UNITED STATES OF AMERICA 97 FERC ¶ 61,097
FEDERAL ENERGY REGULATORY COMMISSION

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

Petal Gas Storage, L.L.C. Docket Nos. CP01-69-000 and CP01-69-001

ORDER ISSUING CERTIFICATE

(Issued October 25, 2001)

On January 23, 2001, Petal Gas Storage, L.L.C. (Petal) filed in Docket No. CP01-69-000, pursuant to section 7(c) of the Natural Gas Act (NGA), an application for authority to construct and operate 59 miles of pipeline, compression and appurtenant facilities commencing at the terminus of Petal's storage header facility near Hattiesburg, Mississippi and terminating adjacent to Southern Natural Gas Company's (SNG) compressor station near Enterprise, Mississippi. Petal seeks authority to charge negotiated rates for the transportation services using such facilities. On June 19, 2001, Petal filed in Docket No. CP01-69-001 an application to amend its January 23 application to revise the rate that Petal will charge Southern Company Services, Inc. (Southern Company) for firm transportation on the proposed facilities, and to revise its initially filed recourse rate for the project. As discussed below, we find that Petal's proposal will benefit the public by improving the interstate pipeline grid, provide competitive alternatives for Petal's shippers, increase gas and electric reliability and provide fuel for Southern Company's power plants.

I. Background

Petal, a wholly-owned subsidiary of El Paso Energy Partners, L.P.,[1] is a Delaware limited liability company with its principal place of business in Forrest County, Mississippi. Petal is a natural gas company within the meaning of the NGA , and is engaged in the storage and delivery of natural gas for others in interstate commerce.

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[1]El Paso Energy Partners, L.P., an energy master limited partnership and an independent gatherer of natural gas and oil, acquired Petal on August 30, 2000.

In a series of orders beginning in 1993, the Commission authorized the construction and enlargement of Petal's two storage caverns, Cavern Nos. 6 and 7, which are located on the Petal Salt Dome near Hattiesburg, Mississippi.[2] When the entire project is completed, Petal will have approximately 10 Bcf of storage working gas capacity to satisfy customer requirements. Those storage requirements include a twenty year precedent agreement with Southern Company[3] covering 7.0 Bcf of firm storage capacity. Petal refers to the construction and enlargement of its storage facilities as Phase I of its long range business plan.

Under its precedent agreement with Petal, Southern Company has contracted for 700,000 MMBtu per day of firm deliverability into Transcontinental Gas Pipe Line Corporation (Transco), SNG, and Destin Pipeline Company, L.L.C. (Destin), and a maximum daily receipt quantity of 350,000 MMBtu per day from those three pipelines. Phase II of Petal's business plan involves the construction of pipeline facilities and interconnects with Transco, SNG and Destin necessary to meet these transportation requirements. To implement Phase II, Petal filed in Docket No. CP00-59-000 for certificate authorization to add compression, construct a 5.5 mile loop of its storage header, and construct a 58.7 mile pipeline to interconnect with Transco, SNG and Destin. Later, in Docket No. CP00-59-001, Petal amended its application to eliminate the 58.7 mile pipeline and the three meter stations and interconnections with Transco, SNG, and Destin. Petal's amendment stated that Tennessee Gas Pipeline Company (Tennessee) indicated that it could transport Petal's volumes by looping about 30 miles of its 500 Pipeline System. The Commission issued a certificate authorizing the construction of facilities as reflected in the amended application.[4]

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[2]See Petal Gas Storage Company, 64 FERC ¶ 61,190 (1993) (authorizing the construction and operation of Cavern No. 6); 86 FERC ¶ 61,224 (1999) (authorizing the construction and operation of Cavern No. 7); Petal Gas Storage, L.L.C., 90 FERC ¶ 61,243 (2000) (authorizing the enlargement of Caverns No. 6 and 7, each from a capacity of 5.2 Bcf to 8 Bcf); 92 FERC ¶ 61,220 (2000) (authorizing additional compression at the storage facility, installation of a 5.5 mile loop of its storage header, and enlargement of an existing interconnect with Tennessee Gas Pipeline Company).

[3]Southern Company is acting as agent for its operating electric utilities, Alabama Power Company, Georgia Power Company, Mississippi Power Company, Gulf Power Company, and Savannah Electric and Power Company.

[4]Petal Gas Storage, L.L.C., 92 FERC ¶ 61,220 (2000).

Subsequently, based on the results of its March 2000 open season to further assess demand for storage caverns, together with Tennessee's May 2000 open season to assess market demand for incremental expansion of its 500 Line, Petal concluded that the option of using Tennessee's facilities would not provide capacity sufficient to meet Petal's long range plans. Accordingly, Petal determined that it is necessary to proceed with its original proposal as contemplated in its application in Docket No. CP00-59-000, and for that reason found it necessary to file the application in Docket No.CP01-69-000.

II. Proposal

Petal states that the underlying purpose of the instant project is to enable it to provide firm natural gas transportation service to meet the requirements of a new electric generation customer, Southern Company. As such, Petal claims that its proposal is specifically designed to support growth of the gas-fired electric generation market in the southeast United States. Petal seeks to place the facilities in service by May 1, 2002.

A. Facilities

Petal's proposed facilities consist of the following:

(a) 58.7 miles of new bi-directional 36-inch diameter pipeline from a point adjacent to Petal's Tennessee meter station site at the terminus of Petal's storage header loop facility approximately 5.5 miles east of Hattiesburg, Mississippi, to a site adjacent to an existing SNG compressor station approximately 2 miles southwest of Enterprise, Mississippi;

(b) a new 9,000 hp compressor station located near Heidelberg, Mississippi consisting of two natural gas driven units;

(c) 0.3 miles of bi-directional 36-inch diameter pipeline from a tie-in point on the Transco system to the proposed new compressor station near Heidelberg, Mississippi;

(d) new metering facilities at the three new interconnection points (one with Transco, another with SNG, and a third with Destin);

(e) a bi-directional pig launcher/receiver adjacent to the Destin meter station; and

(f) certain mainline block valves at six (6) points along the new pipeline facility.

The total cost of the project is estimated at $94,343,700.

B. Rates

Petal requests that the Commission approve initial rates and new services as provided in Petal's pro forma Tariff Volume No. 1, covering firm and interruptible transportation services over the new 59.0-mile, 36–inch diameter pipeline.[5] Petal states that because one hundred percent (100%) of the proposed pipeline's firm transportation capacity is subscribed by Southern Company for a period of 20 years, the FTS rate schedule is, in effect, initially expected to apply only to the firm transportation service provided to Southern Company, as well as to any replacement transactions. To the extent available capacity permits, Petal will also provide interruptible service over the new pipeline.

Petal seeks Commission authorization to charge negotiated rates for open access firm and interruptible transportation service on its proposed pipeline facilities under Rate Schedules FTS and ITS, respectively. Petal states that negotiated rates for transportation service will only be made available to the extent that such service is alternatively available at a Commission-approved, cost-based "recourse" rate. The initial recourse rates set forth in Exhibit P of the application cover these pipeline transportation services and are supported by the cost of service contained in the application's Exhibit K.

Petal proposes to provide in both its FTS and ITS rate schedules that the shipper and Petal may agree to a negotiated rate with respect to the charges identified in the rate schedule that: (i) may be less than, equal to, or greater than the cost-of-service based Maximum Rate (i.e., recourse rate); (ii) may be based on a rate design other than straight-

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[5]The pro forma rate schedules filed with the application implement open access firm transportation services ("FTS") and interruptible transportation services ("ITS") over the proposed pipeline between Petal and the interconnection points with Transco, SNG, and Destin. Petal's storage services are treated as separate services covered under Petal's Rate Schedules FSS and ISS. Petal is authorized to charge market-based rates for those services.

fixed variable; and (iii) may include a minimum quantity or other form of consideration. Petal states that in accordance with Commission policy, it will file all such negotiated rates with the Commission.

Petal states that for purposes of scheduling, curtailment and interruption, and calculating the economic value of a request for unsubscribed firm capacity, shippers paying a negotiated rate exceeding the Maximum Rate will be considered to be paying the Maximum Rate. In addition, Petal proposes that replacement shippers would not be able to bid or pay a rate higher than the Maximum Rate, if any, and that they would be ineligible for negotiated rates.[6]

Currently, Petal has authority to charge market-based rates for storage services under Rate Schedules FSS and ISS.[7] Petal states that it does not propose to change its market-based storage rates because construction of the proposed transportation facilities will not affect its lack of market power over storage services.[8] Thus, upon approval of the subject proposal, Petal will have rate schedules covering storage services and other rate schedules covering storage transportation services.

Petal states that, consistent with the Commission's recent Order No. 637 et seq., the pro forma tariff sheets filed with its application contain provisions that provide transportation customers with flexibility to segment capacity, for their own use or for purposes of capacity release,[9] and the ability to trade and net imbalances. Petal states,

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[6]Petal reserves the right to submit changes to the negotiated rates provisions of its tariff for any reason, subject to Commission approval.

[7]Petal Gas Storage Co., 64 FERC ¶ 61,190 (1993); Petal Gas Storage Co., 86 FERC ¶ 61,224 (1999); Petal Gas Storage, L.L.C., 92 FERC ¶ 61,220 (2000).

[8]Petal's December 28, 1999 application in Docket No. CP00-59-000 included a market power analysis prepared by International Gas Consultant that included the pipeline facility and showed that Petal would continue to lack market power over storage services. Petal thereafter filed an updated market power analysis as part of its amended application in Docket No. CP00-59-001 on February 24, 2000. Petal, therefore, does not believe that a new market power study is necessary at this time.

[9]Petal did not propose to allow its storage customers to segment capacity in its August 15, 2000, Order No. 637 compliance filing, because Petal is a small company

(continued...)

however, that it is proposing imbalance penalties for transportation customers that do not subscribe to firm or interruptible storage service under rate Schedules FSS or ISS. According to Petal, these penalties are necessary to prevent transportation customers from "free-riding" on Petal's storage service.[10] Petal claims that without such penalties, its transportation customers might freely run positive imbalances on Petal's pipeline (and thereby receive free storage services), believing that Petal can use its storage facilities to handle excess line pack before resorting to the issuance of an Operational Flow Order. On the other hand, Petal states that it is not proposing imbalance penalties for customers that have both storage and transportation contracts because such customers will, in fact, be paying for storage service for any of their excess gas.[11]

C. Firm Transportation Service Agreement deviations from pro forma tariff

Petal requests that the Commission review and approve the non-conforming firm transportation service agreement between it and Southern Company.[12] Petal states the agreement deviates from Petal's pro forma firm transportation tariff agreement in three respects. First, Petal states that Article III (Price) of the service agreement specifies that prices charged for services are those set forth in Rate Schedules FTS, subject to any

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[9](...continued)
operating storage facilities in one geographic location. Petal states that now that it is proposing firm and interruptible transportation services with receipt and delivery points at three additional interconnections, its pro forma tariff includes language providing its customers with the flexibility to segment their capacity for capacity release or for their own use.

[10]Consistent with its Order No. 637 compliance filing in Docket No. RP00-491-000, dated August 15, 2000, Petal proposes that all of its penalties be credited to non-offending customers.

[11]In Petal's Order No. 637 compliance filing in Docket No. RP00-491-000, Petal has also proposed to offer an interruptible advancing (lending) service in its AVS Rate Schedule to help customers manage their imbalances. This application would have no impact on that proposal. As stated in Petal's Order No. 637 compliance filing, Petal has no plans to offer a "parking" service because Petal views such service to be functionally identical to the interruptible storage service (ISS) that Petal already offers.

[12]See Application in Docket No. CP01-69-000, Exhibit I, Transportation Precedent Agreement, dated December 22, 2000, Exhibit A.

discount to which the parties may mutually agree from time to time.[13] Petal's pro forma tariff does not contain the "subject to discount" language. Petal does not believe Article III of the Service Agreement materially deviates from the pro forma because the tariff allows Petal and a customer to agree at any time to discounted service under Rate Schedule FTS.

Second, Petal points out that Article VI (Term) of the service agreement deviates from the pro forma tariff because Southern Company has requested that the term of the firm transportation service run concurrently with its firm storage agreement with Petal. Consequently, Southern Company wants all storage facilities and transportation facilities, including the associated services, to be in place as a condition to the effective date of the service agreement.

Finally, Article X (Transfer and Assignment) of the service agreement deviates from the pro forma tariff because it permits Southern Company, as agent for its affiliated electric utility companies, to assign capacity under the service agreement to those affiliated operating electric utility companies. In addition, because the service agreement has a term of twenty (20) years, the operating companies have the ability to designate a new agent, if need be over the extended term.

Petal states that should the Commission find that the service agreement materially deviates from the pro forma tariff and approve the service agreement, Petal will make the requisite material deviation filing after the Service Agreement is executed and prior to commencement of service.

D. Authorizations requested

Petal requests that the Commission grant the following authorizations:

(a) a certificate of public convenience and necessity authorizing Petal to construct, install, own, operate and maintain the proposed facilities pursuant to section 7 of the NGA;

(b) approval of Petal's new firm and interruptible transportation services and initial rates for such services, as set forth in Petal's Pro Forma

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[13]Submitted as part of Exhibit I is the Discount Agreement covering Firm Transportation Service, between Petal and Southern Company, dated December 22, 2000.

Tariff Volume No. 1, Rate Schedule FTS, Rate Schedule ITS, and Statement of Transportation Rates, as provided in Exhibit P of Petal's application;

(c) authorization to charge negotiated rates for transportation services;

(d) approval of certain additional pro forma changes to Petal's FERC Gas Tariff; and

(e) approval of certain deviations from its pro forma Form of Firm Transportation Service Agreements; and

E. Amended Application - Docket No. CP01-69-001

On June 19, 2001, Petal filed an amendment to its application in order to revise the rate that Petal will charge Southern Company for firm transportation on the pipeline proposed in Petal's application and to revise the initially filed recourse rate for the project. Petal states that it and Southern Company have agreed to a revised discounted rate for the primary term of their firm transportation service agreement, as contemplated in their transportation precedent agreement between Petal and Southern Company filed with Petal's application in Docket No. CP00-59-000.[14] Specifically, Petal and Southern Company have agreed that the rate under the Firm Transportation Discount Agreement will be the lesser of a monthly reservation rate of $1.20 per MMBtu or Petal's maximum FTS reservation rate, and have amended the Discount Agreement to reflect the new rate.[15]

Additionally, Petal proposes to amend the depreciation life and rate for the proposed facilities. In Docket No.CP01-69-000, Petal sought for the proposed facilities

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[14]See Transportation Precedent Agreement dated December 22, 2000, Exhibit I of original application .

[15]Under the December 22, 2000 Discount Agreement filed as part of Exhibit I in Docket No. CP01-69-000, the applicable FTS reservation rate for a [Maximum Daily Total Quantity] of 700,000 MMBtu/day was the lesser of (i) a monthly reservation rate of $0.7000 per MMBtu or (ii) Petal's applicable maximum FTS reservation rate. Petal has submitted in Docket No. CP01-69-001 a revised Exhibit I that includes a Discount Agreement covering Firm Transportation Service, as amended on May 22, 2001, which reflects the new mutually agreed rate.

a depreciation life of 20 years and a depreciation rate of 5 percent, based on the term of the contract with Southern Company. Petal has now determined that it would be more appropriate to depreciate the facilities over a longer period on the basis of a useful life eyond 20 years.[16] Therefore, Petal requests authorization to depreciate the proposed facilities over a 40 year period, or at a depreciation rate of 2.5% per year.[17]

III. Interventions

Notice of Petal's application was published in the Federal Register on February 5, 2001 (66 Fed. Reg. 8952). Timely motions to intervene were filed by Destin, Enron North America Corp. (Enron), and Southern Company.[18] Untimely motions to intervene were filed by PG&E Trading-Gas Corporation, Mr. Fred S. Walters (Mr. Walters), and Mr. Kevin S. West (Mr. West). In accordance with Rule 214 of the Commission's regulations, the Commission finds that granting the late interventions will not delay, disrupt or otherwise prejudice this proceeding or place an additional burden on existing parties. Therefore, for good cause shown, the late filed motions to intervene in this proceeding are granted.

In its intervention, Southern Company urges the Commission to expeditiously approve Petal's application. Mr. Walters, a landowner, questions whether Petal's proposed expansion is in the public convenience and necessity. As discussed below, the Commission finds that Petal's proposal is in the public convenience and necessity. Mr. West opposes the construction of the pipeline through his property, alleging that the proposed pipeline would create public health and safety hazards and adversely affect wildlife, recreation, water and woodland resources. Additionally, Mr. West claims that

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[16]Petal cites Gulfstream Natural Gas System, L.L.C. , 91 FERC ¶ 61,119 at 61,463 (2000) and Independence Pipeline Company, et al., 89 FERC ¶ 61,283 at 61,850-51 (1999); order issuing certificate, 91 FERC ¶ 61,102 (2000); order issuing certificates, 92 FERC ¶ 61,022 (2000); order on reh'g, 92 FERC ¶ 61,268 (2000) as recent cases in which the Commission has approved a depreciation life of forty years for new pipelines projects.

[17] Petal's revised Exhibits N and O in Docket No. CP01-69-001 incorporate revised revenue projections based on the change to the Southern Company agreements and a newly derived recourse rate.

[18]Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations, 18 C.F.R. § 385.214 (2000).

the pipeline would destroy the use, value and enjoyment of his property. Mr. West contends that Petal should either select another route or reimburse him for the total loss of use of his property. Mr. West's concerns are addressed below and in the Environmental Assessment prepared for this project.

Notice of Petal's amendment to its application was published in the Federal Register on July 3, 2001 (66 Fed. Reg. 35,234). Southern Company filed a timely motion to intervene. No other protests or comments were filed.

IV. Discussion

Since the applications pertain to facilities used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, Petal's proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Project Need and the Certificate Policy Statement

On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.[19] The Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicants responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers.

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[19]Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement), 88 FERC ¶ 61,227 (1999); order clarifying statement of policy, 90 FERC ¶ 61,128 (2000); order further clarifying statement of policy, 92 FERC ¶ 61,094 (2000).

The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

Petal has an executed precedent agreement with Southern Company for firm transportation services, for a 20-year term, at a negotiated rate. We find that this long-term commitment for 100 percent of the proposed pipeline's capacity demonstrates market support for Petal's proposal.[20] The proposed project will meet Southern Company's unserved demand brought about by its plans to convert much of its older electric generation units to gas-fired generation. Additionally, the proposed pipeline will provide multiple new pipeline interconnects with Petal's salt dome storage facilities. This additional access to Petal's storage facilities will increase the efficiency, reliability of service that these natural gas storage facilities provide by reducing the reliance on natural gas production wells to satisfy demand. These new interconnects will improve the interstate pipeline grid, provide competitive alternatives, increase gas and electric reliability and facilitate Southern Company's conversion to gas-fired electric generation. As a consequence, the public will enjoy reduced gas and electric costs.

1. Subsidization and adverse impacts on existing customers

Petal's transportation rates, as authorized herein, will be either traditional cost-of-service recourse rates, discount rates, or negotiated rates, subject to review by the Commission. Petal has no existing transportation customers; all of Petal's existing customers receive only storage services from Petal at market-based rates, and Petal states that it will continue charging market-based storage rates for these services after the proposed pipeline facilities are placed in service. Accordingly, the proposed project will have no impact on the rates paid by Petal's existing storage customers, and any rates for transportation services will be subject to review by the Commission, as discussed below. On this basis, we find that there should be no subsidization of the project by Petal's existing customers. Moreover, we find that Petal's existing customers should suffer no

[20]We will require that Petal execute a contract with Southern Company reflecting the terms and volumes of the precedent agreement.

deterioration in the quality of or increase in the cost of their storage services, as the proposed pipeline should have no adverse affect on Petal's ability to fulfill its storage service obligations; indeed, it likely will enhance Petal's ability to fulfill its storage obligations.

2. Other adverse impacts

a. other pipelines and their captive customers

We are satisfied that Petal's proposed project will have no adverse impact on existing pipelines in the market and their captive customers. Petal's proposed project will serve a new market load not served by any other pipeline. None of the firm demand to be served by Petal's project is attributable to turned back capacity on other pipelines in the market. Moreover, we note that no pipelines in Petal's market area have protested Petal's proposal or raised this issue in comments. As Petal states, the market demand to be served by its pipeline represents new demand related to Southern Company' s movement toward greater reliance on gas-fired electric generation.

b. affected landowners and communities

Petal states that has taken steps to minimize any adverse effects the pipeline project might have on landowners and communities, and that the impact on landowners will be minimal and will be mitigated. Petal maintains that it has selected the route which minimizes adverse effects on landowners, communities, and the environment and best serves the public interest.[21] Specifically, Petal has selected a pipeline route which parallels existing pipeline rights-of-way for its entire length.[22] In addition, for a portion of the temporary work space, Petal plans to use Tennessee's existing cleared right-of-way.

Mr. West has expressed concerns regarding the potential adverse impact that Petal's project might have on the value, and use and enjoyment of his property. However, the effect that an easement may have on property values is a damages-related issue that is appropriately negotiated between landowners along the proposed right-of-way and the pipeline during the easement acquisition process. Petal states that it has contacted all of the affected landowners to conduct the various required surveys for this

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[21]See Resource Report 10 of the Environmental Report at Exhibit F-1.

[22]See Resource Report 1 of the Environmental Report at Exhibit F-1.

project and has received permission from 98 percent of them. Petal also states that it will continue to work with landowners and other potentially affected interests along its route.[23]

Petal's proposed pipeline, which parallels existing pipeline rights-of-way for its entire length, requires rights of-way totaling 697 acres and spanning a total of 422 parcels of land. As of October 17, 2001, Petal has negotiated 303 easements totaling 579 acres. Of the remaining 119 parcels, Petal expects to be able to negotiate 79 easements, leaving 40 parcels covering approximately 40 acres for which condemnation will be required.[24] Given the likelihood that Petal will obtain easements from over ninety percent of the landowners affected by Petal's proposed route, leaving only 40 acres of rights-of-way to be obtained through condemnation, we find adverse impacts on landowners along and proximate to the proposed right-of-way will be minimal and should be outweighed by the benefits that the project is expected to provide.[25]

In view of the above, we conclude that Petal's proposed project should provide substantial public benefits without significant adverse impacts. Therefore, consistent with the criteria discussed in the Policy statement, we find the public convenience and necessity requires the approval of Petal's proposal.

B. Rates

1. Negotiated Transportation Rates

Petal requests negotiated rate authority for its new firm and interruptible transportation services under Rate Schedules FTS and ITS pursuant to the Commission's

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[23]Petal provided notice to directly affected and adjacent landowners notifying them that Petal had filed this application in accordance with Order Nos. 609 and 609-A. Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing requirements, Order No. 609, FERC Stats. & Regs. (Regs. Preambles) ¶ 31,082 (Oct.13, 1999); order on reh'g, Order No. 609-A, FERC Stats. & Regs. (Regs. Preambles) ¶ 31,095 (March 16, 2000).

[24]See Petal's supplemental data response filed October 18, 2001.

[25]See Resource Report 1 of the Environmental Report at Exhibit F-1. With the exception of the abutters to the new compressor station site, Petal has been able to consult with 100 percent of the affected landowners.

Alternative Rate Policy Statement and precedent.[26] Petal states that negotiated rates will only be available to the extent that such services are also available at Commission-approved, cost-based recourse rates. Petal's pro forma tariff filing implementing its negotiated rate authority includes provisions in both the FTS and ITS Rate Schedules allowing the customer and Petal to negotiate a rate which may: (i) be less than, equal to, or greater than the cost-based maximum rate (i.e., recourse rate); (ii) be based on a rate design other than SFV; and (iii) include a minimum quantity or other form of consideration. Petal states that it will file all negotiated rate service agreements and pertinent details with the Commission. Petal's pro forma filing also provides that: (i) shippers paying a negotiated rate that exceeds the maximum rate will be considered to be paying the maximum rate for purposes of scheduling, curtailment, and interruption, and calculating the economic value of a request for unsubscribed firm capacity; and (ii) replacement shippers will not be able to bid or pay a rate greater than the maximum rate,[27] and will be ineligible for negotiated rates.

As noted, in support of its proposal, Petal submits its December 22, 2000 Precedent Agreement with Southern Company (Agreement), jointly executed with their Firm Storage Service Agreement (Storage Agreement), which commits 100 percent of Petal's design day transmission capacity of 700,000 Dth to Southern Company for a primary term of 20 years. The Agreement specifies the negotiated rates and provides for the designation of receipt and delivery points, the calculation for fuel reimbursement, reimbursement for taxes and regulatory fees, nomination procedures, and incorporates the General Terms & Conditions (GT&C) of Petal's FERC Gas Tariff and the provisions under Petal's Rate Schedule FTS. Also as stated above, Petal amended its application in Docket No. CP01-69-001 on June 19, 2001, to revise the negotiated rate and the initially filed recourse rate to reflect a change in the depreciation rate from 5% over 20 years (based on the term of the Agreement) to 2.5% over 40 years, the useful life of the

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[26]Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996), reh'g and clarification denied, 75 FERC ¶ 61,024 (1996), reh'g denied, 75 FERC ¶ 61,066 (1996); petition for review denied, Burlington Resources Oil & Gas Co. v. FERC, Case No. 96-1160, et al., U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998).

[27]Petal recognizes that Order No. 637 removes the rate ceiling for short-term releases until September 30, 2002. Therefore, until September 30, 2002, there is no maximum rate for replacement shippers taking capacity for less than one year.

pipeline.[28] The amended application revises the negotiated rate for Petal's firm transportation service to Southern Company from $0.70 to $1.20/Dth, and lowers the recourse rate from $2.5443/Dth to $2.2862/Dth to reflect the decreased depreciation rate.

As discussed above, Petal proposes to provide transportation services under Rate Schedules FTS and ITS with services available at both recourse and negotiated rates in accordance with the terms and conditions set forth in its pro forma tariff. In general, when negotiated rates are proposed, the Commission does not review those rates at the time they are filed, "permitting" the negotiated rates if they are consistent with certain guidelines established in the Alternative Rate Policy Statement and refined in subsequent orders.[29] We find that Petal's proposed negotiated rates conform with the guidelines prescribed in the Commission's Alternative Rate Policy Statement. Further, under that policy, as affirmed in NorAm Gas Transmission Company (NorAm),[30] the revenue shortfall due to Petal's lower negotiated rates with Southern Company cannot be recovered from existing shippers. Therefore, our policy is to permit negotiated rates that are lower than recourse rates in all cases, even to affiliates, and not only when lower rates are needed to compete for business. Accordingly, we will approve Petal's proposed negotiated rates, subject to the conditions set forth below.

2. Recourse Rates

Petal proposes an FTS reservation rate of $2.2862 per Dth (a one-part rate) and an ITS commodity rate of $0.0752 per Dth (the 100 percent load factor equivalent of the FTS rate). These recourse rates are based on $94,343,700 of plant investment, less $1,179,500 for accumulated depreciation, and $432,000 for accumulated deferred taxes, plus $46,000 of working capital, for a total rate base of $92,778,200. The recourse rate structure uses a straight-fixed variable rate design reflecting: (1) a 15 percent return on equity (ROE), an 8.75 percent cost of debt, and an 11.875 percent overall rate of return; (2) a capital structure of 50 percent debt and 50 percent equity; (3) a 2.5 percent

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[28]Citing Gulfstream Natural Gas System, 91 FERC ¶ 61,119 at 61,463 (2000), and Independence Pipeline Co., et al., 89 FERC ¶ 61,283 at 61,850-51 (1999); order issuing certificate, 91 FERC ¶ 61,102 (2000); order issuing certificates, 92 FERC ¶ 61,022 (2000); order on reh'g., 92 FERC ¶ 61,268 (2000).

[29]74 FERC at 61,224-25 (1996). See also, Alliance Pipeline L.P., 80 FERC ¶ 61,140 (1997).

[30]NorAm Gas Transmission Company, 77 FERC ¶ 61,011 (1996).

depreciation rate; and (4) a 38.25 percent composite tax rate. Petal will charge monthly for in-kind fuel reimbursement to reflect actual fuel used for compression and fuel lost and unaccounted for volumes.

As noted above, the recourse rate structure reflects, among other things, a depreciation rate of 2.5 percent and an ROE of 15 percent. The proposed straight-line method of depreciation conforms with the Commission's Uniform System of Accounts, and Petal's proposed depreciation rate of 2.5 percent over the 40-year useful life of the pipeline is consistent with Commission precedent.[31] Accordingly, Petal's depreciation proposal is accepted. However, Petal's proposed 15 percent ROE is not supported. Specifically, Petal's proposed 15 percent ROE is based on the claimed cost of equity of its parent company, El Paso Energy Partners, L.P. (El Paso Energy), but Petal has failed to provide calculations that support its proposed ROE. Therefore, we reject Petal's proposed 15 percent ROE.

The Commission uses the Discounted Cash-Flow (DCF) methodology to establish the return on equity for regulated pipeline companies. Consistent with the DCF methodology discussed by the Commission in Transcontinental Gas Pipe Line Corporation (Transco),[32] we have selected a group of proxy companies to use in developing the ROE for Petal. Those companies are: CMS Energy, Duke Energy, El Paso Energy, Equitable, Kinder Morgan, MDU Resources, National Fuel Gas Company, NiSource, Questar Corp., Reliant Energy, and The Williams Companies. The equity costs for each company in the proxy group form a zone of reasonableness for ROE under the Commission's DCF formula. Using current information regarding dividend yields and growth rate estimates for these companies, the DCF formula results in a range of equity costs between 10.31 percent and 15.52 percent with a median of 12.60 percent.

In Transco, we stated that we would begin our risk analysis for proposed projects with the assumption that pipelines generally fall into a broad range of average risk. Absent highly unusual circumstances that indicate an exceptionally high or low risk as compared to other pipelines, the assumption is made that a pipeline faces average risks (though an examination of a particular pipeline's risk factors may warrant adjusting the ROE higher or lower than the middle of the zone of reasonableness established by the

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[31]See supra footnote 3.

[32]See Transcontinental Gas Pipe Line Corporation, 90 FERC ¶ 61,279 (2000).

proxy group).[33] We note that Petal has not justified placement at the upper-end of the zone of reasonableness. Consequently, we conclude a reasonable rate of return on equity for Petal is the median of the range of the above-described proxy group, or 12.60 percent.

In view of the above-required revision to Petal's proposed ROE, Petal must revise its FTS and ITS recourse rates and file the revised rates at least 60 days prior to its in-service date. When Petal files its initial rates, we will allow it to modify the cost of service and resulting rates conditionally authorized herein to the extent necessary to reflect the actual cost of debt incurred to construct the project. However, if Petal desires to make any other changes not specifically authorized by this or a subsequent order in this proceeding prior to placing its facilities into service, it will need to file an amendment to its application. Petal will need to provide cost data and the required exhibits supporting any revised rates. After the in-service date, Petal may make an NGA section 4 filing to change its rate to reflect revised construction costs and operating costs.

Further, consistent with Commission policy,[34] Petal is required to make a filing at the end of its first three years of its actual operation to justify its existing recourse rates. In its rate filing, Petal's projected units of service should be no lower than those upon which its approved initial rates are based.[35] The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations, updating cost-of-service data, including the cost of plant-in-service and a compression gas flow analysis, describing compression and operating pressure of all facilities. After review, we will be able to determine whether we should exercise our authority under NGA

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[33]Id. at 61,936.

[34]See, e.g., Horizon Pipeline Company, L.L.C., 92 FERC ¶ 61,205 (2000) at 61,687; TransColorado Gas Transmission Company, 53 FERC ¶ 61,421, at 62,490 (1990); Alliance Pipeline L.P., 80 FERC ¶ 61,149 at 61,597 (1997), order on reh'g and issuing certificates, 84 FERC ¶ 61,239 (1998), order denying reh'g, 85 FERC ¶ 61,331 (1998), order amending certificate, 88 FERC ¶ 62,224 (1999); Trunkline LNG Company, 82 FERC ¶ 61,198 at 61,780 (1998), aff'd., 194 F. 3d 68 (D.C. Cir. 1999); and Vector Pipeline Company, 85 FERC ¶ 61,083 (1998), order on reh'g and issuing certificates, 87 FERC ¶ 61,225 (1999), order on reh'g and amending certificates, 89 FERC ¶ 61,242 (1999).

[35]Id.

Section 5 to establish just and reasonable rates.[36] Alternatively, in lieu of this filing, Petal may make an NGA Section 4 filing to propose alternative recourse rates to be effective no later than three years after the in-service date.

3. Market-Based Storage Rates

Petal requests continued authority to charge market-based rates for its existing firm and interruptible storage services under Rate Schedules FSS and ISS after the proposed pipeline facilities are placed in service. Petal's market power study contains the major elements prescribed in the Commission's Alternative Rate Policy Statement regarding alternative ratemaking, including a definition of the relevant geographic market, a measurement of market share and concentration, and an evaluation of other relevant factors.[37]

With respect to defining the relevant geographic market, the Commission has taken the approach of reviewing the narrowest market area possible with the reasoning that, if a company does not have market power in the narrowest market, it cannot have market power in a broader market. In this case, the narrowest applicable market for Petal is the market in which the Petal storage facility physically resides -- the Gulf Coast Region, extending from Texas to Florida along the routes of Gulf South, Tennessee, Sonat, Transco, Destin and Florida Gas. The relevant market area includes: (1) Petal's proposed pipeline connections and ownership of all underground storage in Mississippi; (2) El Paso Energy's holdings in Texas, Louisiana, Mississippi, and Georgia (including Pacific Gas & Electric's (PG&E) Wilson Salt Dome facilities in Texas as a result of El Paso Energy's acquisition of PG&E); (3) Southern's LNG plant at Elba Island, Georgia; and (4) the other LNG facilities in the Texas to Georgia market region.

In its June 12, 2001 response to Staff's Data Request, Petal recalculated its market share and Herfindahl-Hirschman Index (HHI) based on its proposed interconnections and current affiliations, and existing and potentially accessible storage in the relevant geographic market. Petal's revised study includes: (i) the overall storage capacity and peak deliverability offered by other entities in the relevant geographic market; (ii) Petal's

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[36] Id.

[37] Petal also provided lists of development projects, other storage capacity to be connected or accessible to interstate pipelines in the relevant market area, and alternatives to conventional underground storage (such as liquified natural gas (LNG) and propane-air facilities, and seasonal and swing gas supply contracts).

10,000 MMcf of working gas capacity and peak day deliverability of 1,000 MMcf per day; and (iii) Petal's increase in market share as a result of its acquisition by El Paso Energy and proposed pipeline connections, and all affiliated ownership of underground storage and LNG facilities in the relevant geographic market. Petal's revised market study shows that its combined market share in the Gulf Coast region is 15.8 percent and 17.6 percent for working gas capacity and maximum deliverability, respectively, with corresponding HHI's of 962 and 897.

Our review of Petal's revised market study, which incorporates its affiliations resulting from the El Paso Energy merger and its proposed new interconnections, shows that Petal still lacks market power in the relevant geographic market. There are 56 other storage facilities in that market area with an existing working gas capacity of 775,446 MMcf and maximum deliverability of 24,874 MMcf per day. Petal's share of that market combined with its affiliates is 122,295 MMcf of working gas capacity and maximum deliverability of 4,355 MMcf per day or 15.8 percent and 17.6 percent, respectively. Petal's revised market study shows that the market concentration levels for working gas capacity and maximum deliverability, including the market shares of Petal's affiliates, is 962 and 897, respectively, which is below the Department of Justice's guideline level of 1000 which is considered an unconcentrated market, such that adverse competitive effects are unlikely.[38] Accordingly, we will accept Petal's proposal to continue to charge market-based rates for its storage services, as conditioned in the certificate proceedings underlying its other storage services.[39] In the event that Petal adds storage beyond the two caverns now authorized,[40] or an affiliate provides additional storage in the same market area or acquires an interest in another storage field in the relevant geographic market, a detailed description of the new facilities and their relationship to Petal must be filed with the Commission within 10 days of Petal acquiring knowledge of any such changes.

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[38] See U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, 57 Fed. Reg. 41,552 (1992), revised, 4 Trade Reg. Rep. (CCH) ¶ 13,104 (April 8, 1997).

[39] See Petal Gas Storage Co., 64 FERC ¶ 61,190 (1993); Petal Gas Storage Co., 86 FERC ¶ 61,224 (1999); Petal Gas Storage, L.L.C., 92 FERC ¶ 61,220 (2000). See also, Egan Hub Partners, L.P., 77 FERC ¶ 61,016 (1996); Avoca Natural Gas Storage Co., 68 FERC ¶ 61,045 (1994); and Koch Gateway Pipeline Co., 66 FERC ¶ 61,385 (1994).

[40] See n. 2, infra.

C. Non-Conforming Service Agreement

The Agreement contains the Transportation Service Agreement (Service Agreement) that will be executed upon commencement of the new transportation service. Petal states that the Service Agreement deviates from its pro forma Rate Schedule FTS Form of Service Agreement in three respects: (1) regarding discounts; (2) requiring concurrent effective dates for both the storage and transportation related services; and (3) allowing Southern Company to assign the firm capacity under the Service Agreement to an affiliated successor.

Consistent with our finding in NorAm, Petal must file its executed Service Agreement and the requisite material deviation filing prior to the commencement of service.[41] The Commission will accept the deviations discussed below, subject to conditions.

First, Article III of the Service Agreement incorporates the rates set forth in its Rate Schedule FTS, "subject to any discount that Petal and Customer mutually agree to from time to time." By comparison, the pro forma tariff language for "Discounted Rates" at Rate Schedule FTS, Section 5(b) allows Petal to charge any Customer a reservation rate less than the maximum reservation rate at any time, but requires that Petal file all Commission required reports to include the discounted reservation rates and affected Customers. We find that the language in the Service Agreement is not consistent with the Pro Forma Service Agreement, because the Service Agreement with Southern Company does not obligate Petal to report to the Commission any future discounts negotiated with Southern Company. Section 284.13(b) of the Commission's regulations requires pipelines to post on its Internet web site specific information with respect to each firm and interruptible service contract, "or revision of a contract for service," including the rate charged under the contract and the applicable maximum rate.[42] For this reason, the proposed rates and any future changes in the rates for services provided by Petal to Southern Company must be reported, accordingly.

Second, Article VI of the Service Agreement stipulates that the Service Agreement will be executed when all of the necessary transportation and storage facilities (and the associated services) are in place. This provision further provides that the term of the Service Agreement shall not exceed the term of its Storage Agreement.

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[41] See supra footnote 6.

[42] 18 C.F.R. § 284.13(b) (2000).

According to the application, Southern Company's Storage Agreement with Petal was predicated on firm deliverability of the associated volumes into Transco, SNG, and Destin, and the Service Agreement effectuates the deliverability of those volumes. We find that it is reasonable to make the effective date and term of the firm transportation services concurrent with the term of the Storage Agreement, and will accept this deviation from the tariff's Form of Service Agreement.

Third, Article X of the Service Agreement allows Southern Company, as Agent, to assign the Service Agreement to any of the affiliated electric utilities listed as parties to the Agreement or any successor affiliated generation company. The provision continues:

> No other assignment of this agreement by either party or any of the rights or obligations hereunder shall be made unless there first shall have been obtained the consent thereto in writing of the other party. . . .[43]

With respect to the distribution of capacity under the Service Agreement, Petal requests that the Commission grant any waivers it deems necessary to permit Southern Company, as Agent, to apportion capacity among the affiliated electric utilities named under the Service Agreement.[44]

Because of the relationship under this Service Agreement between the Agent and its affiliated utilities, the stipulation permitting the assignment of the agreement and the allocation of the capacity to the parties under the Service Agreement will be permitted in this case. However, we clarify that the stipulation permitting the assignment of this agreement to an unaffiliated non-party to the Service Agreement is subject to the Commission's capacity release regulations, which require the posting and bidding of all capacity release transactions of greater than one month.[45]

D. Tariff Issues

Petal filed pro forma tariff sheets to implement negotiated rate authority and initial recourse rates for its new Part 284 firm transportation service under Rate Schedule FTS

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[43]See Service Agreement at page 3.

[44]See Petal's Application at page 20.

[45]See 18 C.F.R. § 284.8. See also, III FERC Stats & Regs. ¶ 31,091 at 31,300.

and interruptible transportation service under Rate Schedule ITS. The pro forma tariff filing also includes: (i) the related Forms of Service Agreements; (ii) conforming changes to the GT&C and storage service rate schedules to include creditworthiness and fuel reimbursement terms consistent with the proposed transportation services; (iii) edits to reflect Petal's reorganization as a limited liability company; (iv) language pending Commission review in Petal's Order No. 637 compliance filing in Docket No. RP00-491-000 (e.g., Petal introduces a new Advancing Storage Service (AVS Rate Schedule), and provides flexibility to segment capacity); and (v) a revised Section 21 under its GT&C listing the GISB Standards incorporated by reference.

Petal's pro forma tariff is in general compliance with Part 284 of the Commission's regulations. However, Petal must revise its tariff in accordance with the discussion below.

1. GISB Standards

The Commission adopted in its regulations various standards for conducting business practices and electronic communication with interstate gas pipelines as promulgated by the Gas Industry Standards Board (GISB). Petal has incorporated by reference a number of GISB Standards by version number in Section 21 of its GT&C.[46] However, in its June 6, 2001 response to a Staff Data Request, Petal provided a chart showing several tariff inconsistencies with the GISB Standards. Specifically, Petal notes that Standards 1.3.1, 1.3.5, 5.3.2, and 5.3.6 should be cited by reference under Section 21, because the language in the tariff is not verbatim. Also, Standard 5.3.26 is incorporated verbatim on Sheet No. 7 at Section 4.3(e) and also by reference under Section 21. Further, Petal shows that Standards 1.3.32, 2.3.29, 2.3.30, 4.3.7, and 5.2.2 are missing from its tariff and should be incorporated by reference under Section 21.[47] Petal states that it will revise its GISB compliance standards to reflect the changes noted on its chart and to include GISB Version 1.4 standards as adopted and approved by the Commission when the actual tariff sheets are filed for implementation. Therefore, Petal

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[46]The following GISB standards have been incorporated by reference: (Version 1.3) 1.1.17 - 1.1.19, 1.2.1-1.2.3, 1.2.5, 1.2.6, 1.2.8 - 1.2.12, 1.3.2(v), 1.3.2(vi), 1.3.3, 1.3.4, 1.3.8, 1.3.14 - 1.3.18, 1.3.20 -1.3.31, 1.3.34- 1.3.46, 1.4.1-1.4.7, 2.2.1, 2.3.1-2.3.28, 2.4.1-2.4.6, 3.3.1-3.3.22, -3.3.4, 4.1.16-, 4.1.21, 4.3.1-4.3.3, 4.3.5, 4.3.6, 4.3.8-4.3.35, 5.2.1, 5.3.1, 5.3.3-5.3.5, 5.3.7-5.3.30, 5.4.1-5.4.17.

[47]Our review of Petal's chart shows that GISB Standards 1.3.9 and 1.3.13 were also omitted from the tariff.

must: (1) revise its tariff to either incorporate verbatim or by reference the standards incorrectly cited or omitted; and (2) conform its tariff to comply with the GISB Standards enumerated in Commission issuances subsequent to this order regarding GISB Standards in effect at the time it files its actual tariff; and (3) provide a chart that identifies the location of the GISB Standards incorporated verbatim into the tariff.[48]

Finally, Petal's June 6 Data Response notes that the Commission granted waiver of GISB Standard 1.3.2(iv) in its underlying certificate proceeding.[49] In Docket No. CP00-59-001, Petal requested waiver of that standard to remove the "no bump rule" under its evening Intraday 2 Nominations Cycle to ensure deliverability under firm storage contracts to support gas-fired electric generators (specifically, Southern Company) during sudden weather and fuel supply changes. Because Petal's proposal in that proceeding showed that Petal's storage capacity was fully subscribed by Southern Company and Petal was not providing any interruptible services at that time, the Commission conditionally granted Petal's request "subject to redress as required by any future action by GISB and the Commission regarding the bumping standards."[50] The Commission finds that Petal's new status as a firm and interruptible transportation provider with three new interconnections significantly changes its role from a storage provider to a transporter now subject to the industry standards applicable to all other natural gas transporters. For this reason, Petal's request for waiver is denied and Petal is required to retain its tariff language under Section 8.1(d) of its GT&C that "[b]umping is not allowed during the Intraday 2 Nomination Cycle." This action is consistent with the intent of the GISB Standards and the Commission's actions in other GISB related proceedings.

2. Order No. 637 Compliance

The pro forma tariff sheets contain provisions that will be addressed in Petal's Order No. 637 compliance filing in Docket No. RP01-491-000. Petal's compliance with Order No. 637, et seq., will not be determined in this order. However, when Petal files its actual tariff in this proceeding, it must file tariff sheets in compliance with the

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[48]See North Baja Pipeline LLC, 95 FERC ¶ 61,259 at 61,917 (2001).

[49]See Petal Gas Storage, L.L.C., 92 FERC ¶ 61,220 (2000) (the Commission granted waiver, but Petal never filed to remove the GISB Standard from its tariff).

[50]Id. at 61,728.

Commission's findings in its Docket No. RP01-491-000 proceeding, and subsequent orders that the Commission has issued in other Order No. 637 proceedings.

3. ACA Charge

Petal proposes to assess an Annual Charge Adjustment (ACA) of $0.0022/Dth. However, section 154.402 of our regulations states that the ACA charge may go into effect only if a company has paid the applicable annual charge in compliance with section 382.103 of the regulations. Since the ACA is based on the previous fiscal year's throughput, and Petal's transportation services have not been in operation for a year, there is no basis for Petal's ACA charge at this time. Therefore, Petal is directed to delete the ACA charge from its tariff. Once Petal has paid its applicable annual charge, it may file revised tariff sheets reflecting the appropriate ACA surcharge.

4. IT Crediting Mechanism

Petal does not propose to allocate any costs to its new Rate Schedule ITS service. Commission policy regarding new interruptible service requires either a 100 percent credit of the interruptible revenues, net of variable costs, to firm and interruptible customers or an allocation of costs and volumes to these services.[51] Petal must revise its tariff to reflect an interruptible transportation crediting mechanism or propose an allocation of costs to interruptible service.

E. Engineering

In NGA section 7(c) cases, the Commission will review and approve the design capacity of a project. We conclude that the facilities proposed by Petal are properly designed to provide up to 700,000 Dth per day of firm transportation from Petal's storage field to the proposed interconnects with Southern Natural and Destin while simultaneously receiving 350,000 Dth per day of gas from the proposed Transco interconnect for injection into Petal's storage facility.

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[51]See, e.g., Independence Pipeline Company, 89 FERC ¶ 61,283 (1999); and Maritimes & Northeast Pipeline L.L.C., 80 FERC ¶ 61,136, at 61,475 (1997), order on reh'g, 81 FERC ¶ 61,166, at 61,725-26 (1997).

F. Environmental

On February 22, 2001, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Petal Pipeline Project and Request for Comments on Environmental Issues (NOI). We received no filed direct responses to the NOI. However, three people wrote notes on the mailing list information forms, and two landowners filed as intervenors. Two of the comments concerned compensation for the acquisition of the right-of-way. As noted above, this is not an environmental issue, but rather a damages-related issue that is resolved either by negotiation or in state condemnation proceedings. One comment mentioned concerns about potential impacts on gopher tortoises. Impacts on threatened and endangered species are addressed in our staff's Environmental Assessment (EA) for this project.

Our staff prepared an EA for Petal's proposal. The EA discusses project impacts on geology, soils, water resources, wetlands, vegetation, wildlife, cultural resources, land use, air and noise quality, and alternatives. All substantive environmental comments were addressed in the EA.

One of the landowner intervenors (Mr. Walters) questioned whether Petal's application was in the public convenience and necessity. His concerns have been addressed above. The other landowner intervenor, Mr. West, raised specific issues relating to the impact of Petal's project on his property. Mr. West indicated that he would prefer that Petal's pipeline be placed on the west side of Tennessee's existing pipelines (West Route Variation A). Alternatively, Mr. West suggested that Petal reroute its pipeline to follow an existing transmission line corridor between Ira G. Odom Road and Township Road (West Route Variation B).

The EA examined both of Mr. West's suggested route variations as part of the alternatives section. Our staff found no environmental differences between the proposed route and the West Route Variation A. While the variation would move Petal's pipeline further away from Mr. West's residence and shorten the crossing of his property, it would add two crossovers to the Tennessee Line 500 pipelines and affect other landowners. The EA does not recommend following the West Route Variation A, since there are no environmental advantages to this alternative.

The EA also found that West Route Variation B does not appear to be environmentally superior to the proposed route. This route variation would be longer than Petal's proposed route, would place the pipeline near the community of Lanham, closer to more residences, and would affect a new group of landowners who have not

had an opportunity to comment on the alternative. Therefore, use of the West Route Variation B was not recommended.

Our environmental staff concluded that an alternative using an expansion of Tennessee's existing Line 500 system (Tennessee System Alternative) would be environmentally preferable to Petal's proposed pipeline to transport the volume of gas proposed by Petal. However, the EA indicated that neither the Tennessee System Alternative or Petal's proposed project would have significant environmental impacts.

In its August 9, 2001 response to staff's April 17, 2001 data request Petal provided detailed information related to the Tennessee System Alternative. Petal estimated that in order to provide the 700,000 Mcf per day of firm transportation proposed by Petal, Tennessee would need to construct approximately 30.9 miles of pipeline and 12,500 horsepower of compression at two locations. With the exception of a meter station and the compression, all of the facilities would be at the same locations as portions of Petal's proposed project.

In its January 23, 2001 application, Petal stated that it had participated in a May 2000 open season on Tennessee's pipeline system to obtain the necessary capacity on Tennessee's Line 500 to serve Southern Company. Petal stated that Tennessee was unable to provide the capacity requested by Petal. Petal then chose to pursue its current proposal. In its August 9, 2001 response to staff's April 17, 2001 data request, Petal clarified that its bid for capacity on Tennessee took into account future transportation and storage demands beyond the volumes specified in the instant application. Petal states that it has received expressions of interest for additional future storage capacity of up to 5 Bcf, and additional incremental transportation capacity of up to 500,000 Mcf per day. Therefore its bid during Tennessee's open season was to obtain transportation capacity for 1.2 Bcf per day rather than the currently contracted 700,000 Mcf per day.

Petal estimates that Tennessee would need to construct an additional 23.1 miles of pipeline and 16,000 horsepower of compression at two sites to provide the additional 500,000 Mcf per day of future demand. Petal states that it would only need to install an additional 8,000 horsepower of compression at its proposed Heidelberg Compressor Station to transport an additional 500,000 Mcf per day. In summary, a comparison between a Tennessee System Alternative designed to transport 1.2 Bcf per day and an expanded Petal 100 Line designed to transport 1.2 Bcf per day shows that Petal would require a total of 59.0 miles of pipe and 17,000 horsepower of compression at one site while Tennessee would need to construct a total of 54 miles of pipe and 28,500 horsepower of compression at two sites. While a Tennessee System Alternative to

transport 700,000 Mcf per day would be environmentally preferable to Petal's proposed pipeline, an expanded Tennessee System Alternative to meet Petal's planned growth would offer few benefits. We therefore will reject the Tennessee System Alternative.

Petal's proposal is preferable on a non-environmental basis for several reasons. First, Petal's proposed pipeline would provide a direct interconnect between Petal's storage facility and the interstate pipelines of Transco, SNG and Destin as requested by Southern Company. The Tennessee System Alternative would complicate transportation service to and from Petal's storage facility by inserting a middle-man, Tennessee into the transaction.

Also, an expansion by Petal of the facilities proposed herein, would require only the addition of compression to increase the capacity to 1.2 Bcf per day from 700,000 Mcf per day. Tennessee would need to file an application to construct additional pipeline looping and compression. Petal would probably be able to install additional compression at what will be an existing compressor station more quickly than Tennessee could win approval and construct extensive pipeline looping and compression. In this manner, Petal would be able to respond to the needs of its markets in a more timely fashion.

Finally, we note that Tennessee has not submitted an application to the Commission requesting authority to construct and operate the facilities to serve as a system alternative to Petal's proposal. Further, Tennessee is not a party to Petal's current proceeding. Also, the market, Southern Company, has elected Petal as its service provider. For the Commission to adopt the Tennessee System Alternative, we would need to reject Petal's proposal and the underlying contract with Southern Company. This is something that we are not, and in the past have not been, inclined to do.[52] Moreover, even if Tennessee did propose to construct the necessary facilities, it is doubtful that Tennessee would be able to file an application, receive approval, and construct the facilities in time to meet Southern Company's in-service date of May 2002. Consequently, to deny Petal's application, would only serve to deprive Southern Company of the natural gas and storage and transportation services that it needs to supply its generating facilities.

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[52]See, e.g. Guardian Pipeline, L.L.C., 94 FERC ¶ 61,269 at 61,948 (where the Commission rejected a pipeline alternative that might be economically and environmentally preferable in the short term because the alternative would neither fulfill the target market's desire of gaining access to a second interstate pipeline, nor further the Commission's long term goals of assuring adequate supplies and competition on among suppliers).

Based on the discussion in the EA, we conclude that if constructed and operated in accordance with Petal's application as supplemented, approval of Petal's proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.[53] Petal shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Petal. Petal shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

At a hearing held on October 24, 2001, the Commission on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued in Docket No. CP01-69-000, as amended in Docket No. CP01-69-001, authorizing Petal to construct and operate the facilities as more fully described in the application in CP01-69-000 and in the body of this order.

(B) The certificate authorized in Ordering Paragraph (A) above and the rights granted thereunder is conditioned upon Petal's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in Parts 154 and 284 and paragraphs (a), (c), (e), and (g) of section 157.20 of such regulations.

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[53]See, e.g., Schneidewind v. ANR Pipeline Co., 485 U.S. 293 (1988); National Fuel Gas Supply v. Public Service Commission, 894 F.2d 571 (2d Cir. 1990); and Iroquois Gas Transmission System, L.P., et al., 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(C) Petal's request to charge negotiated firm transportation rates is approved, as discussed in the body of this order and subject to the following conditions:

(1) Petal must calculate revised FTS and ITS recourse rates, as discussed in the body of this order, and file such revised rates at least 60 days prior to placing its facilities in service;

(2) Petal must submit an NGA section 4 rate filing after three years of operation to justify its existing transportation rates;

(D) Petal's request to continue charging market-based rates for its firm storage services is approved, subject to the conditions set forth herein. Petal shall notify the Commission within 10 days of acquiring knowledge of any change in circumstances that may alter Petal's market power status.

(E) The authorization issued in Ordering Paragraph (A) above, is conditioned upon Petal's compliance with the environmental conditions set forth in Appendix A to this order. Petal shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Petal. Petal shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(F) Petal's facilities must be constructed and made available for service within one year from the date this order is issued, pursuant to paragraph (b) of section 157.20 of the Commission's regulations.

(G) Petal must file actual tariff sheets 60 days prior to placing the pipeline facilities in service to bring its tariff in compliance with the revisions specified in the body of this order.

(H) Petal must file its executed service agreement and the requisite material deviation filing after the service agreement is executed and prior to the commencement of service.

(I) Petal's request for waiver of GISB Standard 1.3.2(iv) is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.

Appendix A
Environmental Conditions

1. Petal shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by this Order. Petal must:

   a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
   b. justify each modification relative to site-specific conditions;
   c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
   d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification**.

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:

   a. the modification of conditions of this Order; and
   b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

3. **Prior to any construction**, Petal shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Petal shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller

than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Petal's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Petal's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Petal shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas shall be explicitly requested in writing. For each area, the request shall include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area shall be approved in writing by the Director of OEP **before** construction in or near that area.

This requirement does not apply to minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

a. implementation of cultural resources mitigation measures;
b. implementation of endangered, threatened, or special concern species mitigation measures;
c. recommendations by state regulatory authorities; and

d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of this certificate** and **before construction** begins, Petal shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Petal will implement the mitigation measures required by this Order. Petal must file revisions to the plan as schedules change. The plan shall identify:

a. how Petal will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
b. the number of environmental inspectors assigned per spread, and how Petal will ensure that sufficient personnel are available to implement the environmental mitigation;
c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
d. what training and instructions Petal will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity of OEP staff to participate in the training sessions;
e. the company personnel (if known) and specific portion of Petal's organization having responsibility for compliance;
f. the procedures (including use of contract penalties) Petal will follow if noncompliance occurs; and
g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:

(1) the completion of all required surveys and reports;
(2) the mitigation training of onsite personnel;
(3) the start of construction; and
(4) the start and completion of restoration.

7. Petal shall employ at least one team of environmental inspector per construction spread. The environmental inspectors shall be:

a. responsible for monitoring and ensuring compliance with all mitigative measures required by this Order and other grants, permits, certificates, or other authorizing documents;
b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
d. a full-time position, separate from all other activity inspectors;
e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other Federal, state, or local agencies; and
f. responsible for maintaining status reports.

8. Petal shall file updated status reports prepared by the head environmental inspector with the Secretary on a **biweekly** basis **until** all construction-related activities, including restoration and initial permanent seeding, are complete. On request, these status reports will also be provided to other Federal and state agencies with permitting responsibilities. Status reports shall include:

a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other Federal, state, or local agencies);
c. corrective actions implemented in response to all instances of noncompliance, and their cost;
d. the effectiveness of all corrective actions implemented;
e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
f. copies of any correspondence received by Petal from other Federal, state or local permitting agencies concerning instances of noncompliance, and Petal's response.

9. Petal must receive written authorization from the Director of OEP **before commencing service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.

10. **Within 30 days of placing the certificated facilities in service**, Petal shall file an affirmative statement with the Secretary, certified by a senior company official:

    a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
    b. identifying which of the certificate conditions Petal has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. **Prior to construction**, Petal shall file with the Secretary a revised project-specific Environmental Construction Plan (ECP), which includes the measures outlined in our staff's Upland Erosion Control, Revegetation, and Maintenance Plan (Plan, December 2, 1994 version) at sections III.B.15, VIII.A.1, and VIII.B.2.

12. Petal shall conduct, with the landowner's permission, pre- and post-construction monitoring of well yield and water quality for all private water supply wells located within 150 feet of the construction right-of-way. Petal shall replace any potable water supply system it damages during construction and cannot repair to its former capacity and quality. **Within 30 days of placing the facilities in service**, Petal shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality, and how each was resolved.

13. **Prior to construction**, Petal shall file with the Secretary a revised, project-specific Spill Prevention, Containment, and Countermeasure Plan, based on section IV.A. of our staff's Wetland and Waterbody Construction and Mitigation Procedures (Procedures, December 2, 1994 version), for the review and written approval of the Director of OEP.

14. Petal shall file with the Secretary detailed, site-specific crossing plans for the pond at milepost MLV-1+MP 2.8 and Souinlovie Creek, for the review and written approval of the Director of OEP **before construction**.

15. **Prior to construction**, Petal shall file with the Secretary, for the review and written approval of the Director of OEP, a contingency plan for all waterbodies which Petal proposes to cross using a horizontal directional drill. This plan shall addresses how Petal would:

    a. handle and contain any inadvertent release of drilling mud into the waterbody or adjacent areas, and seal the drill hole;
    b. clean up any inadvertent releases; and
    c. cross the waterbody using alternative methods if the drill fails.

16. **Prior to conducting hydrostatic testing of the Petal 100 Line**, Petal shall file a revised project-specific hydrostatic testing plan with the Secretary, for the review and written approval of the Director of OEP. The plan shall identify all discharge locations, discharge volumes, and discharge rates for hydrostatic test water. The plan shall also indicate if any chemicals would be added to the hydrostatic test water, the concentration of the additives at discharge, and the treatment and/or disposal methods for the discharge if needed. In addition, Petal shall provide copies of any required permits for these discharges.

17. **Prior to construction**, Petal shall file with the Secretary a revised project-specific ECP, which includes the measures outlined in our staff's Procedures at section VI.C.2.d.

18. Petal shall implement all of the gopher tortoise mitigation measures and conservation recommendations outlined in the U.S. Department of Interior, Fish and Wildlife Service's (FWS) Biological Opinion, and document that pre-construction and construction related activities were completed in a filing with the Secretary **within 30 days after service has been authorized**. Post-construction activities shall be documented in the quarterly restoration filings with the Secretary required under section VIII.B.2 of our staff's Plan.

19. If the facilities are not constructed **within 1 year from the date of issuance of the certificate**, Petal shall consult with the FWS to update the

species list and to determine if additional surveys are required. The biological survey reports and any FWS comments on the survey and its conclusions shall be filed with the Secretary. The survey reports shall include the following information:

a. name(s) and qualifications of the person(s) conducting the survey;
b. method(s) used to conduct the survey;
c. date(s) of the survey;
d. area surveyed (include the mileposts surveyed); and
e. proposed mitigation that would substantially minimize or avoid the potential impacts.

20. Petal shall defer construction of its pipeline and use of access roads 48/7 and 66/28 **until**:

a. Petal files all additional necessary cultural resources investigation reports covering the entire area of potential effect, including any testing reports or treatment plans, and the Mississippi State Historic Preservation Office's comment on those reports or plans;
b. the Advisory Council on Historic Preservation has been given an opportunity to comment if historic properties would be affected by the project; and
c. the Director of OEP reviews and approves in writing all cultural resource reports and plans, and notifies Petal in writing that construction or mitigation may proceed.

All materials filed with the Commission containing **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **"CONTAINS PRIVILEGED INFORMATION - DO NOT RELEASE."**

21. Petal shall reduce its construction right-of-way width to 75 feet for 100 feet on each side of the residences at mileposts MLV-1+MP 0.1, MLV-2+MP 9.6, and MLV-2+MP 4.7, and keep the edge of the construction right-of-way at least 10 feet from these residences, unless the landowners voluntarily agrees otherwise.

22. Petal shall increase the distance between the residence at milepost MLV-3+MP 9.2 and the edge of the construction right-of-way to 25 feet for 100 feet on each side of the residence, unless the landowner voluntarily agrees otherwise.

23. Petal shall reduce the distance between its pipeline and the existing Tennessee 500 pipelines to 10 or 15 feet, and keep the edge of the construction right-of-way more than 10 feet from the residences at mileposts MLV-3+4.5 and MLV-4+MP 7.1 for 100 feet on each side of the residences, unless the landowners voluntarily agree otherwise. **Prior to construction**, Petal shall file with the Secretary revised site-specific mitigation plans for these residences for the review and written approval of the Director of OEP.

24. Petal shall file a noise survey with the Secretary **no later than 60 days after placing the Heidelberg Compressor Station in service**. If the noise attributable to the operation of the new station at full load exceeds an L_{dn} of 55 dBA at any nearby noise-sensitive area, Petal shall install additional noise controls to meet that level within 1 year of the in-service date. Petal shall confirm compliance with the L_{dn} of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days after it installs the additional noise controls**.