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To: Rules Comments
Subject: RIN 1010-AD11
Subpart J Comments from Offshore Technical Compliance

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Offshore Technical Compliance would like to thank the Minerals Management Service (MMS) for conducting the workshop held on February 22, 2008, and extending the comment period for the proposed 30 CFR 250 subpart J to March 17, 2008. We found the workshop to be extremely informative. Our comments below are limited to pipeline ROW grants.

During the past year we have worked with several operators whose pipeline ROW grants have expired in accordance with the current regulations at 30 CFR 250.1014. This regulation states "Temporary cessation or suspension of pipeline operations shall not cause the grant to expire". When we contacted the MMS to determine the definition of temporary cessation, we were directed to the April 18, 1991, Letter to Lessees. In review of this LTL we found at number three 250.150(b), fourth paragraph, the following:

"An application to maintain a ROW grant in effect shall be submitted for approval to the Regional Supervisor, Field Operations if the associated ROW pipeline will not be used for the purpose for which the ROW grant was made for a period of more than 90 consecutive days".

In the proposed regulations at 30 CFR 250.1133, Temporary cessation of pipeline operations is defined as follows:

"Temporary cessation of pipeline operations means the use of a pipeline associated with a pipeline ROW grant for a purpose other than that for which the grant was made for a period of 180 consecutive calendar days or less".

We have two issues with the practice of expiring pipeline ROW grants. First, we cannot find the statutory citation authorizing pipeline expirations. The April 18, 1991, LTL does not reference the authority for this requirement. The US Code: Title 43, 1334(e) Pipeline rights-of-way: forfeiture of grant specifies the following:

"Failure to comply with the provisions of this section or the regulations and conditions prescribed under this section shall be grounds for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States district court having jurisdiction under the provisions of this subchapter".

The statutory language is clear and unambiguous in that the forfeiture of a ROW grant requires a judicial hearing in a United States district court. The April 18, 1991, LTL and the existing and proposed regulations violate this law by expiring ROW grants without the mandated judicial proceeding in a United States district court.

Also, US Code: Title 43, (a)(2)(A) addresses the cancellation of any lease or permit as follows:

“that such cancellation may occur at any time, if the Secretary determines, **after a hearing**, that-“

The practice of expiration of ROW grants based on a number of days out of service, **without a hearing**, also violates this paragraph of the statute.

Second, the wording used in the April 18, 1991, LTL, states the ROW grant will expire when the associated ROW pipeline will not be used for the purpose for which the ROW grant was made for a period of more than 90 consecutive days. The proposed rule states the ROW grant will expire when the use of a pipeline associated with a pipeline ROW grant for a purpose other than that for which the grant was made for a period of more than 180 consecutive days.

When a pipeline is out of service for one day, two days, thirty days, sixty days, two hundred days, a year, etc., the use for which the pipeline was approved and the purpose for which the pipeline ROW grant was issued has not changed. The use of that pipeline is to transport oil or gas. The purpose of that pipeline ROW grant is to provide a corridor for the pipeline that transports the oil or gas. If an operator were to submit a request to transport something other than oil or gas, then the use of the pipeline would change and the purpose of the ROW grant would change. Time is a dimension that is not related to changing the use of the pipeline (to transport oil or gas) or the purpose for which the ROW grant was approved (to provide a corridor for the pipeline that transports oil or gas). Pipeline inactivity does not equate to changing the approved use of the pipeline or the purpose of the ROW grant. Therefore, using a time period to expire a pipeline ROW grant is inappropriate.

Further, since the pipeline still physically exists when the ROW grant is deemed to have expired and normally has future utility, this is no more than a paperwork exercise requiring the submission of a new application for a pipeline ROW grant and processing fee. Had the operator requested an extension of the 90 day or proposed 180 day temporary cessation period, it normally would have been granted. There are separate requirements in subpart J that address the notification, integrity and safety concerns of out-of-service pipelines before they can be returned to service.

There appears to be no added value in expiring pipeline ROW grants or the statutory authority to do so. Additionally, we can see no meaningful purpose to the expiration of pipeline ROW grants until the pipeline is decommissioned. All that is being accomplished by the current expiration practice is the submission of additional unnecessary pipeline ROW applications and processing fees that further burden an MMS office that seemingly always has a backlog of work.

Also, the pipeline ROW grant expirations that clients are bringing to our office are almost entirely related to Hurricanes Katrina and Rita. The timeframes being quoted to operators to repair their pipelines, or to repair downstream pipeline segments affecting their properties after these hurricanes were constantly being extended to longer periods because of shortages of repair personnel, equipment, and materials resulting in many of these paperwork expirations. Some operators are even now receiving pipeline ROW expiration notifications for 90 day expirations that happened in the year 2005. Since MMS has been accepting the ROW rental fees during this entire time and MMS now says the pipeline ROW grant was expired effective December 2005, is MMS going to refund the rental fees for the period from December 2005 to present that operators have paid?

We sincerely appreciate the workshop that was held and the opportunity to comment on this proposed rule. We hope our comments have been helpful and thank you for your consideration of them.

Sincerely,

J. Michael Melancon, President
Offshore Technical Compliance LLC

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