119 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Missouri Interstate Gas, LLC	Docket Nos.	CP06-407-000
Missouri Gas Company, LLC		CP06-408-000
Missouri Pipeline Company, LLC		CP06-409-000
Missouri Interstate Gas, LLC		RP06-274-000

ORDER DENYING MOTIONS, ISSUING CERTIFICATES, AUTHORIZING ABANDONMENT AND TERMINATING PROCEEDING

(Issued April 20, 2007)

1. On June 28, 2006, Missouri Interstate Gas, LLC (Missouri Interstate) (an interstate pipeline), Missouri Gas Company, LLC (Missouri Gas), and Missouri Pipeline Company, LLC (Missouri Pipeline) (both Hinshaw pipelines exempt from Commission jurisdiction under section 1(c) of the Natural Gas Act (NGA))[1] (jointly, the Applicants) filed applications for authority to reorganize themselves into one interstate natural gas company. In Docket No. CP06-407-000 the Applicants seek authority to acquire and operate facilities under section 7(c) of the NGA and to abandon facilities under section 7(b). In addition, the Applicants request a blanket construction certificate under Part 157, Subpart F of the Commission's regulations in Docket No. CP06-408-000 and a blanket transportation certificate under Part 284 Subpart G of the Commission's regulations in

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[1] A "Hinshaw pipeline" is a person engaged in the transportation of natural gas in interstate commerce but exempt from Commission jurisdiction under 1(c) of the NGA by virtue of meeting the following conditions: 1) it receives the gas within or at the boundary of a state; 2) all gas so received is consumed within such state; and 3) the rates and services of such person are subject to regulation by the state. 15 U.S.C. 717 (2005).

Docket No. CP06-409-000. As discussed more fully below, we will grant the requested authorizations as conditioned by this order. Further, this order terminates, subject to condition, Missouri Interstate's pending cost and revenue proceeding in Docket No. RP06-274-000 because the issues in that proceeding will become moot as a result of this order.

Background

2. Missouri Pipeline and Missouri Gas are limited liability companies formed under Delaware law. United Pipeline Systems, LLC, a wholly-owned subsidiary of Gateway Pipeline Company (Gateway), owns 100 percent of both pipelines. There are various owners of Gateway further up the corporate structure. Both Missouri Pipeline and Missouri Gas are currently regulated by the Missouri Public Service Commission (MoPSC).

3. The MoPSC issued a certificate to Missouri Pipeline in 1989 authorizing it to acquire, convert to gas use, and operate a 70-mile segment of an existing oil pipeline and to construct an additional 15 miles of pipeline. In 1991, Missouri Pipeline was authorized to construct an additional 56 miles of pipeline to extend its system. Because Missouri Pipeline had purchased, but did not intend to operate, a 5.6-mile segment of the oil pipeline that crossed the border between Illinois and Missouri, the MoPSC imposed a certificate condition on Missouri Pipeline requiring it to keep the Missouri portion of its pipeline physically separate from the pipeline segment that crossed the Mississippi River so that there would be no doubt about Missouri Pipeline's Hinshaw status. Missouri Pipeline currently receives gas from two interstate pipelines, including its affiliate Missouri Interstate, and delivers that gas in Missouri to local distribution companies (LDCs) and others, including Missouri Gas.

4. Missouri Gas was certificated by the MoPSC in 1991 and under that authority it constructed 66 miles of pipeline extending from an interconnection with Missouri Pipeline to a terminus at Fort Leonard Wood in Missouri. Missouri Gas receives its gas from Missouri Pipeline. It delivers gas to LDCs and others in Missouri.

5. In 1994, Missouri Pipeline and Missouri Gas were acquired by UtiliCorp United Inc. In the MoPSC proceeding approving that acquisition, the parties stipulated that the condition requiring Missouri Pipeline to keep its system separate from the segment that crossed the Mississippi River, which was still owned by Missouri Pipeline, would remain in force. Subsequently, in 2001, Gateway sought to acquire the outstanding shares of UtiliCorp Pipeline Systems (UtiliCorp), a subsidiary of UtiliCorp United, Inc., which owned Missouri Pipeline and Missouri Gas. In the proceeding before the MoPSC addressing this acquisition, the parties raised the prospect of connecting Missouri Pipeline to the segment of the former oil pipeline that crossed the Mississippi River in

order to obtain a second source of gas. To address concerns that such a connect would result in Missouri Pipeline and Missouri Gas becoming subject to this Commission's jurisdiction, Gateway offered to restrict the gas flow so that it would only flow into, and not out of, Missouri. Accordingly, the MoPSC imposed a gas flow condition to that effect and also required that a separate company be formed to own the segment crossing the river if the parties pursued their plan to operate that segment. Thus, Missouri Interstate was formed to own and operate the border-crossing segment.[2]

6. To effectuate the instant proposal, the Applicants propose first that Missouri Interstate, with the Commission's approval, will abandon its pipeline facilities by transfer to Missouri Pipeline. Applicants assert that Missouri Pipeline would become a natural gas company subject to the Commission's jurisdiction under the NGA if the Commission issues a certificate to Missouri Pipeline to acquire those interstate facilities; therefore, Missouri Pipeline seeks authority from this Commission under NGA section 7(c) to acquire the subject facilities from Missouri Interstate. Then, Missouri Pipeline, which according to Applicants would no longer be subject to the MoPSC's jurisdiction or Missouri law, would abandon by transfer to Missouri Gas, with Commission approval, all of its facilities, including those acquired from Missouri Interstate. The Applicants request certificate authority from the Commission for Missouri Gas to acquire the facilities from Missouri Interstate. Missouri Gas would become the interstate pipeline that would supercede Missouri Pipeline and Missouri Interstate.

<u>Interventions</u>

7. Notice of the application filed in this proceeding was published in the *Federal Register* (71 Fed. Reg. 40,088) on July 14, 2006. Eight timely, unopposed motions to intervene were filed.[3] The MoPSC filed a timely notice of intervention.[4]

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[2] *See Missouri Interstate Gas, LLC*, 100 FERC ¶ 61,312 (2002) (*Missouri Interstate*) (authorizing Missouri Interstate to acquire and operate the segment of the former oil pipeline that traverses the Mississippi River and to construct an additional mile of pipeline to interconnect with Mississippi River Transmission Corporation (MRT) in Illinois). Missouri Interstate is owned by United Pipeline Systems, LLC, which also owns Missouri Pipeline and Missouri Gas. Missouri Interstate delivers gas to Missouri Pipeline in Missouri.

[3] Timely, unopposed motions to intervene were filed by the U.S. Dept. of Defense (on behalf of itself and other affected federal agencies at Fort Leonard Wood, Mo.), Panhandle Eastern Pipe Line Co., LP, Georgia-Pacific Corp., Laclede Group, Inc., Laclede Gas Co., Municipal Gas Commission of Missouri and Cities of St. James, St.

(continued)

8. Omega Pipeline Co. (Omega) filed a motion to intervene out-of-time. Omega states that it is a local distribution company and holds capacity on each of the Applicants' facilities. However, Omega explains, due to the press of business associated with its purchase by another unaffiliated company, it was unable to file a timely motion to intervene. Omega has demonstrated that it has an interest in this proceeding, therefore, since late intervention will not delay this proceeding, prejudice the rights of any party, or place an additional burden on existing parties, for good cause shown, the Commission will grant Omega's motion.

9. The MoPSC filed a motion requesting that the Commission abstain from acting on the application pending resolution of a proceeding initiated by the MoPSC in the Circuit Court for Cole County, Missouri.[5] In that proceeding the MoPSC seeks to enjoin the Applicants from taking any action inconsistent with certain certificate conditions imposed on Missouri Pipeline and Missouri Gas by the MoPSC. The MoPSC also seeks to enjoin Applicants from consolidating ownership of their respective facilities without prior authorization from MoPSC pursuant to Mo.Rev.Stat. § 393.190.1.[6]

10. In the alternative, if the motion for abstention is denied, the MoPSC requests that the Commission reject or dismiss the application. The MoPSC states that Rule 2001 of

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Roberts, Richland, and Waynesville (MuniComm/Cities), filing jointly, Missouri Gas Energy, A Division of Southern Union Co., and Union Electric Co. d/b/a AmerenUE (AmerenUE). Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214 (2006).

[4] Timely notices of intervention are granted by operation of Rule 214(a)(2) of the Commission's regulations. 18 C.F.R. § 385.214(a)(2) (2006).

[5] The court proceeding had been removed to the U.S. Court for the Western District of Missouri Central Division Missouri at the initiation of the Applicants. *See* Applicants' September 1, 2006 answer at note 2. However, the federal court remanded the matter back to the state court, holding that the state court was the appropriate forum. *See* MoPSC's October 20, 2006 Motion to Lodge with the Commission the U.S. District Court's October 18 Order remanding the MoPSC proceeding to the Missouri state court. We note that Applicants filed an answer to the motion to lodge on October 23, 2006. The MoPSC filed a response to that answer on November 1, 2006 and, on November 3, 2006, the Applicants filed an answer to the latter pleading. The matter is pending action by the state court.

[6] MoPSC Motion at 12.

the Commission's regulations authorizes the Commission to summarily reject any filing that "does not comply with any applicable statute, rule, or order."[7] The MoPSC argues that this gives the Commission authority to reject the Applicants' filing because, it alleges, the Applicants' proposal to acquire facilities from one another would contravene conditions in the Missouri Pipeline and Missouri Gas state certificates, and because the Applicants have not indicated that they have any intention of securing the MoPSC approvals required under state law for the proposed mergers. Further, if its motions to reject or dismiss are not granted, the MoPSC protests the application, contending that the proposed consolidation of the pipelines into one interstate pipeline is not required by the public convenience and necessity.

11. AmerenUE filed a protest asserting that the application should be denied because it is based on sham transactions designed to allow Missouri Pipeline and Missouri Gas to avoid state regulation and certain rate proceedings pending before the MoPSC, and because the Applicants' proposals will not achieve any benefits for consumers. AmerenUE also requests that if the application is not denied outright, a hearing should be held to examine the proposed rates.

12. The MuniComm/Cities request the Commission to reject the Applicants' filings, asserting that the Applicants' proposal would increase the rates of existing shippers. In the alternative, the MuniComm/Cities request that the Commission impose conditions requiring Missouri Pipeline and Missouri Gas to remain Hinshaw pipelines and to perform interstate transactions pursuant to a limited blanket certificate under section 284.224 of the Commission's regulations. MuniComm/Cities also request a hearing to determine whether the Applicants' proposed rates are just and reasonable.

13. On August 10, 2006, the Applicants filed an answer to these motions and protests. The Applicants argue that the MoPSC's motion for abstention should be denied because Commission precedent is clear that the Commission will not abstain from exercising its jurisdiction in cases brought under the NGA and that the Commission has long held, consistent with Supreme Court precedent, that abstention is the exception – not the rule. Applicants also argue that the MoPSC's request that the Commission reject the Applicants' filing should be denied on the grounds that (1) the Commission has exclusive jurisdiction over the Applicants' proposal, (2) the MoPSC lacks the authority to prevent the Applicants' proposed restructuring under the NGA, (3) the Applicants are free to structure their pipeline assets such that they fall under the Commission's exclusive jurisdiction, and (4) the MoPSC is attempting to restrict the Applicants' rights to engage

[7] Id. at 14.

in interstate commerce in violation of the Commerce Clause. On August 25, 2006, the MoPSC filed a response to the answer, and on September 2, 2006, the Applicants filed a response to that response.[8]

14. As an initial matter, we will deny AmerenUE's and MuniComm/Cities' requests for a hearing because they do not identify issues of material fact that cannot be resolved based on the written record. The Commission will respond to the motions filed by the MoPSC requesting that the Commission abstain from deciding or reject/dismiss the application, as well as the motion filed by the MuniComm/Cities to reject the application, in Part I of this order. Part I will also address AmerenEU's contention that the Applicants' requested authorizations should be denied, which we view as a request to reject the application outright, on the grounds that the proposed transactions between the Applicants are a sham and only for the purpose of evading state regulation. These arguments are similar to those raised by the MoPSC and MuniComm/Cities to support their contention that the application should be either dismissed or rejected.

15. Because the Commission is denying these motions, as discussed in more detail below, in Part II of this order we will analyze the Applicants' proposals and the protests thereto. Part II addresses, among other things, contentions that the proposals will not result in sufficient benefits and objections to specific aspects of the initial rate proposal and then determines whether the requested authorizations should be issued.

[8] Rule 213 of the Commission's rules of practice and procedure provides for answers to motions and certain other pleadings; however, this rule prohibits answers to answers. *See* Rule 213 (b), 18 C.F.R. § 385.213(b) (2006). Nevertheless, the Commission has waived this prohibition when the answers provide information that clarifies the issues and aids us in our decision-making. We find that this is the case for the Applicants' answer to the MoPSC's protest and MoPSC's answer to the Applicants' answer, as well as for additional responsive pleadings filed by the Applicants and the MoPSC. Therefore, for good cause shown, we will waive Rule 213(b) and accept the answers referred to above. For the same reasons, we will also waive this rule and accept the MoPSC's November 1, 2006 answer to the Applicants' answer to the motion to lodge, referred to in note 6 herein, and related responsive pleadings filed by the Applicants and the MoPSC.

PART I

Motions to Abstain, or in the Alternative, to Reject Applications

Position of the Parties

16. The MoPSC requests the Commission to abstain from ruling on the merits of the applications for certificates of public convenience and necessity and requests for abandonment authorization submitted by Applicants pending resolution of the proceeding initiated by the MoPSC in the Circuit Court for Cole County, Missouri.[9] The MoPSC argues that it would be appropriate for the Commission to apply principles consistent with those articulated in *Younger v. Harris*[10] and abstain from acting on the applications.

17. In the alternative, the MoPSC moves the Commission to reject or dismiss the application filed in this proceeding pursuant to Rule 2001(b)(1) of the Commission's regulations.[11] Rule 2001(b)(1) provides, in pertinent part, that "[i]f any filing does not comply with any applicable statute, rule, or order, the filing may be rejected . . . ." Citing *Municipal Light Boards v. Federal Power Commission,*[12] the MoPSC argues that conditions in the Missouri Pipeline and Missouri Gas state certificates (relating to flow) and Mo.Rev.Stat. § 393.190.1 are "applicable statute[s], rule[s], or order[s]" within the meaning of Rule 2001. More specifically, the MoPSC contends that the Applicants' proposal would contravene the flow conditions in the state certificates and, thus, their application filed pursuant to NGA section 7 for acquisition authority should be rejected for failure to "comply with [an] applicable statute, rule or order."[13] The MoPSC also contends that because the Applicants have not indicated that they have any intention of securing MoPSC approval to consolidate pursuant to Mo.Rev.Stat. § 393.190.1, their application should be rejected for failure to "comply with [this] applicable statute." The

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[9] *See* P 9, *supra.*

[10] 401 U.S. 37 (1971).

[11] 18 CFR § 385.2001(b)(1).

[12] 450 F.2d 1341 (D.C. Cir. 1971).

[13] The MoPSC also claims, in a footnote, that the Commission could consider MoPSC's motion to reject under the summary disposition provisions of Commission Rule 217, citing *ANR Pipeline Co.*, 105 FERC ¶ 61,236 at P 24 (2003). MoPSC Motion at 14, n. 43.

MoPSC characterizes the application as flouting state law and urges the Commission not to condone this action by processing the application.

18. In response to the MoPSC's motion to abstain, the Applicants argue that Commission precedent is clear that the Commission will not abstain from exercising its jurisdiction in cases brought under the NGA. The Applicants state that this is consistent with Supreme Court precedent holding that abstention is the exception, not the rule. The Applicants add that there is no valid basis for abstention here because the outcome of the state proceeding will not impact the Commission's ability to consider or decide the application before it.

19. In response to the MoPSC's alternative motion to reject the application, the Applicants do not address MoPSC's argument that rejection is called for by Commission Rule 2001. Rather, the the Applicants raise a federal preemption argument. They state that the Commission has exclusive and unequivocal jurisdiction over the transportation of natural gas in interstate commerce and that the MoPSC's filing of its lawsuit against Applicants in Missouri state court is "clearly an attempt by MoPSC to interfere with the Commission's exercise of its authority under the NGA."[14] They further argue that the MoPSC lacks the authority to prevent the Applicants' proposed restructuring under the NGA and that the Applicants are free to structure their pipeline assets such that they are under the Commission's exclusive jurisdiction. In making this argument, they contend that the MoPSC certificate conditions and Mo.Rev.Stat. § 393.190.1 are preempted by the NGA, citing *Schneidewind v. ANR Pipeline Company (Schneidewind)*[15]. Finally, they contend that the MoPSC conditions restricting the flow of gas on the pipelines violate the Commerce Clause of the U.S. Constitution by imposing an impermissible burden on interstate commerce.

20. In response to this answer, the MoPSC asserts that the Applicants' response to its motion mischaracterizes its request for relief and states that "MoPSC is not attempting to bar this Commission from exercising its jurisdiction; rather, MoPSC is seeking to bar [Missouri Pipeline] and [Missouri Gas] from unilaterally disregarding state certificate conditions proposed and accepted by [them] and included in a final MoPSC order that is final and non-appealable." The MoPSC explains, again, that it is seeking to uphold these conditions in Missouri state court and reargues that the Commission should abstain from ruling on, or should reject, the instant application.

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[14] Applicants' answer at 7.

[15] 485 U.S. 293 (1988).

21. The MoPSC also responds to Applicants' constitutional arguments. While not disputing that the NGA gives the Commission "exclusive jurisdiction over the transportation of natural gas in interstate commerce," the MoPSC argues that whether the conditions agreed to by the Applicants and included in a final and non-appealable order of the MoPSC preclude the Applicants from pursuing the restructuring they propose is an issue "that can and should be decided by the Missouri state courts." It points out that the Applicants will have an opportunity in Missouri Circuit Court to argue that the MoPSC conditions and state merger review pursuant to Mo.Rev.Stat. § 393.190.1 are preempted by federal law.[16]

22. The MoPSC further states that the Applicants did not cite any authority to support their contention that a state agency that regulates intrastate pipelines may not impose the types of conditions that the MoPSC did in its state certificates. It cites *Northwest Central Pipeline Corp. v. State Corporation Commission of Kansas*[17] for the proposition that its flow conditions are consistent with the NGA's division of jurisdiction between the state and federal governments. The MoPSC goes on to distinguish the facts regarding the Applicants' situation from those in *Schneidewind* and argues that neither *Schneidewind* nor section 7 of the NGA compels a conclusion that Congress intended to preempt state jurisdiction to review a proposed merger involving Hinshaw facilities regulated by a state commission – or to enforce conditions imposed by a state in a Hinshaw pipeline's state certificate that had been accepted by the pipeline. Finally, the MoPSC disagrees with the Applicants' argument that the state certificate conditions restricting the flow of gas on the pipelines violate the Commerce Clause of the U.S. Constitution.

23. In answering the MoPSC's response to its answer, the Applicants argue that the MoPSC is seeking to effectively and unlawfully "prohibit Applicants from transporting gas in interstate commerce," citing *Cabot Corporation v. Public Service Commission of West Virginia.* [18] For this reason, the Applicants ask the Commission to deny MoPSC's request for abstention and/or denial of its application.

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[16] We note that the state court proceeding filed in Cole County was removed to the U.S. District Court for the Western District of Missouri, Central Division, by the Applicants. *See* n. 5, *supra*. However, the federal court remanded the matter back to the state court, holding that the state court was the appropriate forum. *Id*.

[17] 489 U.S. 493 (1989).

[18] 332 F.Supp. 370 (S.D.W.Va. 1971).

Commission Response

24. We decline to abstain from acting on the Applicants' proposal. The Supreme Court has made clear that the doctrine of abstention is "the exception, not the rule," and "an extraordinary and narrow exception at that."[19] Here, as the MoPSC concedes, the Commission has exclusive jurisdiction over NGA issues. As we noted in *Stowers Oil & Gas Co.*, where federal law governs (in that case, also the NGA), the federal agency has exclusive jurisdiction, and the expertise, to administer the statutes entrusted to it.[20] Accordingly, in the handful of proceedings in which abstention requests have been filed, the Commission's practice has been to deny the requests even if there is a related pending state proceeding when, as here, the issues before the Commission are within its exclusive jurisdiction.[21]

25. The MoPSC asserts that, under certain circumstances as set forth in *Younger v. Harris*[22] and its progeny, courts have found that it is appropriate for a federal court to abstain from hearing a matter when the same issues are pending in state proceedings, and the Commission should therefore "follow an analogous approach" here.[23] We believe the MoPSC's reliance on this line of cases is misplaced. Assuming, *arguendo*, that these cases are applicable to this proceeding, we note that the applications before us and the pending state proceeding involve different issues. The pending state proceeding involves enforcement of the conditions of Applicants' state certificates and whether the Applicants may consolidate their respective facilities without prior authorization from the MoPSC as required by Mo.Rev.Stat. §393.190.1. On the other hand, the issue before this Commission is whether the granting of the Applicants' proposal is consistent with the public convenience and necessity under NGA section 7, which is a matter within our exclusive jurisdiction.

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[19] *Colorado Water Conservation District v. U.S.*, 424 U.S. 800, 813, *reh'g denied*, 426 U.S. 912 (1976) (*quoting County of Allegheny v. Frank Mahshuda Co.*, 360 U.S. 185, 188-189 (1959). *See also Stowers Oil & Gas Co.*, 33 FERC ¶61,207 at 61,423 (1985).

[20] 33 FERC ¶61,207 at 61,423.

[21] *Id*. *See also Florida Power & Light Co.*, 41 FERC ¶61,153 at 61,382 (1987); *Central Power and Light Co.*, 8 FERC ¶61,065.

[22] 401 U.S. 37 (1971).

[23] MoPSC Motion at p. 13.

26. We also deny the MoPSC's alternative request that the Commission reject the applications as a matter of substantive law. It is appropriate for an agency to reject a filing where it is plainly deficient on its face or "is so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by obviating any docket at the threshold rather than opening a futile docket."[24] By way of example, in interpreting this standard, the Supreme Court upheld the rejection of an application for a certificate of public convenience and necessity when the application was supported by a contract containing a clause that would have resulted in summary rejection under Commission regulations.[25]

27. In accordance with the "patently a nullity" standard articulated in *Municipal Light Boards v. FPC*, the Commission has refused to reject filings that were not found to be "patently deficient or a violation of an applicable statute, regulation, or Commission policy."[26] We do not agree that Mo.Rev.Stat. §393.190.1 or the conditions in the Missouri Pipeline and Missouri Gas state certificates are "applicable" statutes, rules or orders within the meaning of Rule 2001. The Applicants' filing is in accordance with the NGA and the Commission's relevant regulations and policies, and they have provided a full explanation of the nature, reasons, and basis for the filing. The MoPSC has not pointed to an applicable Federal statute or Commission regulation that the Applicants have violated by exercising their rights under section 7 of the NGA to make the filing before us. While the Commission's ultimate decision on the merits of an application under the NGA may include a consideration of the potential implications, if any, of state or local laws or regulations to which applicants may be subject, the Commission does not view failure to demonstrate compliance with such laws and regulations as grounds for rejection of a filing under Rule 2001.[27] Accordingly, given that the Applicants' filing fully complies with the Commission's standards under the NGA and our implementing

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[24] *Municipal Light Boards v. FPC*, 450 F.2d 1341, 1346 (D.C.Cir. 1971).

[25] *Federal Power Comm'n v. Texaco*, 377 U.S. 33 (1964).

[26] *American Electric Power Service Corporation,* 97 FERC ¶ 61,103 at 61,543 (2001). *See also Tennessee Gas Pipeline* Company, 69 FERC ¶ 61,235 at 61,886 (1994), and Rule 2001 of our regulations, which authorizes rejection of any filing that does not "comply with any applicable statute, rule or order."

[27] *See, e.g.*, May 12, 2006 Staff Data Request to South Carolina Pipeline Corporation in Docket No. CP06-71-000, et. al. (seeking information regarding the status of state authorizations related to the divestiture of facilities).

regulations, there is no support for the notion that the application is a "patent nullity" for which rejection is appropriate.

28. The Commission understands the obligation that the states have in protecting the interests of natural gas consumers in their respective states. While the Commission takes a broader view of the public interest because it focuses on the national market, we nevertheless consider the effects of any proposal on existing shippers as well as on other state interests, such as the environment. This analysis will occur later in this order.

29. We note that the MoPSC, MuniComm/Cities and AmerenUE all suggest that Missouri Pipeline and Missouri Gas are attempting to avoid the MoPSC's rate regulation and a complaint proceeding pending before the MoPSC which could result in a refund obligation or fine. These parties also aver that there must be changed circumstances with respect to the Applicants' operations, lacking here, to warrant a change from state to federal jurisdiction.

30. We disagree with both suggestions. First, as several of the parties point out, the Commission has stated that "[i]t is not unusual, much less unlawful, for persons to structure transactions either to qualify for regulation by one entity or to avoid regulation by another."[28] Therefore, the Commission will not reject an application based on arguments that its purpose is to avoid state regulation. The parties' arguments with respect to changed circumstances are unclear as to what circumstances they believe must change before a state-regulated pipeline may apply to this Commission for authorization to operate in interstate commerce. As a practical matter, an intrastate/Hinshaw pipeline cannot change its operational circumstances, *i.e*. transport gas in interstate commerce, until it applies for and receives authorization under NGA section 7(c) from this Commission to do so.[29]

31. Finally, because we decline to either abstain from acting on the applications before us, or to reject the applications, we need not address additional arguments raised by the parties, including preemption. However, as a general matter, we note that "the right to acquire and the right to operate an interstate pipeline is an essential adjunct to"

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[28] *See KN Wattenberg Transmission, LLC v. Public Service Co. of Colorado*, 83 FERC ¶ 61,285 at n.25 (1998).

[29] We will not reach the question of whether Missouri Gas and Missouri Pipeline would remain liable for any refund or fine resulting from the processing of the complaint pending before the MoPSC. Further, the possibility of that liability is not a cause to defer consideration of the application in this proceeding.

the right to transport and sell gas in interstate commerce and that these matters are subject to the Commission's jurisdiction.[30] Referring to NGA section 7(c), one court has observed:

> [nowhere] in that section, or anywhere else in the Act, is found any provision which requires…[the Commission] to act jointly with a state utility commission, or to condition its grant of authority or approval upon the action of a state regulatory body, in the respects with which we are concerned.[31]

With reference to state statutes which conflict with the Commission's jurisdiction under the NGA, the court found that "not the federal but the state regulation must be subordinated, when Congress has so plainly occupied the regulatory field."[32]

Part II

Proposal

32. As described, the Applicants, all affiliated companies, are Missouri Interstate, a natural gas company subject to the Commission's jurisdiction, and the limited liability companies, Missouri Gas and Missouri Pipeline, both subject to the jurisdiction of the MoPSC as Hinshaw pipelines exempt from Commission jurisdiction under NGA section 1(c).

33. Missouri Interstate's facilities include 6.6 miles of 12-inch diameter interstate pipeline extending from an interconnection with MRT in Illinois to an interconnection with the eastern end of Missouri Pipeline in the northern suburbs of St. Louis, Missouri. Missouri Interstate is authorized to provide up to 20,000 Mcf/d of interstate natural gas transportation service. On the northwestern end of its approximately 141-mile system, Missouri Pipeline receives gas through an interconnection with Panhandle Eastern Pipe Line Company. Missouri Pipeline delivers gas to two major local distribution companies,

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[30] *Public Service Comm'n of West Virginia v. Federal Power Comm'n and Mountain Gas Co.*, 437 F.2d 1234 (4th Cir. 1971). *See also Pennsylvania Public Utility Commission v. Federal Energy Regulatory Commission, et al.*, 881 F.2d 1123 (D.C. Cir. 1989) (agreeing that "the transfer of facilities subject to federal regulation under the NGA is properly within the jurisdiction of FERC).

[31] *Public Service Comm'n of West Virginia* at 1238.

[32] *Id.* (*quoting Northern Natural Gas Co. v. State Corp. Comm'n of Kansas,* 372 U.S. 84 (1963).

Laclede Gas Company and AmerenUE, and to its affiliated Hinshaw pipeline, Missouri Gas, for redelivery and ultimate consumption within Missouri. From its interconnection with Missouri Pipeline's southern end, Missouri Gas extends for 66 miles to a terminus at Fort Leonard Wood, Missouri. At that point, Missouri Gas delivers gas to Omega Pipeline Company (Omega), a contractor providing gas distribution to Fort Leonard Wood, a federal military facility. Omega was affiliated with Missouri Interstate, Missouri Pipeline and Missouri Gas, but was recently sold to a third party, Tortoise Capital Resources Corporation.[33] Missouri Gas also delivers gas to AmerenUE, one industrial customer, and several Missouri municipalities.

34. The application seeks approval to consolidate certain facilities owned by the affiliated companies in order to form a new interstate pipeline to be owned by Missouri Gas which would be subject to the jurisdiction of the Commission. Specifically, the Applicants seek authorization for: (1) Missouri Interstate to abandon its tariff and services and to abandon its facilities by transfer to Missouri Pipeline; (2) Missouri Pipeline to acquire and operate, as part of its existing system, all of Missouri Interstate's facilities; and (3) Missouri Pipeline to subsequently abandon by transfer and Missouri Gas to acquire and operate, as part of its existing system, all of the facilities of Missouri Pipeline.

35. In addition, Applicants request: (1) issuance of a blanket certificate of public convenience and necessity under Part 284, subpart G of the Commission's regulations to Missouri Gas, authorizing it to provide open access interstate transportation services to the Applicants' existing transportation customers and to potential new customers located inside and outside of Missouri, and a determination that Missouri Gas' proposed initial firm and interruptible rates are in the public interest; (2) issuance of a blanket certificate of public convenience and necessity under Past 157, subpart F, of the Commission's regulations to Missouri Gas authorizing certain routine construction and operation activities and abandonment; and (3) approval of the pro forma tariff proposed herein and acceptance of Applicants' existing service agreements with current customers as non-conforming service agreements.

36. The Applicants state that upon implementation of the mergers, if approved by the Commission, their proposal will expand access to the interstate gas transportation grid for the Applicants' customers on standardized terms and conditions, make the grid more efficient, offer better supply and pricing options, facilitate future pipeline expansions within and outside of Missouri, and establish a single regulatory regime wherein the

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[33] As a contractor to the U.S. Government, Omega's rates are not regulated by the MoPSC.

Commission would review any expansions, newly proposed services and rates for service on the new system. The Applicants aver that their proposed acquisition of the facilities and the integration of the Applicants' assets into a single interstate pipeline system will allow the Applicants to provide open access, non-discriminatory transportation consistent with the NGA and the Commission's regulations and policies. As an integrated interstate company, the Applicants maintain that the proposed Missouri Gas will be better able to serve Missouri and Illinois customers and respond to interstate demand, particularly in Illinois.[34] In addition, the Applicants assert that consolidation of the companies will eliminate inefficiencies, enabling Missouri Gas to improve service to existing and potential new customers.

37. The Applicants state that as a result of these transactions, all of the facilities currently owned and operated individually by Missouri Interstate and Missouri Pipeline will be owned and operated by Missouri Gas along with the latter's currently-owned facilities. The Applicants aver that no later than 18 months after the integrated Missouri Gas commences operations pursuant to the Commission-issued certificates requested here, Missouri Gas will file a rate case to establish just and reasonable rates under section 4 of the NGA to replace the proposed initial rates requested for approval in this proceeding.[35]

38. The Applicants' proposed cost-based initial recourse rates reflect a straight-fixed variable rate design and two rates zones. Zone 1 would include all of Missouri Pipeline's and Missouri Interstate's facilities, and Zone 2 would consist of the current Missouri Gas system.[36] Zone 1 FT rates were derived using a cost of service for Missouri Pipeline and

[34] In its August 10, 2006 answer, the Applicants include a letter from ConocoPhillips indicating that industrial users in Illinois have expressed interest in receiving service from Missouri Gas after the mergers.

[35] We note that when Missouri Interstate was issued a certificate by the Commission in 2003, the certificate order required the pipeline to file a cost/revenue study within three years. Missouri Interstate made this filing in Docket No. RP06-274-000 and contends that its study supports the recourse rates that were approved as initial rates and that no change in such rates is warranted. The MoPSC filed a protest, request for discovery and a request for a technical conference in that proceeding. As discussed below, the MoPSC raised many of the same issues in the rate docket as it does here.

[36] The rates listed here were included in Exhibit N (revised), attached to the Applicants' October 3, 2006 response to a data request and, thus, differ slightly from the rates proposed in the application or in July 6, 2006 filing of a revised Exhibts N-1 and N-2.

Missouri Interstate of $8,609,089 and annual FT reservation billing determinants of 31,954,655 Dth, based on the capacity currently under contract and the imputing of 1,000 Dth per day to interruptible volumes. The proposed maximum cost-based FT reservation rate for Zone 1 is $8.134 per Dth and the proposed maximum commodity rate is $0.002 per Dth. The proposed Zone 2 rates are based on a cost of service of $4,295,747 and annual FT reservation billing determinants of 7,207,655 Dth, based on the capacity currently under contract and the imputing of 1,000 Dth per day to interruptible volumes. The proposed maximum cost-based FT reservation rate for Zone 2 is $18.128 per Dth and the proposed maximum commodity rate is $0.000 per Dth. Other factors upon which the rates are based are discussed in the rate section of this order.

39. The Applicants also seek authorization to enter into negotiated rate transactions and request the Commission to accept the Applicants' existing customers' contracts as negotiated rate agreements so that these shippers will continue to pay the rates they are currently paying. In addition, the Applicants request that the Commission accept these existing contracts as nonconforming service agreements under the proposed Part 284 tariff so that the existing shippers' service will continue under the terms and conditions of their current contracts.[37] The Applicants explain that since the existing contracts were drafted and executed under state regulations, their format is significantly different from the Commission's approved service agreements. Therefore, the Applicants request a waiver of the requirement that nonconforming contracts should be redlined to indicate the differences between the nonconforming agreements and the pro forma agreements because such redlining would result in an unreadable document.

40. The Applicants request a waiver of the EDI/EDM and EBB/EDM requirements defined in the North American Energy Standards Boards' (NAESB) definitions 4.2.11 and 4.213 because the Applicants will be a small pipeline and the high cost of compliance would work a hardship on the pipeline. The Applicants note that the Commission has granted similar waiver requests for other small pipelines.[38]

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[37] The Applicants note that some of their direct and indirect customers are small municipal-owned utilities that have contracts specifying that if these customers incur overruns on the contracts' maximum daily quantity (MDQ), the MDQ is automatically adjusted upwards to the higher level; therefore, these contracts function as full requirements contracts. Because of the benefit to the municipalities, the Applicants request the Commission to accept these contracts as nonconforming agreements.

[38] *Citing, e.g., Missouri Interstate Gas LLC*, 102 FERC ¶ 61,172 (2003).

41. The Applicants assert that none of the issues of concern in the Commission's Certificate Policy Statement are raised by its proposal.[39] They maintain that since no new construction is proposed, the Commission's concerns about over-building, disruptions to the environment and use of eminent domain are not present. Further, they aver that the existing customers of each pipeline will not subsidize the merger proposal because they will continue to pay the same rates they currently are paying until the rate case that will be filed in 18 months. Moreover, the Applicants state that the proposal will have no adverse effects on competing pipelines or those pipelines' existing customers, but will increase competition consistent with the Commission's policy goals in this respect. Finally, because there is no new construction proposed, there will be no negative impacts on the interests of landowners or the environment. Thus, they argue the substantial benefits to be gained by the proposed merger will outweigh any negligible adverse effects if there are any. For all of these reasons, the Applicants contend that the proposal is required by the public convenience and necessity and the Commission should issue the requested the authorizations.

Discussion

42. The facilities of Missouri Gas, after the merger, will be used to provide transportation of natural gas in interstate commerce; therefore, Missouri Gas and its facilities, as well as the services provided over the facilities, will be subject to the NGA and the Commission's jurisdiction. In this regard, as previously explained herein, the application filed in this proceeding is properly before the Commission because the Applicants are proposing to merge in order to become a new natural gas company as defined by the NGA.

Certificate Policy Statement

43. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.[40] The Policy Statement establishes 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

[39] *See Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 92 FERC ¶ 61,094, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

[40] *Id.*

adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

44. Under the Commission's 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. If the applicant is an existing pipeline, 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.

45. For both new companies and existing pipelines, 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 then proceed to complete the environmental analysis where other interests are considered.

46. The Certificate Policy Statement has limited applicability in this proceeding because the Applicants are not proposing to expand an existing system or to construct new facilities which existing shippers could subsidize. Although the pipeline is proposing initial recourse rates, the existing shippers of each Applicant will continue to pay the same rates they are paying until the new pipeline, Missouri Gas, files its rate case in 18 months. Any issues of subsidization will be addressed in that future rate proceeding where Missouri Gas will have to support either the same or new recourse rates based on actual operating history.

47. MuniComm/Cities contend that the application should be rejected because the proposed initial recourse rates are higher than those approved by the MoPSC for intrastate service over Missouri Pipeline and Missouri Gas. The Applicants explain, however, that MuniComm/Cities are comparing the proposed Zone 1 rate, which combines the rates for both Missouri Pipeline and Missouri Interstate, with the rate for Missouri Pipeline alone. The Applicants assert that the proposed Zone 1 reservation rate

of $8.134 is actually lower than the combined existing reservation charges for Missouri Interstate ($9.766) and Missouri Pipeline ($4.3181).[41]

48. The Applicants also point out that any rate comparison must consider the change in rate design from modified-fixed variable, under which Missouri Pipeline's and Missouri Gas' rates were designed, to straight-fixed variable. Depending on a shipper's load factor, the shipper's unit costs may increase or decrease under the change in rate design. The Applicants state that the MoPSC's own Exhibit 7 to its Motion to Abstain shows the impact of the change. That Exhibit outlines 12 scenarios and shows that in ten of them, the proposed recourse rates are lower than the rates currently approved by the MoPSC for Missouri Gas and Missouri Pipeline. Further, if in its rate case Missouri Gas proposes higher recourse rates than the proposed initial rates, the existing shippers with expired or terminated contracts may still seek to enter into new negotiated rate contracts for their service or seek discounts.

49. Therefore, since the Applicants have agreed to maintain shippers' current rates until a section 4 rate case is filed, the Commission finds that the existing shippers are not likely to subsidize any other shipper's service. In addition, the existing shippers can raise any concerns they have about the rates that Missouri Gas proposes in the future rate case.

50. We also find that the Applicants' proposal meets the other criteria of the Certificate Policy Statement. No landowners will be affected because the proposal does not involve construction of facilities. Additionally, it appears that this proposal will enhance competition in the area and will not adversely affect competing pipelines or their captive customers. The initial shippers on the new pipeline will be existing shippers so their current levels of service will not be moving from a competing pipeline. Finally, we find that to the extent there are any residual adverse impacts resulting from the merger, those effects would be outweighed by the benefits of the proposal.

51. Among those benefits are the more efficient and cost-effective operation of the merged pipelines since the procedures for obtaining, scheduling and paying for service will not require three separate systems. For example, the merged pipeline will operate under one tariff as opposed to three. Another benefit is that the current shippers on the

[41] The Commission also notes that the commodity component of the interstate rates that MuniComm/Cities claim are being proposed by the Applicants is incorrect. The filed maximum Zone 1 commodity charge is $0.002 per Dth and there is no commodity charge for Zone 2. Therefore, on a 100 percent load factor basis, the Zone 1 maximum rates for the Applicants ($0.267) is less expensive than Missouri Pipeline's current rates ($0.312 per Dth).

integrated pipeline will have all of the benefits afforded interstate shippers, such as flexible receipt and delivery rights, and capacity release.[42]

Rates

52. The Applicants' rate proposal is generally acceptable; however, there are a number of issues, many of which are raised by the protesters, which we will address.

Rate Base Issues

53. The MoPSC questions whether the new Missouri Gas pipeline's gross plant includes an acquisition premium and whether financing and loan fees have been capitalized, both of which would be contrary to Commission policy.[43] The Applicants contend that these issues, as well as others raised by the MoPSC, should be deferred until it files its rate case in 18 months.

54. Page 6 of the Applicants' Exhibit S indicates that an acquisition adjustment of $1,770,784 has been added to Gas Plant in Service for Missouri Pipeline and $1,145,802 for Missouri Gas. The Commission's longstanding policy is to allow only the net book value of facilities in rate base for pipelines which provide regulated natural gas services, with limited exceptions.[44] In order to recover such a premium, we have held that the pipeline has "the burden of establishing the dollar amount of the benefits alleged to have been conferred upon the consumers."[45] The Applicants have provided no evidence in

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[42] The Applicants cite Order Nos. 636 and 637 wherein the Commission explained the benefits of flexible receipt and delivery rights and of capacity release, respectively. *See Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations*, Order No. 636, FERC Stats. & Regs. ¶ 30,939 (1992), and *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091 (2000), respectively.

[43] *Citing*, *Empire*, 116 FERC ¶ 61,074 (2006) and *Enbridge Pipelines*, 100 FERC ¶ 61,260 (2002).

[44] *Enbridge Pipelines*, 100 FERC ¶ 61,260 at P 48 (2002).

[45] *United Gas Pipeline Co.*, 25 F.P.C. 35 (1960), *order on reh'g*, 25 F.P.C. 26 (1961); *rev'd on grounds other than acquisition premium sub nom. Willmut Gas and Oil Co. v. FPC*, 299 F.2d 111 (D.C. Cir. 1962).

support of the benefits of the acquisition premium; therefore, we will require that Missouri remove the combined $2,916,586 acquisition adjustment from its rate base. However, we agree with the Applicants' response to the MoPSC's concern that the issue of whether financing and loan fees have been capitalized would more appropriately be addressed in Missouri Gas' subsequent section 4 rate case where the parties can raise this issue.

55. The MoPSC also contends that based upon Schedule H-2, filed by Missouri Interstate with its cost and revenues study in Docket No. RP06-274-000, it appears that the Applicants may have determined plant balances and accumulated depreciation by averaging the beginning and end-of-year balances, and that it would be more appropriate to utilize the end-of-year balances. The Applicants' proposed recourse rates are based on financial information as of December 31, 2005. The total reserve for depreciation in revised Schedule B of Exhibits N-1 and N-2 for the merging pipelines totals $22,480,667. However, the Accumulated Depreciation in Exhibit L is $23,380,584. While Exhibit L is a consolidated statement and does not provide the total by pipeline, the Commission notes that the MoPSC appears to be correct that the Applicants used an average accumulated depreciation balance. Since Missouri's Exhibits N-1 and N-2 are based on financial information as of December 31, 2005, the Applicants should revise the rate base by using depreciation balances as of December 31, 2005 in its rate base calculation.

56. Additionally, the MoPSC states that the application does not contain a schedule detailing the computation of Accumulated Deferred Income Tax (ADIT) to derive the Zone 1 and Zone 2 rates and that the Applicants should be required to provide filed income tax returns to support the tax depreciation expense and tax rates used. According to the MoPSC, if there is no actual income tax liability, there should be no ADIT credit to rate base. We think the level of ADIT is an issue that would best be resolved in the section 4 rate case which Missouri Gas has agreed to file within 18 months of the commencement of interstate service. However, the Commission will require Missouri Gas to use end of the year totals for ADIT, not an average, in its rate base calculation. The Commission will address MoPSC's comments related to an income tax allowance below.

Cost-of-Service Issues

57. Numerous issues have been raised in the protests regarding the various components used by Applicants to develop the cost of service. The Commission also has concerns about the Applicants' approach on several components. All of these issues are addressed below.

Depreciation

58. The MoPSC questions why the Applicants should be able to depreciate Land and Land Rights and Rights-of-Way. In response, the Applicants state that depreciation for Land and Land Rights was erroneously claimed and it will be removed from the rate calculation. We direct the Applicants to do so.

Capital Structure

59. The Applicants propose to use a hypothetical capital structure of 50 percent debt and 50 percent equity based on the average for the proxy group it states is generally used by the Commission.[46] They state that the Applicants' actual capital structure reflects 100 percent equity and is not appropriate to use in the development of a reasonable return. This is so, the Applicants explain, because the capital structure does not satisfy two of the three tests established by the Commission in Opinion Nos. 414 and 414-A[47] for the use of a pipeline's own capital structure in the computation of the overall rate of return. Specifically, the Applicants do not issue their own non-guaranteed debt and have no bond rating. In addition, the corporate owner, Gateway, and Gateway's owner, Mogas Energy, LLC (Mogas), do not satisfy these requirements either.

60. The MoPSC maintains that the Applicants' use of a hypothetical capital structure may be contrary to Commission precedent since it does not identify the real entities that will obtain financing for the pipeline. The MoPSC requests that the Commission require the Applicants to provide additional information regarding their financing and the financing of their affiliates/owners in order to more clearly determine whether their financing is consistent with Commission policy. Further, the MoPSC posits that the capital structure of either Gateway or Mogas might be appropriate to use in setting initial rates since, it asserts, both issue their own commercially-held debt and, as noted by Missouri Interstate in its cost/revenue study in Docket No. RP06-274-000, Gateway is the entity that provided the financing. In that study, Missouri Interstate identified Gateway's capital structure as comprising 49.28 percent debt and 50.72 percent equity.[48] In

[46] This proxy group consists of Equitable Resources, Kinder Morgan, Inc., Questar Corp., and Williams Companies, Inc.

[47] *Transcontinental Gas Pipe Line Corporation*, 80 FERC ¶ 61,157 (1997); *order on reh'g*, 84 FERC ¶ 61,084 (1998).

[48] *See* Missouri Interstate's March 17, 2006 Transmittal Letter at 3 in Docket No. RP06-274-000.

addition, the MoPSC argues that that even if the Applicants are able to support the use of a hypothetical capital structure, they should be required to show that 50 percent debt and 50 percent equity is an appropriate hypothetical capital structure.

61. The Commission prefers to use the capital structure of the real entities that obtain financing for the pipeline, such as the pipeline itself or a company associated with the pipeline, such as its parent. However, the Commission may use a hypothetical capital structure if the capital structure of the entity obtaining the financing is anomalous. The Commission has recently stated that the anomalies include circumstances where either (a) the capital structure of the financing entity is not representative of the regulated pipeline's risk profile, or (b) the capital structure is different from the capital structure approved for other pipelines, or if a discounted cashflow (DCF) analysis is performed, outside the range of the proxy group used in the DCF analysis.[49]

62. Here, however, it is not clear from the information provided which entity will provide the actual financing for the merged pipeline, Missouri Gas. The record does not show that the Applicants, their corporate owner, Gateway, or Gateway's owner, Mogas Energy, issue their own non-guaranteed debt[50] or whether any of them have a bond rating. Accordingly, the Applicants are correct that their capital structure does not satisfy two of the three tests established in Opinion Nos. 414 and 414-A [51] for the use of a pipeline's own capital structure in calculating the overall rate of return. Therefore, the Commission will approve the use of a hypothetical capital structure for the new Missouri Gas.

63. In *HIOS*,[52] the Commission adopted a hypothetical capital structure based on the average equity ratio of the proxy group Commission Staff used for its DCF analysis.[53]

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[49] *Enbridge Pipelines (KPC)*, 109 FERC ¶ 61,186 at P 89 (2004).

[50] Gateway's debt consists of a bank loan agreement secured by real and personal property of Gateway.

[51] *See supra.* note 48.

[52] *See High Island Offshore System, L.L.C.*, 110 FERC ¶ 61,043 (2005), *order on reh'g and compliance filing*, 112 FERC ¶ 61,050 (2005), *order on clarification and reh'g*, 113 FERC ¶ 61,280 (2005) (*HIOS).*

[53] Staff's proposed proxy group consisted of four companies: Kinder Morgan, Inc., Equitable Resources, Inc., National Fuel Gas Company, and Questar Corp.

This assures a match between the financial risk inherent in the DCF analysis used to develop the return on equity and the hypothetical capital structure. The average capital structure of the Staff proxy group was 50.8 percent debt and 49.2 percent equity. The same proxy group was recently adopted by the Commission in *Kern River*.[54] The capital structure of this proxy group is nearly identical to the average capital structure for the four pipeline companies included in the Applicants' proxy group (50.9 percent debt and 49.1 percent equity), which includes three of the four companies in the Staff proxy group.[55] The Applicants have not provided a compelling reason to adopt their own proxy group as opposed to the Staff proxy group that was approved in *HIOS* and *Kern River*. Therefore, the Commission directs the use the capital structure of the Staff proxy group, 50.8 percent debt and 49.2 percent equity, for the Applicants' hypothetical capital structure.

<u>Return on Equity</u>

64. The Applicants have requested a return on equity (ROE) of 13.30 percent, which is the return authorized by the Commission when it issued Missouri Interstate's certificate in Docket Nos. CP02-399-000.[56] The Applicants state that their DCF analysis shows that the appropriate ROE is 13.60 percent and that the Commission typically recommends an ROE in the 14 percent range. Therefore, the Applicants urge that a 13.30 percent ROE is reasonable to establish new recourse rates in this proceeding. The allowance of a ROE of 13.30 percent will produce an overall rate of return of 10.28 percent.

65. The Applicants' DCF analysis is based on three different models: 1) a short-term growth model using Wall Street analysts' estimates of company growth; 2) a two-stage growth rate using short-term growth rates for the proxy companies and the constant growth rate based on retained earnings and the effects on book value of new common stock issuances; and 3) a three-stage growth rate using company-specific short-term growth rates, the expected long-term growth of the gross domestic product, and a transition growth rate. The average cost of equity of the three models is 14.04 percent,

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[54] *Kern River Gas Transmission Company,* 117 FERC ¶ 61,077 (2006) (*Kern River).*

[55] The Commission also notes this is nearly identical to the capital structure of Gateway (49.28 percent debt and 50.72 percent equity) identified by Missouri Interstate in its cost and revenue study in RP06-274-000.

[56] *Missouri Interstate Gas, LLC*, 100 FERC ¶ 61,312 (2002).

13.81 percent and 11.98 percent, respectively and the average of all three models is 13.28 percent.

66. The MoPSC asserts, however, that the proposed 13.30 percent ROE is excessive, assuming a capital structure like that proposed by the Applicants, and that this rate exceeds the equity returns the Commission has authorized in recent litigated pipeline cases.[57] The MoPSC notes that the proposed 13.30 percent ROE is also very close to the high end of the range of reasonableness (13.51 percent) cited by the Commission in its recent decision in *Empire.*[58] The MoPSC contends, however, that the Applicants have not shown that the new pipeline will face above-average business risks that would merit an ROE above the median of the range. The MoPSC also maintains that while it is true that the Commission will generally allow a pipeline, when establishing the ROE for initial rates for a new project under NGA section 7, to use the ROE approved in its last section 4 rate case, the 13.30 percent ROE approved for Missouri Interstate was not approved in such a proceeding, but only in the context of establishing initial rates in a certificate proceeding.[59] Therefore, the MoPSC requests that the Commission perform its own DCF analysis to derive an appropriate ROE for the new Missouri Gas' initial rates. In response to the MoPSC, the Applicants contend that in cases such as this, involving an existing interstate pipeline, the Commission's policy is that rates in a section 7 proceeding be designed based on the pipeline's approved rate of return.

67. When a pipeline establishes rates for an incremental project or for a new interstate system such as that proposed here, the Commission policy is to approve rates that are designed on the ROE approved in the pipeline's last section 4 rate case.[60] Missouri

[57] *See, e.g., HIOS*, 110 FERC ¶ 61,043 (2005), *order on reh'g and compliance filing,* 112 FERC ¶ 61,050 (2005), *order on reh'g clarification,* 113 FERC ¶ 61,280 (2005) (adopting an 11.22% ROE); *Williston Basin Interstate Pipeline Co.,* 104 FERC ¶ 61,036 (2003), *order on reh'g and remanding certain issues for hearing,* 107 FERC ¶ 61,164 (2004) (adopting a 12.48% ROE); *Enbridge Pipelines (KPC),* 100 FERC ¶ 61,260 (2003), *order on reh'g,* 102 FERC ¶ 61,310 (2003) (adopting an 11.83% ROE).

[58] *Empire,* 116 FERC ¶ 61,074 (2006).

[59] The MoPSC also notes that it has never specifically set an ROE for either Missouri Pipeline or Missouri Gas.

[60] *Texas Eastern Transmission, LP.*, 99 FERC ¶ 61,383 at 62,265 (2002); *Kern River Gas Transmission Co.,* 98 FERC 61,205 at 61,721-22 (2002); *Trailblazer Pipeline Co.*, 95 FERC 61,258 at 61,903 (2001).

Interstate's approved ROE of 13.30 percent was established in a section 7 certificate proceeding, not in a section 4 rate case. Therefore, that figure is not appropriate to use in this proceeding. Although Missouri Pipeline and Missouri Gas are both regulated by the MoPSC, the MoPSC has never specifically set an ROE for either Missouri Pipeline or Missouri Gas. Therefore, none of the Applicants has a current ROE that can be used for determining the new Missouri Gas' initial recourse rates.

68. Given the unique set of facts present in this proceeding, the Commission finds it appropriate to use the most recent ROE approved in a litigated section 4 rate case, which was in *Kern River*.[61] In that proceeding, the Commission adopted a ROE of 11.20 percent. The Commission determined that the proxy group proposed by Commission Staff, consisting of Kinder Morgan, Inc., Equitable Resources, Inc., National Fuel Gas Company, and Questar, Corp., was appropriate and adopted the Staff's DCF analysis, which found that the DCF returns for the proxy group ranged from 8.94 percent to 13.62 percent, with a median of 10.70 percent and a midpoint of 11.28 percent.

69. The Commission will not use the DCF analysis provided by the Applicants because it is based on a proxy group that differs from the Staff proxy group approved in *HIOS* and *Kern River* and the Applicants have not made a showing that supports a change in the makeup of the proxy group. In addition, the composite growth rate used by the Commission in the DCF model is calculated by weighting the Institutional Brokers' Estimate System (I/B/E/S) estimate of growth in earnings per share for an entity by two-thirds, and a composite estimate of GDP growth using three sources (Global Insight, EIA and SSA) by one-third. Although, the Applicants provide three different models in their DCF analysis, none of the models uses the Commission's established composite growth rate methodology or provides compelling evidence for adopting a different methodology. In addition, while the data on record in *Kern River* is approximately two years old, we think it is timely enough to provide a sufficient basis for the DCF analysis, especially since the new Missouri Gas will be required to file a rate case within 18 months of the commencement of interstate service. Therefore, based on the Commission's ruling in *Kern River*, the Commission will authorize an ROE of 11.20 percent for the new Missouri Gas.

<u>Cost of Debt</u>

70. The Applicants propose to use a long-term debt cost of 7.25 percent which they state is the average debt cost of their proxy group and is lower than the actual debt cost.

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[61] *Kern River*, Opinion No. 486, 117 FERC ¶ 61,077 (2006); *see also Northern Natural Gas Co.*, 119 FERC ¶ 61,035 at P 37 (2007) (*citing Kern River* as precedent for adopting an ROE of 11.20 percent since it was the most recent litigated ROE).

The MoPSC observes that it is difficult to assess the Applicants' actual debt costs based on the information provided in the application and other filings. The Commission's preference is to rely on the actual debt costs of the entities that are financing the project. In *Kern River*, the Commission approved a blending of the two debt issues used to finance the pipeline's expansions. In *HIOS*, the parties agreed to use the cost of debt of HIOS' parent company. Applicants state that their actual cost of debt is significantly higher, and the terms of the debt more complex, than that usually found in interstate pipeline debt instruments. Because of the unusual nature and expense of the debt, the Applicants are proposing to use a debt cost that is the average of their proxy group, which they state is lower than their actual debt cost. The Commission will approve the Applicants' use of 7.25 percent for the long-term debt cost in designing the recourse rates. The Commission also notes that parties will be able to question the calculation of Applicants' long-term debt cost when Missouri Gas files its section 4 rate case, which will be no later than 18 months after the commencement date of interstate service.

Income Taxes

71. As noted above, the MoPSC concludes that under the Commission's Tax Policy Statement,[62] the Applicants have failed to establish that they are entitled to an income tax allowance because they did not provide the information that the Commission has required when a pass-through entity seeks an income tax allowance.[63] Therefore, the MoPSC urges that the Commission should not permit the inclusion of an income tax allowance in the initial rates for the new Missouri Gas. In response, the Applicants contend that the Commission's policy is to permit an income tax allowance, regardless of ownership form, if the owners have an actual or potential tax liability for regulated utility income. The Applicants do not dispute that the ultimate parent of the new interstate pipeline will be individuals; however, they assert that individuals are also liable for taxes and there is no reason to treat the owners of the pipeline any differently from the individual unit holders.[64] The Applicants also maintain that this is the type of issue the Commission addresses in section 4 cases, not in section 7 cases where initial rates are set. The MoPSC responds that even if the Commission does not find that the Applicants failed to support their position, the *SFPP* decision indicates that a presumptive tax rate of 28

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[62] *Inquiry Regarding Income Tax Allowances, Policy Statement on Income Tax Allowances*, 111 FERC ¶ 61,139 (2005).

[63] *Citing, Trans-Elect NTD Path 15, LLC,* 112 FERC ¶ 61,202 (2005).

[64] *Citing SFPP, L.P.*, 113 FERC ¶ 61,277 at P 28 (2005), *order on reh'g,* 114 FERC ¶ 61,136 (2006) (*SFPP*).

percent is appropriate rather than the 35 percent maximum corporate tax rate because the Applicants' ultimate owners will be individuals.

72. On February 22, 2007, the Applicants filed with the Commission a revised version of Exhibit D reflecting a change in the Applicants' ownership structure. According to the revised Exhibit D, EIF Gateway, Inc. acquired Dennis M. Langley's 100 percent interest in DES Energy, Ltd., one of the Applicants' owners further up the corporate structure. EIF Gateway is owned by the United States Power Fund II, L.P. and the United States Power Fund II Institutional Fund, L.P.

73. The Commission's policy is to permit an income tax allowance for all entities or individuals owning public utility assets, provided that an entity or individual has an actual or potential income tax liability to be paid on that income from those assets. Any entity seeking an income tax allowance must establish that its partners or members have an actual or potential income tax obligation on the entity's public utility income.[65] It is not clear to the Commission from the information provided in the February 22, 2007 filing whether the Applicants are entitled to an income tax allowance. Therefore, we will require the Applicants to demonstrate when they make their compliance filing to recalculate their rates that they meet the standards for an income tax allowance as set out in the Commission's Tax Policy Statement.

Other Rate Issues

Interruptible Transportation Cost Allocation

74. The Applicants propose to impute interruptible volumes of 1,000 Dth per day for each zone, which they state is far more interruptible throughput than what has occurred in the past. The Commission's policy regarding new interruptible services requires a pipeline to either credit 100 percent of the interruptible revenues, net of variable costs, to firm and interruptible customers or to allocate costs and volumes to these services.[66] Since the Applicants' chose the second option, their proposal is consistent with the Commission's policy.

[65] *Inquiry Regarding Income Tax Allowances, Policy Statement on Income Tax Allowances*, 111 FERC ¶ 61,139 (2005).

[66] *See, e.g., Creole Trail LNG, L.P. and Cheniere Creole Trail Pipeline, L.P.*, 115 FERC ¶ 61,331 at P 27 (2006; and *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177 at P 51 (2005).

Negotiated Rates and Nonconforming Contracts

75. The pro forma tariff for the new Missouri Gas includes a provision at General Terms & Conditions (GT&C) section 12 that would allow Missouri Gas to enter into negotiated rate agreements consistent with Commission policy. The Applicants indicate they will file with the Commission a tariff sheet for each negotiated rate agreement that includes a detailed description of the essential elements of the agreement. They also state they will maintain separate records for all revenues associated with negotiated rate agreements and maintain and provide separate accounting records identifying total volumes transported, billing determinants, rate or surcharge components, and revenue accounting information for its negotiated rate arrangements in any general or limited rate change filing that they make. As noted previously, the Applicants state they plan to treat the three pipelines' existing service agreements as negotiated rate contracts.

76. The Commission will accept the proposed tariff language in section 12 concerning negotiated rate provisions. In certificate proceedings we establish initial recourse rates but we do not make determinations regarding specific negotiated rates for any proposed service.[67] Rather, in order to comply with the Alternative Rate Policy Statement[68] and our decision in *NorAm Gas Transmission Company*,[69] we direct that the new Missouri Gas file its negotiated rate contracts or numbered tariff sheets not less than 60 days, or more than 90 days, prior to the commencement of service. A tariff sheet shall state for each shipper the negotiated rate, the applicable gas volume to be transported, and an affirmation that the affected service agreements do not deviate in any material respect from the form of service agreement in Applicants' pro forma tariff. Applicants must also disclose all consideration received that is associated with the agreement. Finally, Missouri Gas must also maintain separate and identifiable accounts for volumes

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[67] *CenterPoint Energy – Mississippi River Transmission Corp.*, 109 FERC ¶ 61,007 at P 19 (2004); *ANR Pipeline Co.*, 108 FERC ¶ 61,028 at P 21 (2004); *Gulfstream Natural Gas System, LLC*, 105 FERC ¶ 61,052 at P 37 (2003); *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,360 at n. 19 (2002).

[68] *Alternative to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Alternative Rate Policy Statement*, 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*, 172 F.3d 918 (D.C. Cir. 1998).

[69] 77 FERC ¶ 61,011 (1996).

transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future section 4 or 5 rate case.[70]

77. As described above, Applicants propose that the service agreements that the Missouri Pipeline and Missouri Gas entered into with their existing customers while they were under MoPSC jurisdiction remain in effect after the merger and that these contracts be accepted as negotiated rate agreements and, where applicable, as non-conforming service agreements under the new Missouri Gas' Part 284 tariff. The Applicants explain that because the existing contracts were executed under state regulation their format is significantly different from the form of service agreement in their pro forma tariff, which is based on the Commission-approved service agreement in Missouri Interstate's current tariff. Under the circumstances of this case, the Applicants believe that attempting to redline the differences between the nonconforming agreements and the pro forma service agreement would not be practicable and would result in an unreadable document. Therefore, they request waiver of this requirement.

78. The Commission finds that because the Applicants are proposing to integrate their intrastate and interstate transmission systems and operate as one jurisdictional interstate pipeline, the new pipeline, Missouri Gas, should provide service to the Applicants' customers under the service agreement in its Part 284 tariff and not use its existing MoPSC-approved contracts as nonconforming service agreements. We recognize that in order to provide jurisdictional service to the existing shippers, the new Missouri Gas must renegotiate its existing contracts using its standard pro forma service agreement as the starting point for drafting any negotiated rate or contract consistent with our policies.[71] To the extent that the new Missouri Gas wishes to grandfather any provision in its existing contracts, Missouri must file the agreements reflecting the deviations from the standard pro forma service agreement in redline/strikeout format. Also consistent with our requirements, Missouri Gas will have to explain the basis for any deviations and demonstrate that the deviations are not unduly discriminatory.

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[70] We note that the reference to GT&C section 26.1 in section 12.2 is incorrect and should be changed to section 12.1. This change should be made in the Applicants' compliance filing.

[71] *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003).

79. Also regarding nonconforming contracts, the Applicants indicate that Missouri Pipeline and Missouri Gas currently have full requirements contracts with several small municipalities that they serve directly or indirectly through AmerenUE, an LDC. Under these contracts, if a municipality overruns the MDQ in its contract, the MDQ is automatically adjusted upward to that amount. The Applicants request that these contracts continue to be in force. The full requirements or load growth provision of these contracts is an impermissible term and condition of service because this type of service will not be offered to all of the new pipeline's customers. In a previous case where a nonconforming agreement included a similar growth option wherein the customer could increase its MDQ at specified times and by specified amounts,[72] the Commission held that the provision was a negotiated term and condition of service different from the services offered to other customers, which our policies do not permit. We found that if the pipeline's existing rate schedules did not include this type of provision, then the pipeline should include in its tariff a provision making this service option generally available to all customers. The Commission reasoned that if all customers could avail themselves of a full requirements option if they chose, any anticompetitive or discriminatory aspects of a full requirement obligation would be substantially mitigated.[73]

80. Therefore, since the Applicants' pro forma tariff does not provide for full requirement or load growth provisions in shipper contracts, the new Missouri Gas may not continue to serve the affected municipalities under a service agreement with such a provision. If the new Missouri Gas desires to provide a full requirement service as proposed here, it must mitigate the risk of undue discrimination among the new pipeline's customers by filing to place such a service into its tariff so that the service will be generally available to all customers. If Missouri Gas will not provide such service, the full requirements/load growth provisions must be removed from the service agreements with its shippers.

Future Rate Filing Requirement

81. With regard to the Applicants proposal that the new Missouri Gas file a section 4 rate case no later than18 months after service commences, MuniComm/Cities are concerned that delaying that filing conflicts with the NGA's section 4(a) and 4(b) requirement that "all rates shall be just and reasonable" and not provide any "undue preference." This concern is unfounded. First, Missouri Gas will be a new interstate

[72] *See Northern Natural Gas Co.*, 111 FERC ¶ 61,141 (2005).

[73] *Id.*

pipeline after the merger and as such it may propose initial rates under NGA section 7 that must be shown to be consistent with the public convenience and necessity standard. That standard is somewhat more lenient than the just and reasonable standard because a new pipeline does not have an operational history upon which to base a proposal for just and reasonable rates. Although the three pipelines in this proceeding have operational histories, it is unknown how the operations of those pipelines will change once they merge into an integrated interstate pipeline. Thus, the Applicants are properly proposing initial rates in this proceeding.

82. Moreover, the Applicants have agreed to honor their individual customers' existing rates until new rates are established in the section 4 rate case they have committed to file no later than 18 months after service begins on the new interstate pipeline. Thus, no existing customer's rate can go any higher than it is now for those 18 months. The Commission traditionally requires new pipelines to file a cost and revenue study at the end of their first three years of actual operation to justify their initial cost-based firm and interruptible recourse rates.[74] Here, however, the new Missouri Gas has committed to file a full section 4 rate case no later than 18 months after the in-service date of the new interstate pipeline and all existing customers will have a full opportunity to participate in the rate proceeding and raise any concerns they have about the proposed rates. Further, in that proceeding, the Commission will have a sufficient record to determine whether the proposed rates meet the Commission's just and reasonable standard. We are requiring the Applicants to initiate the section 4 rate case as they have committed themselves to do.

83. The Commission is approving the Applicants' proposed initial rates to the extent they are recalculated consistent with the above discussion. The Applicants should file the recalculated rates when they file to place the rates into effect no less than 60 or more than 90 days before the commencement of service.

Tariff Revisions

84. Section 2.2 of Rate Schedule FT states that "service may be curtailed pursuant to section 15 of the GT&C or whenever necessary to maintain gas quality or the integrity of Transporter's system." While a pipeline needs the authority to take action to maintain the proper gas quality on its system, shippers need adequate knowledge about when action will be taken. Section 3 of Missouri Gas' tariff provides the gas quality specifications it requires. To assure that there is no confusion about when the pipeline may take action

[74] *See, e.g.*, *Empire*, 116 FERC ¶ 61,074 at P 133; and *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177 at P 52 (2005).

related to gas quality, the tariff should cross-reference section 3 in section 2.2 so that shippers have a clear understanding of what gas quality criteria may result in the curtailment of firm service.

85. MuniCities/Comm is concerned with section 3.1 of Rate Schedule FT, which provides that "transporter has the right at any time to adjust the rates to any service, not less than the minimum or more than the maximum." The Commission assumes that the intent of this language is to provide Missouri Gas with the ability to discount its rates if required to meet competition. However, the inclusion of the language "at any time" appears to provide transporter with the ability to arbitrarily increase any discounted agreements to the maximum rate. Therefore, Missouri Gas should remove "at any time" from section 3.1 of Rate Schedule FT.

86. The MoPSC questions why, in section 3.1of the GT&C, nitrogen was not included in the proposed tariff although it is included in Missouri Interstate's current tariff and also why in section 3.1(e) butanes plus is limited to no more than 1.5 mole percent. The Applicants state that since all of the gas is received from other interstate pipelines, inert gases are already limited by those pipeline tariffs. The Commission finds the response to be sufficient and will not order a change to the tariff.

87. Section 6.2(g) of the GT&C states that "acceptance of a request for service is contingent upon a satisfactory credit appraisal by Transporter." The Commission's policy is that pipelines must establish and use objective criteria for determining creditworthiness.[75] Such objective criteria are not included in the tariff and should be added. The MoPSC questions why Missouri Gas has eliminated section 6(h), which was in Missouri Interstate's tariff and contains the procedures by which a customer certifies which entity it is requesting transportation service on-behalf-of. The Applicants' should address this omission in their compliance filing.

88. The MoPSC states that section 15 of the proposed tariff regarding priority of service during curtailment is very different from that provision in Missouri Interstate's current tariff and that it also is not clear how the provisions of section 15 will be applied. Missouri Interstate's current tariff prioritizes service and curtailment based on a shipper's service agreement date or request-for-service date. The new tariff prioritizes service and interruption of firm services based on contract path and interruptible services based on the rate paid. Although this is a change from Missouri Interstate's current tariff, the

[75] *See Tennessee Gas Pipeline Co.*, 102 FERC ¶ 61,075 (2003) at P 41, *order on reh'g*, 103 FERC ¶ 61,275 at P 40-41 (2003); *PG&E Gas Transmission, Northwest Corp.*, 103 FERC ¶ 61,137 at P 67 (2003).

process in the new tariff more accurately reflects the Commission's policies in Order Nos. 636 and 637 and should provide shippers with greater certainty.

89. Section 21.6(l) of the pro forma tariff's Capacity Release Program states that "[r]eplacement Shippers may not change Primary Delivery Points or otherwise alter the underlying agreement." This is contrary to Commission policy. In Order No. 637 the Commission found that providing replacement shippers with the ability to obtain primary points when available was important to furthering competition between released capacity and pipeline capacity.[76] This restriction should be removed from the tariff.

90. Section 25 of the pro forma tariff lists the NAESB standards that are incorporated by reference into the tariff. As noted, the Applicants request a waiver of the requirement to provide EDI/EDM and EBB/EDM, as defined in NAESB definitions 4.2.11 and 4.2.13. They support this request by citing the high cost of compliance and the fact that even after reorganization the new Missouri Gas will still remain a relatively small pipeline with a limited number of customers. The Applicants note that the Commission previously granted a waiver of this requirement to Missouri Interstate, subject to the condition that it implement the EDI standards if requested by a customer.[77]

91. Consistent with our ruling in *Tennessee Gas Pipeline Company*,[78] the Commission will grant Applicants' waiver, subject to condition. The Commission notes that the NAESB data sets are to be used by more persons than just a pipeline's customers. Agents, third party service providers, other pipelines and the Commission can require the use of the NAESB data sets for their communications with the pipeline, as well as for access to other information. Further, the Commission requires certain capacity release information to be available to the public. Therefore, the Commission will require Missouri Gas to implement the capacity release data sets for public information. As for the remaining data sets, the Commission will grant the new Missouri Gas an extension of time to comply with a NAESB data set for up to 90 days from the date any person first requests use of a NAESB data set that Missouri Gas currently does not support.

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[76] *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services,* Order No. 637, FERC Stats. & Regs., *Regulations Preambles* July 1996-December 2000 ¶ 31,091 (February 25, 2000).

[77] *Missouri Interstate Gas, LLC*, 102 FERC ¶ 61,172 (2003).

[78] *Tennessee Gas Pipeline Company*, 100 FERC ¶ 61,340 (2002).

92. Although we are granting a waiver of the requirement to provide EDI/EDM and EBB/EDM, the new Missouri Gas will still be required to develop an Informational Postings Web Site and to incorporate the necessary NAESB standards[79] associated with that requirement.[80] Section 24 of the tariff provides for such a website. In addition, the Commission will require the new Missouri Gas to incorporate Standards 1.3.64 through 1.3.74 and Standards 1.3.76 and 1.3.77, which are related to Title Transfer Tracking. Although NAESB's Title Transfer Tracking standards are principally applied at pooling points (which the Applicants state will be impractical on the new pipeline), the standards require pipelines to accommodate Title Transfer Tracking at no less than one location. Standards 0.3.1, 2.3.11, 2.3.29, 2.3.30, 2.3.40 through 2.3.44, 5.3.10 through 5.3.12 and 5.3.31 through 5.3.34 should also be incorporated or a reason provided as to why these standards should not be incorporated. Further, the new Missouri Gas must adopt the NAESB standards to implement gas quality reporting requirements approved by the Commission in Order No. 587-S.[81] In addition, not all of the NAESB definitions have been adopted. Definitions 2.2.2, 2.2.4 and 2.2.5 and definitions 4.2.1 through 4.2.9. must be adopted.[82] Finally, NAESB standard 2.3.24 has been deleted and therefore this standard should be removed from the tariff.

93. Section 26.5 provides procedures whereby service to a customer may be suspended and terminated for failure to pay an invoice. Commission policy, as reflected in section 154.602 of the Commission's regulations, is to require at least 30 days' notice to the customer and the Commission before service is terminated. Section 26.5 must include this requirement. This section of the tariff should also state that the pipeline will not bill the shipper if the shipper's service is suspended.

94. Section 27 of the pro forma tariff addresses force majeure. Such a provision is intended to demonstrate that a pipeline and its customers will share the economic risks of a force majeure event, generally through a crediting of reservation charges back to

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[79] These include standards 4.3.5, 4.3.7, 4.3.8, 4.3.16 through 4.3.18, 4.3.20, 4.3.22 through 4.3.41 and 4.3.48.

[80] *See NGO Transmission, Inc.*, 107 FERC 61,302 (2004).

[81] *Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587-S, 111 FERC ¶ 61,203 (2005).

[82] Missouri is not required to adopt definitions 4.2.10 through 4.2.20 since they address EDI/EDM and EBB/EDM communication.

shippers whose service is interrupted.[83] The Commission has approved two approaches to reservation charge crediting.[84] The pipeline may either offer full reservation charge crediting beginning 10 days after the event, or partial reservation charge crediting beginning on the first day of the event.[85] The tariff should be revised to state that it will award reservation credits to shippers affected by force majeure situations, either through partial or full reservation charge credits, or through some other methodology that the Commission finds reasonable.

95. The Applicants indicate that pooling is not operationally practicable on its system given the location of its two receipt points. Aggregation of supplies does not occur at either of the two receipt points but upstream on the two pipeline systems that will deliver gas into the new Missouri Gas interstate system. The Applicants also state that they can not combine the two receipt points into one pool since the system lacks the requisite storage facilities that would accommodate imbalances occurring on the two upstream pipelines. The Commission agrees with this analysis and will not require the new Missouri Gas to incorporate the appropriate NAESB provisions related to pooling in the pro forma tariff. However, NAESB standard 1.3.17 requires that a pipeline must offer pooling on its system if asked to do so. If pooling is requested in the future, the new Missouri Gas would have to file a tariff provision for pooling under NGA section 4.[86]

96. The new Missouri Gas should revise its pro forma tariff as discussed above and file to place the revised tariff into effect no less than 60 days or more than 90 days before the commencement of service over the pipeline.

<u>Part 284, Subpart G, Blanket Certificate and Part 157, Subpart F, Blanket Certificate</u>

97. Since the Commission is approving the Applicants' request to merge their systems into one integrated natural gas pipeline and is granting the necessary authorizations to accomplish that end, we will also grant the new Missouri Gas a Part 284, Subpart G

[83] *Tennessee Gas Pipeline Co.*, 80 FERC ¶ 61,070 (1997).

[84] *Tennessee Gas Pipeline Co.*, 76 FERC ¶ 61,022 at 61,089 (1996), *order on reh'g*, 80 FERC ¶ 61,070 (1997). For two rejected approaches, see *Natural Gas Pipeline Company of America*, 106 FERC ¶ 61,310 at P 24 (2004) and *North Baja*, 111 FERC ¶ 61,101 (2005).

[85] *North Baja*, 111 FERC ¶ 61,101 at P 5.

[86] *See Arkansas Western Pipeline Company*, 78 FERC ¶ 61,250 (1997).

blanket certificate. This authorization is subject to the condition that the proposed rates and the pro forma tariff are revised, as discussed above.

98. Further, the Applicants request that a blanket certificate under Part 157, Subpart F, be issued to the new Missouri Gas. That certificate permits a pipeline to undertake certain construction activities and to abandon certain facilities and services, among other things, without first obtaining case-specific authorization from the Commission. Instead, these activities may be initiated with either no prior notice or upon the filing of prior notice, depending on the type of activity and/or the cost of construction. We will issue this blanket certificate to the new Missouri Gas.

Accounting

99. The Commission finds that the Applicants' proposed accounting for the transfer of assets, as detailed in Exhibit S of the application, is generally in compliance with the Uniform System of Accounts. The Commission directs the Applicants to comply with Gas Plant Instruction No. 5, Gas Plant Purchased or Sold, and Account 102, Gas Plant Purchased or Sold, and to file their final journal entries to clear Account 102 no later than six months after the completion of the transaction.[87] Regarding the latter requirement, the Applicants must also file their final accounting with the Commission within six months of the date the transfer is consummated, and the accounting submission must provide all the accounting entries related to the transfer along with narrative explanations describing the basis for the entries.

Environment

100. The Applicants' proposal to acquire and abandon facilities does not require an environmental assessment because no construction or removal of facilities is involved. This conclusion is consistent with similar findings in other proceedings where a merger or transfer of facilities is part of paper transaction which does not include any action directly affecting the physical facilities.[88]

Missouri Interstate Gas – Docket No. RP06-274-000

101. On March 17, 2006, Missouri Interstate submitted its cost and revenue study in compliance with the Commission's September 24, 2002 order in Docket No. CP02-399-

[87] 18 C.F.R. Part 201 (2006).

[88] *See, e.g., Equitrans, L.P.*, 104 FERC ¶ 61,008 (2003).

000[89] and in accordance with 18 C.F.R. § 154.313. The study shows a cost of service of $1,961,127 and annual revenues of $720,000. On the basis of the study, Missouri Interstate requests that the Commission issue an order accepting the study and finding that it has justified the continued use of the transportation rates contained in Missouri Interstate's currently effective tariff. AmerenUE filed comments on the study and the MoPSC filed a protest and a request for discovery and a technical conference. Issues raised by MoPSC include the inclusion of an acquisition premium, calculation of ADIT, capital structure, debt cost, return on equity and income tax allowance. The MoPSC requests that the Commission reduce Missouri Interstate's firm maximum reservation rate from $9.766 per Dth to $7.782 per Dth.

102. Many of the issues raised by MoPSC were raised in CP06-407-000 and the Commission is addressing them in this order as they relate to the development of initial recourse rates for the new Missouri Gas system. In addition, the issues raised in Docket No. RP06-274-000 by MoPSC and AmerenUE will be moot if the proposed merger is implemented since Missouri Interstate will cease to exist as a separate interstate pipeline and will no longer charge separate rates. Therefore, since the Commission is issuing a certificate to Missouri Gas authorizing the operation of the reconstituted interstate pipeline resulting from the merger, we are terminating the proceeding in Docket No. RP06-274-000 contingent upon the acceptance of the certificates issued to the new Missouri Gas authorizing it to acquire facilities from Missouri Pipeline and to provide transportation in interstate commerce under Part 284, Subpart G.[90]

Conclusion

103. For all of the reasons discussed above, we are issuing a certificate of public convenience and necessity under section 7(c) of the NGA authorizing Missouri Pipeline to acquire the existing facilities of Missouri Interstate and issuing authority under section 7(b) of the NGA for Missouri Pipeline to abandon by transfer to Missouri Gas all of its existing facilities, including those acquired from Missouri Pipeline. Additionally, we are issuing a certificate of public convenience and necessity to Missouri Gas to acquire by transfer from Missouri Pipeline all of the latter's facilities. Further we are issuing to

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[89] *Missouri Interstate Gas*, 100 FERC 61,312 (2002).

[90] If the certificates are not accepted and the merger is not implemented, then Missouri Interstate's cost/revenue study filed in Docket No. RP06-274-000 is accepted as being in compliance with the Commission's September 24, 2002 certificate order in Docket No. CP02-399-000 and with section 154.313 of the Commission's regulations, and the rate proceeding will remain open.

Missouri Interstate authority to abandon its existing facilities by transfer to Missouri Pipeline and we are authorizing Missouri Interstate to assign its service obligations to the new Missouri Gas.

104. Also, we are approving the Applicants' proposed initial recourse rates subject to recalculation as discussed above and approving the pro forma tariff, subject to the revisions discussed herein. The Commission is also issuing blanket certificates under section Part 284, Subpart G, and Part 157, Subpart F, to the new Missouri Gas. The proceeding in Docket No. RP06-274-000 involving the cost and revenue study filed by Missouri Interstate in compliance with the order issuing that pipeline's certificate will be terminated as moot if the new Missouri Gas accepts the certificates issued herein to effectuate the merger.

105. At a hearing held on April 19, 2007, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity under section 7(c) of the NGA is issued to Missouri Pipeline in Docket No. CP06-407-000 to acquire by transfer from Missouri Interstate all of Missouri Interstate's facilities.

(B) A certificate of public convenience and necessity is issued to Missouri Gas in Docket No. CP06-407-000 authorizing it to acquire by transfer from Missouri Pipeline facilities belonging to Missouri Pipeline, including facilities that Missouri Pipeline will acquire from Missouri Interstate, as authorized in Paragraph (A) above.

(C) In connection with the authorization issued in Ordering Paragraph (B), Missouri Pipeline is authorized pursuant to section 7(b) of the NGA to abandon by transfer to Missouri Gas its facilities, including those acquired from Missouri Interstate.

(D) In connection with the authorization issued in Ordering Paragraph (A) above, Missouri Interstate is authorized under section 7(b) to abandon its facilities by transfer to Missouri Pipeline, its tariff and its service obligations, the latter of which the new Missouri Gas will assume.

(E) The transactions authorized in Ordering Paragraphs (A), (B), (C), and (D) above shall be completed within one year from the date of this order.

(F) A blanket construction certificate pursuant to Subpart F of Part 157 is issued to Missouri Gas in Docket No. CP06-408-000.

(G) A blanket transportation certificate pursuant to Subpart G of Part 284 is issued to Missouri Gas in Docket No. CP06-409-000.

(H) The initial recourse rates proposed in this proceeding are accepted, subject to the revisions discussed herein, and shall be filed, along with the work papers supporting them no less than 60 days or more than 90 days before the new Missouri Gas commences interstate service.

(I) Missouri Gas is directed to revise the pro forma tariff consistent with the requirements discussed herein no less than 60 days or more than 90 days before Missouri Gas commences interstate service.

(J) Missouri Gas is directed to file either its negotiated rate agreements or a tariff sheet fully describing the transactions no less then 60 days or more than 90 days prior to commencement of interstate service pursuant to those agreements.

(K) The certificate authorizations issued in Paragraphs (A), (B), (F) and (G) above are conditioned on Missouri Gas' compliance with all applicable provisions of the NGA and the Commission's regulations, in particular, Parts 154, 157 and 284, and paragraphs (a), (b), (d), (e) and (f) of section 157.20 of the regulations.

(L) The request for waivers of certain Commission regulations is granted as discussion herein.

(M) The motions to intervene out-of-time, to lodge documents, and answer protests are granted.

(N) Missouri Gas shall file a rate case under section 4 of the NGA to establish just and reasonable rates no later than 18 months after interstate service on Missouri Gas' newly configured system commences.

(O) The proceeding in Docket No. RP06-274-000 relating to the cost and revenue study filed by Missouri Interstate is terminated contingent upon acceptance of the certificates issued in Paragraph (A) and (B) to implement the proposed merger;

otherwise, Missouri Gas' cost and revenue study filed in that docket is accepted as in compliance with the Commission's directions and the proceeding will remain open.

By the Commission.

(S E A L)

Philis J. Posey,
Deputy Secretary.