UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
102 FERC ¶ 61,339

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Caesar Oil Pipeline Company, LLC Docket No. OR03-2-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued March 28, 2003)

1. On December 6, 2002, Caesar Oil Pipeline Company, LLC (Caesar Company) filed a petition for declaratory order. Caesar is planning to construct an oil pipeline system (Caesar System) to provide transportation from the deepwater Gulf of Mexico to a receiving facility on the Outer Continental Shelf (OCS). The issue presented is whether an oil pipeline subject to the anti-discrimination provisions of Section 5 of the Outer Continental Shelf Lands Act (OCSLA)[1] may operate as a contract carrier. Caesar Company requests authorization to function as a contract carrier, hold an open season, enter into long-term transportation contracts reflecting contract carriage principles, give those contracts precedence in allocating capacity, and contract on a first-come, first-served basis for capacity that remains available after the open season closes. For the reasons discussed below, the Commission grants Caesar Company's petition. This order is in the public interest because it will enable Caesar Company to provide open and nondiscriminatory access to its transportation system that will both permit and encourage optimal development of oil production in the deepwater Gulf of Mexico.

Factual Background

2. The Caesar System is owned by Caesar Company, which is comprised of the Mardi Gras Transportation System, Inc. (Mardi Gras) (a subsidiary of BP America Inc.) (56%), BHP Billiton Petroleum (Deepwater) Inc. (25%), Shell Pipeline Company LP (15%), and Union Oil Company of California (4%).

3. The Caesar System is designed to transport oil from deepwater production facilities in the Green Canyon area of the deepwater Gulf of Mexico to a receiving

[1]43 U.S.C. § 1334(e)-(f) (2002).

20030328-3038 Issued by FERC OSEC 03/28/2003 in Docket#: OR03-2-000

facility at Ship Shoal 332 (SS 332). The Caesar System will also be available to provide transportation service to the Walker Ridge and Atwater Valley areas of the deepwater Gulf of Mexico. The Caesar System will provide transportation service to a portion of the Gulf of Mexico that at this time has little available transportation capacity on existing oil pipeline infrastructure. Once complete, the Caesar System will be the deepest large diameter oil pipeline in the world. The Caesar System will be the first oil pipeline at these water depths in the Gulf of Mexico. The Caesar System is anticipated to commence service in 2004.

4. The Caesar System will connect to three host production facilities (the Mad Dog production facility, the Atlantis production facility, and the Holstein facility), to be located in the deepwater Green Canyon area. The terminus of the Caesar System will be at SS 332, where the Caesar System will connect to the to-be-constructed Cameron Highway Oil Pipeline System. In addition to the Cameron Highway Oil Pipeline System, there will exist the potential for future connections with other oil pipelines at or near SS 332.

5. Initial production to be transported on the Caesar System is expected to come from the Holstein field, which is scheduled to commence production in mid-2004. Later in 2004 the Mad Dog field is scheduled to flow into the Caesar System. After 2004 the Atlantis field is scheduled to flow into the Caesar System. Both the Holstein and Mad Dog fields have estimated reserves of more than 300 million barrels of oil equivalent, and the Atlantis field has estimated reserves in excess of 500 million barrels of oil equivalent. The combined daily production capacity of these three initial fields is estimated to be more than 300,000 barrels of oil per day.

6. In addition to Holstein, Mad Dog, and Atlantis, Caesar Company anticipates that other oil fields yet to be discovered or developed could utilize the Caesar System. Based on the large number of active leases, existing producing fields, and leases with Exploration Plans and Development Operations Coordination Documents filed with the Minerals Management Service (MMS), it appears that the Green Canyon, Atwater Valley and Walker Ridge areas will be a prolific supply basin. The MMS estimates that 71 billion barrels of oil equivalent (boe) exist in this nation's Gulf of Mexico deepwater reserves and that less than one-quarter of those reserves has been discovered to date.

7. The Caesar System has been sized to serve not only the currently identified transportation requirements of the estimated proven reserves from the Holstein, Mad Dog and Atlantis fields, but also future discoveries in the Green Canyon, Walker Ridge and Atwater Valley areas of the deepwater Gulf of Mexico. While shipment of anticipated production from the Mad Dog, Holstein, and Atlantis fields required a 24-inch diameter

20030328-3038 Issued by FERC OSEC 03/28/2003 in Docket#: OR03-2-000

pipe, Caesar Company proposes to increase the diameter of the Caesar System's pipe to the maximum technologically feasible limit of 28 inches in order to have capacity available to transport volumes from additional developments in these areas of the deepwater Gulf of Mexico. The Caesar System is designed to transport approximately 450,000 barrels of oil per day.

8. Caesar Company will install three or four sub-sea access connection facilities on the Caesar System to allow future production facilities to connect to the Caesar System. Without these sub-sea access connection facilities future access would be limited to the existing production facilities at the extremity of the Caesar System, since hot tap techniques at these water depths have yet to be developed.

9. The Caesar System and the Holstein, Mad Dog, and Atlantis production fields and related facilities are among investments of more than $8 billion in the deepwater Gulf of Mexico being made by Mardi Gras, its producing affiliate, BP Exploration & Production, Inc., and their respective asset co-owners. The Caesar System alone is expected to cost in excess of $230 million.

10. Caesar Company states that an investment of this magnitude is the result of Caesar Company's affiliation with the Holstein, Mad Dog, and Atlantis producers, which allowed it to secure commitments for the transportation of production for the life of those fields. However, the Caesar System will need to attract producers of fields in addition to the Holstein, Mad Dog, and Atlantis fields to reach its full potential, and to encourage the Caesar Company investors and others to make investments in deepwater Gulf of Mexico pipelines in the future. The designed incremental capacity in the early life of the Caesar System and the freed capacity as the three initial fields decline will provide the Caesar System with the necessary transportation capacity to provide service to development projects in the Green Canyon, Atwater Valley, and Walker Ridge deepwater areas, as well as beyond.

Petition for Declaratory Order

Introduction

11. Caesar Company asks the Commission to authorize the Caesar System to function as a contract carrier, hold an open season, enter into long-term transportation contracts reflecting contract carriage principles, give those contracts precedence in allocating capacity, and contract on a first-come, first-served basis for capacity that remains available after the open season closes. Caesar Company intends to hold a formal open season in which it would offer firm life of lease contracts for transportation service on a

20030328-3038 Issued by FERC OSEC 03/28/2003 in Docket#: OR03-2-000

non-discriminatory basis, based on projected production profiles. The open season process for the Caesar System would be patterned on the open season process utilized by jurisdictional interstate natural gas pipelines. Capacity that remains available after the open season closes would be made available on a first-come, first-served basis. The capacity priorities on the Caesar System would be consistent with these contractual commitments.

12. The long-term transportation contracts proposed by Caesar Company would provide that when a shipper under contract is faced with short-term upswings in production regarding dedicated acreage, the shipper would be able to secure transportation for those additional volumes at the contractual tariff rate, provided there is capacity available on the Caesar System – capacity that could be available either as a result of uncontracted long-term capacity or short-term production cutbacks from other shippers.

Jurisdictional and Procedural Issues

13. Caesar Company states that the Caesar System will transport oil from the Holstein, Mad Dog, and Atlantis production facilities to a receiving facility at SS 332. Caesar Company states that the Caesar System's origin and destination points are in the OCS. Caesar Company states that the Commission has held that inasmuch as the OCS is not a State or Territory of the United States, the OCS does not come within the ICA's jurisdictional language and, thus, the ICA "does not expressly cover pipelines transporting oil solely on or across the OCS."[2]

14. Caesar Company states that consideration of a petition for declaratory order is within the Commission's discretion.[3] Caesar Company states that Section 554(e) of the Administrative Procedure Act provides that an agency in its sound discretion may issue a declaratory order to terminate a controversy or remove uncertainty.[4] Caesar Company states that specifically with regard to the anti-discrimination provisions of the OCSLA, the federal courts characterized the Commission's granting of a petition for declaratory

---

[2]Citing, Bonito Pipe Line Co., 61 FERC ¶ 61,050, at 61,221 (1992); Oxy Pipeline, Inc., 61 FERC ¶ 61,051, at 61,227-28 (1992). See also Ultramar, Inc. v. Gaviota Terminal Co., 80 FERC ¶ 61,201, at 61,810 (1997)

[3]Citing, Express Pipeline Partnership, 76 FERC ¶ 61,245, at 62,253 (1996); Phillips Petroleum Co. and Marathon Oil Co., 58 FERC ¶ 61,290, at 61,932 (1992).

[4]Citing, Express Pipeline Partnership, 76 FERC at 62,253 (1996).

20030328-3038 Issued by FERC OSEC 03/28/2003 in Docket#: OR03-2-000

order in order to enforce Sections 1334(e) and 1334(f)(1)(A) as a "remedy" within the scope of Commission's discretionary power.[5]

15. Caesar Company states that Commission precedent supports use of the declaratory order mechanism for advance approval to confer certainty where uncertainty would otherwise persist with respect to oil pipelines to be constructed. Caesar Company states that the Commission has employed this regulatory tool in several similar cases involving the need for regulatory certainty for proposed construction of pipeline facilities and should do so here.[6]

Interpretation of Section 5 of the OCSLA

16. Caesar Company states that it filed its petition in order to negate any potential that the Caesar System might be required to allocate on a common-carrier, pro rata basis due to the nondiscrimination language of Section 5(e) of the OCSLA, 43 U.S.C. § 1334(e), which requires transportation in such proportionate amounts as the Federal Energy Regulatory Commission may determine to be reasonable. Caesar Company states that slightly different language prohibiting discrimination appears in Section 5(f) of the OCSLA, 43 U.S.C. § 1334(f)(1)(A), although it does not specifically refer to "proportionate" takings.

17. Caesar Company states that in Order No. 509[7] the Commission determined that it was not required to and would not require interstate gas pipelines to prorate capacity. Instead it would allow shippers with firm contracts to have precedence over shippers without firm contracts. Caesar Company states that the Commission held that (1) "it can and should implement the nondiscriminatory access mandate in Section 5 of the OCSLA without generically imposing, by rule, a pro rata allocation scheme on all OCS

---

[5]Citing, Chevron U.S.A., Inc. v. FERC, 193 F.Supp.2d 54, 72 (D.D.C. 2002); Shell Oil Co. v. FERC, 47 F.3d 1186, 1200 (D.C. Cir. 1995); ICC v. American Trucking Assoc., Inc., 467 U.S. 354 (1984).

[6]See Express Pipeline Partnership, 76 FERC ¶ 61,245 (1996), order on reh'g, 77 FERC ¶ 61,188 (1996); Colonial Pipeline Co., 89 FERC ¶ 61,095 (1999); Plantation Pipeline Co., 98 FERC ¶ 61,219 (2002).

[7]Citing Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Gas Pipelines on the Outer Continental Shelf, FERC Stats. & Regs. ¶ 30,842 (Dec. 9, 1998).

20030328-3038 Issued by FERC OSEC 03/28/2003 in Docket#: OR03-2-000

pipelines," and (2) it has authority to permit contract carriage in implementing the nondiscriminatory access mandate of Section 5 of the OCSLA.[8]

18. Caesar states that it is the ICA – not the OCSLA – which imposes a common carrier obligation on oil pipelines and thus subjects them to prorationing. Since the ICA is not applicable in this instance, there is no legal requirement that a new oil pipeline should be less entitled to contract carriage than a new gas pipeline. Accordingly, the Commission's determination in Order No. 509 that pro rata allocation is not required and that contract carriage and capacity allocation based on contractual entitlements are permissible under the OCSLA applies equally to oil and gas pipelines subject to the OCSLA.

19. Caesar Company states that the Commission in Bonito Pipe Line stated, "there is nothing in the legislative history of the OCSLA that persuades us that the nondiscrimination provisions of that act were intended to apply to oil pipelines in a different fashion than they apply to natural gas pipelines."[9] The Commission in Bonito further stated that Order No. 509's analysis regarding the OCSLA's anti-discrimination provisions applies with equal force to OCS oil pipelines.[10]

Public Policy Arguments

20. Caesar Company states that investing in deepwater production facilities in the Green Canyon, Walker Ridge, and Atwater Valley deepwater Gulf of Mexico areas, and elsewhere, entails substantial risk, which discourages production and development projects. Caesar Company asserts that contract carriage can significantly reduce much of this risk, thus promoting deepwater development.

21. Caesar Company submits that its proposal for contract carriage meets the transportation security needs of both initial field developers and prospective subsequent field developers looking for transportation, thus encouraging development of production in the deepwater Gulf of Mexico. Due to its massive investment in the Caesar System, it is imperative to Caesar Company that the Green Canyon, Walker Ridge and Atwater Valley areas be developed so that the Caesar System will be fully utilized. Accordingly, Caesar argues that the large investment in the Caesar System has sent the signal to

---

[8] Citing Order No. 509 at 31,272-3 and 31,279.

[9] Bonito Pipe Line Co., 61 FERC ¶ 61,050, at 61,221 (1992).

[10] Id. at 61,220-21.

20030328-3038 Issued by FERC OSEC 03/28/2003 in Docket#: OR03-2-000

producers that the Caesar System has every incentive to provide reliable transportation service.

22. Caesar Company contends that insecurity in the availability of transportation for a field's production amplifies the downside risk of an investment in deepwater production facilities and discourages investment. Caesar submits that contract carriage alleviates this risk by providing security of transportation for the life of the lease to field owners contracting with the Caesar System. In contrast, pro rata allocation would not provide security of transportation, since under pro rata allocation latecomers for a fully subscribed pipeline system have the potential to push existing shipper volumes off the pipeline. Accordingly, Caesar Company argues that the likely results of pro rata allocation will be that (1) certain investments in development of the deepwater Gulf of Mexico will not be undertaken and (2) common carriage will create incentives for wasteful overbuilding of transportation facilities as insurance against being pushed off the Caesar System due to prorationing.

23. Caesar Company states that the Caesar System will be built to the maximum size that is technologically feasible with currently existing equipment, thereby taking advantage of economies of scale in pipeline construction. Caesar Company points out that importantly, the Caesar System is being designed to provide for sub-sea connection facilities in order to allow future sources of production to connect to the Caesar System.

24. Caesar Company submits that firm contract carriage will encourage all shippers to take advantage of the economies of scale inherent in the Caesar System before shippers choose to build additional field-specific deepwater pipelines. Caesar Company contends that contract carriage ensures efficient utilization of the Caesar System and avoids wasteful duplication of facilities. Caesar Company states that maximum use of the Caesar System is also encouraged by the fact that the firm transportation contracts will provide flexibility for a shipper to secure shipment of additional volumes from dedicated acreage at the contractual tariff rate, when capacity is available.

25. Caesar Company submits that under the contract carriage proposal, until the Caesar System is full, the economy's needs are being met with the existing pipeline infrastructure. At the time the Caesar System begins to fill up, the contract carriage arrangement will send the signal that additional pipeline capacity needs to be built. Under the pro rata allocation, on the other hand, the signal to build additional pipelines gets sent too early (e.g., due to the prospect of prorationing, producers construct pipelines to serve their isolated fields as insurance against being pushed off the Caesar System rather than utilize the existing and available Caesar System), or too late (e.g., due to prorationing, producers that invested in oil field developments in reliance upon shipment

20030328-3038 Issued by FERC OSEC 03/28/2003 in Docket#: OR03-2-000

on the Caesar System find their oil production shut out from transportation when latecomer shippers to the Caesar System bump such earlier producers' production off the pipeline), making the pro rata alternative for organizing deepwater pipeline systems a more costly one to the nation's economy.

26. Caesar Company states that contract carriage will provide Caesar Company with the assurance that the Caesar System will be fully utilized, thus furnishing Caesar Company with appropriate incentives to build and expand with both current and potential future volumes (including known developments and anticipated future developments) in mind. According to Caesar Company, building pipelines with prudent quantities of additional capacity, as Caesar Company plans to do, maximizes the use of the transportation system's resources, as the available capacity will force the company to compete for transportation contracts for newly developed fields (such as in Caesar Company's case, fields to be developed in the Green Canyon, Walker Ridge, and Atwater Valley areas).

27. Caesar Company argues that pro rata allocation would provide a latecomer shipper who seeks shipment on a pipeline that is fully subscribed with the opportunity to "free-ride" on the initial investment and risk-taking of earlier shippers who contracted to use the pipeline system. Caesar Company contends that access to an already-built common carriage system is an attractive option for a latecomer's transportation needs, as the latecomer knows that it can ship some, if not all, of its production by bumping production currently being shipped by earlier shippers.

28. Caesar Company argues that while this "bumping" option is attractive to a latecomer, it imposes costs and risks on shippers already utilizing a system like the Caesar System, thus discouraging development of the deepwater Gulf of Mexico. Given that the latecomer is the marginal buyer of transportation services, it is appropriate that the latecomer, not the earlier shippers, (1) bear the risk of a lack of transportation on the Caesar System should the Caesar System become fully subscribed and (2) consequently, bear the burden of coordinating the construction of a new pipeline system that will serve the transportation needs of the latecomer's field and other latecomers' fields that will require a new pipeline system if the Caesar System is fully subscribed.

Request for Expedited Action

29. As part of their planning for initial production when the Caesar System commences service in 2004 (as currently scheduled), Caesar Company and the shippers to be served by the Caesar System at start-up would like to have in place transportation agreements reflecting contract carriage principles and be confident that those agreements

20030328-3038 Issued by FERC OSEC 03/28/2003 in Docket#: OR03-2-000

are mutually binding and enforceable. Caesar Company states that the uncertainty regarding the applicability of contract carriage makes this impossible. Moreover, in order for the Caesar System to be fully utilized, Caesar Company must obtain future transportation commitments from current and prospective producers in the applicable areas, who are at this time assessing (1) whether they should pursue development of oil field production opportunities in the applicable deepwater Gulf of Mexico areas, (2) whether the Caesar System will be able to meet their requirements for transportation of production, and (3) whether they must construct their own isolated oil pipelines to serve their production fields. Accordingly, Caesar Company requests that the Commission issue an expedited decision on this petition no later than the end of March 2003.

Public Notice and Interventions

30. Public notice of the filing was issued on December 13, 2002. Interventions and protests were due by January 10, 2003. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2001)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or comments were filed.

Discussion

31. At the outset, the Commission finds that Caesar Company's petition is appropriately analyzed under the OCSLA rather than the ICA since the Commission has found that "[i]t is clear that the ICA does not expressly cover pipelines transporting oil solely on or across the OCS."[11]

32. Section 554(c) of the Administrative Procedure Act provides that an agency in its sound discretion may issue a declaratory order to terminate a controversy or remove uncertainty.[12] Rule 207 of the Commission's Rules of Practice and Procedure provides that a person must file a petition when seeking a declaratory order.[13] The rule does not include any requirement that a person have "standing" before filing a petition for a

---

[11] Bonito Pipe Line Company, 61 FERC ¶ 61,050 at 61,221 (1992).

[12] 5 U.S.C. § 554(c) (1988).

[13] 18 C.F.R. § 385.207 (2002)

20030328-3038 Issued by FERC OSEC 03/28/2003 in Docket#: OR03-2-000

declaratory order. Thus, whether to consider providing declaratory relief under this provision is discretionary with the Commission.[14]

33. The Commission finds, in the exercise of its discretion, that, as a general matter, in order to provide definitive guidance for all interested parties, it would be appropriate to address the issues raised by Caesar Company in the context of a declaratory order proceeding. It is better to address these issues in advance of an actual tariff filing rather than to defer until the rate filing is made, when the decisionmaking process would be constrained by the deadlines inherent in the statutory filing procedures. The public interest is better served by a review of the issues presented before a filing to put the rates into effect. Further, because of the importance of developing oil production in the deepwater Gulf of Mexico to the nation's economy, and the magnitude of the financial commitments that will be made by the Caesar Company, the Commission finds that it is appropriate to exercise its discretion to provide declaratory relief in order to provide certainty to Caesar Company and all other interested parties.

34. Whether an oil pipeline subject to the anti-discrimination provisions of Section 5 of the OCSLA may operate as a contract carrier is an issue of first impression for the Commission. However, the Commission finds that an analysis of the relevant cases interpreting Section 5 of the OCSLA supports the relief requested by Caesar Company. Section 5(e) of the OCSLA gives the Commission certain responsibilities on the OCS by providing that every right-of-way on the OCS be granted:

> [U]pon the express condition that oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas, produced from submerged lands or outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.

Further, Section 5(f) of the OCSLA states in part:

---

[14] See, e.g., Phillips Petroleum Company and Marathon Oil Company, 58 FERC ¶ 61,290 (1992); and Longhorn Partners Pipeline, 73 FERC ¶ 61,355 (1995).

20030328-3038 Issued by FERC OSEC 03/28/2003 in Docket#: OR03-2-000

> (f)(1) Except as provided in paragraph (2) every permit, license, easement, right-of-way, or other grant of authority for the transportation by pipeline on or across the outer Continental Shelf of oil or gas shall require that the pipeline be operated in accordance with the following competitive principals:
>
> > (A) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers.

35. In Order No. 509, which interpreted Section 5 of the OCSLA and issued regulations with respect to natural gas pipelines, the Commission found that pro rata allocation was not required for natural gas pipelines in the OCS. The order stated:

> [T]he Commission has concluded that it can and should implement the nondiscriminatory access mandate in section 5 of the OCSLA without generically imposing, by rule, a pro rata allocation scheme on all OCS pipelines. We believe that it may well be possible to remedy the problems of access on the OCS through less sweeping regulatory access, as discussed below. If, however, access problems on the OCS continue to exist as OCS pipelines implement the requirements of this rule, the Commission will not hesitate to consider pro rata allocation of capacity on a case-specific basis, taking into account the specific factual context in which such problems arise.[15]

36. In Order No. 509, the Commission recognized that the language of Section 5(f) was different than that in Section 5(e). The Commission stated that it could not implement Section 5 of the OCSLA as if the adoption of the "open and nondiscriminatory access" language in Section (f) added nothing to the general nondiscrimination provisions of Section 5(e). The Commission found that the open-access requirement of Section 5(f) was satisfied by the Commission issuing blanket certificates to OCS gas pipelines that contained a nondiscriminatory access provision that was the same as the condition imposed on onshore pipelines through Order Nos. 436 and 500. The order also recognized that Section 5(f) also did not require pro rata allocation. The Commission cited the Attorney General's comments which stated:

> While the FERC's authority to determine what "proportionate amounts" of gas must be transported is broad enough to allow the FERC to require

---

[15]Order No. 509 at 31,273.

20030328-3038 Issued by FERC OSEC 03/28/2003 in Docket#: OR03-2-000

> proration, it does not necessarily mean that proration is required by section 5(e) in all cases. To the contrary, the debate on section 5(f), which was added in 1978, indicates that both proration and first-come, first-served were considered to be possible means of allocation under the statute. See, e.g., 123 Cong. Rec. S. 23, 257 (July 15, 1977) (statements of Sen. McClure and Sen. Johnston). The Department thus believes the FERC's authority is broad enough to require proration of capacity on OCS pipelines, but such allocation system is not compelled by the statute.[16]

This interpretation of Section 5 of the OCSLA applies to oil pipelines in the OCS. In Bonito Pipe Line Company, 61 FERC ¶ 61,050 at 61,221 (1992) the Commission determined "that there is nothing in the legislative history of the OCSLA that persuades us that the nondiscrimination provisions of that act were intended to apply to oil pipelines in a different fashion than they apply to natural gas pipelines."

37. The Commission finds that Caesar Company's contract carriage proposal is supported by applicable legal precedent. In addition, the Commission finds that granting Caesar Company's petition is appropriate for a number of public policy reasons. As Caesar points out, the deepwater Gulf of Mexico is potentially a significant source of oil production. However, because of the technology required to develop production and pipelines in this location, significant investments are required. Producers and pipelines are unlikely to make financial commitments without adequate assurance that their investments can be recouped. In the Commission's view, contract carriage will provide this assurance. Caesar Company will be guaranteed that certain supplies of oil will be shipped on its pipeline and producers will have the security of knowing that they have an outlet for their production. The Commission further believes that Caesar Company's contract carriage proposal along with its intention to build its pipeline up to the capacity technologically feasible in order to accommodate future production will send the appropriate economic signals to encourage development in the deepwater Gulf of Mexico.

38. The Commission's issuance of a declaratory order in this proceeding is based on the facts and circumstances presented by the petition. If any of the facts supporting this petition were to change significantly, Caesar Company should make a filing with the Commission to determine whether the ruling here would still be applicable. Moreover, the issuance of a declaratory order here does not relieve the Commission of its responsibility under Section 5 of the OCSLA to investigate claims of discriminatory

---

[16] Order No. 509 at 31,282.

20030328-3038 Issued by FERC OSEC 03/28/2003 in Docket#: OR03-2-000

behavior made in a future complaint. In the event the Commission found that Caesar Company was engaging in discriminatory conduct in the future, the Commission would have the authority under Section 5 of the OCSLA and Order No. 509 to impose the appropriate remedies.

The Commission orders:

Caesar Company's petition for declaratory order is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.