Greenberg Traurig

Memorandum

TO: Antony Scott

CC: Donald C. Shepler

FROM: Kenneth M. Minesinger

DATE: March 28, 2007

RE: Producer-owned Pipelines

Introduction and Summary of Conclusions

This memorandum and the attached chart discuss (1) the number of producer-owned natural gas pipelines in the Lower 48 States, (2) the amount of firm capacity held by non-affiliates on producer-owned pipelines, and (3) pipeline expansion by producer-owned pipelines. As discussed herein, based on our review of materials available at FERC and other public sources of information, there are very few producer-owned pipelines in the Lower 48 States. Producer-owned pipelines are the exception, not the rule. Those that exist: (1) are relatively small -- either in terms of length, capacity, or both; (2) can generally be described as production-area "feeder" systems that only move gas to other interstate pipelines and are not engaged in the primary business of long-haul transportation to major end use markets; (3) generally do not ship, on a percentage basis, large volumes of third-party gas on a firm basis; and (4) sometimes ship significant quantities of gas on an interruptible basis. Of the small number of producer-owned pipelines that exist, we have been unable to find any examples of large-scale pipeline expansions.

Discussion

A threshold question is: what is a "producer-owned pipeline"? As used in this memorandum, a producer-owned pipeline is a natural gas pipeline that currently is *majority-owned* by a company whose primary business is the production of natural gas (and oil). Because we do not have access to the pipeline ownership agreements that define the rights of the various pipeline owners discussed herein, we have had to make certain assumptions about which parties actually control the pipeline. For example, we have assumed that a minority owner does not have the ability to veto a pipeline expansion, or engage in or otherwise control the day-to-day operation of the pipeline in which it holds a minority ownership interest. Although these assumptions were necessary due to the lack of available information, to the extent they are incorrect it is possible that other pipelines could be considered to be producer-owned pipelines. Given, however, the relatively small number of pipelines that can be considered to be producer-owned pipelines even under a broader definition of the term, we doubt that our conclusions would materially change even if we had access to more ownership and control information.

1. Producer-Owned Pipelines and Their Firm Shippers

As the attached chart shows, based on our research we have only found three pipelines that currently can be considered producer-owned pipelines as that term is defined herein, none of which provide direct access to major end use markets. Those pipelines are:

- **Chandeleur Pipeline Company:** Chandeleur is a small offshore pipeline in the Gulf of Mexico ("GOM") area, which was certificated in 1963 and is 100 percent owned by Chevron. Less than ten percent of Chandeleur's capacity of 331,000 Dth/day is held by third-party shippers. A Chevron affiliate holds about 13 percent of the firm capacity. The remainder of the pipeline's capacity is unsubscribed, and it appears that Chandeleur, like some other offshore pipelines, performs or has performed a significant amount of interruptible transportation business.[1] Chandeleur installed various pipeline looping facilities in 1968, and a lateral in 1985.[2] It also acquired the Mobile Area Gathering System in May 2004, which increased Chandeleur's capacity from 321,000 Dth/day to 331,000 Dth/day.[3]

- **Destin Pipeline Company**: Destin is a 1.2 Bcf/day, 255 mile pipeline that transports gas from receipt points in the GOM to onshore connections with various interstate pipelines in the Southeastern U.S. A BP affiliate owns 67 percent of Destin, while an affiliate of Enbridge (an independent pipeline) owns the remaining 33 percent. Less than half of Destin's capacity (approximately 41.5% percent) is held by third-party shippers. A BP affiliate holds approximately 170 MMcf/day of firm capacity. Destin was certificated by FERC in 1997.[4] FERC has never approved an expansion of the Destin system. Destin recently filed to abandon a significant portion of its capacity by a long-term lease to Gulf South Pipeline, an independent pipeline company.[5] Under the terms of the lease, Destin would lease approximately 20 percent of its capacity (260 MMcf/day) to Gulf South, which

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1 *Chandeleur Pipe Line Co*., 63 FERC ¶ 61,279, at 62,789 (1993) ("Currently, Chandeleur has two firm shippers on its system, Chevron and International Paper Company (International Paper). Chandeleur currently has 26 interruptible shippers.").

2 *See Chandeleur Pipe Line Co*., 42 FPC 20, at *6 (1969*); see also Chandeleur Pipe Line Co*., 39 FERC ¶ 62,054 (1987).

3 *See Chandeleur Pipe Line Co*., 107 FERC ¶ 61,162 (2004).

4 *See Destin Pipeline Co*., 79 FERC ¶ 61,395 (1997).

5 *See* Destin Pipeline Co., Abbreviated Application for Authorization to Abandon Firm Capacity by Lease, Docket No CP07-110-000, (filed March 16, 2007).

has the option of leasing up to 700 MMcf/day (almost 60 percent of Destin's capacity). Once FERC approves Destin's abandonment application, the capacity leased by Gulf South will be marketed by Gulf South and used by shippers on its interstate pipeline system.[6] For all practical purposes, the leased capacity will become Gulf South capacity for the ten-year term of the lease, which Gulf South can extend to twenty years.

- **Sabine Pipeline Company:** Sabine, which is wholly owned by Chevron, is another offshore GOM pipeline, with a capacity of approximately 1.35 Bcf/day. Very little -- less than 15 percent -- of the pipeline's capacity is under contract to firm shippers. As the attached chart reflects, a Sabine affiliate holds 45 MMcf/day, while non-affiliated shippers hold the remainder of the firm capacity under contract. The pipeline commenced service in 1966, but FERC has never approved an expansion of the line.

These are the only examples of current producer-owned pipelines that we have been able to find in a review of FERC orders, FERC filings, and other publicly available sources. To put this in perspective, none of the 20 largest interstate natural gas pipelines are producer owned, and those pipelines have system capacities ranging from approximately 2.5 to 8.5 Bcf/day of capacity and from 1,249 to 12,749 miles of pipe in the ground.[7] By comparison, the three producer-owned pipelines discussed above are relatively small, production-area "feeder" lines which do not provide direct access to major end use markets, in contrast to what one would normally consider a major interstate pipeline.

[6] *Id*. *See also* Abbreviated Application of Gulf South Pipeline Co., L.P., Docket No. CP07-105 (filed March 16, 2007).

[7] *See* Natural Gas Pipeline Systems Database (Energy Information Administration, April 24, 2006). Some of these pipeline companies may have production affiliates, but are generally considered in the industry to be in the primary business of transporting natural gas for others.

As noted above, our definition of a producer-owned pipeline excludes pipelines in which a producer holds a minority ownership interest, or pipelines that may have originally been owned by producers but are now owned by independent pipelines due to an intervening acquisition. Thus, the following are examples of pipelines that would *not* be considered producer-owned pipelines:

- **Rockies Express:** Although Conoco owns 24 percent of Rockies Express, Kinder Morgan and a Sempra affiliate own 51 and 25 percent, respectively, and the pipeline is being marketed by Kinder Morgan, which is considered in the industry to be an independent pipeline.[8] Thus, Rockies Express is basically considered to be a Kinder Morgan-driven project at the present time. Note that while a major Rockies producer, EnCana, owned the initial Entrega pipeline segment of what has become Rockies Express, EnCana is not a current owner of Rockies Express.[9]
- **Maritimes and Northeast:** Maritimes is a major, relatively new pipeline connecting reserves from the Sable Island region in Canada to Northeastern U.S. markets. An independent pipeline company, Spectra (recently spun-off from Duke Energy) owns more than 75 percent of Maritimes.[10] Exxon, which has an ownership interest in the Canadian gas production project connected to Maritimes, owns slightly less than 10 percent of the Maritimes pipeline.[11]

8 *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 3 (2006).

9 *Id*. at nn.1, 4.

10 *See* Spectra Energy's Website, available at: http://www.spectraenergy.com/businesses/us/facilities/maritimes/.

11 *Id*.

- **Alliance:** Although a group of 15 Canadian producers (and 2 non-producers) originally constructed the Alliance pipeline[12], Alliance is currently owned by an Enbridge affiliate and Fort Chicago Energy Partners.[13] Alliance is an example of a project that producers initially constructed and then divested to independent parties fairly soon after the pipeline commenced service. In this respect it is similar to Entrega, which again was launched by EnCana before being sold to Rockies Express.

In addition, we reviewed a list of six "producer-owned pipelines" that were identified by a presenter for the major Alaska producers at a hearing last summer before the Special Senate Committee on Natural Gas Development of the Alaska legislature. One of those pipelines, Destin, is discussed above and is still properly considered a producer-owned pipeline. Two of the pipelines, Garden Banks and Nautilus, were acquired from Shell by an independent pipeline company (Enbridge) in 2004 and thus are not producer-owned pipelines at the present time.[14] A fourth pipeline, Maritimes, is not properly considered a producer-owned system as explained above. The fifth pipeline, Discovery, is now owned by affiliates of two independent pipelines (Williams and Duke) and thus is no longer a producer-owned pipeline.[15] The sixth pipeline, Green Canyon, has been reclassified as a non-jurisdictional gathering facility and thus is no longer an interstate natural gas pipeline.[16]

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[12] *See Alliance Pipeline L.P.*, 80 FERC ¶ 61,149, at 61,590 (1997).

[13] *See* Alliance Pipeline's website, available at: http://www.alliance-pipeline.com/inside.jsp?cid1=1&cid2=17.

[14] *See Garden Banks Gas Pipeline, LLC*, 113 FERC ¶ 61,132, at P 3 (2005); *Nautilus Pipeline Co.*, 117 FERC ¶ 61,259, at P 2 (2006).

[15] *See Jupiter Energy Corp.*, 115 FERC ¶ 61,317, at P 47 (2006).

[16] *See Green Canyon Pipe Line Co.*, 59 FERC ¶ 61,109 (1992).

2. Expansions of Producer-Owned Pipelines

Finally, an important issue in the Alaska pipeline debate is whether a producer-owned pipeline would have the same incentive to expand as an independent pipeline. In a prior memorandum addressing recent antitrust and FERC case law involving vertical market power issues, we concluded that antitrust theory and related authorities strongly suggest that a producer-owned pipeline would have less incentive than an independent pipeline to expand to ship third-party gas. In preparing the instant memorandum, we analyzed this issue from a different perspective. Namely, we reviewed FERC orders and other publicly available materials for evidence of expansions by producer-owned pipelines.

As discussed above, none of the producer-owned pipelines on the attached chart has engaged in a major expansion. To be fair, we could only find three examples of producer-owned pipelines, which makes it more difficult to find evidence of expansions of those pipelines. Nevertheless, the fact that we were unable to find evidence of major expansions by producer-owned pipelines tends to confirm the conclusion from our prior memorandum.

A recent presentation by FERC Staff also reflects the absence of significant expansions of producer-owned pipelines. We have attached slides from that presentation, which list major new pipeline expansion projects in the U.S., including expansions by Guardian, Gulf South, Kinder Morgan, Rockies Express, Transcontinental Gas Pipeline, Transwestern, and Wyoming Interstate.[17] Not a single one of the expansion projects listed on FERC's "Pre-Filing" slide is being constructed by one of the major producers of natural gas.

[17] Jeff C. Wright, FERC Office of Energy Projects, Slide Presentation, Energy Bar Association Annual Meeting, "FERC Perspective on Gas Infrastructure", page 2 (April 27, 2006).

Producer-owned Pipeline Chart

Name of Pipeline	Producer Owner (and percentage ownership)	Total Capacity (and length)[1]	Third-Party Shippers (capacity in Mcf)[2]	Certification and In-Service Dates	Expansion	Capacity Held by Affiliate (amount in Mcf)[3]
Chandeleur Pipeline Company	Chevron Corp. (100%)[4]	331,000 Dth/day (79.9 mile mainline, 82.3 mile "looping" line and 11.3 mile lateral line)[5]	Callon Petroleum (17,500)	Certificate date: December 1963[6] Main line In-service 1964; Loop in-service 1968; Lateral in-service in 1985[7]	Expanded from initial capacity by adding looping mainline[8]; Recently expanded from 321,000 Dth/d to 331,000 Dth/day by acquiring Mobile Area Gathering System in May 2004[9]	Chevron USA (43,000)
Destin Pipeline Co.	BP (Amoco Destin Pipeline Co. (67%) *33% owned by Enbridge Offshore, LLC[10]	1.2 Bcf (255 miles)[11]	Chevron USA (60,000) Murphy Gas Gather. (13,875) Dominion Explor. (81,532) Mariner Energy (21,150) Newfield Explr. Co. (23,500) Hydo Gulf of Mex. (7,250) ExxonMobil Corp (87,368) W&T Offshore (2,000) Shell Offshore (183,750) Apache Corp. (9,200) OXY USA, Inc (8,309)	Certificate Date: June 1997; In-service Date September 1998[12]	No expansions Note: Gulf South filed application to lease 260,000 Mcf/d from Destin on March 16, 2007[13]	BP America Production Co. (169,750)
Sabine Pipeline Co.	Chevron Corp. (100%)[14]	1.348 Bcf (131 miles)[15]	BP Energy Co. (11,000) ConocoPhillips (5,000) Coral Energy Res. (20,000) Duke Energy Field Srvs. Mkt. (30,000) Murphy Gas Gathering (20,000) Sequent Energy Mgt. (30,000)	Certificate Date: 1964[16] In Service as of 1966 as Cost-of-Service pipeline; 1987 as Open Access pipeline[17]	No expansions	Bridgeline Gas Marketing (45,000)

[1] Sources include Federal Energy Regulatory Commission ("FERC") orders and company websites.

[2] Data concerning third-party shippers and capacity held was taken from pipeline's most recent Index of Customers report (reports for first quarter of 2007). Capacity amounts listed represent an aggregate of the capacity for the contracts held by the third-party shipper when the shipper holds more than one contract.

[3] Capacity amounts taken from pipeline's most recent Index of Customers report (reports for first quarter of 2007).

[4] *See* Chandeleur Pipe Line Co., Abbreviated Application for Certificate of Public Convenience and Necessity, Exhibit D, Docket No. CP04-48-000 (filed December 19, 2003).

[5] *See* Chandeleur Pipe Line Co. Abbreviated Application for Amendment of Certificate, at p. 2, Docket No. CP94-233-000 (filed February 14, 1994).

[6] *See Chandeleur Pipe Line Co*., 30 FPC 1515 (1963).

[7] *See* Chandeleur Pipe Line Co. Abbreviated Application for Amendment of Certificate, at p. 2, Docket No. CP94-233-000 (filed February 14, 1994), *citing* 42 FPC 20 (1969) (certificate order for looping mainline), 39 FERC ¶ 62,054 (1987) (certificate order for lateral line).

[8] *Chandeleur Pipe Line Co*., 42 FPC 20 (1969).

[9] *Chandeleur Pipe Line Co*., 107 FERC ¶ 61,162 (2004).

[10] Information available at Destin Pipeline Company's homepage: http://www.destinpipeline.com/.

[11] Information available at Destin Pipeline Company's homepage: http://www.destinpipeline.com/.

[12] *See Destin Pipeline Co*., 79 FERC ¶ 61,395 (1997); *see also* Destin Pipeline Company's homepage at: http://www.destinpipeline.com/.

[13] *See* Destin Pipeline Co., Abbreviated Application for Authorization to Abandon Firm Capacity by Lease, Docket No CP07-110-000, (filed March 16, 2007); *see also* Application of Gulf South Pipeline Co., L.P., Docket No. CP07-105 (filed March 16, 2007).

[14] Information available at Sabine Pipe Line Company's homepage: http://www.sabinepipeline.com/public/public_frame.asp.

[15] *See* Chevron Press Release issued November 8, 2005, *available at*: http://investor.chevron.com/phoenix.zhtml?c=130102&p=irol-newsArticle&ID=780200&highlight=.

[16] *Sabine Pipe Line Co*., 31 FPC 696 (1964).

[17] Information available at Sabine Pipe Line Company's website, "History of Sabine": http://www.sabinepipeline.com/public/public_frame.asp.

FERC Presentation Slides

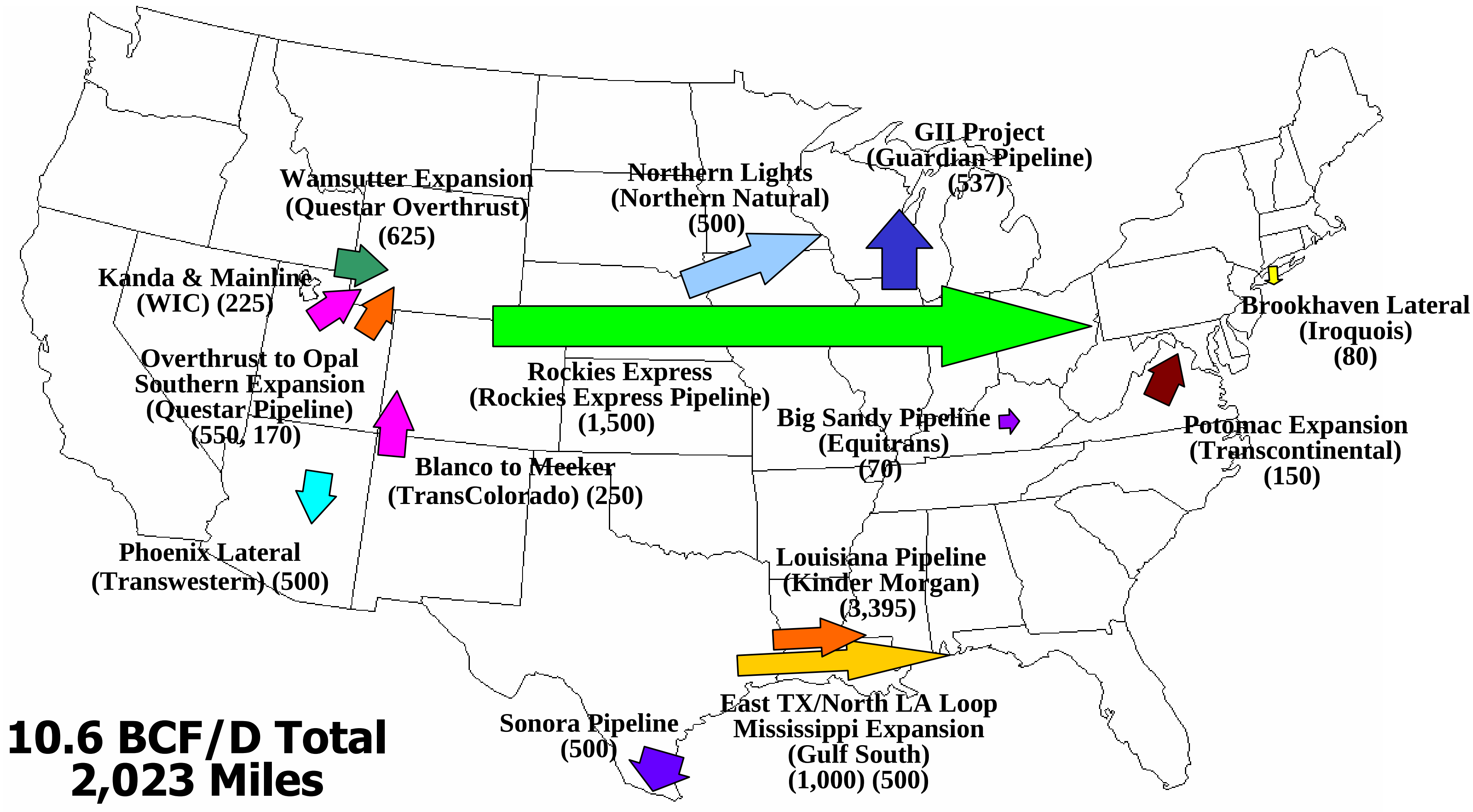
FERC PERSPECTIVE ON GAS INFRASTRUCTURE

Energy Bar Association
Annual Meeting
April 27, 2006

Jeff C. Wright, Chief
Energy Infrastructure Policy Group
Office of Energy Projects

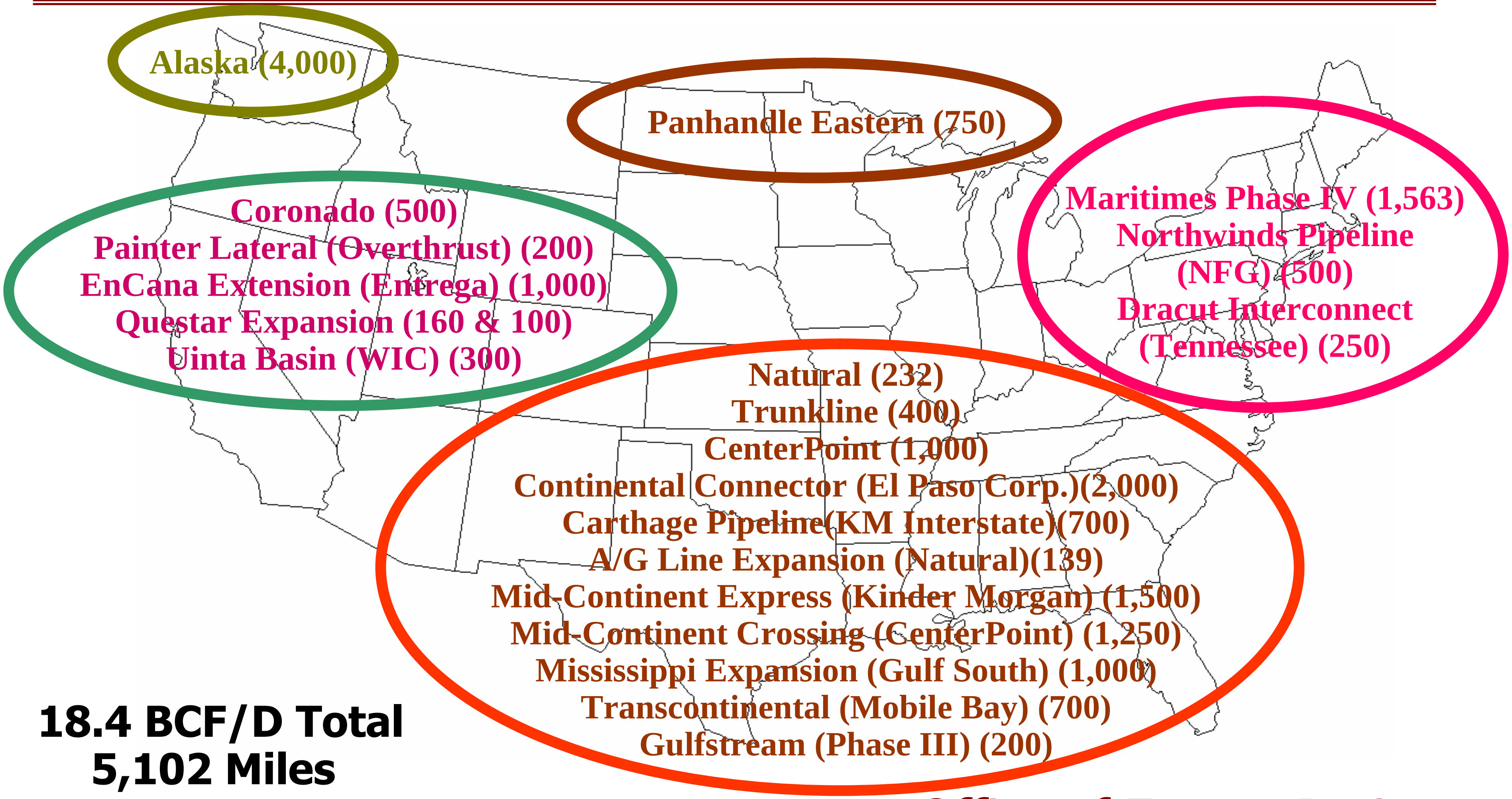
Major Pipeline Projects Pre-Filing (MMcf/d)

April 2006



Major Pipeline Projects On The Horizon (MMcf/d)

April 2006



18.4 BCF/D Total
5,102 Miles