120 FERC ¶ 61,225
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.

Gulfstream Natural Gas System, L.L.C. Docket No. CP07-51-000

ORDER ISSUING CERTIFICATE

(Issued September 10, 2007)

1. On December 22, 2006, Gulfstream Natural Gas System, L.L.C. (Gulfstream) filed an application in Docket No. CP07-51-000 under section 7(c) of the Natural Gas Act (NGA),[1] for certificate authorization to construct, own, and operate a new pipeline project (Phase IV) comprising approximately 17.74 miles of 20-inch diameter pipeline and 45,000 horsepower (hp) of additional compression.[2] The proposed Phase IV project is designed to transport about 152.4 million cubic feet of natural gas per day (MMcf/d)[3] from an existing Gulfstream line off the coast of Florida, across the Tampa Bay, to an existing electric power plant in Pinellas County, Florida. Gulfstream also seeks a predetermination that the project costs may be rolled in with its existing facility costs in Gulfstream's next NGA section 4 rate case. In this order, the Commission grants the

[1] 15 U.S.C. § 717f (2007).

[2] On May 19, 2006, in Docket No. PF06-29-000, the Commission granted Gulfstream's request to use the pre-filing process for its proposed Phase IV project. Authorization was previously granted for Gulfstream Phase I, II, and III projects. *See* 94 FERC ¶ 61,185 (2001), as amended by 98 FERC ¶ 61,349 (2002), 105 FERC ¶ 61,052 (2003), and 119 FERC ¶ 61,250 (2007). Gulfstream states that its proposed Phase IV project is unrelated to and not dependent upon its recently authorized amended Phase III project.

[3] 152.4 MMcf/d is equivalent to 155 thousand decatherms per day (Mdth/d), since Gulfstream assumes an average heat content of 1,017 Btu/cubic foot.

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requested certificate authority and reaches a predetermination supporting rolled-in rate treatment, subject to the conditions below.

Background

2. Gulfstream is a limited liability company organized and existing under the laws of Delaware with its principal place of business in Tampa, Florida. Gulfstream is owned by Spectra Energy Corporation and The Williams Companies, Inc. As an interstate pipeline, Gulfstream transports natural gas from supply areas in Alabama and Mississippi across the Gulf of Mexico to new incremental markets in Florida.[4]

3. Gulfstream held an open season for the proposed Phase IV project from February 1, 2006 to March 1, 2006. Florida Power Corporation d/b/a Progress Energy Florida, Inc. (FPC) submitted a nomination and entered into agreements for firm transportation service for a 23-year term for the full 155 Mdth/d capacity of the proposed project. Gulfstream also conducted a reverse open season from March 10, 2006 to April 8, 2006. Gulfstream states that it did not receive sufficient qualified turnback nominations to justify a reduction in the scope of the Phase IV project facilities.

Proposal

4. Gulfstream requests authorization to construct approximately 17.74 miles of 20-inch diameter offshore pipeline, that will extend from an underwater hot tap with Gulfstream's existing 36-inch diameter pipeline in the Hillsborough County waters of Tampa Bay to FPC's 1,279 megawatt (MW) Bartow powerplant[5] in Pinellas County, Florida. Gulfstream also requests authorization to add a 15,000 hp compressor unit at its existing Station 410 in Coden, Alabama, and to add two 15,000 hp units at its existing Station 420 in Manatee County, Florida.

5. Gulfstream estimates its proposed project will cost $117 million. Gulfstream proposes to charge its existing recourse rates for transportation service through the Phase IV facilities. Gulfstream states it has entered into a negotiated rate agreement with FPC and estimates that the revenues from the proposed project will exceed its costs. Therefore, Gulfstream requests that the Commission make a predetermination that the

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[4]With the Phase IV facility additions, Gulfstream's certificated system capacity would increase to 1.232 billion cubic feet per day.

[5]Summer capability of 1,159 MW.

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costs of the proposed project may be rolled into Gulfstream's existing rates in its next NGA section 4 rate proceeding.

6. Gulfstream intends to coordinate the construction of its proposed Phase IV facilities with FPC's planned repowering of its Bartow power plant.[6] Accordingly, Gulfstream seeks to place its proposed pipeline facilities in service by September 1, 2008, when FPC begins testing its upgraded Bartow plant. Gulfstream intends for its proposed new compression units to be in service by January 1, 2009, when FPC's Bartow plant commences full operation.

Notice, Interventions, and Comments

7. Public notice of Gulfstream's application was published in the *Federal Register* on January 12, 2007.[7] FPC, and Peoples Gas System jointly with Tampa Electric Company, filed timely motions to intervene.[8] Untimely motions to intervene were filed by ManaSota-88, Inc. and Manatee County Port Authority.[9]

8. The Commission requested comments on environmental issues during the pre-filing process in Docket No. PF06-29-000. The comments received are discussed below in the environmental section of this order.

Discussion

9. Since Gulfstream's proposed Phase IV facilities and services will be used in interstate commerce, the construction and operation of the facilities are subject to the jurisdiction and the requirements of the Commission under NGA subsections (c) and (e) of section 7.

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[6]The Bartow Plant currently operates as an oil-fired plant. Gulfstream explains that FPC intends to repower its facility as a gas-fired plant and increase its capacity by adding combined-cycle gas turbines.

[7]72 Fed. Reg. 1,500 (Jan 12, 2007).

[8]Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(a) (3) (2007).

[9]The motions to intervene out-of-time are granted, for good cause shown, as granting the motions will not delay the proceeding or prejudice any party. 18 CFR § 385.214(d) (2007).

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A. Certificate Policy Statement

10. To determine whether a proposed project is required by the public convenience and necessity, we consider whether it satisfies the criteria set forth in the Commission's 1999 policy statement on new facilities.[10] In the Certificate Policy Statement, the Commission established criteria for determining whether there is a need for a proposed project, balancing the public benefits against potential adverse impacts, and determining whether the proposed project serves the public interest. Our goal in evaluating proposed projects 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, avoidance of unnecessary disruptions to the environment, and avoidance of the unnecessary exercise of eminent domain.

11. Under the Certificate Policy Statement, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the proposed project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the new project might have on its existing customers, on existing pipelines in the market and their captive customers, or on landowners and communities affected by the location of the proposed facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we evaluate the project by balancing the public benefits to be achieved against the residual adverse effects. This is essentially an economic test. If the benefits outweigh the adverse effects on economic interests, we will proceed to complete the environmental analysis where other interests are considered.

12. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. Gulfstream intends to use its currently effective system recourse rates for expansion service. Since none of the expansion project costs are included in Gulfstream's currently effective rates, accepting Gulfstream's proposal to charge its existing recourse rates as initial rates for expansion services will not result in subsidization by existing customers. Gulfstream states that FPC has committed to firm, long-term service for the full capacity of the Phase IV facilities at negotiated rates. As discussed below, Gulfstream has

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[10] Certification of New Interstate Natural Gas Pipeline Facilities (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), order on clarification, 90 FERC ¶ 61,128, order on clarification, 92 FERC ¶ 61,094 (2000).

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presented evidence that the incremental revenue from services using the proposed facilities will exceed the incremental costs of constructing and operating the proposed facilities. In such a case, there will be no subsidization of the facilities by existing customers, and rolled-in rate treatment for the proposed project's costs should have a positive impact on rates for existing customers. Therefore, we find that Gulfstream's proposal satisfies the threshold requirement of the Certificate Policy Statement that existing customers not subsidize new projects.

13. Gulfstream's project will not adversely affect other existing pipelines in the market or their captive customers, since the purpose of the project is to serve new gas requirements, not displace loads on other systems. The capacity made available by the proposed expansion will serve to supply an existing oil-fired electric power plant, thereby enabling the plant to convert from oil to gas as a fuel source. Furthermore, no pipeline company in Gulfstream's market area has protested Gulfstream's application.

14. The pipeline portion of the proposed Phase IV project will require rights-of-way and work areas from only three landowners, one of which is FPC. Gulfstream will install and operate the additional compressor units within the current footprint of its existing station facilities. Thus, the proposed project will have limited adverse impacts on landowners and communities affected by the project.

15. Based on the demand demonstrated for the proposed expansion by FPC's commitment for long-term firm service, and the minimal adverse impacts on existing customers, other pipelines, landowners, and communities, we find, consistent with the Certificate Policy Statement, that approval of the project is required by the public convenience and necessity.

B. Rolled-in Rate Treatment

16. Exhibit P of Gulfstream's application shows that estimated annual revenues associated with the expansion capacity will exceed the estimated project costs. Specifically, Gulfstream estimates a total of $401.45 million of revenue calculated using its existing recourse rates over the first ten years of project operation and a total ten-year cost of service of about $177.76 million, resulting in excess revenue of $223.69 million over the period. Thus, rolling in the costs of the proposed project would decrease existing customers' current rates. Therefore, we will grant Gulfstream's request for a predetermination supporting rolled-in rate treatment for the costs of the expansion proposal in its next rate case, absent a significant change in circumstances forming the basis for this presumption.

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17. All service agreements containing a negotiated rate must comply with the Commission's policy regarding negotiated rates[11] and the decision in *NorAm Gas Transmission Company (NorAm)*.[12] Consistent with *NorAm*, Gulfstream must file either its negotiated rate contracts or numbered tariff sheets at least 30, but not more than 60, days prior to the commencement of service using the expansion facilities, stating for each shipper paying a negotiated rate, the exact legal name of the shipper, the negotiated rate, the applicable receipt and delivery points, the volume to be transported, the beginning and ending dates of the contract term, and a statement that the agreements conform in all material respects with the *pro forma* service agreements in Gulfstream's FERC Gas Tariff. Gulfstream must also disclose all consideration linked to the agreements, and maintain separate and identifiable accounts for volumes 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 NGA section 4 or 5 rate case.

C. Environment

18. On June 28, 2006, FERC issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Gulfstream Phase IV Expansion Project and Request for Comments on Environmental Issues (NOI). We received responses to the NOI from the National Marine Fisheries Service (NMFS), Samuel and Margaret Mock jointly with Cleo Connor, the Pinellas County Department of Environmental Management, and the Environmental Protection Commission of Hillsborough County. Late filed comments were received from the Florida Department of State, and the Manatee County and Tampa Bay Port Authorities.

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[11] *See Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order on clarification*, 74 FERC ¶ 61,194, *order on reh'g*, 75 FERC ¶ 61,024 (1996), *as modified by Order No. 637, Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, FERC Stats. & Regs., Regulations Preambles (July 1996-December 2000) ¶ 31,091 at 61,343 (2000), *order on reh'g*, Order No. 637-A, FERC Stats. & Regs, Regulations Preambles (July 1996-December 2000) ¶ 31,099 at 31,648 (2000), Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part*, *Interstate Natural Gas Association of America v. FERC*, 285 F.3d 18 (D.C. Cir. Apr. 5, 2002), *order on Remand*, 101 FERC ¶ 61,127 (2002), and by *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003).

[12] 75 FERC ¶ 61,091, *order on reh'g*, 77 FERC ¶ 61,011 (1996).

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19. Our staff addressed all substantive comments in the environmental assessment (EA). The EA addresses geology, soils, water resources, wetlands, vegetation, wildlife, fisheries, endangered and threatened species, land use, cultural resources, air and noise quality, reliability and safety, and alternatives.

20. Samuel and Margaret Mock filed comments jointly with Cleo Conner on July 31, 2006 stating that the two additional proposed compressor units at Station 420 will be located adjacent to their property line, and recommending the compressor station be relocated to minimize visual and noise impacts. The EA explains that Gulfstream's proposed location of the new compressor units is preferred because it uses the previously affected Station 420 footprint and avoids wetlands located to the north. The EA notes that moving the Station 420 facilities farther north would cause wetland impacts and require the addition of more pipeline. To address visual and noise impacts, the EA recommends the development of a vegetation screening plan for the eastern boundary of the Gulfstream parcel that would involve enhancing and augmenting the existing tree stand that separates the adjacent parcels.

21. The EA was issued on June 19, 2007 and mailed to federal, state, and local agencies, Native American tribes, public libraries, interveners to this proceeding, and other interested parties. During the comment period we received a letter from the NMFS. The NMFS stated that it concurred with our determination that listed species under NMFS' purview, i.e., sea turtles, Gulf sturgeon, and smalltooth sawfish, would not be adversely affected by the proposed action.

22. On July 25, 2007, a comment letter from the U.S. Environmental Protection Agency (EPA) – Region 4 was received that suggested some structural changes to the EA, including the inclusion of an executive summary. It is not our practice to include executive summaries in EAs and we find no substantive purpose would be served by preparing one at this time.

23. The EPA believes that the evaluation of Alternative 3 in the EA should have been expanded. As stated in the EA[13] Alternative 3 is not preferred because it exceeds the impacts of the Proposed Alternative. Specifically, it is four miles longer. All things considered, each additional mile of pipeline construction generates additional impacts. Commission staff attempted to provide a comparative analysis of the alternatives. For example, the seagrass crossing length for Alternative 3 would be 3,180 feet. By comparison, the seagrass impact for the proposed project route (*see* Table 15) is 1,526 feet, *i.e.*, the linear crossing length. However, as stated several places in the EA, the

[13] *See* Table 15 of the EA.

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proposed project would have no direct impact to seagrass because the 1,526 feet would all be crossed by horizontal directional drilling (HDD). Stating the linear crossing lengths, regardless of the construction technique chosen, allows for a direct comparison of alternative routes. The comparison of Alternative 3 to the Proposed Alternative is not dependent on knowing whether or not HDD technology could be used to avoid seagrass impacts on Alternative 3.

24. Since the proposed project route affects no residential or commercial properties, any impact on these resources would represent an increase. Alternative 3 traverses 14.95 miles of U.S. Department of Transportation designated High Consequence Areas with dense populations. In view of the clear difference in potential impacts between the Proposed Alternative and Alternative 3, we conclude that a more detailed accounting of the Alternative 3 is unnecessary.

25. In reference to section 5, Land Use and Recreation, EPA requests an estimate of the actual impacts (acreage) to hard-bottoms and seagrasses. We clarify that section B.5 contains potential impacts based on the Florida Land Use, Cover and Forms Classification System (FLUCCS), which is used on a macro scale to evaluate generalized impacts.

26. The operational impacts described in sections A.7 and B.5 of the EA assume a 200-foot wide continuous corridor that includes pipeline length below channels crossed by HDD for the offshore segment, and a 50-foot wide corridor that includes pipeline length within HDD for the onshore segment. This is depicted as an operational impact only because it is a permanent easement for the pipeline. The 200-foot-wide corridor would normally experience no impacts during operations. Construction impact estimates assume a 200-foot discontinuous corridor and exclude pipeline length below channels crossed by means of an HDD. Construction impacts would typically be less than and would not exceed 200 feet in width. Consequently, the construction impacts depicted in section B.5 are less than the operation impacts.

27. Although the impacts to hard-bottom would be less than the full easement width, to employ conservatism in the impact estimate, Gulfstream assumed a full easement impact to areas of hard-bottom crossed by the proposed project. As indicated in the EA, a total of 11.90 acres of hard-bottom has been identified within the proposed 200-foot-wide easement. Based on discussions in an interagency meeting held on December 11, 2006, Gulfstream was required to estimate mitigation impacts based on Florida's Unified Mitigation Assessment Method (UMAM). Mitigation Determination Formula results for 100 percent compensation of the predicted project impacts indicate that 2.25 acres of mitigation would be required. This mitigation is compensation for the temporary loss of habitat during the period of recovery. Based on the recovery of hard-bottom affected by

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the Gulfstream Phase I project, we expect affected habitats would be recolonized rapidly by marine benthic organisms and that virtually no permanent impacts would occur.

28. As part of its consultation with the National Oceanic and Atmospheric Administration (NOAA), the U.S. Army Corps of Engineers (COE) was provided with an Essential Fish Habitat (EFH) recommendation on March 21, 2007. The recommendation was that a compensatory mitigation plan for unavoidable adverse project impacts to live/hard-bottom habitats be developed and coordinated through the COE, NMFS, and Florida Department of Environmental Protection (FDEP) for review and comment. *See* section B.3.b. of the EA. On March 28, 2007, Gulfstream forwarded it's *Draft Mitigation and Monitoring Plan for Impacts to Hard-Bottom Taxa Associated with the Installation of the Gulfstream Natural Gas System's Phase IV Expansion Project* to the NOAA, COE, FDEP, and other resource agencies for review and comment. The plan is discussed further in section B.3.a of the EA.

29. Gulfstream has agreed to conduct monitoring of the mitigation and impact areas for five years following pipeline installation. As proposed, baseline monitoring would be completed followed by post-construction monitoring after the first, third, and fifth years.

30. EPA recommended that a summary of the avoidance and minimization efforts be provided as well as a description of planned mitigation for impacts to hard-bottom, seagrass, and wetlands. Avoidance and minimization efforts are described throughout the EA and include the routing of the pipeline and the use of HDD crossings. The project would not directly affect any seagrass (*see* section B.3.a) or wetland habitat (*see* section B.2.c). Therefore, no mitigation is proposed. Mitigation for hard-bottom impacts is discussed in section B.3.a of the EA.

31. The EPA suggested that the air quality impacts from Station 410 be evaluated to ensure compliance with the National Ambient Air Quality Standards (NAAQS). The project area in Alabama is currently designated as attainment with the NAAQS for applicable criteria pollutants. The existing Station 410 is a Prevention of Significant Deterioration (PSD) facility that has been previously modeled and determined to be in compliance with the applicable NAAQS standards. PSD regulations define a "significant" increase in emissions based on thresholds. The proposed additional compressor facilities would be considered a minor modification to the facility because, as stated in the EA, the modification would emit less than the PSD significance threshold for all PSD criteria pollutants. In our review, we determined that it would be unlikely that adding a source that emits less than the PSD significance thresholds, and a small fraction of the existing PSD facility's potential emissions, would significantly contribute to the ambient concentrations of pollutants attributable to the facility. Therefore, we conclude that the NAAQS standards are not likely to be exceeded at this facility for any pollutant after installation of the new source.

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32. Finally, the EPA recommended a summary of the impacts of the construction of Gulfstream's prior Phase I, II, and III projects be included as a cumulative impact review for this proposed Phase IV project. Gulfstream's Phase I project was reviewed in the January 2001 *Gulfstream Pipeline Project Final Environmental Impact Statement* (EIS). Phase II is complete and Phase III has not yet begun. Gulfstream's Phase II and part of Phase III projects were originally segments of the Phase I project that were later delayed pending market development. Therefore, the January 2001 EIS considered these impacts cumulatively.

33. The EIS did not consider the proposed Phase IV project. With respect to cumulative impacts of the proposed Phase IV offshore pipeline, we note that for Phase I resource permitting purposes, recovery of the seafloor biological community was predicted to take 100 years; however, within less than five years, the community structure has recovered in equivalence to reference locations (*see* section B.3.a of the EIS). Consequently, the Phase I impacts have both already been mitigated and have also achieved a significant level of recovery. Therefore, we find it is unnecessary to consider the Phase I impacts cumulatively with the proposed Phase IV offshore impacts.

34. On August 6, 2007, a comment letter from the Hillsborough County Environmental Protection Commission (EPC) was received. A review of the EA was conducted by the Air Management, Environmental Resources Management, Wetlands Management, and Waste Management Divisions of the EPC. The Air Management Division stated concerns over odors should the dredged material from trenching be brought to the surface and concurred with the EA's recommendation for noise limits. Gulfstream does not propose to bring dredged material to the surface.

35. The Environmental Resources Management Division had no comments. The Wetlands Management Division indicated that it has recommended approval of the project based on the current plans that it was provided, requested that it be copied on construction and monitoring reports, and provided a reminder that turbid water discharges to wetlands must be properly controlled. Many sections of the EA address the proposed measures to reduce and avoid impacts to aquatic habitats.

36. The Waste Management Division provided some clarifications on NPDES permit requirements for the Project and deferred to the FDEP on matters of turbidity impacts. The EA provides a general summary of permit requirements but does not provide the level of detail included in the letter. This clarification by the EPC should be useful for Gulfstream. Turbidity impacts are addressed in the EA in sections B.2.b and B.3.a.

37. On August 6, 2007, we received a letter from the Florida Department of State Division Of Historical Resources stating that the Project would have no effect on historic properties, provided that Gulfstream comply with the recommendations contained in the

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EA. Condition 10 of this Order ensures completion of cultural resources consultation prior to Gulfstream's authorization to construct the Project.

38. Similarly, in an August 10, 2007 letter, the USFWS provided concurrence with our determination of effects for threatened and endangered species, provided that some modifications be applied to the Manatee Protection Measures contained with our May 8, 2007 letter to the USFWS. These requested modifications as well as the recent consultation regarding the addition of the water line to Station 420, discussed below, will be addressed as part of the normal consultation process with the USFWS. As required by Condition 8 of this Order, the consultation must be completed prior to Gulfstream's authorization to construct the Project.

39. On August 16, 2007, Gulfstream filed supplementary information indicating that the non-jurisdictional municipal water line to Station 420 discussed in section A.3 of the EA would now be constructed by Gulfstream. Originally, Gulfstream indicated that the 12-inch-diamter water line would be constructed, maintained, and operated by Manatee County. The August 16, 2007 filing indicates that Gulfstream would construct the water line, but the operation and maintenance would be performed by Manatee County. The proposed water line would extend about 3,500 feet from Manatee County's existing municipal water system. The water line would interconnect with the existing system along Buckeye Road and progress eastward to Station 420. The line would be located about 30 to 40 feet north of Buckeye Road within an existing maintained and mowed corridor and would be placed in an excavated trench with 3-feet of soil cover. Gulfstream would use excavated material to backfill the trench and would replace the sod removed during trench excavation to ensure ground cover.

40. Gulfstream conducted environmental surveys of the water line corridor and assessed the potential for environmental resources of concern. No cultural resources, wetlands, waterbodies, threatened and endangered species or sensitive habitats were identified. The water line was included in the original consultation with the Florida SHPO and we have initiated informal consultation with the USFWS. Based on our review, the impacts from the water line are expected to be both minor and temporary.

41. Based on the discussion in the EA, we conclude that if constructed in accordance with Gulfstream's application, as supplemented, and the conditions in the appendix to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

42. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or

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local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.[14] Gulfstream shall notify the Commission's environmental staff by telephone, e-mail, or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Gulfstream. Gulfstream shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

Conclusion

43. For the reasons discussed above, and with the conditions imposed by this order, the Commission concludes that the certificate authorization requested by Gulfstream is required by the public convenience and necessity.

44. The Commission on its own motion, received and made a part of the record all evidence, including the application, as supplemented, and exhibits thereto, submitted in this proceeding. Upon consideration of the record,

The Commission orders:

(A) In Docket No. CP07-51-000, a certificate of public convenience and necessity is issued to Gulfstream pursuant to section 7(c) of the NGA Act authorizing Gulfstream to construct, own, and operate the natural gas facilities, as described herein, and as more fully described in the application, as amended and as conditioned herein.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on the following:

(1) Gulfstream's completing the authorized construction of the proposed facilities and making them available for service by January 1, 2009, pursuant to section 157.20(b) of the Commission's regulations;

(2) Gulfstream's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and

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

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(3) Gulfstream's compliance with the environmental conditions listed in the appendix to this order.

(C) Gulfstream may roll the Phase IV project costs into its system rates in its next NGA section 4 rate proceeding, absent significantly changed circumstances.

(D) Gulfstream is directed to execute a firm contract equal to the level of service and in accordance with the terms of service represented in its agreement with FPC prior to the commencement of construction.

(E) Gulfstream must file revised tariff sheets at least 30 days but not more than 60 days prior to commencement of Phase IV project service reflecting the *pro forma* tariff changes accepted in the body of this order.

(F) Gulfstream must maintain separate and identifiable accounts for volumes 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 NGA section 4 or 5 rate case.

(G) Gulfstream shall notify the Commission's environmental staff by telephone, e-mail, or facsimile of any environmental non-compliance identified by other federal, state, or local agencies on the same day that such agency notifies Gulfstream. Gulfstream shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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Appendix

Gulfstream Natural Gas System, L.L.C. – Docket No. CP07-51-000

Environmental Conditions

1. Gulfstream Natural Gas System, L.L.C. (Gulfstream) shall follow the construction procedures and mitigation measures described in its application, as supplemented (including responses to Commission staff data requests), and as identified in the environmental assessment, unless modified by this order. Gulfstream must:

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

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

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

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

4. The authorized facility location shall be as shown in the EA, as supplemented by filed alignment sheets. As soon as they are available, and before the start of

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construction, Gulfstream shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this order. All requests for modifications of environmental conditions of this order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

   This requirement does not apply to extra workspace allowed by the Upland Erosion Control, Revegetation, and Maintenance Plan, minor field realignments per landowner needs and requirements which do not affect other landowners, or sensitive environmental areas such as wetlands.

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

   a. implementation of cultural resources mitigation measures;
   b. implementation of endangered, threatened, or special concern species mitigation measures;
   c. recommendations by state regulatory authorities; and
   d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. Gulfstream shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:

   a. responsible for monitoring and ensuring compliance with all mitigation measures required by this order and other grants, permits, certificates, or other authorizing documents;

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

7. **Prior to construction of Compressor Station 420**, Gulfstream shall file with the Secretary for review and written approval from the Director of OEP, a vegetation screening plan that establishes methods for enhancing and augmenting the existing vegetation line along the eastern boundary of the Compressor Station 420 site. The plan should describe the types and densities of vegetation to be planted with the objective of providing visual and noise screening.

8. Gulfstream shall not begin construction activities **until**:

a. the Commission staff receives comments from the U.S. Fish and Wildlife Service (FWS) regarding the proposed action;
b. the staff completes formal consultation with the FWS, if required; and
c. Gulfstream has received written notification from the Director of OEP that construction or use of mitigation may begin.

9. **Prior to construction in Florida**, Gulfstream shall file with the Secretary documentation that the project is consistent with Florida's Coastal Zone Management Program. Similarly, **prior to construction in Alabama**, Gulfstream shall file with the Secretary a No Objection letter from the Alabama Department of Environmental Management.

10. Gulfstream shall defer implementation of any treatment plans or mitigation measures (including archaeological data recovery) and the construction of facilities, including the use of all staging, storage or temporary work areas and all new or to-be-improved access roads, until:

a. Gulfstream files with the Secretary detailed alignment sheets and aerial photographs that have marked on them the submerged areas to be examined by archaeologists and the mitigation measures for the onshore portion as outlined in the December 2006 survey report, and the State Historic

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Preservation Office comments on the alignment sheets and aerial photographs; and

b. The Director of OEP reviews and approves the alignment sheets and aerial photographs and notifies Gulfstream in writing that treatment plans/measures may be implemented and/or construction may proceed.

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

11. Gulfstream shall file noise surveys with the Secretary **no later than 60 days after placing the authorized units at Compressor Stations 410 and 420 in service.** If the noise attributable to the operation of Compressor Station 410 or 420 at full load exceeds a day-night level (Ldn) of 55 decibels (dBAs) at any nearby noise sensitive areas (NSAs), Gulfstream shall install additional noise controls to meet that level within one year of the in-service date. Gulfstream shall confirm compliance with the Ldn of 55 dBA requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.