



United States Department of the Interior

MINERALS MANAGEMENT SERVICE

Washington, DC 20240

NOV 24 1998

Dear Payor:

This letter is to inform you of changes in the procedures for obtaining approval from Minerals Management Service (MMS) for the use of Federal Energy Regulatory Commission (FERC) tariffs in lieu of actual costs for transporting oil production on or across the Outer Continental Shelf (OCS). Prior to January 1, 1993, if you filed a tariff with FERC and requested an exception from MMS to use the tariff instead of your actual costs as a transportation allowance, MMS reviewed the tariff, and, in most cases, accepted it as the transportation rate for non-arm's-length movement.

Federal regulations establish the procedures to determine transportation allowances. Title 30 CFR § 206.105(b)(5) (1998) states:

A lessee may apply to the MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. The MMS will grant the exception only if the lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission [Emphasis added.]

The intent of this regulation is to make clear that if FERC has already affirmatively and demonstrably approved transportation costs for a given pipeline, it is not necessary for MMS to duplicate that effort. In some instances, FERC has affirmatively and demonstrably renounced jurisdiction over certain OCS pipelines. (See Oxy Pipeline, Inc., 61 FERC ¶ 61,051 (1992) (Oxy); Ultramar, Inc. v. Gaviota Terminal Company, 80 FERC ¶ 61,201 (1997); Bonito Pipeline Company, 61 FERC ¶ 61,050 (1992), aff'd syb nom., Shell Oil Co. v. FERC, 46 F.3d 1186 (D.C. Cir. 1995).)

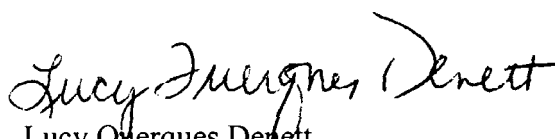
Beginning with January 1993, based on the Oxy decision cited above, MMS began to deny requests for approving FERC tariffs in lieu of actual costs for non-arm's-length OCS oil transportation allowances. None of the exception requests we have received have provided evidence that FERC made an affirmative determination that the movement was interstate and it thus had jurisdiction. Accordingly, MMS will deny your request for approval to use FERC tariffs in lieu of computing actual costs until you petition FERC under 18 CFR § 385.207(a)(2)(1997),

Upon MMS's receipt of such a determination, MMS will recognize the FERC tariff as the appropriate transportation allowance, subject to the requirements of 30 CFR § 206.105(b)(5). However, if all of your production is refined in an adjacent State and thus clearly moves only intrastate, MMS will deny the request to use a FERC tariff because FERC has already concluded it does not have jurisdiction in such cases.

Please note that we are not denying you a transportation allowance in less-than-arm's-length situations. We are only addressing the method of calculating the allowance for transporting offshore oil production. Where you do not have an arm's-length transportation contract, you must calculate your transportation allowances as prescribed at 30 CFR § 206.105(b). Note also that MMS still considers tariffs paid under arm's-length transportation contracts to represent actual costs and to be permissible as transportation allowances.

If you have any questions or need additional information, please call Mr. James P. Morris at (303) 275-7213.

Sincerely,


Lucy Querques Denett
Associate Director for
Royalty Management