also requests a technical conference. The substance of the protest and requests for technical conference will be discussed below.

n47 18 C.F.R. § 385.214 (1989).

Discussion Pursuant to the provisions of section 7(b) of the NGA, the Commission may permit and approve the abandonment of jurisdictional facilities and services if it determines that the available gas supply is depleted to the extent that continuation of a service is unwarranted or if the present or future public convenience or necessity permits such abandonment. In the instant case, we find that present and future public convenience and necessity permits the abandonment by El Paso of certain facilities which are part of the Quinlin System. The specific facilities include approximately 28.72 miles of 6-5/8-inch pipeline and one dual 4-1/2-inch meter station. El Paso has demonstrated that it no longer needs the gas supplies available from the Northwest Quinlin Field to supply its customers requirements because customers have reduced their purchases [\*46] of commodity gas significantly in recent years. For example, El Paso's Form 2 reflects that in 1984 sales to utilities and other pipelines for resale constituted 74 percent of its throughput, while transportation accounted for the remaining 26 percent. However, by 1987, transportation volumes had almost tripled, constituting 75 percent of throughput, while sales for resale declined to 25 percent. These circumstances reflect the industry shift from system sales to transportation. Moreover, El Paso has demonstrated that the reserves of gas in the Northwest Quinlin Field have declined significantly since 1973, thus, it is unlikely that El Paso would rely on this source to meet its system and customer requirements. In its protest, PG&E submits that a technical conference needs to be convened in order to determine whether a hearing is necessary in this proceeding. According to PG&E, the following issues need further exploration: (a) whether the price to be paid by MOPI for the Quinlin System is reasonable; (b) whether the proposed abandonment would affect El Paso's ability to meet its service obligations to its customers; (c) what impact the proposed rates for gathering services provided [\*47] by MOPI would have on El Paso's rates; (d) whether El Paso has made any take-or-pay payments or incurred take-or-pay liabilities related to any gas to be abandoned; and (e) whether there is a relationship between El Paso's proposed abandonments in this docket and those proposed in Docket Nos. CP87-553-000 and CI87-883-000. Resolution of the issues raised by PG&E does not require a technical conference. We note that the rate consequences of El Paso's transfer of facilities, as well as the rates paid to MOPI for gathering services, will be subject to review in an El Paso rate proceeding. We further note that El Paso will not assign any gas purchase contracts to MOPI until all take-or-pay issues are cured. n48 Any additional issues relating to El Paso's take-or-pay liability for the gas supplies at issue here should also be raised in a rate proceeding. Further, we find that the proposed abandonment will

have no significant effect on El Paso's ability to render existing service or on its system supply. To the extent that El Paso does assign its producer contracts to MOPI, such transfer will not result in the loss of gas supplies to El Paso, since MOPI, as purchaser, would continue [\*48] to deliver the gas to the existing exchange point with Northern for El Paso's account.

n48 The purchase contract between El Paso and MOPI so provides.

As to PG&E's concern with the relationship between the proposal here and those in Docket Nos. CP87-553-000 and CI87-883-000, we find that the three proceedings are not related. In Docket No. CP87-553-000, El Paso proposed to abandon company-owned production by sale to its production affiliate, El Paso Producing Company. That proceeding involves the issue of whether price caps in effect pursuant to an existing settlement will remain valid after El Paso transfers the properties. The issues in that case are not relevant to the instant case. In Docket No. CI87-883-000, Meridian Oil Holding Inc., a marketer of natural gas of which MOPI is a subsidiary, sought to make sales for resale in interstate commerce. Since Meridian Oil Holding Inc. is an affiliate of El Paso, the Commission granted the certificate, but limited the term to one year in order to assess the impact of pipeline affiliated marketers on the market as a whole. There is no connection between El Paso's proposed abandonment here and the resale authority of Meridian [\*49] Oil Holding Inc. Southwest Gas requests a technical conference and raises questions regarding El Paso's accounting treatment of the purchase price for the Quinlin System. Southwest states that it is unlikely that the jurisdictional facilities have depreciated 90 percent and questions whether El Paso's rates will continue to include costs related to the Quinlin System. Southwest raises a question as to whether El Paso's customers will benefit after the abandonment from a cost standpoint, given the gathering charge which will be charged to El Paso by MOPI. With regard to whether the jurisdictional facilities are 90 percent depreciated, we are imposing certain accounting conditions on El Paso which should address Southwest Gas' concern. El Paso must account for the sale of the Quinlin System as a sale of operating unit or system rather than as an abandonment of facilities. This approach necessitates computing estimated depreciation applicable to the retired property, allocating the sale price between jurisdictional and nonjurisdictional property and recognizing a gain or loss, as provided in Gas Plant Instruction No. 5. This accounting method is consistent with the treatment required [\*50] by the Commission in a similar case. n49

n49 El Paso Natural Gas Company, 46 FERC P61,358 (1989), reh'g denied, 49 FERC P61,360 (1989).

Southwest Gas also questions whether or not El Paso's customers will benefit as a result of the proposed abandonment. Since El Paso will no longer pay for the maintenance and operation of the Quinlin System, El Paso's customers will benefit in this respect. El Paso states that its unit operating costs will decrease from \$0.3795 to \$0.20 per dekatherm after the abandonment, a potentially significant benefit to customers. While it cannot be definitively shown that abandonment will prevent future increased costs to El Paso's customers, such concerns, at this time, are speculative. If Southwest Gas has a specific challenge to costs resulting from the abandonment, the proper forum in which to raise this issue will be in El Paso's next rate case. In sum, we find that the proposed abandonment is required by the public convenience and necessity. The record indicates that the abandonment of the meter station will not have a detrimental effect on El Paso's system activities. Moreover, El Paso [\*51] will continue to exchange gas with Northern, except MOPI will move the gas through the Quinlin System as a gathering facility, instead of El Paso, as a transporter. We note that at this time it is unnecessary for the Commission to determine, in this proceeding, whether the facilities of the Quinlin System, as MOPI proposes to operate them, are exempt from the Commission's jurisdiction as gathering facilities. We, therefore, make no finding in this regard. We find that approval of the proposed 7(b) abandonment does not constitute a major federal action significantly affecting the quality of the human environment. Permission for and approval of the abandonment by El Paso of approximately 28.72 miles of 6-5/8-inch pipeline, one dual 4-1/2-inch meter station is granted. El Paso is required to account for the sale of the Quinlin System as a sale of an operating unit or system rather than as an abandonment of facilities. 8. Enron Oil & Gas Company, Docket No. CI89-421-000a. Background On May 19, 1989, Enron Oil & Gas Company (Enron) filed a petition requesting that we issue a declaratory order under Rule 207 of the Commission's Rules of Practice and Procedure n50 disclaiming jurisdiction [\*52] over natural gas facilities that Enron intends to construct on the OCS. Enron asserts that these facilities fall within the gathering exemption in section 1(b) of the NGA.

n50 18 C.F.R. § 385.207 (1989).

b. Proposed Facilities Enron, a natural gas producer, co-owns gas reserves in Matagorda Island (MAT) Blocks 638 and 620, offshore Texas. Enron plans to construct and operate approximately 6.5 miles of 16-inch pipeline with a maximum operating pressure of 1,350 psig. The 16-inch line will connect platform B in the northwest corner of MAT Block 638 to a subsea connection with Northern Natural Gas Company, Division of Enron Corporation's existing 24-inch jurisdictional pipeline in MAT Block 622. n51 Enron also plans to construct approximately 2.2 miles of 12-inch pipeline from a platform to be constructed in MAT Block 620 to a subsea tap on the planned 16-inch line, that will be

located approximately 500 feet downstream of platform B in MAT Block 638. n52 Enron contemplates that it and the other working interest owners in MAT Blocks 638 and 620 will own the proposed facilities and will move their respective working interest share of production through the 16-inch line. n53 [\*53]

n51 Enron notes that the subsea connection is adjacent to Amoco Production Company's platform C and that Amoco and Apache Corporation have constructed gathering lines in this area that attach reserves in MAT Blocks 622, 635, and 636 with Northern's 24-inch line.

n52 Enron contemplates the construction of a platform in MAT Block 637 and a pipeline from that platform to the subsea tap at platform B on MAT Block 638 in the event it develops its reserves in MAT Block 637.

n53 Enron owns a 78.4 percent interest in MAT Block 638 and a 91 percent interest in MAT Block 620. Samedan Oil Corporation owns an 8.1 percent interest in MAT Block 638 and a 9 per-cent interest in MAT Block 620.

Apache Corporation owns a 13.5 percent interest in MAT Block 638.

Enron also contemplates constructing three to six flow lines with diameters of approximately four inches and lengths not to exceed five miles from wells in MAT Blocks 638 and 620 to the platforms in the respective blocks. In addition, Enron contemplates constructing 1.9 miles of 10-inch line between two platforms in MAT Block 620. Enron estimates that 75,000 MMBtu of gas per day will flow from MAT Blocks 638 and 620 and that [\*54] this will increase to 200,000 MMBtu per day in the future. Gas will flow at natural reservoir pressures against the pressure in Northern's line since Enron will not construct compression facilities on the proposed lines or on the platforms in MAT Blocks 638 and 620. Enron states that it will install separation facilities on the platforms in MAT Blocks 638 and 620 to remove free water. After removing the water, Enron will recombine the gas and condensate downstream of the sales meters, but Enron will not process the gas offshore. After delivering the gas to Northern, Northern will transport the gas and condensate to Seagull Shoreline Pipeline Company who, in turn, will transport the gas to Enron Gas Processing Company's plant at Oyster Lake, Texas for processing. After processing, the gas will be delivered to Houston Pipeline Company at the tailgate of the processing plant or transported by Seagull to Texas Eastern Transmission Corporation or Valero Gas Transmission Company. c. Interventions Notice of Enron's petition was published in the Federal Register on June 2, 1989 (54 Fed. Reg. 23,685). Apache Corporation and Anadarko Petroleum Corporation filed [\*55] timely, unopposed motions to intervene. Apache and Anadarko did not protest Enron's petition. The motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. n54

n54 18 C.F.R. § 385.214 (1989).

d. Discussion The 16-inch and 12-inch lines are designed solely to deliver gas from a production platform to a jurisdictional transmission pipeline that will ultimately deliver the gas to an onshore processing plant. There are no compressors or processing facilities on the production platform or along either of the lines, which will operate at wellhead pressures. The facilities are short as compared with other OCS lines and the diameters are no larger than the diameters of facilities found to be gathering in Shell Gas Pipeline Company, 41 FERC P61,032 (1987). The geographic configuration of the lines indicates that the facilities are gathering, since numerous other gathering lines connect to Northern's system near the same point as Enron's planned 16-inch line. Accordingly, we find that the 16-inch and 12-inch lines fall within the gathering exemption found in section 1(b) of the NGA. Finally, we find [\*56] that the flow lines that connect gas wells to platforms in MAT Blocks 638 and 620 and the 10-inch line that connects two platforms in MAT Block 620 are clearly gathering facilities because they are further upstream than the 16-inch and 12-inch lines that we have already found gathering. n55

n55 Our decision in this docket does not address Enron's contemplated construction of facilities in MAT Block 637. For the reasons stated above, we find that the primary function of Enron's 16-, 12-, and 10-inch lines, as well as the flow lines, is gathering and that these facilities are therefore exempt from the Commission's NGA jurisdiction by operation of the "production and gathering exemption" contained in section 1(b) of the NGA. 9. Forest Oil Corporation, Docket No. CP89-2158-000a. Background On September 22, 1989, Forest Oil Corporation (Forest) filed a petition for a declaratory order, seeking a determination from the Commission that certain facilities that Forest intends to construct in the Gulf of Mexico are production and gathering facilities exempt from regulation by the Commission under section 1(b) of the NGA. In the alternative, Forest requests that the Commission certificate [\*57] the construction and operation of these lines pursuant to section 7(c) of the Natural Gas Act (NGA). b. Proposed Facilities The proposed facilities consist of three relatively short lines originating at offshore production platforms in Eugene Island Block 366, Eugene Island Block 325, and Ship Shoal Block 277 in the Gulf of Mexico, and terminating at subsea taps interconnecting with nearby jurisdictional interstate transmission lines. The largest of the three lines proposed to be built by Forest will consist of

5.4 miles of 12 3/4-inch pipe running from a production platform in Eugene Island Block 366 to an existing subsea tap located on Tennessee Gas Pipe Line Company's Ship Shoal Eugene Island Block 349 line, located in Eugene Island Block 342. Forest states that near its terminus, the proposed 12 3/4-inch gathering line will cross pipeline transmission lines owned by Tarpon Gas Pipeline Company, Tennessee Gas Pipeline Company and Northern Natural Gas Company. Forest states that interconnection with these three other transmission lines is not feasible due to either economic or engineering constraints, and would not materially shorten the proposed gathering line. Therefore, Forest [\*58] states, the proposed route represents the shortest line suitable for gathering production from the Block 366 platform for delivery to an interstate pipeline. According to the applicant, two wells initially connected to the Block 366 platform will be brought on line with an initial combined daily deliverability of 90 MMcf per day and with operating pressures of about 1100 psig. Forest plans to drill two additional wells on this platform, which will increase the deliverability from the platform to a level approximating the 100 MMcf per day design capacity of the proposed gathering line. Forest avers that the 12 3/4-inch line is sized no greater than necessary to gather the anticipated production from the Block 366 platform for delivery into an interstate pipeline. No compression is planned for the Block 366 platform in conjunction with the construction of the 12 3/4-inch line. However, Forest will install field compression only if declines in reservoir pressure necessitate compression to maintain deliverability or to meet pipeline operating pressure at the interconnection point. No gas processing will take place on the Block 366 platform. Forest states that it will flow the gas through [\*59] a separator on the platform, and reinject the liquids into the gas stream. Any processing will occur at some point onshore. The second line proposed by Forest will consist of 1.44 miles of 10 3/4-inch pipeline running from Forest's Eugene Island Block 325 production platform to an existing interconnection in Eugene Island Block 320 with the aforementioned Tennessee Gas Pipe Line Company Ship Shoal Eugene Island Block 349 Line. Forest states that this proposed gathering line will not cross any other transmission lines, and that the proposed subsea tap is the nearest feasible point of interconnection with an interstate gas transmission pipeline. Initially, four wells will be brought on line from the Block 325 platform with an initial combined daily deliverability of 65 MMcfd. Forest plans to drill five more wells on this platform, which will ultimately increase deliverability to a level approximating the 100 MMcfd design capacity of the proposed 10 3/4-inch line. Forest states that similar to the proposed 12 3/4-inch line, the gas will flow through the proposed 10 3/4-inch line at operating wellhead pressures of about 1100 psig, without compression. Field compression would only [\*60] be added at a latter date if declining reservoir pressures necessitated compression to maintain deliverability into the interstate transmission pipeline. Liquids resulting from the operation of a separator on the Block 325 platform will be transported onshore via an oil pipeline that will originate on the Block 325 platform. Any further processing of this gas will occur onshore. The third line proposed by Forest will consist of 0.34 mile of 4 1/2-inch pipe running from Forest's production platform in Ship Shoal Block 277 to an interconnection with ANR Pipeline Company (ANR) in Ship Shoal Block 276. Initially, Forest proposes to bring the casinghead gas production of three oil wells on line, which will amount to approximately 8 MMcfd. Forest plans to develop a fourth oil well from the Block 277 platform which will increase total casinghead gas deliverability to the approximately 20 MMcfd design capacity of the proposed 4 1/2-inch line. Forest states that the 4 1/2-inch line is no larger than necessary to gather Forest's anticipated production from the Block 277 platform for delivery to an interstate pipeline. Additionally, Forest states the proposed 4 1/2-inch line will not cross [\*61] any other transmission lines, and the ANR interconnection represents the nearest feasible point at which the Block 277 production can be injected into an interstate pipeline. Because of the lower operating pressures of the oil wells connected to the Block 277 platform, Forest states that compression will be necessary from the outset to deliver the Block 277 casinghead gas into ANR's transmission line. Additionally, the Block 277 platform will contain a separator for the separation of gas from the oil stream, and a dehydrator to meet the quality specifications of ANR's transmission lines. All other processing of the gas stream will occur on shore. c. Notice and Interventions Notice of this petition was published in the Federal Register on October 12, 1989 (54 Fed. Reg. 41,864). Timely motions to intervene were filed by Texas Eastern Transmission Company and Tarpon Transmission Company (Tarpon). Tarpon moved to protest the petition, but later withdrew its objection after an informal technical conference with Forest. n56

n56 Timely unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (1989).

[\*62] d. Discussion The compression, separation and dehydration performed by Forest on the Block 277 platform are necessary field functions for casinghead production. We find that the 0.34 mile 4 1/2-inch line proposed by Forest is clearly a gathering line. In addition, it is clear that the primary purposes of the proposed 12 3/4-inch line and the 10 3/4-inch line are gathering and production functions; these lines are designed to gather the gas produced from each platform, and to deliver it to the nearest feasible interstate pipeline transmission interconnection. All three of these lines are relatively short for lines located on the OCS. They are designed to perform a specific gathering function and are within

the parameters of lines determined to be nonjurisdictional in other cases. Although Forest has indicated that there are other companies with working interests in the wells served by these gathering lines, n57 each of the three owners, will have the same percentage interest in the proposed gathering line.

n57 The joint ownership interests are Forest (50%), Harbert Energy Corporation (16.67%) and Adobe Resources Corporation (33.33%).

Applying the several criteria of the "modified [\*63] primary function" test as enunciated above, we therefore find that the primary function of the facilities which are the subject of this proceeding is gathering and that these gathering lines are exempt from our NGA jurisdiction by operation of the "production and gathering" exemption contained in section 1(b) of the NGA.10. El Paso Natural Gas Company, Docket No. CP90-1084-000 Leapartners, L.P., Docket No. CP90-1083-000. On March 30, 1990, El Paso Natural Gas Company (El Paso) filed in Docket No. CP90-1084-000 an application, pursuant to section 7(b) of the NGA, for permission and approval to abandon, by sale to Leapartners, compression, processing and pipeline facilities, comprising what is referred to as the Lea System, and the related services. El Paso also requests, pursuant to section 7(c) of the NGA, a certificate of public convenience and necessity authorizing the refunctionalization of its Eunice-Keystone Pipeline from gathering to transmission. On March 30, 1990, Leapartners, L.P. (Leapartners) filed in Docket No. CP90-1083-000 a companion petition, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure for a declaratory order disclaiming Commission [\*64] jurisdiction over the Lea System, to be acquired from El Paso Natural Gas Company (El Paso). Leapartners contends that the Lea System is a "gathering" facility under section 1(b) of the NGA and is therefore exempt from the Commission's jurisdiction. For the reasons stated below, we shall grant El Paso's requests. In addition, the Commission finds that the Lea System is a "gathering" facility exempt from the Commission's NGA jurisdiction by operation of the "production and gathering" exemption contained in section 1(b) of the NGA.a. Background The Lea System was initially constructed in 1929 to deliver natural gas from the Lea County production area. Since that time, El Paso has sought and received Commission authorization to expand the Lea System by the construction of additional compression, pipeline and processing facilities. n58 To accommodate the large quantities of gas produced in the area and differing underground reservoir pressures, the Lea System is comprised of two distinct gathering systems, one operating at high pressure (maximum of 100 psig) and another for casinghead gas operating at low pressure (maximum of 40 psig), and four field processing plants. Part of [\*65] the Lea System is a 34-mile, 24-inch low pressure line, called the Eunice-Keystone Line, which has been used to gather gas from outlying reservoirs. Efforts to centralize and modernize its operation led El Paso to integrate its processing activity, which had formerly been accomplished in four processing plants, into a single plant, the Jal No. 3 Plant, where, currently, all of the gas moved through the Lea System is compressed, processed and delivered into El Paso's transmission facilities. n59

n58 El Paso states that it has also added what it refers to as minor "non-jurisdictional facilities" to the Lea System. El Paso states that it has ceased its practice of seeking certificates for such "non-jurisdictional gathering facilities." El Paso states that this practice explains the certificated older segments of the Lea System and the noncertificated newer portions.

n59 Additional gas is processed by Sid Richardson Carbon & Gasoline Company, the General Partner of Leapartners, at its Keystone Processing Plant for redelivery to El Paso's transmission facilities.

The Lea System has continued to evolve over the years and currently is made up of 1,500 miles of pipeline connected [\*66] to 1,400 wells and 29 field compressor facilities. Throughput in the Lea System is no longer primarily dedicated to El Paso's system supply and El Paso has become a major gas transporter of third-party gas. El Paso proposes to abandon, by sale to Leapartners, the Lea System, and the natural gas services which it has performed through them. El Paso explains that a decline in reservoir pressures in the Lea County production area has made many of the previously certificated pipelines more suitable for gathering than transmission. With its own transition from that of gas merchant to gas transporter, and the precipitous decline in gas sources historically serving its system supply, operation of the Lea System to gather and process its system supply gas has become economically impracticable. El Paso states that selling the system to Leapartners, who intends to operate it as an integrated nonjurisdictional gathering system, will benefit area producers by adding another nonjurisdictional competitor offering gathering and processing services. n60 El Paso's end-user transportation customers will also benefit from the increased competition and greater supply alternatives.

n60 El Paso states that producers in the Lea County production area will have, including Leapartners' services, 10 different processing plants and 4 interstate pipelines from which to choose for gathering, processing and transmission services.

[\*67] El Paso states gas from the Lea System dedicated to its system supply is on the wane. Producers are abandoning sales to El Paso and contracting with Leapartners for gathering, processing and marketing services. However, neither El

Paso's remaining contractual purchase obligations nor its sales for resale obligations in the Lea County production area will be adversely affected by the proposed abandonment. Leapartners has agreed to gather and process El Paso's remaining gas in the area and El Paso states that it will abandon no gas supply as a direct result of the abandonment. Furthermore, El Paso assures that its open-access transportation obligations will not be affected by the proposed abandonment. El Paso also requests certificate authorization to use its Eunice-Keystone Line, which is currently functioning as a gathering line, to transport pipeline quality gas from the Lea System to its Eunice Compressor Station or mainline facilities in California. El Paso will operate the line as a high-pressure line to carry processed gas from the plant tailgate to its mainline facilities.

b. Interventions After due notice in the Federal Register on April 17, 1990 (54 Fed. Reg. 14,340), [\*68] timely unopposed motions to intervene were filed in Docket No. CP90-1084 by Amoco Production Company (Amoco), Arizona Electric Power Cooperative, Inc. (Arizona), Conoco Inc (Conoco), El Paso Municipal Customer Group (El Paso Group), Leapartners, Natural Gas Clearinghouse (Natural), Pacific Gas and Electric Company (Pacific Gas), Southern California Gas Company (SoCal), Southern Union Gas Company (Southern Union), and Southwest Gas Corporation (Southwest). n61 The Public Utilities Commission of the State of California filed a timely notice of intervention. n62 In addition, on May 24, 1990, West Texas Gas Gathering (West Texas) filed a motion to intervene out of time and a request for technical conference. n63

n61 Timely unopposed motions to intervene are granted by operation of Rule 214.

n62 By operation of Rule 214 (18 C.F.R. § 385.214) of the Commission's Rules of Practice and Procedure, a state commission becomes a party to a proceeding upon filing a timely notice of intervention.

n63 For good cause shown, West Texas' motion to intervene out of time in this proceeding is granted.

Arco Oil and Gas Company and Arco Natural Gas Marketing, Inc. (Arco Oil) filed a [\*69] motion to intervene out-of-time. We find that granting the late motion will not delay or disrupt the proceeding, or prejudice the interests of any party, and good cause exists to permit it. Therefore, we shall grant the late motion to intervene. Pacific Gas opposes the proposed refunctionalization of the Eunice-Keystone Line from gathering to transmission. Pacific Gas states that El Paso has provided no evidentiary basis to reclassify the subject line as transmission in character. Pacific Gas avers that contrary to El Paso's claims, its gathering facilities are distinct from its transmission facilities and the service performed by its gathering facilities, of which the line is a part, will not change. Also, refunctionalization would allow El Paso to classify fixed costs associated with the line (gathering costs), to the demand component of rates in contravention of the Commission's longstanding policy against demand classification of gathering costs and contrary to Commission's May 30, 1989 [47 FERC P61,295] Policy Statement on Rate Design which mandates service unbundling. Pacific Gas claims that this would have several anticompetitive effects, including [\*70] conferring a price advantage on gas gathered by El Paso. Pacific Gas does not oppose El Paso's proposal to sell and abandon the Lea System. Southern Union, a local distributor of natural gas, like Pacific Gas, supports the proposed abandonment of the Lea System but opposes the reclassification of facilities because of potentially adverse rate effects. Southern Union, without further explanation, requests a technical conference on the issue of reclassification. West Texas expresses its concern that despite El Paso's assurances, the proposed conveyance of the Lea System may affect El Paso's ability to perform under its gas sales contracts with West Texas. There is no evidence in the record to support a finding that the proposed operation of the Lea System by Lea Partners will have such a result. n64 Moreover, the contractual relationships between West Texas and El Paso are presently the subject of Docket No. RP90-19-000. Accordingly, West Texas request for a technical conference is denied.

n64 In its response to West Texas' motion, Leapartners points out that West Texas' gas does not move through the Lea System.

After due notice by publication in the Federal Register on April [\*71] 17, 1990 (54 Fed. Reg. 14,340), timely unopposed motions to intervene were filed in Docket No. CP90-1083-000 by Amoco, Arizona, El Paso Group, El Paso, Natural, Pacific Gas and SoCal. The Public Utilities Commission of the State of California filed a timely notice of intervention. No further motions to intervene, notices of intervention or protests were filed.

c. Discussion

1. Abandonment and Refunctionalization The Commission believes that the abandonment by sale of the Lea System will be advantageous for several reasons. El Paso, like many other interstate pipeline systems, is shifting from sales to transportation of natural gas. Its market environment no longer justifies retention of a system geared to gathering and serving El Paso's system supply. Desirous of phasing out its sales service, El Paso has been releasing gas from the system and has taken other steps toward eliminating unnecessary gas supplies which do not complement its role as a transporter of gas. The proposed abandonment will further its efforts to complete the transition from gas merchant to that of major gas transporter. It will rid El Paso of unnecessary and costly facilities [\*72] without significantly affecting the service or costs of existing customers. Leapartners, the proposed purchaser of the Lea System, has agreed to provide gathering and processing services for El Paso's remaining gas in the Lea System. Also, El Paso will not abandon any gas supply as a direct result



of the abandonment, thus preserving its ability to render existing sales service to its customers. In addition to assisting El Paso to optimize its system operations, abandonment to Leapartners will benefit area producers and El Paso's end-user transportation customers. Accordingly, we find that the proposed abandonment is in the public convenience and necessity. We also find that certificating the Eunice-Keystone line as a transmission facility is in the public convenience and necessity. Classifying the line as transmission will allow El Paso to use the line to provide a connection between El Paso's northern and southern systems and will enable El Paso to transport processed gas to its mainline facilities to the benefit of both producers in the Lea County production area and El Paso's transportation customers. Pacific Gas' objections are unfounded. The Eunice-Keystone Line was [\*73] constructed to gather gas from outlying high pressure reservoirs to the four Jal area processing plants. Processing on the Lea System, however, was subsequently integrated into one plant, thereby changing the original function of the line. Contrary to Pacific Gas' suggestions, the line is now better suited to provide transmission service than gathering. The line will be operated as a high pressure line to transport pipeline quality gas from the plant tailgate to its mainline facilities. Reclassifying the line as transmission will refine the Lea System as distinctly gathering. In view of the foregoing, Southern Union's request for a technical conference is also without merit. Approval of the abandonment would not constitute a major federal action significantly affecting the quality of the human environment.

2. Jurisdiction Applying the "modified primary function" test to the Lea System, we conclude that the subject facilities perform primarily a gathering function and are therefore exempt from the Commission's NGA jurisdiction by operation of the "production and gathering" exemption contained in section 1(b) of the NGA. The vast majority of lines included in the Lea System are [\*74] small in diameter and operate at low pressures and dimensions consistent with gathering. The larger lines needed to move large volumes of gas to the Jal No. 3 or Keystone processing plants and situated behind the processing plants are also consistent with gathering. The location of compressor units behind the Jal No. 3 and Keystone processing plants also comport with gathering. In fact, the entire Lea System is located behind these plants, the tailgates of which serve as the central point in the field. Wells are located at various points upstream of the plants and along feeder lines. These lines are merely a function of the location of the wells. The entire Lea System is situated in a large production area and resembles a network-like configuration designed to gather and process gas for delivery into mainline facilities. Finally, Leapartners states that it will operate the subject facilities exclusively as an integrated gathering and processing complex and that neither it nor its General Partner are owners of any interstate pipeline facilities. The General Partner of Leapartners, Sid Richardson Carbon & Gasoline Company (SRCG), has been engaged in the business of gathering and [\*75] processing natural gas in the Permian Basin area since 1948. SRCG proposes to upgrade and operate the Lea System as an integrated nonjurisdictional complex offering competitive gathering and processing services to the benefit of producers and consumers alike in the Lea County production and market area, respectively. Under these circumstances, we find the subject facilities to be exempt from our NGA jurisdiction under the "production and gathering" exemption contained in section 1(b) of the NGA. Accordingly, after consideration of all of the elements of the "modified primary function" test, we find that the Lea System performs primarily a gathering function and is exempt from the Commission's NGA jurisdiction.

11. Mitco Pipeline Company, Docket No. CP89-1514-000a. Background On May 24, 1989, Mitco Pipeline Company (Mitco) a wholly owned subsidiary of Southwestern Gas Pipeline, Inc. (Southwestern), which in turn is a wholly owned subsidiary of Mitchell Energy Corporation (Mitchell Energy) filed a petition for a declaratory order in Docket No. CP89-1514-000. n65 Mitco seeks a determination that the operation of its pipeline facility authorized under previously issued certificates [\*76] of public convenience and necessity will no longer be subject to Commission regulation in accordance with the "production and gathering" exemption contained in section 1(b) of the NGA. n66

n65 Originally, the request for a declaratory order was filed in Docket Nos. CP80-458, CP82-115 and CP82-442 as a motion to vacate its previously issued certificate orders. However, we will treat the motion as a petition for a declaratory order filed under Rule 207 of the Commission's Rules of Practice and Procedure, and have reassigned that motion to this proceeding.

n66 On April 7, 1981, in Docket No. CP80-458 (15 FERC P61,026), the Commission issued a certificate authorizing Mitco to construct and operate an 8.5 mile, 6 inch, gathering line in the producing area located in federal waters of the Outer Continental Shelf (OCS). Subsequently, in Docket Nos. CP82-115 (19 FERC P62,430) and CP82-442 (20 FERC P62,559), the Commission issued blanket certificates authorizing Mitco to transport natural gas for interstate pipelines under Part 284 of the regulations and to perform certain routine transactions necessary to operate its facilities.

[\*77] Mitco states that while it filed its application leading to the issuance of a certificate in Docket No. CP80-458 under the belief that such facilities were subject to the Commission's jurisdiction under section 7(c) of the NGA, recent

Commission rulings indicate that Mitco's pipeline is actually a nonjurisdictional gathering facility under section 1(b) of the NGA. We will grant the petition as discussed below.

b. Description of Facilities According to Mitco, the subject 8.5 miles of 6-inch pipeline, which is owned and operated by Mitco, connects OCS Block 189, Galveston Area, Offshore Texas to State Tract 214, where there is a subsea connection with an intrastate pipeline owned by Seagull Pipeline Corporation (Seagull). Casinghead gas enters the pipeline at the B platform in Block 189 where the gas and oil is transported to Seagull for redelivery to Houston Pipe Line Company (Houston) for ultimate delivery to Transcontinental Gas Pipe Line Corporation (Transco). Mitco asserts that it neither buys nor sells natural gas, and its sole function is to receive and carry gas (and associated oil) on behalf of one customer (Transco) from one offshore block to another offshore block for [\*78] delivery to Seagull. Mitco states that it provides no compression or processing services. Initially, it says, the pipeline was located behind an onshore processing plant operated by an affiliate, Liquid Energy Corporation, which has been dissolved. However, Mitco states that the separation and dehydration facilities onshore are in place and operated by Mitchell Energy for the purpose of bringing the gas up to pipeline quality for delivery into the Houston system. Finally, Mitco states that its affiliate producer, Mitchell Energy, provides such minor compression (295 hp) at the B platform in Block 189 as is needed to force sufficient gas to enter Seagull's line. Mitco states that based on the factors under the "primary function" test enunciated in *Farmland*, it is clear that the subject pipeline is an exempt gathering facility within the meaning of section 1 (b) of the NGA.

c. Notice and Interventions After due notice by publication in the Federal Register on August 29, 1989 (54 Fed. Reg. 35,720), Seagull filed a timely, uncontested motion to intervene. Seagull states that at this time it neither supports or opposes Mitco's motion to intervene. Timely, [\*79] unopposed motions to intervene are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. n67

n67 18 C.F.R. § 385.214 (1989).

d. Discussion In Docket No. CP80-458, supra, we authorized the construction and operation of the subject pipeline under section 7(c) of the NGA. The issue of whether the subject pipeline constitutes a gathering (as opposed to a transmission) line was not raised in that proceeding. Because Mitco raises the issue in this proceeding, we will now consider it. First, we consider the diameter and length of the subject pipeline. As noted previously, the pipeline is 8.5 miles in length and 6 inches in diameter. Such dimensions are similar to those associated with facilities that the Commission has determined to be gathering. Second, we consider the location of any compressors and processing plants. We find significant the fact that Mitco provides no compression or processing. Instead, those functions are performed by Mitchell Energy. Moreover, even though Mitchell Energy provides compression at the B platform in Block 189 which is located near the front of the pipeline, the compression is for the purpose of forcing sufficient [\*80] gas to flow through the Mitco line to the entrance of the Seagull line. The Mitco pipeline, on the other hand, is located completely behind the onshore, separation and dehydration facilities of Mitchell Energy. These circumstances also demonstrates that the pipeline functions as a gathering line. The fact that Mitchell Energy and Mitco are affiliated does not change our determination in this regard. After weighing all of the factors discussed above, we find that the primary function of the subject facility is gathering. Accordingly, we will vacate the NGA section 7(c) certificates previously issued to Mitco.

12. NRM Operating Company, L.P., et al., Docket Nos. CP88-428-000 and CP88-428-001a. Background On December 22, 1988, the Commission issued an order, in Docket No. CP88-428-000, granting a petition for a declaratory order, filed by NRM Operating Company, L.P., et al., on May 27, 1988, and granting a temporary certificate of public convenience and necessity, pursuant to section 7(c) of the NGA, authorizing the construction and operation of an 18.78 mile pipeline. n68 No motions to intervene, notices of intervention or protests were filed in that proceeding, and none have [\*81] been filed since. In the December 22, 1988, order the Commission found that all of the facilities in question, except the 18.78 mile delivery line, are gathering facilities and are, therefore, exempt from Commission regulation under section 1(b) of the NGA. With regard to the 18.78 mile delivery line, however, the Commission found, after applying the test articulated in *Farmland*, that the delivery line was primarily used for transmission and that, therefore, NRM and EnerMark, Inc., co-owners of the delivery line, were required to operate the delivery line pursuant to a certificate under section 7(c) of the NGA. n69

n68 45 FERC P61,494 (1988). NRM Operating Company, L.P. et al., consists of independent producers and gatherers, including NRM Operating Company, L.P. (NRM). NRM and EnerMark, Inc. (EnerMark) own the 18.78 mile line, which they refer to as a "delivery line," and a smaller line, which are part of the facilities at issue in this case. Hall-Houston Oil Company, one of the independent producers, NRM and other independent producers own the other facilities in this case.

n69 In the December 22, 1988, order, the Commission noted that the application for the certificate was under consideration and that the decision on the application would be the subject of a later Commission order. As noted above, however, the Commission issued a temporary certificate authorizing the construction and operation of the

delivery line.

[\*82] On February 21, 1989, in Docket No. CP88-428-001, the Commission denied rehearing of the December 22, 1988, order and clarified that NRM would be subject to Order No. 509 [FERC Statutes and Regulations P30,842] which requires all pipelines transporting natural gas across the Outer Continental Shelf (OCS) to file with the Commission tariff sheets specifying the rates and conditions for the transportation service. n70 In the February 21, 1989, order, however, the Commission waived the requirements of Order No. 509, as they would apply to NRM, pending further action by the Commission on NRM's application for a permanent certificate.

n70 46 FERC P61,172 (1989).

NRM sought appellate review of the above-referenced Commission orders in the United State Court of Appeals for the Fifth Circuit. n71 In light of the Commission's decision to reconsider its policies governing the determination of what constitutes gathering facilities, the Commission requested permission to withdraw the orders and the Court granted a voluntary remand. The orders issued in Docket Nos. CP88-428-000 and CP88-428-001 are, therefore, vacated and this order shall be deemed the order [\*83] on remand. We find that all of the facilities at issue here are exempt gathering facilities.

n71 NRM Operating Company v. FERC, No. 89-4283.

b. Proposed Facilities The facilities under consideration in this case fall into three categories and involve gas produced from High Island, East Addition. The first category includes seven flow lines which tie in gas and condensate produced from satellite wells located in Lease Blocks A-14, A-171, A-172, A-173 and A-178 to a production platform located in Block A-173, which is owned by Hall-Houston, NRM and other producers and operated by Hall-Houston. The seven flow lines are 4 1/2-inches in diameter and vary in length from .76 to 8.94 miles. They are owned by the independent producers, including NRM, which have working interests in the producing wells. The second category includes a 12 3/4-inch delivery line extending approximately 18.78 miles from the production platform in Block A-173 to a subsea juncture with the High Island Offshore System (HIOS), an interstate pipeline, in West Cameron Black 342. The delivery line is designed to carry approximately 80 million cubic feet of natural gas and associated condensate per day, but was [\*84] carrying 17 million cubic feet per day at the time the petition for a declaratory order was filed. The pressure rating of the delivery line is 1150 psi, but the line has been normally operated at 1050 psi. NRM and EnerMark own the delivery line. As noted, NRM has a working interest in all of the wells which tie into the production platform in Block A-173. The third category consists of a single 6-inch flow line extending several hundred yards from a platform in Block A-183 owned by Union Pacific Resources Company to a tap on the delivery line. This line is owned and operated by NRM and EnerMark. n72

n72 Petitioners originally stated that Union Pacific Resources Company owned the short flow line connecting production in Block A-183 to the delivery line. In their request for rehearing, petitioners advised the Commission that the short line is, in fact, owned by NRM and EnerMark.

The production platforms located in Blocks A-173 and A-183 contain some production-related "gas conditioning" equipment to separate, dehydrate and compress the gas to bring it up to the specifications required on HIOS. The platforms do not include any equipment to otherwise treat or process the [\*85] gas. c. Discussion Applying the criteria of the "modified primary function" test to the seven flow lines which tie in production from the wells in Blocks A-14, A-171, A-172, A-173 and A-178 to the production platform in Block A-173, we find that the primary function of these lines is gathering. The diameter and length of each line are typically that associated with gathering lines. The diameter is only 4 1/2 inches and none of the lines exceeds 8.94 miles. Additionally, the lines do not extend beyond any central point in the field, which, in this case, is at the interconnection between the delivery line and HIOS. Compressors and processing plants are beyond the point where the flows lines terminate. These factors, plus the overall geographic configuration of the lines, lead to the conclusion that their primary function is gathering. We also conclude that the primary function of the .8 mile, 6-inch flow line extending from the production platform in Block A-183 to the delivery line is gathering according to the Farmland criteria. Again, the small diameter, short length, low compression and location of the line are consistent with the characteristics of typical gathering facilities. [\*86] In the case of the 16-inch, 18.78 mile delivery line, in light of EP Operating we find that the length of the delivery line and its diameter, while greater than those of typical onshore gathering lines, are consistent with the dimensions of many offshore gathering lines where the distances to be traversed between production areas and interconnections with interstate pipelines are often considerable. Although some compression is used on the delivery line, no other significant activity (e.g., processing, etc.) occurs before gas enters the delivery line. These factors support a conclusion that the primary function of the delivery line is gathering. For the reasons discussed above, we find that all of the facilities at issue in this case are gathering facilities and

are, therefore, exempt from Commission regulation by reason of the "production and gathering" exemption contained in section 1(b) of the NGA.13. Panhandle Eastern Pipe Line Company, Docket No. CP89-800-000 On February 9, 1989, Panhandle Eastern Pipe Line Company (Panhandle) filed an application pursuant to section 7(b) of the Natural Gas Act (NGA) for a Commission order approving abandonment of certain facilities located [\*87] in Colorado (the Wattenberg System) by sale to Amoco Production Company (Amoco). For the reasons stated below we will dismiss Panhandle's application without prejudice to a joint filing with Amoco wherein Amoco would file for a certificate under section 7 of the NGA to operate the facilities which are the subject of this order.

a. Background In the early 1970's, Panhandle entered into agreements with producers in the Denver-Julesberg Basin area under which the producers were to develop additional gas reserves to augment Panhandle's supplies. Pursuant to these agreements, the producers would buy leases and drill wells, and Panhandle would provide the compression and transportation necessary to bring the gas reserves to market. On January 14, 1972, Panhandle filed an application in Docket No. CP72-181 for a certificate authorizing the construction and operation of facilities in, and the transportation and sale of natural gas from, the dedicated reserves in the Denver-Julesberg Basin. n73

n73 Approximately 75 percent of the dedicated reserves were owned or operated by Amoco. Amoco was granted a certificate to sell this gas to Panhandle in Docket No. CI72-440.

Colorado Interstate [\*88] Gas Company (CIG) initially opposed Panhandle's application because, among other things, the proposed transmission line was duplicative of an existing line operated by CIG between the Denver-Julesberg Basin and CIG's facilities in Lakin, Kansas. To settle this dispute, on July 13, 1972 Panhandle and CIG entered into a sales and exchange agreement (the Master Agreement). The agreement provided that: (1) CIG could purchase a portion of the Denver-Julesberg gas dedicated to Panhandle; (2) Panhandle could deliver gas to CIG at CIG's existing Watkins Junction Measuring Station, east of Denver; and (3) CIG would redeliver equivalent volumes to Panhandle in Lakin, Kansas. Panhandle agreed to build a line from Lakin to interconnect with Panhandle's main transmission line in Liberal, Kansas. The Master Agreement made it necessary for all gas delivered into CIG's pipeline system to be of pipeline quality since the CIG system delivered gas as fuel into the Btu sensitive Denver market. Thus, an Amoco gas processing plant (the Wattenberg Plant) was installed on the Wattenberg System near Watkins, Colorado at the end of the system where gas enters into CIG's line, with a capacity approximately [\*89] equivalent to the estimated gas throughput of the system. Other processing plants, owned by various companies, have since been connected to the Wattenberg System. Panhandle received authorization to construct the Wattenberg System in an order issued by the Commission on March 30, 1973. In such order, the Commission found that the system constituted a jurisdictional facility. n74 The system currently consists of approximately 1,275 miles of pipeline and 11 compressor stations with a total compression of approximately 45,000 horsepower. The system is currently connected to about 1,527 points of receipt for wells which are completed in 32 separate fields within the J-Muddy sandstone formation (the "J") and at least six other formations. The "J" is the primary producing formation in the Wattenberg Field. Less than one-third of the original "J" gas in place has been produced during the field's 19 years of production. Panhandle has indicated in its February 22, 1990, response to a staff data request that there are approximately 29 Bcf of remaining recoverable reserves in the "J."

n74 Panhandle Eastern Pipe Line Co., 49 FPC, 827 (1973).

b. Proposal [\*90] - Conveyance of Facilities to Amoco Panhandle requests authorization to abandon its Wattenberg Transmission System by sale to Amoco. The proposed sale to Amoco would include: (1) 11 compressor station sites with total compression of approximately 45,000 horsepower; (2) approximately 1,275 miles of pipeline; and (3) small field buildings and appurtenant facilities, operating and maintenance equipment and spare parts in inventory. The facilities are located in Adams, Arapahoe, Boulder, Larimer and Weld Counties, Colorado. Panhandle and Amoco entered into a Memorandum of Agreement dated December 9, 1988, which includes a Facilities Sales Agreement. Amoco has agreed to purchase the Wattenberg System for \$48 million, which Panhandle claims to be the net book value of the system. Panhandle indicates that most of the gas that was originally dedicated to Panhandle has been released from contract by the parties. However, to the extent that Panhandle purchases gas from Amoco or other producers connected to the Wattenberg System, Amoco will provide service to Panhandle pursuant to a Gathering Agreement dated December 19, 1988 between Amoco and Panhandle. This Gathering Agreement is described [\*91] in more detail below. Panhandle states that it no longer relies on the gas produced from the fields connected to the Wattenberg System to meet its customers' sales requirements. Panhandle states that over the last few years, on an annual basis, it has had more gas available from its contiguous supplies alone than is necessary to meet its sales customers' requirements. n75 In addition, Panhandle states that it does not rely on this gas for peaking capability, explaining that its gas purchases from the Wattenberg area must be transported to its contiguous system by CIG and redelivered to Panhandle at Lakin, Kansas. Panhandle indicates that its ability to use Wattenberg gas for peaking is subject to CIG's ability to redeliver the gas at Lakin. Furthermore, the

Lakin point on Panhandle's system is upstream of Panhandle's Haven Compressor Station where capacity restraints begin. Finally, Panhandle explains that Wattenberg gas cannot be used to meet peak day demand because of the time involved with moving it from Colorado to Panhandle's market.

n75 Panhandle projects that its 1989 sales will be approximately 52 Bcf. Panhandle estimates that it currently has annual contract quantity from contiguous supplies alone equaling 85 Bcf. Thus, Panhandle concludes that its sales markets will not be affected by the loss of dedicated reserves in the Wattenberg area since such reserves have not been needed in recent years and Panhandle can meet future sales requirements at the current customer levels with existing supplies attached to its contiguous system.

[\*92] Thus, Panhandle feels that the need for maintaining remote pipeline facilities in this area no longer exists. Panhandle reasons that since the Wattenberg System is not a contiguous part of its mainline system, Panhandle's use of the Wattenberg System generally requires the use of transportation and exchange agreements with other pipelines. This makes the Wattenberg System a more expensive source of supply relative to other parts of Panhandle's system. Panhandle claims that the proposed abandonment will improve the overall operating efficiency of Panhandle's system for its customers and will serve the public interest by reducing operating expenditures for labor and equipment maintenance for facilities which are currently being underutilized by Panhandle's customers. Panhandle anticipates a cost-of-service saving of \$18,080,000 per year. Panhandle further states that no customers presently being served by Panhandle will have service terminated as a result of this proposal since the gas purchased from gas fields connected to the Wattenberg System will still be available, although most will not be dedicated to Panhandle. Furthermore, Panhandle states that Amoco has indicated that [\*93] it will also move gas on the Wattenberg System for other parties desiring transportation. Panhandle indicates that it will have the ability to receive and transport such gas, subject to capacity availability on its system downstream of the point of receipt. Panhandle also states that from a firm transportation perspective, its sales market will be unaffected by the loss of dedicated reserves in the Wattenberg area. Panhandle explains that the sales customers which are also firm transportation customers do not have any firm receipt points on the Wattenberg system. These sales/transportation customers which have access to Wattenberg supplies on an interruptible basis, also have access to nearly 4,000 other interruptible receipt points. Finally, Panhandle states that it has 1,531 interruptible transportation contracts that can use the Wattenberg System as receipt points and that of those, 12 contracts are presently being used to receive gas from Wattenberg. n76 These contracts would be amended to remove the Wattenberg receipt points when the system is sold. Panhandle further states that after abandonment, gas from the Wattenberg System can be delivered by CIG to Panhandle at several [\*94] locations on Panhandle's pipeline system. Panhandle indicates that all 1,465 interruptible contracts have these points of interconnection with CIG on their current transportation agreements with Panhandle. Panhandle states that there are no right-of-way or other sales customers on the Wattenberg System.

n76 The amount of interruptible contracts that can use the Wattenberg System as receipt points and the amount that are currently using such receipt points constantly fluctuates.

Panhandle proposes deferring a \$416,632 loss from the sale of the Wattenberg System. Panhandle explains that the sale of the Wattenberg system will generate cost savings in future years and these savings will accrue to the benefit of the ratepayers via lower rates. Panhandle explains that it proposes to defer the losses on the disposition of these assets in order that it may either: (1) request authority in a future rate proceeding to recover these losses from the ratepayers receiving the benefit of the sale, or (2) amortize the loss over periods in which the cost savings occur. Panhandle indicates that it has already reflected the sale of the Wattenberg System in its rate case filed in Docket No. [\*95] RP88-262. n77

n77 Docket No. RP88-262 is currently pending before the Commission. Panhandle reflected the removal of the subject facilities from its rate base in Docket No. RP88-262. The rate design issues in that rate case have been set for hearing. A settlement was filed March 22, 1990, for all other issues in this rate case, including the abandonment of the subject facilities.

Amoco intends to utilize the Wattenberg System as part of its nonjurisdictional production and gathering activities. In response to a staff data request dated May 12, 1989, Amoco has stated that Amoco does not intend to apply for a certificate of public convenience and necessity authorizing its acquisition and operation of the Wattenberg System since Amoco believes that the Wattenberg System is an exempt gathering facility under section 1(b) NGA. Amoco contends that under the traditional "primary function" test as enunciated in *Farmland* that the primary function of the Wattenberg System is "gathering."c. The Amoco-Panhandle Gathering Agreement Pursuant to the Gathering Agreement between Amoco and Panhandle, Amoco will receive from Panhandle and redeliver on a firm basis, quantities of gas up [\*96] to: (1) the total quantities purchased from Amoco under a July 1, 1988, purchase agreement; (2) the quantities purchased by Panhandle under existing agreements with third parties as of July 1, 1988; and (3) the gas gathered for the account of CIG under

agreements in effect as of July 1, 1988. The total volumes received and redelivered for Panhandle under the agreement are not to exceed 50 MMcf per day. For the first two years of service, Amoco will charge Panhandle a gathering rate of \$0.1323 per MMBtu of gas. Thereafter, Amoco will charge Panhandle a gathering rate equal to the lowest rate charged by Amoco for gas moving through the Wattenberg System. This rate will not exceed \$0.25 per MMBtu beginning in the third year. This rate cap will escalate 2.5 percent per year beginning with the fourth year. Article XIV of the agreement states that Amoco will have the exclusive right to process all gas gathered pursuant to this agreement with Panhandle on the Wattenberg System. With the one exception of the quantities of gas that may be processed under agreements in effect before July 1, 1988, Panhandle or its designee may not separate hydrocarbon liquids from gas prior to the receipt [\*97] points by other than the use of a conventional gas-liquid separator. d. Amoco's Proposed Gathering for Shippers Other Than Panhandle Amoco has stated that to the extent that capacity is available, it is willing to provide gathering service for any well which, as of the date ownership of the Wattenberg System is passed to Amoco, is already connected to the system. Amoco will allow a shipper to connect new wells to the system on the condition that the shipper pay all connection costs except, in certain circumstances, the cost of providing a tap. Amoco emphasizes that it intends to offer service to all potential customers and not just to producers of gas from the Wattenberg Field. Amoco states that it has not developed a detailed plan for the initial allocation of capacity on the Wattenberg System for shippers other than Panhandle. Amoco claims that such a plan would be premature at this time since Amoco asserts there is sufficient capacity to meet potential demand. Amoco estimates that the current capacity of the system is 175 MMcf per day and that the aggregate sustained deliverability of all wells now connected to the system is between 120 and 140 MMcf per day. Amoco has, however, [\*98] developed a two-step plan if curtailments of service becomes necessary due to repairs or modifications to the system. These steps are as follows: (1) Up to 50 MMcf per day of capacity would first be set aside for Panhandle; (2) Capacity in excess of that needed by Panhandle would be allocated on a ratable basis to all shippers, including Amoco. Amoco states that it will use a reasonable basis for determining ratability. At present, Amoco intends that an essential element of the basis will be the level of a shipper's utilization of the system in some specified period prior to the curtailment. Pursuant to Article II, paragraph 3 of a gathering agreement which Amoco states it will offer to all parties as capacity on the Wattenberg System permits, Amoco would agree to provide gathering service to shippers and "to operate the Wattenberg System on an open-access basis, without undue discrimination, to any party desiring gathering services on the WGS [Wattenberg System]." Amoco states that these services "shall include but are not limited to the ratable treatment of all non-Panhandle volumes in the event curtailment were ever necessary, nondiscriminatory fees for gathering for comparable [\*99] service, and open access for all interested shippers." In Article V of the agreement, Amoco states that it would charge the shipper a gathering rate equal to the lowest rate charged by Amoco for comparable service on the Wattenberg System, excluding gas moved for Panhandle. Amoco indicates that initially this rate would not exceed \$0.25 per MMBtu. Such rate cap would escalate 2.5 percent per year beginning July 1, 1992. On October 1, 1996, the rate cap would equal \$0.25 per MMBtu in 1989 dollars, adjusted each year beginning July 1, 1990, by the annual implicit GNP price deflator. The rate cap would terminate on October 1, 1999. Six months prior to this termination, all parties would agree to renegotiate the rate for gathering services. If an agreement is not reached by October 1, 1999, the gathering agreement would terminate. Article XIV of the agreement states that Amoco would not have the right to process gas gathered pursuant to this agreement with its non-Panhandle customers on the Wattenberg System. However, compressor liquids, drips, or products resulting from other mechanical separation incidental to operation of the system would be retained and solely owned by Amoco [\*100] and the shipper would be credited with the Btu equivalence of these liquids. Article XVI discusses certain economic conditions which may require Amoco to modify or terminate this agreement. These are as follows: (1) If the total volume of gas shipped through the Wattenberg system for all shippers averages less than 50 MMcf per day for an consecutive 12-month period, Amoco would have the right to request renegotiation of the gathering rate; (2) If changes in gas quality, government regulations, or any other cause, excluding normal maintenance, occur that would require extraordinary modification or replacement of the gathering system facilities in order to effectuate gathering gas, then Amoco could increase the gathering rate to the shippers whose gas necessitated the cost of such modifications, including a reasonable return on investment; (3) Amoco reserves the right to cease operations of the Wattenberg System at any time (subject to Article II, paragraph 3) if any governmental body having or asserting jurisdiction imposes controls or regulations on Amoco which are unacceptable in Amoco's sole discretion. e. Interventions After due notice by publication in the Federal Register on [\*101] February 22, 1989 (54 Fed. Reg. 8387), the twenty-two parties listed in Appendix B to this order filed timely motions to intervene in this proceeding. n78 Protests to Panhandle's application and/or requests for hearing were filed by nine parties. n79 In addition, three parties filed interventions with comments but did not protest the application. n80 Amoco filed in support of the application.

n78 Timely, motions to intervene are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1989). In addition, Phillips 66 Natural Gas Company (Phillips) filed its motion to intervene in this proceeding out-of-time. However, for good cause shown and because it will not delay this proceeding, we will grant Phillips late-filed motion to intervene.

n79 Barrett Energy Company (Barrett), Commercial Energies, Inc. (Commercial), Independent Petroleum Association of Mountain States (IPAMS) and the Denver Julesberg Petroleum Association (DJPA), Martin Exploration Management Company and Colorado Energy Corporation (Martin & CEC), Macey & Mershon Oil, Inc. (M&M), Panhandle Customer Group (PCG), Snyder Oil Company (Snyder), Thompson Valley Gas, Inc. (Thompson), Vessels Oil and Gas Company (Vessels) and Windsor Gas Processing (Windsor). On June 30, 1989 DJPA filed a motion to withdraw its protest explaining that the concerns of its members have been satisfied. On June 13, 1989, Windsor filed a notice of withdrawal of its intervention without comment. On June 25, 1990, Commercial filed a notice of withdrawal of its intervention and protest.

[\*102]

n80 Colorado Interstate Gas Company (CIG), Indiana Gas Company, Inc. (Indiana Gas), Prima Oil & Gas Company (Prima).

Because the protests filed in this proceeding generally overlap with common themes, we will refer to the protests collectively. Many of the protests state that Panhandle's application is deficient and that it should be dismissed on this basis alone. They note that the proposed sale of the Wattenberg System is part of a comprehensive settlement of take-or-pay contract disputes between Amoco and Panhandle, but Panhandle did not include the terms of this settlement in its application. The protests argue that without this information, the actual price paid by Amoco and the true value of the sale to Panhandle and its ratepayers is not determinable. The protesters argue that section 7(b) of the NGA states the Commission must find that either the available gas supply is depleted or that the present or future public convenience and necessity permit such abandonment. They assert that Panhandle has not satisfied either of these criteria. The protesters believe that the Wattenberg System cannot be classified as a gathering facility for various reasons. First of all, [\*103] the protesters state that the Commission clearly stated in its March 30, 1973, order issued in Docket No. CP72-181, that the facilities are jurisdictional. n81 The protesters maintain that this original determination should not be disturbed unless there has been a material change in circumstances or unless it can be shown that the original determination was erroneous. The protesters claim that these two criteria have not been shown by Panhandle.

n81 Supra. f.n. 86.

The protesters employ the "primary function" test set out in Farmland and conclude that the Wattenberg System's primary function is the transportation of natural gas in interstate commerce. In addition, the protesters state that in Panhandle's most recent general rate increase filing, Docket No. RP88-262-000, Panhandle proposed to refunctionalize many of the Wattenberg pipeline and compression facilities as transmission facilities for purposes of cost classification and allocation and unbundling. The protesters believe that this rate filing undercuts Amoco's position that the Wattenberg System will be nonjurisdictional. n82

n82 Panhandle proposed to reclassify some of its facilities, including some of the Wattenberg lines, in its Docket No. RP87-103. It again filed for a reclassification of some of its facilities in Docket No. RP88-262, but excluded the Wattenberg facilities from its reclassification proposal to reflect the removal of the Wattenberg System from its rate base, effective April 1, 1989. Thus, while the reclassification of the Wattenberg facilities for rate purposes is moot at this time, the fact that Panhandle submitted testimony in Docket No. RP87-103 to show that much of the Wattenberg System functions in a transmission rather than a gathering capacity is at least contradictory to the nonjurisdictional predicate which presently appears to be envisioned by Panhandle and Amoco in the proposed conveyance of the facilities at issue in this proceeding.

[\*104] The protests also argue that the ownership and operation of the Wattenberg System by Amoco would frustrate open access in the area and would be anticompetitive. The protesters maintain that the Wattenberg System is part of Panhandle's overall open-access obligations and that the proposed sale to Amoco would defeat the Commission's goal of open-access transportation. The protesters state that the proposal will stifle competition in the Wattenberg area and contravene Order Nos. 436 [FERC Statutes and Regulations, Regulations Preambles 1982-1985 P30,665], 500 [FERC Statutes and Regulations P30,761] and 497 [FERC Statutes and Regulations P30,820]. They state that Panhandle has ignored the probable elimination of competition in the area and that the Commission must consider the impact on all upstream entities and activities, and not just the impact on sales customers. The protesters maintain that the Commission should consider

the interest of the market as whole and not just a few specific customers. The protesters argue that the anticompetitive effect of the proposal would be compounded since the Wattenberg System is an "essential facility" within the meaning of antitrust laws. Other [\*105] pipelines are generally located on the periphery and interconnect with various processing plants, but without open access and regulated rates over the Wattenberg system, gas cannot freely and competitively move within the area. The protestors state that the outlying pipeline systems do not provide economically viable substitutes for the Wattenberg System. The protesters further allege that Amoco's past pattern of conduct in the area shows that it intends to use the Wattenberg facilities as a device to consolidate and leverage its alleged monopoly power in the Denver-Julesberg Basin. The protestors claim that Amoco has used its position to manipulate gas prices and to subsidize its own processing operations. The protesters also express concern with Amoco's gathering agreement with Panhandle. They are particularly opposed to Amoco's preferential treatment of Panhandle, specifically the discounted rate and the 50,000 Mcf per day that would be reserved for Panhandle. The protesters also point out that up until the time the application was filed, all the gas produced in the Wattenberg area could be transported on CIG's system pursuant to the Master Agreement. The protesters allege, [\*106] however, that on March 15, 1989, Panhandle announced that Panhandle and CIG would no longer allow gas produced from the Wattenberg Field area to be transported into the interstate market pursuant to the Master Agreement if the gas has been temporarily or permanently released from a Panhandle gas purchase contract or if it is owned by a third-party shipper. The protesters argue that this practice will result in a disparity in the treatment of sales and transportation volumes that cannot be justified on the basis of the language of the Master Agreement. The protestors claim that the agreement does not state that the scope is limited to gas which Panhandle acquires by purchase to serve its on-system sales customers, but it does state that it encompasses gas that Panhandle purchases or otherwise controls. The protesters state that it has been Panhandle's and CIG's practice over the past year to knowingly move transportation gas under the Master Agreement. Thus, the protestors contend that under this new declaration, Panhandle would be implicitly acknowledging that it has been its practice to intentionally violate applicable certificate requirements administered by the Commission. [\*107] The protesters further assert that since the Commission has not authorized any change in the applicable certificate, there is no basis for this change in Panhandle's position. Without access to capacity pursuant to the Master Agreement and without the regulation of Amoco's transportation rates and terms, the protesters believe that the Wattenberg gas would be rendered uneconomical. n83

n83 On May 1, 1989, CIG filed a response to this claim that was raised in a supplemental protest filed March 31, 1989. Generally, answers to protests are prohibited by section 385.213(a)(2) of the Commission's regulations. 18 C.F.R. § 385.(a)(2). However, for good cause shown we will in this instance waive the prohibition contained in that section. In its response CIG states that CIG has not made any agreement with Panhandle that CIG will not transport gas for third parties under the Master Agreement (CIG's rate Schedule X-38). CIG states that it has not been informed by Panhandle whether the proposed transfer of ownership in the Wattenberg system will affect Panhandle's choices or abilities to tender third-party gas under the Master Agreement, but that CIG continues to stand ready to transport all gas tendered by Panhandle under the terms of Rate Schedule X-38 as it is required to do under its tariff and certificate. The Commission is of the view that the issue of Panhandle's compliance with the Master Exchange Agreement should not be investigated in the instant docket, but will be reviewed through other established Commission procedures.

[\*108] Finally, the protesters argue that Panhandle's proposed would result in a regulatory gap. They reason that since the gas produced in the Wattenberg area is mostly consumed outside the state of Colorado, Colorado's regulatory agency would not be interested in regulating Amoco's operations or the rates that it charges. Discussion Section 7(b) of the NGA requires that prior to permitting an abandonment of natural gas facilities, the Commission must find "that the present of future public convenience and necessity permit such abandonment." In implementing this statutory mandate the Commission has repeatedly held that the burden of proving that a proposed abandonment satisfies the public convenience and necessity standard lies with the proponent of the abandonment. n84 As the proponent of the abandonment in this proceeding, the burden of proof thus is with Panhandle. The Commission is of the view that Panhandle has failed to meet its burden of showing "that the public interest 'will in no way be deserved' by abandonment." n85

n84 See, e.g., *Felmont Oil Corp. and Essex Offshore, Inc.*, 33 FERC P61,333 (1985); reh'g denied, 34 FERC P61,298 (1986); remanded on other grounds, *Consolidated Edison Co. of New York v. FERC*, 823 F.2d 630 (D.C. Cir. 1987).

[\*109]

n85 *Transcontinental Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1328 (D.C. Cir. 1973), cert. denied sub nom.,



Natural Gas Pipeline Co. of America v. Transcontinental Gas Corp., 417 U.S. 921 (1974).

First, Amoco has stated in the record of this proceeding that it does not intend to apply for a certificate of public convenience and necessity authorizing its acquisition and operation of the Wattenberg system in the event that Amoco receives conveyance of the system. n86 Yet, under the modified "primary function" test set out above, the Commission is of the view that at least a critical portion of the facilities which Panhandle seeks to abandon and convey to Wattenberg constitutes a jurisdictional transportation facility.

n86 Response of Amoco Production Co. to Staff Data Request dated May 12, 1989, at 1.

The Wattenberg system is comprised of approximately 1,275 miles of pipeline, most of which is between four and eight inches in diameter. n87 The Wattenberg system also includes eleven compressor stations which are currently owned and operated by Panhandle. Six of these compressor stations have low compression capability [\*110] ranging from 30 to 110 psig. n88 These six compressor stations are located throughout the Wattenberg system. However, five of the compressor stations have high compression capability typical of a transportation function. n89 These larger compressor stations are basically located on or near the main trunk of the system. According to Panhandle, the typical operating pressure of the 3-inch, 4-inch and 6-inch pipelines is approximately 100 psig. These smaller lines are typically well connects and lines transporting gas from multiple connects on the suction side of compressor stations. These smaller lines feed into the substantial sections of large, high pressure (1,000 psig) lines at many points throughout the system. Thus, the elements of the "modified primary function" test indicate that while much of the Wattenberg System's primary function might be classified as gathering (the smaller diameter pipelines and the low-pressure compressor facilities), a significant portion of the Wattenberg facilities (the larger diameter pipelines n90 and the large compressor stations) n91 clearly performs a jurisdictional transportation function. These transportation lines are all located on [\*111] the discharge end of the large compressor stations and flow towards the system's outlets. These lines total 90 miles in length and operate at pressures generally not consistent with a gathering function. The smaller diameter lines, which total approximately 1,185 miles, are generally located behind the five larger compressor stations and thus operate at about 100 psig. These smaller lines are typically well connects and lines that move gas from multiple connects to the compressor stations.

n87 Diameter (inches)	Miles	2 17 feet	3 28.24	688.96	172.78	181.610	26.112	60.016
64.714	20 feet	20	36.023	1.924	14.1			

n88 Hambert, North Hudson, Vollmar, UPRR AEI-17, UPRR 43H, Kunzman.

n89 Brighten-997 psig, Fort Lupton - 1023 psig, Hudson - 1023 PSIG, Frederick - 1026 psig Dougan 1024 psig.

n91 See f.n. 101 supra.

n90 Line Code Number Diameter Length (miles)

16-10-082-112 20" 9.116-10-075-01 20" 26.116-10-075-351 16" 11.916-10-075-07 12" 1216-10-075-359 12" 6.416-10-075-235 12" 6.216-10-075-02 24" 12.116-10-082-29 12" 4.3

In sum, we conclude that for [\*112] purposes of our NGA jurisdiction, at least a critical portion of the Wattenberg system functions as a jurisdictional transportation system consisting of approximately 90 miles of 12-inch to 24-inch diameter, high - pressure pipeline which transports natural gas for delivery to other interstate pipelines. In the light of the above we find that Panhandle has not met its burden of proving that abandonment of the Wattenberg System by conveyance to Amoco would be required by the public convenience or necessity. Amoco has indicated that its present intent is not to file an application for a certificate to acquire and operate the Wattenberg system. n92 Rather Amoco has stated that it intends to operate the Wattenberg system as part of its nonjurisdictional gathering operations. If we were to grant Panhandle's abandonment request, on this basis, Amoco would acquire and operate the jurisdictional system without the authorization required by the NGA. The Commission will not approve an application which precipitates this result.

n92 Supra.

For the above reasons, we find that the Panhandle's proposed abandonment of the Wattenberg System by sale to Amoco who intends to operate it as a [\*113] nonjurisdictional facility is not in the public convenience and necessity. Accordingly, Panhandle's application in this proceeding is dismissed.14. Pennzoil Company and Pennzoil Exploration and Production Company, Docket No. CP90-466-000 On January 2, 1990, Pennzoil Company and Pennzoil Exploration and Production Company (jointly referred to as "Pennzoil") n93 and United Gas Pipe Line Company (United) n94 filed jointly, in Docket No. CP90-466-000, a petition for a declaratory order under Rule 207 of the Commission's regulations. Pennzoil and United seek a determination that certain certificated facilities that United desires to convey to Pennzoil are, in fact, gathering facilities exempt from Commission regulation in accordance with the "production and gathering" exemption

contained in section 1(b) of the NGA.

n93 Pennzoil Company is a publicly held corporation. Pennzoil Exploration and Production Company (Pennzoil Exploration) is a wholly owned subsidiary of Pennzoil Company is engaged in the production and marketing of natural gas.

n94 United transports and sells gas in interstate commerce and is a "natural gas company" within the meaning of the NGA. United is engaged in the purchase, gathering, transportation and sale for resale of natural gas.

[\*114] United also requests that, to the extent the subject facilities are determined to be nonjurisdictional, the Commission authorize their abandonment under section 7(b) of the NGA and amend the corresponding certificates authorizing their construction and use to exclude those facilities. Upon issuance of the instant order, United will convey to Pennzoil specified percentage interests in these facilities. United will retain ownership of the remaining interest in each facility and operate them as gathering facilities. For the reasons provided below, the Commission finds that the facilities at issue are gathering facilities and are therefore exempt from Commission jurisdiction under section 1(b) of the NGA. Further, we shall grant the requested abandonment authorization.

BackgroundThe facilities which Pennzoil and United seek to have declared exempt from Commission jurisdiction are currently owned by United. However, under a take-or-pay settlement agreement between Pennzoil and United, n95 United has agreed to convey to Pennzoil specified interests n96 in these facilities (all of which connect to wells in which Pennzoil has an interest) upon issuance of an order by the Commission [\*115] declaring them to be nonjurisdictional under section 1(b) of the NGA. The parties state that upon conveyance to Pennzoil, the facilities will not be used by United as jurisdictional facilities.

n95 Under the settlement agreement as approved by the Commission (41 FERC P61,278 (1987)), Pennzoil may sell its gas and that of other "working interest owners" to other purchasers for delivery to United at points other than at the wellhead. To ensure that Pennzoil will be able deliver the gas to a point where transportation or transmission can be arranged, United agreed to convey to Pennzoil an interest in the gathering facilities serving the wells in which Pennzoil has an interest. The petitioners state, that they will enter into operating agreements covering the use and operation of any facilities conveyed.

n96 The extent of the interest to be assumed by Pennzoil in a particular facility has been determined based on Pennzoil's delivery capacity at the facility's location relative to the delivery capacities of other producers connected to United's system at that location.

The facilities in question are located in various gas fields in Louisiana and [\*116] Texas and were built by United to gather gas sold to United at the wellhead by Pennzoil and others. n97 The facilities can be grouped into three primary categories: (1) field pipelines consisting of short-mileage, small diameter pipe that are part of a network originating at the producing wells and connecting to a central point in the field, (2) compressor stations and appurtenant facilities operated within a producing field to move gas to a central location within the field, and (3) short pipelines which the petitioners contend will perform a gathering rather than transmission function once conveyed to Pennzoil.

n97 Most of the facilities which United seeks to convey to Pennzoil were constructed pursuant to "budget-type" certificates which did not involve a detailed project analysis; rather, the certificates established only fixed-dollar limits for minor construction proposals. Hence, the Commission never directly addressed the issue of whether these certificated facilities were, in fact, gathering facilities eligible for exemption from Commission jurisdiction.

Collectively, the field pipelines in question range in length from under 10 feet to slightly less than 2 1/3 miles. [\*117] They range from 2 inches in diameter to 8 inches in diameter. The meter stations are either 2-inch, 4-inch, 6-inch or 8-inch diameter units. They consist of (1) the Carthage Compressor Station which is located in Carthage Field, George Goodwin Survey, A-224, Panola County, Texas, and which consists of 7 compression units with a total of 8,080 horsepower, as well as, appurtenant facilities, and (2) the Sterling Compressor Station which is located in Monroe field, Section 32, Township 20 North, Range 4 East, Ouachita Parish, Louisiana and which consists of two 1200 horsepower compressors and appurtenant facilities. The remaining facilities to be conveyed to Pennzoil, comprising the third category described above, are those located in the Willow Springs Area and in the Agua Dulce Area. The Willow Springs Area facilities consist of approximately one-fifth of a mile of 8-inch diameter pipe, 10 feet of 6-inch diameter pipe, approximately 2 miles of 12-inch diameter pipe, 91 feet of 4-inch diameter pipe, and one dehydration plant in the Willow Springs Field. There are several wells connected along the length of the Willow Springs line downstream to the dehydration plant in the field. [\*118] The Agua Dulce Area facilities consists of approximately 1/2 mile of various diameter pipeline (ranging from 8-inch to 24-inch), one 20-inch meter station, and two 60-inch gas separators. The petitioners state that the Agua

Dulce line will be used as a plant suction line by Pennzoil.

Interventions Notice of United's and Pennzoil's petition was published in the Federal Register on January 18, 1990 (55 Fed. Reg. 1710). Timely unopposed motions to intervene were filed by Oryx Energy Company and Arkla, Inc. n98 The State of Louisiana filed a notice of intervention. No further motions to intervene, notices of intervention, or protests to the petition have been filed.

n98 Timely unopposed motions to intervene are granted by operation of Rule 214, of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214.

Discussion Applying the modified "primary function test" to all the facts and circumstances of this case, the Commission finds that the facilities in question are gathering facilities and are therefore exempt from the Commission's jurisdiction under section 1(b) of the NGA. The primary function of the field facilities is that of gathering. [\*119] These facilities are characteristic of what we have found typically to be gathering facilities. They are a network of small diameter and short distance lines all located entirely within the production area and connecting to a central point in the field. The geographical configuration of each field pipeline facility within the producing area is a network of small lines, another indicia that the facilities are part of a gathering system. Further, each of the field pipeline facilities is located behind the compressors and/or processing plants in the fields, and most of the facilities have wells along the length of the pipeline. We have found that where there are wells located along the facility, its primary function can be considered that of gathering. The compression facilities are intended to compress low-pressure gas at the wellhead or at some point in the gathering system in order to raise such gas to the wellhead flowing pressure of other gas in the system. The primary function of the compression facilities therefore is to permit entry of gas from low-pressure wells into a gathering line. The compression which takes place in the field is incidental to the gathering and processing [\*120] of the gas and is not intended for mainline transmission. In light of the foregoing, we find such pipeline facilities are production-related rather than transmission facilities. See, e.g, Shell Gas Pipeline Co., 41, FERC P61,032, at p. 61,080 (1987). The compression facilities fall therefore into the category of nonjurisdictional gathering facilities. We also find the Willow Springs and Agua Dulce area facilities to be nonjurisdictional gathering facilities. The geographical configuration and the length and width of the lines are indicia of a gathering system. These lines are small in diameter and short in length. Further, there are several wells connected along the length of the Willow Springs line downstream of the dehydration plant. Regarding the Agua Dulce Area facilities, Pennzoil has expressed its intent use these facilities in order to bring its gas to the transmission market. The intended primary function of these facilities, therefore, would be a nonjurisdictional plant suction line, not a jurisdictional transportation-transmission facility. Accordingly, considering the totality of the circumstances based upon the information provided, we find that the facilities, [\*121] as described above and as more fully described in the joint petition, primarily function as gathering rather than transmission. There is nothing in the nature of the activities to be performed by the facilities to indicate that those activities should be described as anything other than gathering. In the light of our jurisdictional finding regarding the subject facilities we will vacate the certificates authorizing their construction and operation. Abandonment of the interests to be conveyed to Pennzoil will relieve United of costs associated with operating facilities and will relieve United of substantial take-or-pay obligations. In addition, because United will continue to own a percentage in each facility, abandonment of the facilities will not affect adversely United's obligations to receive or deliver gas on its transmission system. For the reasons provided, we find the abandonment by United of the facilities declared gathering facilities in this order to be in the public convenience and necessity. We find that approval of the proposed abandonment does not constitute a major federal action significantly affecting the quality of the human environment. 15. Ringwood Gathering [\*122] Company, Docket No. CP89-1001-000a. Background On March 13, 1989, Ringwood Gathering Company (Ringwood) filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure n99 for a declaratory order disclaiming Commission jurisdiction over certain natural gas facilities in Major County, Oklahoma. Ringwood states that it intends to sell a portion of its facilities, after which the remaining facilities will be gathering facilities under section 1(b) of the NGA and thereby be exempt from the Commission's NGA jurisdiction. For the reasons discussed below, the Commission finds that the facilities in question are gathering facilities exempt from NGA jurisdiction.

n99 18 C.F.R. § 385.207 (1988).

b. Description of Facilities Ringwood is an interstate pipeline which makes NGA jurisdictional sales to Williams Natural Gas Company (Williams) and Oklahoma Natural Gas Company (ONG) and provides open-access transportation pursuant to Part 284 of the Commission's regulations. n100

n100 Ringwood contends that its primary function has always been gathering, citing to Ringwood Gathering Company, 36 FERC P61,033, at p. 61,080 (1986).

[\*123] Ringwood describes its "gathering" system as a process of collecting gas from producers in the Ringwood Field for delivery to a gas processing plant wholly owned and operated by Mesa Operating Limited Partnership (Mesa Plant). Residue gas is received at the tailgate of the plant at which point it is delivered by its jurisdictional 26-mile, 12-inch pipeline to an interconnection with Williams, ONG and Panhandle Eastern Pipe Line Company. Ringwood states that it intends to transfer the 26-mile line downstream of the Mesa Plant to an unaffiliated third party. After the transfer, Ringwood's remaining facilities will be located behind and upstream of the Mesa Plant and consist of approximately 275 miles of 3 to 12-inch lines connecting 569 low-deliverability wells, randomly dispersed throughout the Ringwood Field, with the Mesa Plant. n101 Gas moves through the lines at wellhead pressure, without field compression.

n101 Ringwood has not filed for authorization to abandon the jurisdictional 26-mile line. This petition only concerns the network of small diameter low-pressure lines behind the Mesa Plant.

c. Interventions After due notice by publication in the Federal Register on [\*124] April 3, 1989 (54 Fed. Reg. 13,414), Williams and ONG filed unopposed motions to intervene. n102 ONG, as a sales customer of Ringwood, wants assurance that service is not abandoned, by virtue of any Commission action herein, without a finding under section 7(b) of the NGA that abandonment is in the public interest. No further protests, motions to intervene, or notices of intervention were filed.

n102 Timely unopposed motions to intervene are granted by operation of Rule 214, of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (1989).

d. Discussion Applying the "modified primary function" test we conclude that the subject facilities perform primarily a gathering function and are therefore exempt from the Commission's NGA jurisdiction. We observe that the diameter and length of the pipeline segment which comprise the facility are consistent with gathering. The modest dimensions comport with gathering natural gas production and are uncharacteristic of facilities designed primarily to transport substantial volumes of gas. The location of compressors and the plant are also consistent with gathering. The lines operate at low-pressure [\*125] and gas is not compressed until it reaches the Mesa Plant. The central point and wells are also situated in a manner designed to perform gathering. The Mesa Plant is the central point in the field, behind which all of the subject facilities are located. Wells from which gas is gathered are randomly dispersed throughout the system. Moreover, Ringwood serves only one discrete producing area. The facilities are located wholly within the Ringwood Field and converge on the Mesa Plant for processing and ultimate delivery at the plant tailgate. This entire system resembles a network-like configuration set up to gather gas from several wells for delivery into mainline transportation facilities for market. We therefore find that the lines, plants, and other physical and geographic characteristics comprising the subject facilities and their planned operation constitute a gathering network whose primary function is to gather and process gas for market. Accordingly, the Commission finds that the subject facilities are exempt from the Commission's jurisdiction under section 1(b) of the NGA. 16. Shell Gas Pipeline Company Docket No. CI89-191-001a. Background On December 20, 1988, Shell [\*126] Gas Pipeline Company (Shell Gas) filed a petition for a declaratory order in Docket No. CI89-191-000 in which it requested the Commission to issue an order pursuant to section 1(b) of the NGA disclaiming jurisdiction over a proposed OCS pipeline which Shell Gas intends to construct and operate (the Bud line). On April 19, 1989, the Commission issued an order in Docket No. CI89-191-000 n103 finding that the primary function of Shell Gas's proposed facilities will be the transmission of natural gas rather than gathering and, thus, would be subject to the Commission's NGA jurisdiction. Shell Gas filed a timely request for rehearing of the Commission's April 19, 1989 order. On July 18, 1989, Shell Gas filed a motion to reopen the record pursuant to rule 716 of the Commission's Rules of Practice and Procedure n104 for the limited purpose of receiving into evidence the decision of the United States Court of Appeals for the Fifth Circuit's in EP Operating. We will grant the motion to reopen the record in Docket No. CI89-191-001 for the limited purpose requested. As discussed below, we will grant the rehearing request.

n103 Shell Gas Pipeline Co., 47 FERC P61,077 (1989).

[\*127]

n104 18 C.F.R. § 385.716 (1989).

b. Proposed Facilities Shell Gas proposes to construct a pipeline on the OCS that will carry up to one hundred million standard cubic feet of gas per day (100 MMSCF/D) from Shell Offshore, Inc.'s (Shell Offshore) Bud production platform in Main Pass (MP) Block 252, offshore Louisiana in the federal domain, to an interconnection with a jurisdictional transmission line that will ultimately deliver the gas onshore to a processing plant. Shell Offshore currently plans to sell all gas produced from MP 252 to Shell Gas Trading Company at the Bud Platform, reserving processing rights. Because

Shell Gas has not yet finalized its plans for the configuration of the Bud line, it described three alternate configurations in its petition, n105 and requested that the Commission determine whether the pipeline proposed under each option would be jurisdictional. The Commission found that the primary function of all three of the proposed facilities would be transmission of natural gas rather than gathering, and that the facilities will thus subject to the Commission's jurisdiction under the NGA.

n105 Option 1: a 34-mile long, 12-inch diameter pipeline that would extend from the Bud Platform in Main Pass Block 252 to an interconnection with Southern Natural Gas Company's 2-inch diameter pipeline on Shell Offshore's Main Pass Block 290 platforms. Option 2: a 40-mile long, 12-inch diameter pipeline that would extend from the Bud Platform in Main Pass Block 252 to an interconnection with the proposed 16-inch Jubilee Pipeline System at a platform in Viosca Knoll Block 203. Option 3: a 34-mile long, 12-inch diameter pipeline that would extend from the Bud Platform in Main Pass Block 252 to an interconnection with Texas Eastern Transmission Corporation's 24-inch diameter pipeline on a platform in Main Pass Block 165.

[\*128] c. Discussion Applying the indicia of the "modified primary function" test we now conclude that the Bud line is a nonjurisdictional gathering facility. The 34 or 40 mile length of the Bud line is less than the length of the gathering line in EP Operating and is solely a function of the location of the production in OCS waters in relation to the nearest available pipeline connection. The 12-inch diameter is appropriate for the volumes of gas to be gathered through the line. There will be no compression of the gas, either at the Bud Platform, or along the proposed Bud line. Shell Gas will perform mechanical separation and dehydration of the gas on the platform solely to allow the gas to enter the transmission line at an acceptable quality, and to prevent internal corrosion and blockage of the line. The Shell Production Platform does meet the definition of a central-point-in-the-field in that it may be viewed as the central point in an offshore gas field where numerous wells are produced on the platform and raw production from other wells is transported to the platform through short flowlines. The proposed line will extend shoreward from the production platform that constitutes [\*129] the central point in the field. However, the court in EP Operating found that this is only one factor to be considered and that "the validity of making a central-point-in-the-field analysis in regard to isolated OCS operations is unclear." n106 There are no wells located along any of the proposed lines as is characteristic of a gathering system onshore.

n106 EP supra, at p. 49.

We conclude that the subject facilities are primarily used for production and gathering at this time and are, therefore, exempt for Commission regulation under section 1(b) of the NGA.17. Shell Offshore Inc., Docket No. CI89-420-000, and Trunkline Gas Company, Docket No. CP89-921-000a. Background On February 28, 1989, Trunkline Gas Company (Trunkline) filed an application pursuant to section 7(b) of the NGA for permission and approval to abandon by sale to Shell Offshore Inc. (Shell Offshore) its 49.637% undivided interest in a 3,500 horsepower gas turbine compressor unit at the High Island Block A-350 Platform, offshore Texas. On May 18, 1989, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, Shell Offshore filed a companion petition for a declaratory order disclaiming Commission [\*130] jurisdiction over the 49.637% undivided interest in the compressor unit if the compressor minority interest is acquired by Shell Offshore. Shell Offshore contends that the compressor, once acquired by Shell Offshore, will be performing a gathering function under section 1(b) of the NGA and, therefore, will be exempt from the Commission's jurisdiction. For the reasons stated below, the Commission grants the abandonment and finds that the compressor, once acquired by Shell Offshore, will be performing a gathering function exempt from the Commission's NGA jurisdiction under section 1(b) of the NGA. b. Description of Facilities Trunkline, along with other interstate pipeline companies, was authorized on January 12, 1979, in Docket No. CP77-538, n107 to construct, own and operate facilities required to connect gas reserves located at High Island Block A-350 and West Cameron Block 633, offshore Texas and Louisiana respectively, for delivery to Trunkline via High Island Offshore System's (HIOS) pipeline at the High Island Block A-350 Platform. Approximately 49.637% of total recoverable reserves from High Island Block A-350 and West Cameron Block 633 are owned by Shell Offshore and are [\*131] dedicated to Trunkline. Shell Offshore's sale of this gas to Trunkline, pursuant to Shell Offshore's Rate Schedule No. 428, was authorized in Docket No. CI78-305.

n107 6 FERC P61,026 (1979).

On January 10, 1983, in Docket No. CP83-84-000, n108 the Commission issued to Trunkline an Order No. 234 [FERC Statutes and Regulations, Regulations Preambles 1982-1985 P30,368] blanket certificate authorizing it to perform the activities specified in subpart F of Part 157 of the Commission's regulations. Pursuant to the automatic authorization provision of section 157.208, Trunkline later purchased a 49.637% undivided interest from Shell Offshore in the 3,500 horsepower compressor unit at the High Island Block A-350 Platform.

n108 22 FERC P62,044 (1983).

Shell Offshore utilizes the "A" platform on High Island Block A-350 to produce gas from gas wells drilled from that platform into reservoirs located on Block A-350 and wells directionally drilled onto West Cameron Block 633. Lease condensate is removed from the gas stream through the use of separators and gas and condensate volumes are measured on the platform. Following separation, [\*132] the gas is compressed and water is removed from the gas stream by dehydration facilities. Next, condensate is reinjected. The stream is then taken by a Transco line to High Island Block A-330 and thence further transported by HIOS to an onshore condensate separation facility where the lease condensate is separated from the gas stream. The compressor was added to the platform facilities to increase ultimate recovery of gas from the producing reservoirs and to increase deliverability. Use of the compressor is necessary to boost the low-pressure gas for delivery into the Transco line and Stingray gathering system. Shell Offshore advised Trunkline that because of declining production, the subject compressor facilities must be upgraded in order to maintain deliveries to Trunkline. Trunkline determined that it is more economical to pay a unit charge to Shell Offshore for the compression service rather than to invest in the actual upgrading of the facilities. Therefore, Shell Offshore and Trunkline have entered into a Facilities Purchase Agreement dated November 1, 1988, wherein Shell Offshore agreed to purchase the compressor unit and appurtenant facilities from Trunkline at the depreciated [\*133] net book value of \$1,204,409. Upon abandonment of Trunkline's interest, the facilities will continue to be used by Shell Offshore for delivery of gas into Trunkline's system. Shell Offshore states that it currently holds a 6.613% undivided interest in the compressor and that CNG Production Company holds a 43.75% interest. The conveyance of Trunkline's interest in the compressor to Shell Offshore will result in the consolidation of all compressor ownership interests in the block's working interest owners. The compression agreement between Trunkline and Shell Offshore provides that Shell Offshore will provide compression of gas as needed by Trunkline in exchange for a payment of 10 cents for each Mcf of gas compressed. Shell Offshore states that it will not file for jurisdictional rates and its costs of service for the compressor minority interest will not be included in any jurisdictional rates. Any risk of underrecovery of Shell Offshore's cost of compression operations will be borne solely by Shell Offshore. Trunkline's sales customers will be protected since the compression charge paid by Trunkline will be subject to the Commission's review if Trunkline elects to pass through [\*134] such charge in its jurisdictional rates. c. Interventions After due notice by publication in the Federal Register on March 13, 1989 (54 Fed. Reg. 11,043) in Docket No. CP89-921-000, a timely motion to intervene and request for a technical conference was filed by Associated Natural Gas Company, Battle Creek Gas Company, Central Illinois Light Company, Central Illinois Public Service Company, Citizens Gas Fuel Company, Illinois Power Company, Michigan Gas Utilities Company, Ohio Gas Company, Richmond Gas Corporation, Southeastern Michigan Gas Company and Union Electric Company (collectively participating as the "Customer Group"). The Customer Group states that Trunkline's abandonment request raises issues relating to the Commission's jurisdiction over the transferred facilities and services provided by Trunkline or Shell Offshore by means of those facilities. In addition, the Customer Group refers to its opposition to Trunkline's "refunctionalization" of approximately 221 facilities from gathering to transmission, including the facilities herein, in Trunkline's rate case filed October 31, 1986, in Docket No. RP87-15-000. n109 The Customer Group also requests [\*135] the Commission to convene a technical conference to determine whether the compressor and appurtenant facilities proposed for abandonment by sale are performing a gathering or a transmission function.

n109 The Trunkline rate proceeding in Docket No. RP87-15-000 involves three phases. Phase II, Initial Decision, 41 FERC P63,011 (1987), discusses the refunctionalization issues. An order on exceptions to the Initial Decision in Phase II is pending before the Commission.

On April 17, 1989, Shell Offshore filed an answer to the Customer Group's intervention. Shell Offshore argues that the Customer Group's intervention is a collateral attack on Trunkline's proposal in Docket No. RP87-15-000 to "refunctionalize" certain facilities. Shell Offshore contends that the only issue is whether the public convenience and necessity support, under section 7 of the NGA, the abandonment of the compressor minority interest by Trunkline. n110

n110 To the extent that Shell Offshore's answer is prohibited by 18 C.F.R. § 385.213 (a)(2), for good cause we will waive that section of the Commission's regulations.

After due notice by publication in the Federal Register [\*136] on July 17, 1989 (54 Fed. Reg. 30,792) in Docket No. CI89-420-000, no motions to intervene, notices of intervention or protests were filed. d. Discussion 1. Abandonment The sale of the compressor to Shell Offshore will allow Trunkline to reduce operating, maintenance and platform space rental expenses. Further, the incremental compression costs it incurs for compression of gas purchased from Shell will be lower than if Trunkline retained ownership of and upgraded the compressor. In addition, pursuant to the compression agreement between Shell Offshore and Trunkline, compression will be provided only as necessary to deliver Trunkline's gas. Accordingly, the Commission finds that the proposed abandonment is in the public convenience and necessity. The abandonment, and our approval thereof, is not a major federal action having a significant impact on the quality of the

human environment. The Customer Group's concerns relate to Trunkline's refunctionalization of facilities from gathering to transmission. That issue will be addressed in Docket No. RP87-15-019 which is pending before the Commission on exceptions to the Initial Decision issued October 29, [\*137] 1987. n111

n111 Supra.

2. Declaratory Order The compression facilities are located on an offshore production platform upstream from any processing. The compression facilities meet the central point in the field test as the production platform is the collection point for gas from various wells connected to the platform by separate and individual lines. The Shell Offshore wells in High Island Block A-350 and West Cameron Block 633 radiate outward from the platform, thus placing the compressor and the remaining production-related equipment on the platform in the center of an irregular "circle" configuration defined by well locations. We conclude that under the modified "primary function" test, as enunciated above, the primary function of the subject compression facilities is gathering, and that it therefore is exempt from our NGA jurisdiction by operation of the "production and gathering" exemption contained in section 1(b) of the NGA. 18. Shell Western E&P, Inc., Docket No. CP89-468-000 El Paso Natural Gas Company, Docket No. CP89-483-000 On December 21, 1988, Shell Western E&P, Inc. (Shell) filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and [\*138] Procedure n112 for a declaratory order disclaiming jurisdiction over certain existing natural gas compression, pipeline and plant facilities, with appurtenances (the Terrell Facilities) that it seeks to acquire from El Paso Natural Gas Company. For the reasons stated below, we find that the Terrell Facilities are gathering facilities exempt from the Commission's jurisdiction by operation of the "production and gathering" exemption contained in section 1(b) of the NGA.

n112 18 C.F.R. section 385.207 (1988).

On December 23, 1988, El Paso Natural Gas Company (El Paso) filed an application pursuant to section 7(b) of the NGA seeking Commission permission and approval to abandon, by conveyance to Shell, the Terrell Facilities located in Terrell, Val Verde, and Crockett Counties, Texas, and the services related thereto. The parties entered into a sales agreement dated October 21, 1988, (Sales Agreement) under which Shell will acquire El Paso's Terrell Facilities as part of a comprehensive take-or-pay settlement resolving El Paso's existing and future take-or-pay (TOP) exposure to Shell. We will approve the abandonment subject to certain conditions as articulated in the body of this [\*139] order. a. Background Shell is a wholly owned affiliate of Shell Oil Company and is engaged in the business of producing and selling natural gas, including the ownership and operation of natural gas gathering systems and processing and extraction plants. El Paso is an interstate pipeline company which owns and operates pipeline facilities connected to eighty-nine (89) wells located in the J.M., J.M. North, and Brown-Bassett fields of Crockett, Val Verde, and Terrell counties, Texas. On May 14, 1988, El Paso and Shell entered into a Settlement Agreement (Settlement) to resolve take-or-pay and pricing litigations between them currently pending in the Texas state courts. The Settlement provides for the release of certain gas volumes and transportation by El Paso of those released volumes in interstate commerce. As partial consideration for the Settlement, El Paso agreed to sell certain facilities known as the Terrell Facilities to Shell for a cash payment of \$8,500,000. The acquisition, however, is conditioned upon the receipt from the Commission of a declaratory order satisfactory to Shell that acquisition, ownership and operation of the Terrell Facilities after their acquisition [\*140] by Shell will not be subject to Commission jurisdiction. The Terrell Facilities consist of: (1) a Centaur 13,500 ISO horsepower field compressor; (2) a purification and dehydration plant with an inlet capacity of 271,180 mcf per day (the Terrell Treating Plant); (3) approximately 15.0 miles of 24 inch O.D. pipeline extending from the J.M. Ellenburger Field to the Terrell Plant; (4) the Brown-Bassett facilities, consisting of approximately 48.2 miles of various sized pipelines ranging in size from 6-5/8 inches O.D. to 24 inches O.D.; (5) a 24 inch O.D. orifice-type check meter; (6) communication facilities for the operation and maintenance of the Brown-Bassett facilities; (7) general structures for the operation and maintenance of those facilities; (8) the J.M. Ellenburger Field Gathering System located in Crockett and Val Verde Counties, Texas consisting of approximately 25.5 miles of various sized pipelines ranging from 8-5/8 inches O.D. to 24 inches O.D.; and (9) 9.8 miles of 800-5/8" O.D. to 24" O.D. pipeline comprising the J. M. Field Gathering System. n113

n113 El Paso constructed these and the remainder of the Terrell facilities to be conveyed to Shell as nonjurisdictional gathering and auxiliary facilities.

[\*141] El Paso's abandonment application seeks permission and approval to abandon the following facilities: (i) one Centaur 13,500 ISO hp field compressor (Terrell Field Compressor); n114 (ii) the 8.3 miles of 24" O.D. pipeline from the J. M. Field to the Terrell Plant; n115 (iii) the 23.4 miles of 6-5/8" O.D. to 24" O.D. pipeline comprising the Brown Bassett Gathering System; n116 (iv) the Terrell Plant with a capacity of 271,180 Mcf per day; n117 and (v) one 24" O.D. orifice-type check meter n118 Upon acquisition, Shell proposes to operate the facilities as a nonjurisdictional gathering system.

n114 El Paso constructed this field compressor unit under the budget-type authorization granted in Docket No.

CP72-113, in order to offset declining reservoir pressures from the Brown Bassett and J.M. fields.<sup>47</sup> FPC 1065 (1972).

n115 In Docet No. CP66-306, El Paso was authorized to construct and operate a 15-mile 24" O.D. pipeline from the J.M. Field to the Terrell Plant. 13 FERC P62,142 (1980). Instead of constructing 15 miles of certificated pipeline, El Paso actually constructed only 8.3 miles of 24" O.D. field transmission pipeline and 6.7 miles of nonjurisdictional gathering pipeline, which action it reported to the Commission in its 1981 Statement of Actual Cost filing.

[\*142]

n116 In Docket No. G-19966, El Paso was authorized to construct and operate (1) Brown Bassett Gathering System, which consisted of approximately 23.4 miles of various size pipeline, and (2) the Terrell Plant, which had a design inlet capacity of 221,180 Mcf per day (Mcf/d). 24 FPC 1072 (1960).

n117 El Paso received authorization to increase the inlet capacity by 50,000 Mcf per day in Docket No. CP66-306, 13 FERC P62,142 (1980).

n118 Constructed pursuant to authorization granted in Docket No. CP66-306. 13 FERC P62,142 (1980).

b. Notice and Interventions Notice of Shell's petition was published in the Federal Register on January 17, 1989 (54 Fed. Reg. 1785). Notice of El Paso's application was published in the Federal Register on January 6, 1989 (54 Fed. Reg. 473). Timely interventions were filed by American Trading and Production Corporation (ATPC), n119 Arco Oil and Gas Company (Arco), n120 Bass Enterprises Production Company (Bass), n121 California Public Utilities Commission (CPUC), Pacific Gas and Electric Company (PG&E), Shell [\*143] Western E&P Inc. (Shell), Southern Union Gas Company (Southern Union), and Southwest Gas Company (Southwest). Timely unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. n122 Untimely motions to intervene were filed by Fina Oil and Chemical Company (Fina), n123 Gas Company of New Mexico (GCNM) and Southern California Gas Company (SoCal). n124

n119 ATPC submitted a notice of withdrawal from the proceedings on September 12, 1989, stating that after several discussions with the interested parties, including Shell, it is satisfied that it will not be adversely affected by the sale of the Terrell facilities, and thus supports approval of the abandonment application.

n120 On April 10, 1990, Arco filed a "Notice of Withdrawal of the Supplemental Comments and Statement in Support of Abandonment Application," noting that it would continue its status as an intervenor in the proceeding.

n121 On August 7, 1989, Bass filed a motion for leave to withdraw its motion to intervene.

n122 18 C.F.R. § 385.214 (1989).

n123 On November 13, 1989, Fina filed an amendment to its motion to intervene requesting to withdraw its requests for Commission-imposed conditions on any approval of the application and indicating its support.

[\*144]

n124 For good cause shown and because they will not delay this proceeding, the late-filed interventions are granted. The intervening producers raised concerns with how El Paso would treat existing gas purchase contracts once the Terrell Facilities are sold to Shell, and how El Paso and Shell would treat abandoned, released and third party gas that requires services at the Terrell Facilities. All of these parties have subsequently withdrawn their protests. ATAP and Bass have withdrawn from the proceeding. PG&E protests the approval of the abandonment and requests a technical conference for a determination as to whether a hearing should be held in this proceeding. According to PG&E, at least the following issues warrant a technical conference: (a) whether the price paid by Shell for the abandoned facilities was reasonable; (b) whether the proposed abandonment would affect El Paso's ability to meet its service obligations to its customers; (c) the impact of the proposed abandonment upon El Paso's rates; n125 and; (d) whether the abandonment was a prudent resolution of El Paso's TOP dispute with Shell.

n125 PG&E states that a technical conference is appropriate in light of El Paso's contention that abandonment of the Terrell Facilities will have no effect on its rate schedules. PG&E adds that El Paso's rates in Docket No. RP88-44-000 provide for 100-percent demand charge recovery of gathering (field transmission) facilities, presumably including the Terrell Facilities. Further, PG&E avers that it is not clear from the application how, or whether, El Paso will reduce its cost of service and customer demand charges to reflect the instant abandonment.

[\*145] Southern Union also requests a technical conference, stating that the Terrell Facilities constitute an important part of El Paso's system, and that it is uncertain as to the effect such abandonment will have upon the system. In particular, Southern Union states that it is necessary to review the specific contract arrangements between El Paso and Shell and,



even more important, to review the relationship between this application for abandonment and El Paso's future gas sales obligations. Therefore, Southern Union states that prudence dictates that the Commission not issue any order regarding the requests until all parties have had the opportunity to question El Paso informally about the application in a technical conference. On April 17, 1989, El Paso provided additional data relevant to the concerns raised by the intervening parties. El Paso states that sellers involved will not be adversely affected by the proposed abandonment. El Paso states that it will continue to perform in accordance with its contractual gas purchase obligations and will cause Shell to gather, process and deliver to El Paso that gas purchased by El Paso at the wellhead, for the remaining term of the gas [\*146] purchase contracts between El Paso and its producer-sellers. c. Discussion 1. Abandonment Under section 7(b) of the NGA, we will grant an abandonment upon a finding that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience and necessity permits such abandonment. We find that the present and future public convenience and necessity requires our granting the requested abandonment. El Paso's market requirements can no longer justify the continued operation of the Terrell Plant. The low demand for El Paso's system supply gas has prevented the wells behind the plant from producing at optimal levels. For example, the Terrell Field Compressor was designed for a minimum load of 100,000 Mcf per day. In 1985, El Paso's production behind the Terrell Facilities averaged approximately 160,000 Mcf per day. However, due to producer abandonments and other factors, production has declined to its present level of approximately 34,000 Mcf per day. n126 Thus, the compressor cannot be consistently fully loaded and is periodically shut down, forcing the wells in the Brown Bassett and J. M. [\*147] Fields to free-flow gas, pressures permitting, without the benefit of compression, or to shut-in. El Paso states that the proposed abandonment will not have any negative impact on El Paso's ability to continue serving its customers.

n126 El Paso states that it, or producers previously selling to El Paso, already have elected to abandon certain sales pursuant to Order Nos. 451 and 490. These abandonments total approximately 80 percent of the gas supply previously purchased by El Paso and gathered and processed at the Terrell Facilities.

We find that the abandonment will have future beneficial effects on El Paso's operations. Because the facilities are processing only a fraction of the originally designed plant throughput, El Paso states that the unit operating costs are high and that the continued operation of the Terrell facilities would frustrate its goal of optimizing system operations. n127 The specific rate consequences of the transfer of facilities will be determined in El Paso's rate proceedings, including that in Docket No. RP88-44-000. Additionally, we find that the abandonment will have beneficial effects on the market as a whole. Shell's acquisition of the facilities [\*148] may allow the Terrell Field Compressor to be loaded more fully and allow the wells behind the Terrell Plant to produce more consistently.

n127 El Paso states that the unit cost in 1984, before its decline in gas sales and system wide increase in transportation volumes, was 29 cents per Dth. In contrast, the unit cost for the twelve months ended June 30, 1988, had nearly tripled to 74 cents per Dth.

We find that the abandonment of the Terrell Facilities will, have a de minimis effect upon El Paso's system supply activities, will have no significant effect upon its ability to render existing service to its customers, and will benefit El Paso's customers and the market as a whole. We therefore will grant the requested abandonment. Certain intervenors have raised issues regarding the prudence of the TOP settlement and issues relating to the price paid for the facilities and the effect of the transfer of such facilities upon El Paso's rates. We find that these arguments are without merit. El Paso's proposed abandonment by conveyance of the Terrell Facilities is one part of a comprehensive TOP settlement with Shell to obtain take-or-pay relief. Our policy has been to encourage [\*149] TOP settlements that would reduce pipelines' liabilities and allow shut-in gas to flow to the market. n128 The prudence of the TOP settlement associated with the abandonment is not at issue in this proceeding. El Paso's proceeding in Docket No. RP88-184-000 et al., is the appropriate proceeding to review El Paso's attempt to recover, pursuant to Order No. 500, certain TOP costs. n129 Additionally, El Paso's PGA proceeding in Docket No. TA88-1-33-000, is a proper forum for addressing rate issues raised here. n130 Additionally, the issues relating to the price paid for the subject facilities as well as the effect of the transfer of facilities on El Paso's rates require no technical conference/hearing to resolve, but are properly considered in El Paso's next rate proceeding pursuant to § 4 of the NGA.

n128 See, among others, Tenneco Oil Company, 39 FERC P61,107 (1987).

n129 We find that the issues raised by PG&E regarding El Paso's prospective ability to fulfill its service obligations also do not require a technical conference/hearing to resolve. We find based on the record as discussed above that El Paso's ability to render service to its customers will not be effected by the proposed abandonment. To the extent that PG&E raises issue with El Paso's loss of reserves through releases and/or abandonments under Order Nos. 451/490, such releases can be challenged in a prudence proceeding. Such concerns however, have no effect on the

sale of the facilities contemplated here.

[\*150]

n130 El Paso's recovery of gas costs under renegotiated producer contracts is at issue currently in Docket No. TA88-1-33-000. The amounts paid to buy out or buy down those contracts are addressed in Docket No. RP88-184-000 et al. 43 FERC P61,250 (1988), Reh'g grant'd in part and denied in part, 45 FERC P61,107 (1988).

We will require El Paso to modify its proposed method of accounting for the conveyance. El Paso prepared its journal entries regarding the proposed sale on the basis of Gas Plant Instruction No. 10 which deals with retirement of gas plant. The book cost less net salvage value of the depreciable gas plant is charged in its entirety to Account 108, Accumulated Provision of Depreciation of Gas Plant in Service. The sale of the Terrell Facilities should be accounted for in accordance with Gas Plant Instruction No. 5, Gas Plant Purchased or Sold, which provides accounting for sale of an operating unit or system. When a pipeline system is sold, the book cost of the system should be credited to the appropriate plant account; the amounts carried in the accounts for accumulated provision for depreciation should [\*151] be charged to such account; and the correct entries should be made to Account 102, Gas Plant Purchased or Sold. In addition, any gain or loss on disposition should be charged to Account 421.1, Gain on Disposition of Property or Account 421.2, Loss on Disposition of Property. Accordingly, we will condition our granting of the abandonment upon such accounting treatment. This method is consistent with treatments afforded El Paso in a similar case. n131

n131 46 FERC P61,358 (1989); reh'g denied, 49 FERC P61,360 (1989).

We find that approval of the proposed 7(b) abandonment does not constitute a major federal action significantly affecting the quality of the human environment.<sup>2</sup> JurisdictionApplying the "modified primary-function" test set out above to the Terrell Facilities, we find that their primary function is gathering and that they are therefore exempt from the Commission's NGA jurisdiction.The approximately 85 miles of various diameter pipeline facilities connect eighty-nine (89) wells in the J.M and Brown-Bassett field areas to the Terrell Plant. All of the subject lines are located upstream or behind the Terrell [\*152] Plant and are utilized to bring gas produced from the Brown-Bassett and J.M. fields for processing at the plant. While some of the lines are of relatively large diameter (up to 24" O.D.), this fact does not disqualify the facilities from consideration for a gathering exemption. The Terrell Facilities lines are all located in the producing area behind the Terrell Plant and their primary function is to deliver low pressure gas to the plant.The location of compressors and wells along the pipeline also lend to our finding that the facilities are used for gathering rather than transmission. Natural gas collected from producers in the field areas are carried through the various pipelines to a single point, the Terrell Plant, where it is processed, prior to its entry into El Paso's mainline system at the tailgate of the plant. n132 A single 13,500 hp compressor is located immediately behind the Terrell Plant to raise the pressure of the gas from low-pressure wells so that it may enter the plant. Such compression is incidental to the gathering and processing of the gas, not intended for mainline transmission, and is consistent with a primary function of gathering.In addition, the [\*153] Terrell Plant serves as the central point in the field where all gas from the J.M. and Brown Bassett Fields are commingled for measurement and delivery to El Paso and/or pipelines at or beyond the tailgate of the plant.

n132 Shell in its petition states that when operated by Shell, the Terrell Plant will be used: (1) to extract CO<sub>2</sub> from the production owned by El Paso and brought to the plant pursuant to the Gas Gathering Agreement, whereupon the residue stream will enter interstate commerce at a point at or beyond the tailgate of the plant; or (2) upon the release and abandonment of El Paso's purchases, gas will be sold by individual producers who will separately arrange transportation on El Paso's or another pipeline system, in which event the common custody transfer point for Shell's and other producers' released gas will be the meter beyond the Terrell Plant tailgate.

The geographical configuration of the facilities resemble a gathering facility, the field feeder and well connection lines forming a network-like arrangement, basically revolving around the central point of the Terrell Plant. The gas is collected from the two fields behind the plant and moved through the feeder [\*154] line to the compressor which bumps the pressure up enough to enter the plant.Transportation does not begin until the gas has been treated and exits the plant.The operating pressure of the system is also typical of a gathering function. The gas from the low-pressure wells is compressed to approximately 340 psia in order to meet in inlet suction pressure of the Terrell Plant. At the tailgate of the plant, pipeline quality gas exits to El Paso's mainline at approximately 970 psia.Finally, we note that the producer parties that originally raised the issue of access to the facilities after sale to Shell have withdrawn their opposition and, in fact, now support the abandonment.<sup>19</sup> Tennessee Gas Pipeline Company, Docket No. CP89-1883-000a. BackgroundOn July 31, 1989, Tennessee Gas Pipeline Company (Tennessee) filed an application pursuant to section 7(b) of the NGA for permission and approval to abandon the Stratton Pipeline System by conveyance to Union Pacific Resources Company (UPRC). In

the same pleading, Tennessee filed, pursuant to Rule 207 of the Commission's Rules of Practice, n133 a petition for a declaratory order disclaiming Commission jurisdiction over the abandoned [\*155] facilities. Tennessee contends that the subject facilities, when owned and operated by UPRC, will be "gathering" facilities, and, therefore, will be exempt from the Commission's jurisdiction under section 1(b) of the NGA. For the reasons stated below, the Commission grants the requested abandonment authorization and finds that, upon their conveyance, the subject facilities will function as gathering facilities exempt from the Commission's NGA jurisdiction under section 1(b) of the Act.

n133 18 C.F.R. § 385.207 (1989).

b. Description of Facilities The Stratton Pipeline System, located in San Patricio County, Texas, was constructed by Tennessee in 1944 and consists of three pipeline segments. Each segment begins at the tailgate of a processing plant owned by UPRC, a producer and processor of natural gas. n134 The first pipeline segment is the Aqua Dulce-Wardner line, which extends 7.71 miles from the discharge side of the Wardner Station Processing Plant northeasterly to an interconnection with Tennessee's 24-inch main line on the upstream side of Tennessee's Meter No. 1-0008. This meter is located at Tennessee's Compressor Station No. 1. The Aqua Dulce-Wardner line consists [\*156] of 3.06 miles of 12-inch pipeline and 4.65 miles of 18-inch pipeline. The second pipeline segment is the Aqua Dulce-Wardner-Gulf Plains lateral line. It consists of 0.51 miles of 10-inch pipeline extending from the discharge side of the Gulf Plains Processing Plant easterly to an interconnection with the Aqua Dulce-Wardner line. The third pipeline segment is the Coastal line, consisting of 0.43 miles of 10-inch pipeline. It extends from the discharge side of the Coastal Station Processing Plant westerly to an interconnection with the Aqua Dulce-Wardner line just upstream from Tennessee's Meter No. 1-0008.

n134 See, Appendix A to this order for a diagram of the system.

The three segments of the Stratton Pipeline System were installed originally to receive and transport gas produced in the Stratton-Aqua Dulce field. Pursuant to a September 7, 1943 agreement between Tennessee and UPRC's predecessor, Chicago Corporation (Chicago), Tennessee purchased gas for resale from Chicago or accepted it for delivery to Manufacturers Light and Heat Company, the predecessor of Columbia Gas Transmission Corporation (Columbia), which purchased it from Chicago. The point of delivery to Tennessee [\*157] for all gas was at the discharge side of the three processing plants. All gas exited the system at the interconnection of Tennessee's 24-inch mainline. In 1952, the Wardner Station and Coastal Station processing plants ceased operating, and the 1943 agreement was superseded by a 1952 contract. The new contract, as amended on May 30, 1953, provided that the delivery point for gas to be purchased by Tennessee was at the discharge side of Tennessee's Meter No. 1-0008, immediately downstream from the Aqua Dulce-Wardner pipeline segment. This same point also has been established as the delivery point for gas purchased by Columbia and delivered to Tennessee for transportation. n135 Additionally, pursuant to the new agreement, although Tennessee continued to own the lines, UPRC was responsible for operating and maintaining them.

n135 See Tennessee's FERC Gas Tariff, Volume 2, Rate Schedule T-20, Article VI.

All gas now enters the Stratton Pipeline System at the Wardner Station Plant site and the Gulf Plains Plant. Natural gas formerly gathered and processed at the Coastal Station Plant is now moved from that site to the inlet of the Gulf Plains Processing Plant by nonjurisdictional [\*158] gathering lines owned by UPRC. Since the Wardner Station Plant is not operational, gas from behind that plant movesthrough the 12-inch pipeline segment of the Aqua Dulce-Wardner line into the Gulf Plains lateral line and to the Gulf Plains Plant for processing. This gas and gas from behind the Gulf Plains Plant is processed, and then moved back through the lateral line and into the 18-inch pipeline segment of the Aqua Dulce-Wardner line. The gas then exits the system in one of two ways. Some moves through Tennessee's Meter No. 1-0008, at Tennessee's Compressor Station No. 1, where it is compressed for redelivery into Tennessee's mainline system. Other gas enters the Coastal line at its interconnection with the Aqua Dulce-Wardner line (immediately upstream from the meter station) and exits the system at the interconnection of the transmission system of United Gas Pipe Line Company (United) at the Coastal Station plant site. UPRC presently compresses all gas entering the Stratton Pipeline System. The 12-inch line operates at 700 psig, while the 10-inch Coastal line and 18-inch line operate at 525 psig. When delivering gas to the Gulf Plains Plant, the 10-inch Aqua Dulce-Wardner-Gulf [\*159] Plains line operates at 700 psig. When delivering gas from the plant into the 18-inch line, it operates at 525 psig. The greater pressure in the 12-inch line is necessary to enable the gas to enter the Gulf Plains Processing Plant without additional inlet compression. As stated, when Tennessee takes delivery of processed gas at its meter station, it further compresses it before it enters its mainline system. United, however, receives processed gas into its transmission system without further compression. All gas flowing through the Stratton Pipeline System is owned by UPRC or other field producers that have contracted with UPRC to have their gas processed at the Gulf Plains Plant. UPRC will not charge a fee for the movement of gas through the system, since the system is an integral part of UPRC's Gulf Plains processing operations that enables UPRC to meet

its contractual responsibilities both to the other producers and to purchasers of the gas at the Tennessee and United interconnects. No pipeline purchaser takes title to any gas flowing through the system before Tennessee's Meter No. 1-0008 or United's interconnect. Further, while Tennessee has other obligations to receive [\*160] gas at the meter station, it has no obligation to receive or deliver gas at any point on the Stratton Pipeline System. To summarize, the evolving operations in the Stratton-Aqua Dulce production field have changed the way the Stratton Pipeline System operates. All gas moving through the system now enters at the Wardner Station Plant site and the and Gulf Plains Plant. All gas is processed at the Gulf Plains Plant, which is the only remaining operational processing facility. Gas no longer moves into the system at the Coastal Station Plant site but exits from it there, as well as at Tennessee's Meter No. 1-0008. Tennessee argues that conveyance of the Stratton Pipeline System to UPRC will enhance UPRC's ability to carry out its production and gathering operations in the Stratton-Aqua Dulce and other nearby fields. Tennessee, on the other hand, will have the same transportation abilities after the conveyance that it now has. In addition, the conveyance will eliminate incidental expenses to Tennessee still associated with the system, thus generating savings to its customers.

c. Interventions After due notice by publication in the Federal Register on August 18, 1989 (54 Fed. Reg. 34,224), [\*161] UPRC, Columbia, Consolidated Edison Company of New York, Inc., and National Fuel Gas Supply Corporation filed timely unopposed motions to intervene. Timely and unopposed motions to intervene are granted pursuant to 18 C.F.R. §385.214 (1989). No protests were filed.

d. Discussion We find that abandonment of the Stratton Pipeline System will relieve Tennessee of all costs still associated with operating the system, thus generating savings to it and, ostensibly, its customers. On the other hand, abandonment will not adversely affect Tennessee's obligations to receive or deliver gas at other points on its transmission system. Nor will it adversely affect the ability of local gas producers or purchasers of the gas to ship it. Upon conveyance of the system to UPRC, Tennessee and United will continue to receive gas through the system for transportation on their mainline systems. Accordingly, we find that the public convenience and necessity will be served by authorizing the abandonment. We find that approval of the proposed section 7(b) abandonment does not constitute a major federal action significantly affecting the quality of the human environment. Applying the modified "primary [\*162] function" test, as set out above, we conclude that the Stratton Pipeline System will perform primarily a gathering function after its conveyance to UPRC. Most of the physical and geographical characteristics of the pipeline system are consistent with gathering. The entire system is located in a producing area. The lengths, diameters, and operating pressures of the various pipeline segments are similar to those of other facilities that the Commission has determined to be gathering. The segments are short, with modest diameters, and they operate at relatively low pressures. This is typical of gathering. In addition, we note that the cessation of operation of the Wardner Station and Coastal Station plants significantly altered the function of the Stratton Pipeline System. Gas collected from fields located behind the three plant sites now is tied directly to the Gulf Plains Plant. It is gathered from behind the Gulf Plains plant itself and tied to the plant through the 12-inch line from the Wardner Station Plant site and the nonjurisdictional, producer-owned lines from the area around the Coastal Station Plant site. Thus, gas now flows out of the system, rather than into it, [\*163] through the Coastal Station Plant site. And the 12-inch and 10-inch pipeline segments used to move gas from the Wardner Station Plant site now are functionally located behind the plant. Additionally, while Tennessee used to take delivery of the gas at the tailgates of the three processing plants and then move it through the system to its Meter No. 1-0008 into its 24-inch mainline, UPRC and the other producers now deliver gas to Tennessee and United at the downstream ends of the system. Finally, we note that UPRC is the main producer in the Stratton-Aqua Dulce field and owner of the three plants. It is engaged in production and processing activities and is not otherwise engaged in interstate transportation.

In conclusion, after weighing all factors of the modified "primary function" test, we find that the Stratton Pipeline System will perform, after conveyance, primarily a gathering function and, therefore, will be exempt from the Commission's NGA jurisdiction under NGA section 1(b) of the NGA.20. West Texas Gathering Company, Docket No. CP88-212-000 (On Remand)

a. Background On January 26, 1988, West Texas Gathering Company (West Texas) filed a petition for declaratory order [\*164] in this docket seeking a determination that its facilities constituted an integrated gathering system exempt from the Commission's NGA jurisdiction pursuant to section 1(b) of the NGA; and requested that the Commission rescind certificates of public convenience and necessity authorizing the operation of those facilities as a Class A interstate pipeline. n136

n136 In 1966, West Texas was classified as a Class A interstate pipeline company in a letter order issued by the Commission.

In its petition for declaratory order, West Texas argues that a reevaluation of its circumstances is warranted in light of the enactment of the NGPA and the Commission's decision in Farmland where the Commission evaluated a number of criteria to determine whether the "primary function" of a facility was gathering or transportation of natural gas. West Texas claimed that application of the Farmland test should lead to a finding that its facilities are gathering facilities. In an order issued on May 24, 1988, n137 the Commission found that there had been no material change in West Texas'

situation since the prior determination in 1966 and, further, that the facilities were transportation facilities [\*165] under the primary function test. On rehearing, the Commission reaffirmed its earlier holding. n138 West Texas appealed to the United States Court of Appeals for the Fifth Circuit for a review of these orders. n139

n137 43 FERC P61,305 (1988).

n138 45 FERC P61,386 (1988).

n139 West Texas Gathering Co. v. Federal Energy Regulatory Commission, No. 89-4096 (5th Cir.)

On August 10, 1989, the Commission filed a motion for a voluntary remand of the West Texas Gathering Company v. FERC case for further administrative proceedings, to reconsider its previous order under the primary function test, in light of the Court's decision in EP Operating. On September 1, 1989, the Court granted the Commission's motion for voluntary remand. Application of the traditional Farmland criteria in our earlier orders led to the conclusion that the West Texas system was a jurisdictional transmission facility under the NGA. Emphasis in those orders was placed on the length of the main lines leading to the Keystone and Goldsmith plants. However, under the modified Farmland criteria, we are applying a sliding scale to the length criteria for [\*166] offshore pipeline situations and even for onshore facilities, the size or length of a line is no longer the major determining factor, where other factors lead us to the conclusion that the primary function of a system is gathering. A review of West Texas' facilities under the modified "primary function" leads us to the conclusion that their primary function is the gathering of natural gas exempt from the Commission's jurisdiction under the NGA.b. Proposed Facilities West Texas' system includes approximately 130 miles of pipe. One hundred and seven miles of that system is comprised of facilities varying in a diameter from 4 to 8 inches. In order to connect two natural gas fields, an 8 5/8-inch line was constructed, commencing in the Emperor field and running 11.4 miles in a northerly direction, through the South Kermit field, to a 500 horsepower compressor unit and intermediate dehydration plant near the site of the Keystone processing plant. n140 In addition, in order to accommodate high volumes to be taken by El Paso, West Texas constructed 11.4 miles of looped 20-inch line that paralleled the segment of the 8 5/8-inch line that crosses the two fields. The looped line was designed [\*167] so that it terminates at the inlet of the Keystone Purification and Dehydration Plant (Keystone), located 2.5 miles north of the South Kermit field and 0.3 miles south of El Paso's main line transmission facilities. From there, an 8 5/8-inch pipeline continues 27 miles to the Goldsmith processing plant. An eleven mile 8-inch and parallel 20-inch line are interconnected by lateral lines connected to producing wells along the system, from the Emperor field through the South Kermit field to the Keystone plant. However, no wells feed into the 27-mile line that proceeds from the terminus of the Keystone plant to the Goldsmith plant. In addition to the 500 horsepower compressor near the Keystone plant, there are four field compressors on West Texas' system, with horsepower ratings of 60 to 300 horsepower.

n140 The compressor is operated and maintained by Cabot Gas Supply Corporation.

c. Interventions Intervenors in this case are Mobil Producing Texas New Mexico, Inc. (Mobil) and El Paso Natural Gas Company (El Paso). n141 In its motion, El Paso protested West Texas' petition. El Paso argued that West Texas' failure to oppose the Commission's original 1966 assertion of jurisdiction [\*168] over West Texas' system precludes such opposition twenty-two years later; and that the requested change in jurisdictional status may affect West Texas' service obligation with El Paso and have an adverse effect on El Paso's customers.

n141 Mobil and El Paso were made parties of this case pursuant to 18 § 385.214. 43 FERC P61,305, at p. 61,842. d. Discussion A reexamination of West Texas jurisdictional status under the modified "primary function" test is in order. West Texas' facilities are a group of small diameter and short distance lines feeding into a central, triple looped line. The central facility consists of two 20-inch lines and an 8 5/8-inch line which extends for 11.4 miles, and was constructed to serve the deliverability requirements of the Emperor and South Kermit fields in Winkler County, Texas. Lines of this size and diameter have been approved as gathering facilities in other situations reviewed by the Commission. The decision by the Fifth Circuit in EP Operating finding that a 51-mile, high-pressure pipeline is a gathering facility, while not dispositive of jurisdictional determinations involving onshore facilities, has expanded [\*169] the definition of what can be determined to be a gathering system exempt from Commission jurisdiction under section 1(b) of the NGA. With the exception of a 27 mile line which runs from the Keystone plant, all of the facilities of West Texas are located behind the Keystone plant. In addition, four of five of West Texas' compressors are not mainline compressors. The West Texas system was constructed to take the deliverability of two prolific gas fields and wells do exist along the 11.4 mile line as well as along the lateral lines running throughout the producing fields. We also note that this gas is delivered to the Keystone plant, and is not delivered directly to El Paso. West Texas also has a 27-mile, 8 5/8" diameter line from the El Paso Keystone plant to Pioneer's Goldsmith gas processing plant. Also, this gas is delivered to the Goldsmith plant, and not directly to a pipeline. In view of the relatively small diameter of this line and the line's purpose, we find that it is

not jurisdictional. For the reasons stated above, we find that the primary function of the facilities which are the subject of West Texas' request is gathering and therefore are exempt from the Commission's [\*170] NGA jurisdiction.<sup>21</sup> Western Gas Processors, Ltd., Docket No. CP89-1718-000 El Paso Natural Gas Company, Docket No. CP89-1722-000 On June 29, 1989, Western Gas Processors, Ltd. (Western Gas) filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure n142 for a declaratory order disclaiming Commission jurisdiction over certain compression, pipeline, and plant facilities, with appurtenances, known as the Midkiff System. Western Gas contends that the Midkiff System is a "gathering" facility and is therefore exempt from the Commission's NGA jurisdiction under section 1(b) of the NGA. For the reasons stated below, the Commission finds that the Midkiff System is a "gathering" facility exempt from the Commission's NGA jurisdiction by operation of the "production and gathering" exemption contained in section 1(b) of the NGA.

n142 18 C.F.R. section 385.207 (1988).

On June 29, 1989, El Paso Natural Gas Company (El Paso) filed a companion application in Docket No. CP89-1722-000, pursuant to section 7(b) of the NGA, seeking Commission permission and approval to abandon, by conveyance to Western Gas, the Midkiff System. a. Proposed Facilities Western Gas [\*171] is an independent owner and operator of a number of natural gas processing plants and related facilities. Western Gas has contracted to purchase from El Paso the Midkiff System. Included in the Midkiff System are the following certificated compression and processing facilities located in Glasscock, Midland, Reagan and Upton Counties, Texas: (i) the Pembroke Field Compressor Station (Pembroke Station), with five field compressor units totaling 6,750 horsepower (hp); (ii) the Driver Field Compressor Station (Driver Station), with three field compressor units totaling 6,000 hp; (iii) the Midkiff Field Compressor Station (Midkiff Station), with thirteen field compressor units totaling 23,760 hp; (iv) the Midkiff Dehydration Plant, with a design inlet capacity of 136,000 Mcf per day (Mcf/d); (v) the Midkiff Gasoline Plant, (Midkiff Plant) with a design inlet capacity of 168,000 Mcf/d; and (vi) general structures and equipment, meter stations, and maintenance of the above described facilities. The following certificated pipeline facilities are also included in the Midkiff System: (i) the Upton County Line to Texas Natural Gas' (TNG) Pembroke Plant Line (Upton to TNG Pembroke Line), consisting [\*172] of approximately 12.8 miles of 12-3/4-inch pipeline and approximately 1.6 miles of 6-5/8-inch pipeline, and necessary appurtenances; (ii) the Pembroke Plant to Midkiff Plant Line (Pembroke to Midkiff Line), consisting of approximately 0.1 mile of 24-inch pipeline and 12.7 miles of 16-inch pipeline, and necessary appurtenances; (iii) the Driver Plant to Midkiff Plant Line (Driver to Midkiff Line), consisting of approximately 6.3 miles of 26-inch pipeline and necessary appurtenances; (iv) the TNG Pembroke Plant (now retired) to Midkiff Plant Line (TNG Pembroke to Midkiff Line), consisting of approximately 7.5 miles of 10-3/4-inch pipeline and necessary appurtenances; and (v) the Spraberry System, consisting of approximately 185 miles of certificated pipelines, ranging in size from 2-3/8-inch to 30-inch. El Paso states that the Spraberry System also includes approximately 875 miles of various sized nonjurisdictional and noncertificated gathering lines and two portable field compressors which will also be conveyed to Western Gas. b. Background On June 23, 1952, in Docket No. G-1631, n143 El Paso was granted authorization to, inter alia, construct the Upton to TNG Pembroke Line. By [\*173] order issued June 29, 1953, in Docket No. G-2106, n144 as amended, El Paso was authorized to, inter alia, construct and operate the Pembroke Station, the Driver Station, the Midkiff Station, the Midkiff Dehydration Plant, the Midkiff Gasoline Plant, the Pembroke to Midkiff Line, the Driver to Midkiff Line, the TNG Pembroke to Midkiff Line, and the Spraberry System. The Midkiff System was designed to receive natural gas at the Driver and Pembroke Stations and deliver that gas to the Midkiff Plant to be processed along with gas received in the proximity of the Midkiff Plant. After processing, the gas is ultimately delivered to El Paso's transmission facilities for transportation to its customers.

n143 11 FPC 1071 (1952).

n144 12 FPC 1037 (1953).

In late 1963, due to the declining availability of casinghead gas in the area, El Paso requested approval to reduce its compression facilities in the Midkiff System. El Paso received on February 14, 1964, in Docket No. CP64-134, n145 authorization to abandon 4,000 compressor hp at the Driver Station and 2,000 compressor hp at the Midkiff Station. Over the succeeding years, as [\*174] production in the Midkiff area continued, availability of casinghead gas dropped further, eliminating El Paso's need for certain compression facilities. As a result, in 1971, in Docket No. CP71-284, n146 and in 1978, in Docket No. CP77-481, n147 El Paso received authorization to abandon a total of 12,000 compressor hp at the Driver Station. n148

n145 31 FPC 425 (1964).

n146 46 FPC 811 (1971).

n147 4 FERC P61,169 (1977).

n148 In 1986, due to a rearrangement of certain gas supply facilities, El Paso needed greater compression at the Driver Station in order to accept additional gas supplies into the Midkiff System. Accordingly, under its blanket certificate in Docket No. CP82-435, as reported to the Commission by letter dated April 27, 1987, El Paso reconnected 2,000 hp of compression at its Driver Station.

El Paso states that it is continuing its transition from being primarily a gas merchant to being a major gas transporter. Similarly, many of the producers with gas in the Midkiff System have chosen to abandon their sales to El Paso and now sell gas directly to others. Currently, [\*175] approximately 45 percent of the total 41,000 Mcfd of residue gas available at the outlet of the Midkiff Plant is dedicated to El Paso's system supply. The remaining 55 percent of such residue gas is transported by El Paso to various delivery points on its system. El Paso states that the precipitous decline in gas supply historically available on the Midkiff System has caused the unit cost for gathering and processing gas to increase dramatically. The unit cost for gathering and processing the Midkiff production was \$0.19 per dekatherm (Dt) in 1985. In contrast, the unit cost for the twelve months ending December 1988 had almost quadrupled to \$0.71 per Dt. Even though El Paso's Midkiff area purchases for system supply as a percentage of total Midkiff availability have substantially declined, El Paso states that the entire cost of the Midkiff system remains in El Paso's cost of service. c. Interventions After due notice by publication in the Federal Register on July 14, 1989 (54 Fed. Reg. 30,920), timely motions to intervene were filed in Docket No. CP89-1722-000 by ARCO Oil and Gas Company, Division of Atlantic Richfield Company and ARCO Natural Gas [\*176] Marketing, Inc., Hunt Oil Company, Phillips Petroleum Company, Public Utilities Commission of the State of California, Southwest Gas Corporation and Western Gas Processors, Ltd. The Gas Company of New Mexico, a division of Public Service Company of New Mexico (GCNM) intervened out of time. n149 Pacific Gas and Electric Company (PG&E) protested the application and requested a technical conference.

n149 For good cause shown we will grant GCNM's motion.

PG&E submits that a technical conference should be convened to determine whether a hearing should be held in this matter. PG&E maintains that the information available at this time is insufficient to fully analyze the implications of El Paso's abandonment application. PG&E asserts that the following issues warrant convening a technical conference: (a) the reasonableness of the price paid by Western Gas for the abandoned facilities; (b) whether the proposed abandonment would affect El Paso's ability to meet its service obligations to its customers; (c) the impact of the proposed abandonment on El Paso's rates particularly in light of El Paso's pending proposal in Docket No. RP88-44-000 in which it is seeking demand charge recovery [\*177] of certain costs associated with the abandoned facilities; and (d) the impact on El Paso's customers of the proposed gathering services to be provided by Western Gas. After due notice by publication in the Federal Register on August 2, 1989 (54 Fed. Reg. 33,597), timely motions to intervene were filed in Docket No. CP89-1718-000 by El Paso, the Public Service Company of Colorado, Western Gas Supply Company, and Cheyenne Light and Power Company. The motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. d. Discussion The Commission is of the view that El Paso's market requirements cannot justify the continued retention and operation of the Midkiff System. Further, El Paso no longer requires the assured access to gas supply provided by the Midkiff System due to the present and projected low demand for El Paso's system supply gas. These conditions will frustrate El Paso's goal of optimizing system operations. El Paso's current system operations are representative of the industry shift from system sales to transportation. After abandonment of the Midkiff System, El Paso will still have purchase obligations [\*178] for approximately 28,000 Mcfd of natural gas located in the Spraberry Field. The sale of the Midkiff System will not prevent El Paso from honoring its remaining contractual obligations in the gathering and processing services for El Paso's remaining gas in the Midkiff System. Western Gas has agreed to provide gathering and processing services for El Paso for its remaining gas in the Midkiff System. Further, Western Gas has also agreed to provide to El Paso gathering and processing services for all producers with supplies located in the Midkiff System. El Paso will not abandon any gas supply as a direct result of the abandonment of the Midkiff System. Furthermore, El Paso's ability to render existing natural gas service to its customers will not be impaired. The abandonment will require no changes in El Paso's FERC Gas Tariff and no significant change in its rates will result. Further, El Paso's customers will benefit in the future from a reduction in sales and transportation rates associated with the abandonment of these facilities. Accordingly, we find that the public convenience and necessity require authorization of the abandonment as requested. PG&E's protest is without [\*179] merit. The issues relating to the price paid for the subject facilities, the effect of the transfer of facilities of El Paso's rates, and El Paso's prospective ability to fulfill its service obligations require no technical conference/hearing to resolve. With respect to the overall effect on rates, El Paso states that its customers will benefit from a reduction in sales and transportation rates as a result of the sale of the facilities. In any event, the rate consequences of the transfer of facilities will be determined in El Paso's rate proceedings, including Docket No. RP88-44-000. Further, since no gas supplies are being abandoned by El Paso solely as a result of

the proposed conveyance of facilities, there will be no impact on El Paso's ability to continue serving its customers. We note that El Paso prepared its journal entries on the basis of Gas Plant Instruction No. 10 which deals with retirement of gas plants. The book cost less net salvage value of the depreciable gas plant is charged in its entirety to Account 108, Accumulated Provision of Depreciation of Gas Plant in Service. We will require El Paso to account for the sale of the Midkiff System as a sale of an operating [\*180] unit or system and record the sales in accordance with Gas Plant Instruction No. 5 and Account 102, Gas Plant Purchased Sold, of the Uniformed System of Accounts for Natural Gas Companies rather than as an abandonment of facilities. Approval of the abandonment would not be a major federal action having a significant effect on the quality of the human environment. Western Gas' Declaratory Order Applying the modified "primary function" test, as set at above, and the third-party transportation considerations articulated above, we conclude that the subject facilities perform primarily a gathering function. Accordingly, the facility is exempt from the Commission's NGA jurisdiction. The Midkiff system contains pipelines ranging in size from 2-3/8-inches to 30-inches in diameter. However, more than 90 percent of the lines (well-ties) are under 8-5/8-inches in diameter and connect approximately 1000 wells to the Midkiff Plant. Although some of the lines are of relatively large diameter, the size of these lines is a result of the large number of low-pressure tie lines and low pressure wells which have been connected in the area. These large diameter pipelines permit the low-pressure, [\*181] large volume delivery of gas into the Midkiff Plant. Each of the three compressor stations in the Midkiff System, Pembroke, Driver and Midkiff, is located behind the Midkiff Plant and each serves to solely bring low-pressure gas to a sufficient pressure for delivery into the processing plant. The Driver and Pembroke Stations compress gas arriving at approximately 15-17 psia to a pressure between 184-204 psia, which allows an increase in the suction pressure in the field gathering lines and enables delivery of the gas to the Midkiff Plant. Therefore, the compression is incidental to the gathering and processing of the gas and not intended for mainline transmission. Such compression is consistent with a primary function of gathering. The Midkiff Plant serves as the central point in the field where all gas from the Spraberry Field and other fields in the Permian Basin are commingled for measurement and delivery to El Paso at the tailgate of the plant. The location of wells along the facility are also indicative of a gathering function. The wells are directly tied into the entire length of the Midkiff System, with the exception of the relatively short lines interconnecting the Pembroke [\*182] and Driver Stations to the Midkiff Plant. The geographical configuration of the facilities resemble a gathering facility and not a mainline transmission facility. The field feeder and the well connection lines form a network-like arrangement and basically revolve around a central point, the Midkiff Plant. The gas is collected from the fields behind the plant and moved through the compressors which bump the pressure up enough to flow through the feeder lines and enter the plant. The operating pressure of the system is also typical of a gathering function. The gas from the low-pressure wells is compressed to approximately 200 psia in order to meet inlet suction pressure of the Midkiff Plant. Applying the several criteria of the modified "primary function" test, we find that the primary function of the facilities which are the subject of this proceeding is gathering and that these facilities are exempt from our NGA jurisdiction by operation of section 1(b) of the NGA. The Commission orders: (A) The petitions for declaratory order in Docket Nos. CP90-1083-000, CP90-804-000, CP90-504-000, CP90-466-000, CP90-215-000, CP89-2158-000, CP89-1514-000, CP89-1753-000, CP89-1718-000, CP89-1001-000, [\*183] CP89-468-000, CI489-420-000, CP89-1883-000, CP88-428-000, CP88-202-000 and CI89-421-000 are granted to the extent set out in the body of this order. (B) The abandonment authorizations applied for in Docket Nos. CP90-1084-000, CP90-466-000, CP89-1883-000, CP89-483-000, CP89-1722-000, CP89-1753-000, CP89-921-000 and CP88-244-000 are granted to the extent set out above. (C) The parties granted abandonment authority in Docket Nos. CP90-1084-000, CP90-466-000, CP89-1883-000, CP89-1753-000, CP89-483-000, CP89-1722-000, CP89-921-000 and CP88-244-000 shall notify the Commission of their abandonment within 10 days thereof. (D) The requests for rehearing in Docket Nos. CP89-428-001, CP89-692-001, CP88-202-001 and CI89-191-001 are granted to the extent set out in the body of this order. (E) For the reasons stated above, we find that the facilities of West Texas Gathering Company as set at in its petition in this Docket No. CP88-212-000 are nonjurisdictional gathering facilities under section 1(b) of the Natural Gas Act; and we hereby rescind certificates of public convenience and necessity authorizing the operation of these facilities as a Class A interstate pipeline. (F) Mitco's certificates [\*184] issued in Docket Nos. CP82-458, CP82-115 and CP82-442 are vacated. (G) The certificates authorizing the construction and operation of the facilities which are the subject of Docket No. CP90-466-000 are vacated to the extent that they apply to the subject facilities. (H) The orders issued in Docket Nos. CP88-428-000 and CP88-428-001, on December 22, 1988 and February 21, 1989, respectively, are vacated. (I) A certificate of public convenience and necessity is issued to El Paso in Docket No. CP90-1084-000 authorizing the operation of the Eunice-Keystone pipeline for transportation purposes. (J) The certificate issued by Ordering Paragraph (J) is conditioned upon El Paso's compliance with all applicable Commission regulations under the NGA including the general terms and conditions set forth in Part 154 and Ordering Paragraphs (A) and (E) of section 157.20 of the Commission's regulations. (K) The abandonment authorization granted to El Paso in Docket No. CP89-483-000 is conditioned upon El Paso's accounting for



the conveyance of the Terrell Facilities as a sale of an operating unit or system, resulting in a gain or loss on disposition of property to be charged to account 421.1 or 421.2 [\*185] respectively.(L) Columbia, in Docket No. CP88-202-001, is directed to continue to pay back its gas imbalance to National Fuel from any source acceptable to National Fuel under the same terms and conditions as the uncertificated exchange agreement between them. At such time as the exchange is in balance, Columbia and National may file for permission under section 7(b) of the NGA to abandon the exchange service.(M) For good cause shown, the motion filed by PG&E to intervene out-of-time in Docket No. CP88-244-000 is granted.(N) The request by PG&E and South West Gas for a technical conference in Docket No. CP88-244-000 is denied.(O) For good cause shown, the motion filed by ARCO Oil to intervene out-of-time in Docket No. CP90-1084-000 is granted.(P) The request by Southern Union for a technical conference in Docket No. CP90-1084-000 is denied.(Q) The certificates granted to Mitco in Docket No. CP80-458, CP82-115 and CP82-442 are rescinded to the extent that they apply to the facilities which are the subject of Docket No. CP89-1514-000.(R) The request for a technical conference filed by the Customer Group in Docket No. CP89-921-000 is denied.(S) For good cause shown, the motion [\*186] filed by GCNM, Fina and SoCal to intervene out-of-time in Docket No. CP89-468-000 are granted.(T) The request for a technical conference filed by PG&E and Southern Union in Docket No. CP89-483-000 are denied.(U) For good cause shown the motion filed by GCNM in Docket No. CP89-1722-000 is granted.(V) The abandonment authorization granted to El Paso in Docket No. CP89-1722-000 is conditioned upon El Paso's accounting for the sale of the Midkiff System as a sale of an operating unit of system and recording the sales in accordance with Gas Plant Instruction No. 5 and Account 102, Gas Plant Purchased/Sold, of the Uniform System of Accounts.(W) The request for a technical conference filed by PG&E in Docket No. CP89-1722-000 is denied.(X) The request of Panhandle for a technical conference in Docket No. CP89-800-000 is denied.(Y) The application for abandonment authorization filed by Panhandle in Docket No. CP89-800-000 is dismissed.(Z) The motion to intervene out-of-time filed by Phillips in Docket No. CP89-800-000 is granted.[SEE APPENDIX A IN ORIGINAL]Appendix BIntervention in Docket No. CP89-800-000Amoco Production CompanyBarrett Energy CompanyColorado Energy CompanyEast [\*187] Ohio Gas CompanyIndependent Petroleum Association of Mountain Statesand the Denver Julesbury Petroleum AssociationIndiana Gas CompanyKN Energy, Inc.Koch Hydrocarbon CompanyMacey & Mershan Oil, Inc.Martin Exploration Management Companyand Colorado Energy CompanyMGF Oil CorporationNatural Gas Pipeline Company of ColoradoPanhandle Customer GroupPrima Oil & Gas CompanyState of Colorado ex rel. The Public Utilities Commissionof the State of ColoradoSnyder Oil CompanyThermo Carbonic, Inc.Phillips 66 Natural Gas CompanyPublic Service Company of Coloradoand Western Gas Supply CompanyThompson Valley Gas, Inc.Union Pacific Resouces CompanyVessels Oil and Gas CompanyWindsor gas Processing

**APPENDIX:**

(SEE MAP IN ORIGINAL)