120 FERC ¶ 61,258
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.

Southern LNG, Inc.	Docket Nos.	CP06-470-000
Elba Express Company, LLC		CP06-471-000
		CP06-471-001
		CP06-472-000
		CP06-472-001
		CP06-473-000
		CP06-473-001
Southern Natural Gas Company		CP06-474-000
		CP06-474-001

ORDER ISSUING CERTIFICATES, AUTHORIZING ABANDONMENTS, GRANTING AUTHORIZATION, AND DENYING REHEARING

(Issued September 20, 2007)

1. On April 4, 2007, the Commission issued a preliminary determination addressing the non-environmental issues raised by the applications filed on September 29, 2006 by Southern Natural Gas Company (Southern) and Elba Express Company, LLC (Elba Express) under section 7 of the Natural Gas Act (NGA), requesting, among other things, certificate authority to construct and operate a new interstate natural gas pipeline in Georgia and South Carolina to transport new volumes of vaporized liquefied natural gas (LNG) from Southern LNG, Inc's (Southern LNG) Elba Island, Georgia, LNG terminal to interconnections with Transcontinental Gas Pipe Line Corporation (Transco).[1] In the April 4 Order, the Commission issued its conditional approval of the Elba Express and Southern proposals pending completion of its environmental review. The April 4 Order did not address any of the issues associated with Southern LNG's contemporaneous application pursuant to NGA section 3 to expand its Elba Island LNG terminal and its request to abandon certain dock facilities pursuant to NGA section 7. On May 4, 2007, Shell NA LNG LLC (Shell) filed a timely request for rehearing of the April 4 Order.

[1] 119 FERC ¶ 61,015 (2007) (April 4 Order).

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2. The Commission has completed its analysis of Southern LNG's, Southern's, and Elba Express' proposals. As discussed below, we will grant the requested authorizations subject to certain conditions. Further, we will also deny Shell's request for rehearing.

I. Background and Proposals

A. Southern LNG

3. Southern LNG is a Delaware corporation whose parent is Southern, also a Delaware corporation. Southern LNG operates an LNG import terminal on Elba Island in Chatham County, Georgia, five miles downstream from the city of Savannah, Georgia, on the Savannah River.[2] Southern LNG commenced operations at the Elba Island terminal in 1978 and, by 1980, when market demand slowed, had received 55 LNG shipments. From 1980 to 1982 Southern LNG provided peak shaving service with the remaining inventory of LNG. Between 1982 and 2000, Southern LNG operated the terminal on a standby mode. In a series of orders from 1999 to 2001, the Commission authorized the re-commissioning and expansion of the Elba Island Facility (Elba I).[3] In 2002 and 2003, the Commission authorized a further expansion of the Elba Island terminal (Elba II).[4] This expansion was placed into service on February 1, 2006. As currently configured, the Elba Island terminal has an LNG storage capacity of 7.3 Bcf, a firm sendout rate of 806 MMcf per day, and a maximum sendout rate of 1,215 MMcf per day.

4. In its application in Docket No. CP06-470-000, Southern LNG proposes, in its Elba III Expansion, to expand the storage capacity of its Elba Island LNG import terminal by 8.44 Bcf and its vaporization capacity by 900 MMcf per day in two phases. Specifically, in Phase A, Southern LNG proposes to: (i) construct a new 200,000 cubic meter tank (1.25 million barrels) having a storage capacity of 4.22 Bcf of LNG with a boil-off recondenser and three boil-off gas compressors; (ii) install submerged combustion vaporizers with a firm send-out capacity of 405 MMcf per day; and (iii) modify the existing unloading docks to accommodate larger LNG ships and to facilitate simultaneous unloading of two LNG ships.

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[2] Initial authorization for the Elba Island Facility was issued in *Southern Energy Co.*, 47 FPC 1624 (1972).

[3] *Southern LNG, Inc.*, 89 FERC ¶ 61,314 (1999), *reh'g denied*, 90 FERC ¶ 61,257 (2000); *Southern LNG, Inc.*, 94 FERC ¶ 61,188 (2001); *Southern LNG, Inc.*, 96 FERC ¶ 61,083 (2001).

[4] *Southern LNG, Inc.*, 101 FERC ¶ 61,187 (2002), *order on reh'g*, 103 FERC ¶ 61,029 (2003).

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5. In Phase B, Southern LNG proposes to: (i) construct an additional 200,000 cubic meter tank (1.25 million barrels) with a storage capacity of 4.22 Bcf; and (ii) install submerged combustion vaporizers with a firm send-out capacity of 495 MMcf per day. In addition, Southern LNG proposes, separate and apart from the proposed expansion, to abandon certain unutilized facilities at its riverside dock. Southern LNG anticipates placing the Phase A facilities into service on June 1, 2010, and the Phase B facilities into service on December 31, 2012. Southern LNG estimates that the combined cost of both phases of the expansion will be $416,641,364.

6. Southern LNG has entered into precedent agreements with Shell and BG LNG Services, LLV (BG) for the entire firm capacity of Phase A and Phase B, respectively. Southern LNG proposes to provide service for the Elba III Expansion under its proposed new Rate Schedule LNG-3. Both Shell and BG have agreed to pay a negotiated rate for service from Southern LNG.

B. Southern

7. Southern is a natural gas company engaged in the operation of an interstate natural gas system in the southeast United States. Southern's pipeline system includes the 13.25-mile Twin 30s pipelines, which extend from Southern LNG's Elba Island LNG terminal to an interconnection with the rest of Southern's pipeline system near Port Wentworth, Georgia.[5] In its application in Docket No. CP06-474-000, Southern seeks approval to transfer to Elba Express, at net book value, an undivided ownership interest up to a volume equal to 1,175 MMcf per day in the Twin 30s pipelines. Southern will retain sufficient capacity in the Twin 30s pipelines to meet its contractual obligations and asserts that Carolina Gas' ownership interest in the Twin 30s pipelines will be unaffected by the instant proposal.

8. Southern also seeks to acquire an undivided ownership interest in Elba Express' proposed pipeline between Port Wentworth and Rincon, Georgia, up to a volume equal to 500 MMcf per day, if Southern elects to proceed with Phase III of its previously

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[5] Southern was authorized in September 2002 to transfer an undivided ownership interest in the Twin 30s equal to a volume of 190 MMcf per day to SCG Pipeline, Inc. (SCG). *Southern Natural Gas Co. and SCG Pipeline, Inc.*, 99 FERC ¶ 61,345 (2002), r*eh'g denied*, 100 FERC ¶ 61,284 (2002). In an order issued on July 20, 2006, the Commission approved the merger of SCG with South Carolina Pipeline Corporation to form Carolina Gas Transmission Corporation (Carolina Gas). *Carolina Gas Transmission Corp., SCG Pipeline, Inc., and South Carolina Pipeline Corp.*, 116 FERC ¶ 61,049 (2006).

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authorized Cypress Expansion Project.[6] Southern explains that it was authorized in Phase III of its Cypress Expansion Project[7] to construct a 9.85-mile, 30-inch diameter pipeline loop on its pipeline system downstream of Port Wentworth along the route of the proposed Elba Express pipeline. Southern states that acquiring an interest in the Elba Express pipeline would reduce construction costs and environmental impacts by eliminating the construction of two pipelines in the same right-of-way. Southern will pay Elba Express the net book value of its proportional share of capacity in the pipeline at the time of closing.

C. Elba Express

9. Elba Express, a subsidiary of Southern, is a Delaware Limited Liability Company formed to provide open-access transportation service for others under the Commission's jurisdiction. In addition to acquiring an undivided ownership interest in Southern's Twin 30s pipelines, Elba Express proposes in Phase A to construct and operate a new 42-inch and 36-inch diameter pipeline extending approximately 189 miles, from Port Wentworth through Effingham, Screven, Jenkins, Burke, Jefferson, Glascock, Warren, McDuffie, Wilkes, and Elbert Counties, Georgia, to interconnections with Transco in Hart County, Georgia, and Anderson County, South Carolina. The 42-inch diameter segment would extend approximately 115 miles from Port Wentworth to a proposed interconnection with Southern at Wrens, Georgia, and the 36-inch diameter segment would continue north for approximately 74 miles from Wrens to interconnections with Transco.

10. The acquired capacity on the Twin 30s pipeline and the Phase A facilities will allow Elba Express to provide up to 945 MMcf per day of transportation capacity from the Elba Island LNG terminal to the Transco interconnections. In addition, Elba Express has designed the pipeline to accommodate the transfer of an undivided ownership interest equal to a volume of 500 MMcf per day to Southern on the approximately 10-mile segment of the 42-inch diameter pipeline from Port Wentworth to an interconnection with Southern's Cypress Expansion at Rincon, Georgia.

11. In Phase B, Elba Express proposes to construct a 10,000 horsepower compressor station on the 42-inch diameter segment in Jenkins County, Georgia, to provide an additional 230 MMcf per day of transportation capacity for a total of 1,175 MMcf per day

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[6] Southern states that in the event it does not proceed with Phase III of the Cypress Expansion Project, it seeks authority to acquire only an undivided ownership interest equal to 55 MMcf per day in the Elba Express pipeline between Port Wentworth and an interconnection with Southern at Wrens, Georgia.

[7] *Southern Natural Gas Co.*, 113 FERC ¶ 61,199 (2005); *Southern Natural Gas Co., and Florida Gas Transmission Co.*, 115 FERC ¶ 61,328 (2006).

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to the Transco interconnections. Elba Express' proposed in-service dates for Phases A and B are coincident to those of Southern LNG's expansion. Elba Express estimates that the combined costs of both phases will be $509,225,070.

12. Elba Express has entered into precedent agreements for long-term firm transportation service for the entire Phase A and Phase B capacity, with Shell and BG, respectively. Elba Express proposes to provide open-access transportation service under Part 284 of the Commission's regulations and has provided a *pro forma* tariff for review. Shell and BG have elected to pay negotiated rates for service on Elba Express. Finally, Elba Express also requests a Part 157 blanket certificate authorizing it to construct, operate, and/or abandon certain eligible facilities and services.

D. April 4, 2007 Preliminary Determination

13. In the April 4 Order we made a preliminary determination, subject to completion of our environmental review and the fulfillment of all conditions specified in that order, that the benefits of Elba Express' and Southern's proposed projects will outweigh any potential adverse effects, are consistent with our policy statement[8] on new facilities, and are required and permitted by the public convenience and necessity.

14. Among the conditions to the April 4 Order was a requirement in Ordering Paragraph (G), that Southern make a filing, within 20 days of the issuance of the order, providing a detailed justification of the proposed acquisition of an undivided ownership interest in the Elba Express Pipeline between Port Wentworth and Wrens, Georgia equal to 55 MMcf per day, including an analysis of the application of the Commission's Policy Statement to the facts presented.[9] On April 20, 2007, Southern provided the required justification. Specifically, Southern states that it has been unable on occasion to honor all requests for transportation from the Elba Island LNG terminal because the capacity of its facilities between the terminal and Wrens has been fully utilized. Southern asserts that the Port Wentworth-Wrens capacity will enhance the reliability of service from the LNG terminal.

15. Accordingly, Southern states that the acquisition of the undivided interest in Elba Express' proposed pipeline is consistent with the Policy Statement. Southern asserts that the Policy Statement provides that a project will not be subsidized if its purpose is to improve existing services for existing customers, such as those projects that enhance

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

[9] April 4 Order at P 62.

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service flexibility and reliability. Thus, Southern states that such projects would qualify for a presumption of rolled-in rate treatment although Southern clarified, in its May 22, 2007 supplement, that it was not seeking a pre-determination of rolled-in rate treatment for the acquisition.

16. We find that, as conditioned here, Southern's proposed acquisition of an undivided interest equal to 55 MMcf per day in the Elba Express pipeline between Port Wentworth and Wrens will not be subsidized by Southern's customers, is thus consistent with the Policy Statement, and is required by the public convenience and necessity. Southern requests no predetermination for rolled-in treatment for the incremental costs and does not propose incremental rates. We thus construe Southern's request to be conditioned on the use of its Part 284 system rates as maximum rates for service over this capacity. Southern will acquire the facilities from Elba Express at their depreciated book value.[10]

II. Discussion

A. Shell's Request for Rehearing of the April 4 Order

1. *Hackberry* Doctrine

17. Shell requests rehearing or reconsideration of certain aspects of the Commission's April 4 Order. Shell identifies the following specific issues on which it seeks rehearing and makes the claim regarding each issue that the April 4 Order does not rest on reasoned decision-making.[11] Shell cites to basic administrative agency law. The Commission must not make arbitrary or capricious findings: rather, Commission orders will be upheld if supported by "substantial evidence and reached by reasoned decisionmaking – that is, a process demonstrating the connection between the facts found and the choice made."[12] We believe that in regard to each concern raised by Shell, our conclusions flow directly from the evidence presented. We note also that the sponsoring pipeline has not sought rehearing.

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[10] The April 4 Order noted also (*see* P 63-64*)* that, should Southern acquire Elba Express facilities servicing 500 MMcf per day, issues may arise concerning rolled-in rate treatment in Southern's Phase III Cypress Expansion. Southern has made no request to change its approved initial rates (Part 284 system rates) for service over the Cypress Phase III capacity and this order makes no changes to such rates.

[11] For each of the following rehearing issues, Shell cites in support of its arguments: 5 U.S.C. § 706(2) (A); *ExxonMobil Gas Marketing Co. v. FERC*, 297 F.3d 1071, 1083 (D.C. Cir. 1996); *Williams Natural Gas Co. v. FERC*, 90 F.3d 531, 533 (D.C. Cir. 1996).

[12] *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 516 (D.C. Cir. 1985) (*per curiam*).

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18. As a general matter, Shell states that the Elba III Expansion depends on satisfactory completion of a series of infrastructure facilities and supply and transportation arrangements, consistent with the parties' contractual arrangements. Shell states that shippers here will receive service on both the pipeline and the LNG terminal in what amounts to an integrated commercial and operational arrangement, and that the terms of the arrangement for this service, including the precedent agreement, negotiated rate, and the tariff, have been carefully crafted by the parties.

19. Shell submits that the Commission should, to the maximum extent possible, respect the commercial arrangements reached by the parties, consistent with the *Hackberry* doctrine, under which the Commission recognized that LNG terminals need not be subject to the same degree of regulation as typical interstate pipelines, but can instead agree to rates, terms, and conditions with their customers on a commercial basis.[13] Shell states that the Commission has also signaled that a more relaxed regulatory approach can be taken regarding the delivery pipelines.[14]

20. Shell urges the Commission to likewise take a more flexible approach regarding the Elba Express facilities. In light of the importance of these integrated commercial arrangements to the parties and the gas-consuming public, and the possibility that mandatory changes contrary to the parties' agreement could put the project at risk, Shell asserts that the Commission should grant rehearing of or reconsider its April 4 Order, as discussed below.

Commission Response

21. The Commission rejects Shell's suggestion that Elba Express qualifies for *Hackberry* treatment for LNG terminals or should be afforded the light handed regulation afforded *Freeport-McMoRan*. Shell misreads *Hackberry*, where Hackberry proposed both an LNG terminal and a 35.4 mile pipeline, both to be owned by Hackberry. The LNG terminal application was made pursuant to NGA section 3, and the pipeline proposal was made pursuant to NGA section 7. In *Hackberry*, the Commission established a new policy with regard to LNG terminals that, under certain conditions, (a) permits LNG terminals to offer services at rates, terms and conditions mutually agreed to by these parties, subject to the condition that the company file its contract with its customers prior to the commencement of construction, and (b) does not require the LNG

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[13] *Hackberry LNG Terminal L.L.C.*, 101 FERC ¶ 61,294 (2002)(*Hackberry), order issuing certificates and granting reh'g*, 104 FERC ¶ 61,269 (2003).

[14] *Citing Freeport-McMoRan Energy LLC*, 115 FERC ¶ 61,201 (2006) (*Freeport-McMoRan)*.

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terminal to offer open access service.[15] However, the Commission made no such finding with regard to the pipeline downstream of the LNG terminal. The Commission applied its standard level of review with regard to Hackberry's proposed pipeline services, cost of service, rate design and rates, and required a full open access tariff.[16] The April 4 Order is entirely consistent with *Hackberry*, wherein NGA section 7 open access pipelines downstream of LNG terminals are reviewed using the same standards as any other NGA section 7 pipeline.

22. The Commission also rejects Shell's contention that *Freeport-McMoRan* applies as the standard of certificate review for Elba Express. In *Freeport-McMoRan*, Freeport-McMoRan proposed, pursuant to NGA section 7, a 5.1 mile pipeline downstream of a 92 mile pipeline to be built pursuant to the Deepwater Port Act of 1974, as amended.[17] The Deepwater Port Act permits licensees to use the entire capacity in the facility on an exclusive basis. Freeport-McMoRan stated the NGA jurisdictional portion of the pipeline was to be operated on an integrated basis with the upstream components of the project, and noted that it would have no excess capacity beyond that required by Freeport-McMoRan. Therefore Freeport-McMoRan proposed that the NGA portion of the pipeline should be operated on a single-use, rather than open-access, basis. As proposed, Freeport-McMoRan did not anticipate additional requests for service on its facilities. However, it stated that should there be such a request, it would apply for the necessary open access blank transportation certificate.[18]

23. The Commission granted Freeport-McMoRan's request, but only after finding that the configuration of the NGA jurisdictional facilities made it unlikely other parties would request transportation service, and granting such a waiver would not undermine

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[15] *Hackberry* at P 20-27.

[16] *Id.* P 35-68.

[17] Pursuant to the Deepwater Port Act of 1974, as amended, 33 U.S.C. §§ 1501-1524 (2006), the Secretary of Transportation has exclusive jurisdiction over the licensing, ownership, construction and operation of deepwater ports. A deepwater port is defined as "any fixed or floating manmade structure . . . or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any State," *Id.* at § 1502 (9)(A), and includes, "all components and equipment, including pipelines, pumping stations, service platforms, buoys, mooring lines, and similar facilities to the extent they are located seaward of the high water mark." *Id.* at § 1502 (9) (B).

[18] *Freeport-McMoRan* at P 2-9.

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the Commission's policy encouraging competition in the pipeline industry.[19] The Elba Express pipeline is not comparable to the Freeport-McMoRan pipeline. Elba Express is not a small NGA segment to a Deepwater Port Act facility. It is not a single-party use facility. It is designed to be an open access pipeline fully integrated with the interstate transportation grid, capable of providing other services in addition to firm transportation service away from Southern LNG's terminal. *Freeport-McMoRan* is not applicable to Elba Express.

2. Right of Firm Shippers to Buy Out Their Contracts on Elba Express when a Force Majeure Event occurs on the Elba Island LNG Terminal

24. The Commission rejected Elba Express' proposed General Terms and Conditions (GT&C) section 8.5 because it would provide only certain Elba Express shippers opportunity to exercise service contract buy-out rights upon the declaration of a force majeure event occurring at the interconnected and affiliated Southern LNG terminal.[20] A shipper could terminate the service agreement with Elba Express by buying out the remaining term at a price calculated according to the relevant provisions of GT&C section 8.5 if the shipper's service agreement with Elba Express has a term of at least 25 years and the shipper pays maximum or negotiated rates.

25. The Commission noted that this tariff provision would provide, without any indicated justification, such buyout rights for a single class of shippers, that Elba Express will be an open-access pipeline interconnected with several other interstate pipelines, and that the potential for service requests from currently unknown customers thus exists.[21] The Commission rejected section 8.5 "without prejudice to Elba Express proposing and supporting a force majeure buyout provision that is not unduly discriminatory or preferential."[22]

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[19] *Id.* P 21-24.

[20] Under section 8.5 of the Elba Express Tariff's GT&C, "SLNG Force Majeure" occurs when Southern LNG declares an "event of force" at the Elba Island terminal (pursuant to the terms of Southern LNG's tariff) that leaves Southern LNG unable to make available at least 80 percent of a shipper's aggregate deliveries.

[21] April 4 Order, at P 37. The April 4 Order noted also that interpretation of another (Southern LNG) pipeline's tariff is required. We no longer rely on such a concern here.

[22] *Id.*

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26. Shell states that the Elba Express pipeline is associated with a larger integrated LNG import project, and that the commitments made in association with these types of projects are, by their nature, long term. Shell states that the foundation contracts supporting Elba Express and the Elba Island terminal expansion are for terms of at least 25 years, and would underwrite the Elba III Expansion. Shell states that the project sponsors are not relying on other potential service contracts to recoup their Elba III Expansion costs. Obtaining this protection in the Elba Express tariff is stated to be crucial to firm shippers who are contracting with both Southern LNG and Elba Express for what amounts to an integrated service package. Accordingly, Shell argues, there is good reason to distinguish the large, integrated arrangements for significant transportation quantities involved here from other arrangements when assessing GT&C section 8.5.

27. Shell states that the Commission has previously approved buy-out provisions tailored to the pipeline's circumstances.[23] Shell states that the Commission failed to determine what contract term threshold may be appropriate and simply rejected the entire GT&C section 8.5, instead of rejecting only those specific aspects of the tariff proposal that it finds unjust and unreasonable.[24] The Commission thus failed to engage in reasoned decision-making by rejecting the entire GT&C section 8.5.[25]

Commission Response

28. Shell's arguments speak to why Shell should qualify for the buyout rights Elba Express proposes to provide. We agree that Shell, under the circumstances, presents substantial arguments that it should qualify and that Elba Express so agrees. Shell's argument does, however, assume for its purposes that section 8.5 is indeed discriminatory and preferential. Shell submits no fact or reason, however, why other shippers may not also be considered worthy of the benefits Elba Express proposes or how Shell would be wrongfully impacted by a more broadly drafted provision.

29. The Commission does not require pipelines to offer shippers the chance to buy-out their service contracts.[26] As we explained further in the *Panhandle Eastern* proceeding cited by Shell, the Commission has approved individual pipeline proposals to offer this

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[23] *Citing Panhandle Eastern Pipe Line Company, LP (Panhandle Eastern)*, 110 FERC ¶ 61,155 (2005); *Florida Gas Transmission Co.*, 101 FERC ¶ 61,401 (2002).

[24] *Citing Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272 at P 58-67 (2006) (ordering modifications to tariff provisions of concern rather than elimination of them).

[25] *Citing Williams Natural Gas Co. v. FERC*, 90 F.3d 531, 533 (D.C. Cir. 1996).

[26] *ANR Pipeline Co.*, 99 FERC ¶ 61,310 at p. 62,321 (2002).

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right subject to various limitations, so long as the limitations are not unduly discriminatory.[27] That was and remains precisely our concern with the limitation of this opportunity under section 8.5 of the proposed tariff. Elba Express has not sought rehearing and thus offers no further insight. The Commission has before it no facts regarding likely new shippers on Elba Express' system that would support our redrafting GT&C section 8.5 for Elba Express, which remains free to submit a non-discriminatory provision.

3. Tariff Change Procedures

30. In the April 4 Order, the Commission rejected Elba Express' proposed GT&C section 44 in its entirety. Proposed section 44.1 would require Elba Express to consult with shippers before filing proposed changes to the GT&C with the Commission.[28] Elba Express would provide notice to shippers and engage in discussion about the proposed change. Section 44.1(c) required Elba Express, when certain disputes arise, to submit such disputes to the Commission's alternative dispute resolution service, for an expedited mediation to be completed within 15 days.

31. Under section 44.2(a), Elba Express would not propose changes to certain GT&C provisions, or make an NGA section 4 or 7 filing that expands or increases capacity if the change would have a material adverse effect on the shippers unless agreed to by shippers that subscribed at least 75 percent of the total firm transportation capacity on its system. Under section 44.2(b), shippers would be precluded from filing to change, or support any other person's filing to change, specified provisions of the tariff, including GT&C provisions, rates and discounts.

32. In rejecting GT&C section 44, the Commission noted that Elba Express could choose to commit to a pre-rate filing consultative process, but that the Commission would not commit its staff to resolve unknown proposals by completion of non-binding mediation within 15 days. The Commission also rejected the provisions that would restrict shippers' rights to support certain tariff changes. In addition, the Commission determined that the notice requirements regarding rate changes should not be in a tariff because they may not remain consistent with Commission regulations.

33. Shell states that the Commission erred and failed to engage in reasoned decision-making by striking GT&C section 44 in its entirety, arguing that the Commission has

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[27] *Panhandle Eastern*, at P 8 (2005).

[28] Under GT&C section 44.1(e), this procedure would not apply to tariff filings made to comply with FERC orders, required on an emergency basis for operational or financial reasons, or concerning rates or surcharges.

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previously authorized other pipelines to adopt tariff change procedures requiring consultations with customers. For example, Southern agreed in a rate case settlement to follow a specific tariff change protocol that required it to give advance notice and explanations of its proposed tariff changes, and agreed to meet with customers for discussions.[29] Further, Shell notes that the Commission has widely encouraged pipelines and customers to engage in discussions before tariff proposals are filed.[30]

34. Shell argues further that the 15-day standard for completing non-binding mediation with Commission staff was not intended to bind the Commission or its staff. Shell claims that GT&C section 44.1(c) is simply intended to establish a process to promptly resolve disputes consistent with the Commission's policy.

35. Shell states that, under GT&C section 44.2(a), Elba Express agreed to forego certain unilateral rights to propose changes to the commercial arrangements it has made, and has agreed to require a certain degree of shipper support to effect various tariff changes. Shell states that the tariff proposal is intended to preserve an important piece of the parties' overall commercial arrangements. Accordingly, the Commission should respect the agreement between the parties to limit tariff changes.

36. Shell states that the proposed notice requirements under GT&C section 44.2(d) are meant to guarantee certain minimum standards for communications between the parties so that the pipeline's shippers will receive early notice of Elba Express filings that could have a significant impact on shippers and other parties in the chain of transactions associated with the overall Elba III Expansion.

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[29] *Citing Southern Natural Gas Co*., 91 FERC ¶ 61,206 (2000).

[30] *See, e.g., Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Company Tariffs*, 115 FERC ¶ 61,325 (2006), in which the Commission encouraged pipelines and customers to discuss gas quality matters before initiating FERC proceedings. In addition, with respect to electric power regulatory matters, the Commission encourages independent system operators and regional transmission organizations to discuss proposed tariff revisions with stakeholders prior to submitting a filing to the Commission for approval. *See, e.g., Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,250 at P 32 (2005) ("The Commission has previously stated its preference for discussions at the stakeholder level to gauge support prior to filing revisions to RTO credit policies."); *Alliance Companies, et al.*, 95 FERC ¶ 61,182 at 61,637 (2001) ("We encourage Alliance Companies and stakeholders, such as the Virginia Commission, to resolve these matters prior to making a filing with the Commission.").

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Commission Response

37. The Commission finds no good reason to grant rehearing. With respect to section 44.1(c), the April 4 Order noted specifically that Elba Express may choose to commit to a pre-filing consultative process.[31] The Commission does not object to such pipeline commitments, but they need not be part of the tariff. Shell's stated belief, that the submission of disputes to Commission staff described by section 44.1(c) does not commit Commission staff to overly burdensome deadlines, and is intended merely to provide a prompt process for dispute resolution, is not consistent with a reasonable reading of the section's language. The proposed tariff language specifically provided for submission of pre-filing disputes to the Commission and its staff for expedited mediation resolution within 15 days.

38. As to section 44.2(a) and (b), Shell's interests as a shipper may well be different from those of other new customers reasonably anticipated to seek service from Elba Express, a new open-access pipeline. Thus the proposed limitation of the rights of such shippers is unsupportable. Finally, customer reliance upon the Commission's regulations governing appropriate notice requirements concerning proposed tariff changes is much more administratively efficient than the expenditure of Commission resources to review and approve/deny individual tariff changes aimed at conformance to future Commission regulation amendments.

4. Negotiated Rates

39. The Elba Express application included the Shell Precedent Agreement and the Shell Negotiated Rate. The provisions of GT&C section 34 would govern exercise of the pipeline's negotiated rate authority. The April 4 Order authorized Elba Express to charge negotiated rates, subject to standard negotiated rate conditions specified in the order. The Commission did not rule on the propriety of the terms of the negotiated rates. Rather, consistent with its normal practice, the Commission ordered Elba Express to file the relevant negotiated rate contracts or tariff sheets no later than 30 days and no sooner than

[31] April 4 Order at P 44. The *Southern Natural Gas Company* order to which Shell refers involved just such a settlement-provided pre-filing procedure aimed at informing customers of the nature of the change. *See* 91 FERC at 61,732 (2000). No pre-filing procedures or submissions of disputes to Commission staff for mediation were included in the tariff provisions. *See* Appendix D to the March 10, 2000 *Southern Natural Gas Company* settlement.

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60 days prior to the commencement of service on the expansion facilities, citing the Alternative Rate Policy Statement,[32] and the Commission's decision in *NorAm Gas Transmission Company*.[33]

40. Shell states that it needs commercial certainty now about whether the Commission will approve its negotiated rate agreement. If the Commission does not approve or accept the negotiated rate agreed to by the parties, the project may be put at risk, as the parties may not be willing to commit to the significant costs of the project without knowing until after the project is built whether the agreed-on essential terms will receive regulatory approval. Shell also argues that no party will be harmed by the Commission ruling on the negotiated rate at this time.

41. Shell cites several recent certificate proceedings in which it states that the Commission reviewed and ruled on proposed negotiated rate agreements.[34] Shell argues that the Commission should rule on its negotiated rate now, stating that the Commission's normal practice of not reviewing negotiated rate agreements in the context of a certificate application is not an inflexible policy.[35]

Commission Response

42. The use of one procedural method to process a certificate in one proceeding does not suggest the need for or a right to the use of the same procedures in all other certificate proceedings. The Commission's review of negotiated rate contracts is at its discretion when filed outside the context of an NGA section 4 filing. Indeed, the cases cited by Shell give examples of such discretion.

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[32] *Alternative to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines,* 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied,* 75 FERC ¶ 61,024 (1996), *reh'g denied,* 75 FERC ¶ 61,066 (1996); *petition for review denied, Burlington Resources Oil & Gas Co. v. FERC,* Nos. 96-1160, *et al.*, U.S. App. Lexis 20697 (D.C. Dir. July 20, 1998); *Modification of Negotiated Rate Policy,* 104 FERC ¶ 61,134 (2003), *order on reh'g,* 114 FERC ¶ 61,042 (2006) (Alternative Rate Policy Statement).

[33] 77 FERC ¶ 61,011 (1996) (*NorAm*).

[34] *Rockies Express Pipeline LLC,* 116 FERC ¶ 61,272 at P 68-73 (2006) (*Rockies Express*); *Texas Gas Transmission, LLC,* 113 FERC ¶ 61,185 (2005) (*Texas Gas*); *Maritimes & Northeast Pipeline, L.L.C.*, 118 FERC ¶ 61,110 (2007) (*Maritime*s).

[35] *Rockies Express,* 116 FERC ¶ 61,272 at P 68.

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43. The Commission did not, as suggested by Shell, rule on Maritimes' proposed negotiated rate agreements in the context of its certificate proceeding. Rather, in the cited case Maritimes filed its negotiated rate agreement under a separately docketed section 4 proceeding, which was resolved by separate order.[36] In *Rockies Express*, the Commission acted in response to a specific request from an applicant proposing facilities linking markets to supply never before available. The Commission noted that while it "usually does not review negotiated rate agreements in the context of a certificate application, we will do so here given the size of the Project and the associated financial commitments required."[37] In *Texas Gas*, the Commission appears to have approved the proposed negotiated rates, without explanation in discussion or comment, but also subject to the normal requirement that a separate filing be made consistent with the Alternative Rate Policy Statement as revised in the Commission's Modification of Negotiated Rate Policy. We cannot discern there a deviation from standard practice supporting Shell's request here.

44. In this case, Elba Express did not request pre-approval of the negotiated rates or indicate to the Commission that such was necessary for achieving its financing or was in any other way necessary for the project's successful operation. Elba Express stated in its application that it had precedent agreements with its foundation shippers that included negotiated rates consistent with its proposed negotiated rate authority. Further, Elba Express stated that it would file its tariff to become effective upon the initial in-service date of its facilities.[38]

45. The Commission has fulfilled its NGA obligations to the applicant and potential customers by reviewing and ruling upon Elba Express' maximum recourse initial rates and its proposed terms and conditions of service. Further, the Commission has reviewed, made findings and imposed conditions with regard to Elba Express' proposed negotiated rate authority that establish the tariff conditions and procedures it must follow to achieve Commission approval of negotiated rate contracts.[39] The instant project was proposed for

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[36] *See* 118 FERC ¶ 61,137 (2007) (the certificate proceeding); 118 FERC ¶ 61,110 (2007) (section 4 order on negotiated rate agreement).

[37] *Rockies Express* at P 68.

[38] Elba Express Application at p. 6. Elba Express' proposed timing of its tariff filing is consistent with the Commission's regulations: Section 154.1(c) states that no pipeline may file a new or changed tariff until it is issued an NGA section 7 certificate. The Commission notes that negotiated rate contracts are part of a pipeline's tariff. Section 154.1(b) of the Commission's regulations.

[39] April 4 Order at P 51-53.

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processing consistent with applicable Commission policy. The Commission believes such a procedural path to be consistent with the project as proposed. Therefore, we will deny Shell's request that we rule on its negotiated rate agreement in this proceeding.

5. Authorized Overrun Service's Priority Over Interruptible Service

46. Proposed GT&C section 16 addressed how transmission capacity is to be allocated when there are capacity constraints on the Elba Express system. In those cases when firm services have been scheduled, Elba Express' proposed GT&C section 16.2(d) would require allocation of remaining transmission capacity first to Authorized Overrun service nominated by shippers under Rate Schedule FTS, and then, to the extent capacity remains available, to interruptible transportation services.

47. The April 4 Order stated that this was not consistent with Commission policy since the Commission considers authorized overrun and interruptible service as identical for capacity allocation purposes, and has held that pipelines must revise their tariffs to accord interruptible and overrun services the same scheduling priority.[40] The Commission added that, although authorized FTS overrun service is associated with a firm service contract, it is an interruptible service, and there is no reservation charge for Authorized Overrun Gas.

48. Shell urges the Commission to grant rehearing of or reconsider its ruling, stating that granting priority to authorized overrun service is part of the integrated agreements between Elba Express and its shippers for service on a pipeline intended to deliver regasified LNG from an LNG import terminal. Noting that LNG shipping arrangements involve very large quantities of gas, Shell states that it may have LNG supplies that need to be evacuated from the Elba Island terminal to allow unloading of incoming LNG cargoes, and thus may need to use authorized overrun service. Shell states that it is appropriate for Elba Express to design the scheduling service around the needs of regasified LNG.

49. Shell states that such treatment here should not create precedent for typical interstate pipelines that are not designed to service LNG import terminals. Furthermore, Shell argues, the authorized overrun shippers would be the firm customers that pay reservation charges (and in fact pay the entire costs of the pipeline), and provide sorely-needed new gas supplies to U.S. markets. Accordingly, in the circumstances here the Commission should approve the provision in Elba Express' tariff giving priority to authorized overrun service over interruptible service.

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[40] *Id.* at P 40-41.

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Commission Response

50. We will deny Shell's request. The Commission has long held that authorized overrun service should be accorded the same priority as interruptible service.[41] Indeed, the Commission has found in other storage and liquefied natural gas cases that overrun service should not have a higher priority than interruptible service and has rejected proposals giving authorized overrun service a higher priority than interruptible.[42] The Commission's policy is that capacity must be allocated to the shipper which places the highest value on the capacity.[43] If shippers need more capacity, the shippers should sign up for additional firm capacity which would entitle them to a higher priority.

B. Southern LNG's Proposals

1. Section 3 Authority

51. Because the proposed LNG terminal facilities will be used to import gas from foreign countries, the construction and operation of the facilities and site of their location require approval by the Commission under NGA section 3.[44] The Commission's authority over facilities constructed and operated under section 3 includes the authority to

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[41] *See, e.g., Portland Natural Gas Transmission System*, 106 FERC ¶ 61,289, at P 50 (2004); *TriState Pipeline, L.L.C.*, 88 FERC ¶ 61,238, at 62,206 (1999); *High Island Offshore System and U-T Offshore System*, 63 FERC ¶ 61,280 at 62,826 (1993).

[42] *See Golden Pass LNG Terminal LP*, 112 FERC ¶ 61,041, at P 53 (2005); *Vista del Sol LNG Terminal LP*, 111 FERC ¶ 61,432, at P 51 (2005); *Avoca Natural Gas Storage*, 68 FERC ¶ 61,045, at 61,154-155 (1994); *Algonquin LNG, Inc*., 64 FERC ¶ 61,173, at 62,528 (1993); *ANR Storage Co.*, 51 FERC ¶ 61,114, at 61,305 (1990); *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006).

[43] *See Florida Gas Transmission Co.*, 102 FERC ¶ 61,217 at P 23 (2003); *Columbia Gulf Transmission Co.*, 100 FERC ¶ 61,344 at P 41 (2002).

[44] The regulatory functions of section 3 were transferred to the Secretary of Energy in 1977 pursuant to section 301(b) of the Department of Energy Organization Act (Pub. L. No. 95-91, 42 U.S.C. §§7101, *et. seq.*). In reference to regulating the imports or exports of natural gas, the Secretary subsequently delegated to the Commission the authority to approve or disapprove the construction and operation of particular facilities, the site at which facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry or exit for exports. DOE Delegation Order No. 00-44.00, 67 Fed. Reg. 8,946 (2002). However, applications for authority to import natural gas must be submitted to the Department of Energy. The Commission does not authorize importation of the commodity itself.

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apply terms and conditions as necessary and appropriate to ensure that the proposed construction and siting is in the public interest.[45] Section 3 of the NGA provides that the Commission "shall issue such order on application…" if it finds that the proposal "will not be inconsistent with the public interest."

52. In recent years, the Commission has chosen to exercise a less intrusive degree of regulation for new LNG import terminals, and does not require the applicant to offer open-access service or to maintain a tariff or rate schedules for its terminalling service.[46] On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005) was signed into law. Section 311 of EPAct 2005 amends section 3 of the NGA regarding the Commission's authority over the siting, construction, expansion or operation of an LNG terminal.[47] As pertinent here, section 311(c) of EPAct 2005 adds a new NGA section 3(e)(3) providing that, before January 1, 2015, the Commission shall not condition an order approving an application to site, construct, expand or operate an LNG terminal: (1) on a requirement that the LNG terminal offer service to customers other than the applicant, or any affiliate of the applicant securing the order; (2) any regulation of the rates, charges, terms or conditions of service of the LNG terminal; or (3) a requirement to file schedules or contracts related to the rates charges, terms or conditions of service of the LNG terminal. Our authorization here is consistent with new NGA section 3(e) (3). Here, however, Southern LNG specifically proposed incremental cost-based rates under its open access tariff. As we have stated previously, we do not read NGA section 3(e) (3) (B) as precluding the Commission from issuing and enforcing such authorization when proposed by the applicant.[48]

53. The Commission recognizes the important role that LNG will play in meeting future demand for natural gas in the United States and has noted that the public interest is served through encouraging gas-on-gas competition by introducing new imported supplies. The record in this case shows that the Southern LNG's Elba III terminal expansion will be a source of such additional supplies of natural gas. The economic risks will be borne by Southern LNG. The project should provide these benefits without adverse impacts on adjoining landowners, existing pipelines, or the environment. All construction will take place on lands already dedicated to Southern LNG facilities or

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[45] *Distrigas Corporation v. FPC*, 495 F.2d 1057, 1063-64, *cert. denied*, 419 U.S. 834 (1974); *Dynegy LNG Production Terminal, 97L.P.*, 97 FERC ¶ 61,231 (2001).

[46] *See Hackberry LNG Terminal, L.L.C.*, 101 FERC ¶ 61,294 (2002), *supra*.

[47] Energy Policy Act of 2005, Pub. L. No. 109-58, § 311, 119 Stat. 594, 685 (2005).

[48] *See, e.g., Trunkline LNG Co.*, 117 FERC ¶ 61,339, at P 20 (2006).

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within existing rights-of-way. Further, the environmental conditions set forth in this order will ensure that the adverse environmental impacts will be limited. In view of these considerations, we find that the Southern LNG Elba III Expansion is not inconsistent with the public interest, provided Southern LNG adheres to the safety and environmental conditions specified in Appendix B to this order.

4. Southern LNG's Rate Proposal

54. Southern LNG currently provides firm terminal service under Rate Schedule LNG-1 (LNG-1) and interruptible service under Rate Schedule LNG-2 (LNG-2) for the existing facilities. The LNG-1 rate consists of a monthly reservation charge of $0.6712 per Dth of MSQ at the maximum rate, a dredging surcharge of $0.0459 per Dth of MSQ at the maximum rate, and the addition of the following charges and surcharges: commodity rate, fuel, electric power cost adjustment, and the annual charge adjustment (ACA) surcharge.

55. The LNG-2 rate consists of a monthly storage charge of $0.6712 per Dth at the maximum rate, a dredging surcharge of $0.0459 at the maximum rate, and the addition of the following charges and surcharges: commodity rate, fuel, electric power cost adjustment, and the ACA surcharge.

56. Southern LNG proposes incremental rates under Rate Schedule LNG-3 for those shippers using the new capacity. Southern LNG proposes to phase in the initial rates as service from Phase A to Phase B commences. Rate Schedule LNG-3 provides for firm terminal service up to the MSQ and maximum daily vaporization quantity (MDVQ) of incremental capacity the expansion facilities will provide. Southern LNG proposes to allocate 75.9 percent of the fixed cost of service for LNG-3 rates to the MSQ reservation charge component and 24.1 percent of the fixed cost of service to the MDVQ reservation charge component.

57. Southern LNG proposes a cost of service of $51,309,081 and $80,445,205 for Phase A and Phases A and B combined, respectively. The costs of service were developed using the same components that were incorporated into Southern LNG's currently effective rates. The weighted after-tax rate of return is 10.58 percent, the depreciation rate is 1.76 percent, and the income tax expense is based on the federal income tax rate of 35 percent and the Georgia state income tax rate of 6 percent.

58. For Phase A, Southern LNG proposes an incremental reservation rate of $0.7532 per Dth of MSQ, and an incremental reservation rate of $2.4920 per Dth of MDVQ. In addition, shippers would pay the electric power cost adjustment, the fuel retention charge, the dredging surcharge, and the ACA surcharge. Once Phase B service has commenced, Southern LNG proposes an incremental reservation rate of $0.5905 per Dth of MSQ, and an incremental reservation rate of $1.7582 per Dth of MDVQ. In addition, shippers

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would pay the electric power cost adjustment, the fuel retention charge, the dredging surcharge, and the ACA surcharge. Southern LNG proposes to apply the existing fuel retention mechanism of its Original Volume No. 1, section 24.1 of the GT&C to the LNG-3 service.

59. Southern LNG proposes that the LNG-3 commodity rate be equal to the Rate Schedule LNG-1 commodity rate. The new LNG-3 rate schedule will not include any interruptible service. Rather, Southern LNG proposes to use its existing interruptible Rate Schedule LNG-2 for interruptible service using the incremental capacity.

60. Southern LNG has entered into precedent negotiated rate agreements with BG and Shell for all the firm capacity of the Elba III Terminal Expansion Project.

Comments

61. Marathon LNG Marketing LLC (Marathon) protests that the incremental cost of service is understated.[49] Marathon contends that an understated incremental rate will result in a subsidization of the Elba III Expansion by existing customers, which will make the subsequent roll-in of expansion costs into the existing cost of service underlying the rates charged to LNG-1 shippers more likely. Marathon points out that the proposed services under Rate Schedule LNG-3 would commence in 2010, at about the same time the rate moratorium governing Rate Schedule LNG-1 expires.[50] Marathon protests that the administrative and general expenses (A&G) and the operating and maintenance expenses (O&M) are understated, which results in an understated incremental cost of service. Marathon believes that the proposed incremental rates are not designed to recover the full cost of the incremental service for the Elba III Expansion Project on a stand-alone basis as required by the Energy Policy Act of 2005 and Commission policy.

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[49] Marathon filed various motions in support of its protest, which are discussed and described as necessary below. Southern LNG filed answers thereto, also described as necessary. Given the assistance these pleadings provide to the Commission's analysis, all of the pleadings filed are accepted as part of this record, consistent with Rule 213(a)(2) of the Commission's Rules of Practice and Procedure.

[50] Article 2.2 of the settlement approved in CP99-579-003 states that "during the rate moratorium," customers will not "undertake, pursue, aid or abet any effort under NGA section 5, and hereby waive[s] and relinquish[es] rights under NGA section 5 for such period regarding the Base Rates, and will not take or advocate any action, directly or indirectly, with any governmental authority or regulatory body to require a change (or which would have the effect of requiring a change) in the costs, cost allocation, rate design, services, or billing determinants which underlie the Base Rates."

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62. Southern LNG, in its answer, states that it presumes that Marathon's purpose is to increase the maximum incremental recourse rates under Rate Schedule LNG-3, and not to lower the Rate Schedule LNG-1 rates, since Marathon is unable to challenge and/or lower the Rate Schedule LNG-1 rates at this time due to the rate moratorium approved in Docket No. CP99-579-003.[51] Southern LNG states that it has proposed to incrementally price the expansion service under a new Rate Schedule LNG-3, which was filed on a pro forma basis for Commission review with the application. Southern LNG states that it has not proposed any changes to the Rate Schedule LNG-1 rates, which are the rates in which Marathon has an interest. Southern LNG states that the Commission should deny Marathon LNG's protest.

63. Marathon replies that Southern LNG only looked at an estimate of "overhead and field costs"[52] associated with the new facilities and service, despite the fact that the expansion facilities will be integrated into the existing operations. Because the expansion facilities cannot operate independently of the existing facilities, Marathon contends that to look only at "additional" costs raises a serious question as to whether the integrated facilities being used by the expansion customers are being paid for by the existing customers. Marathon states that the mere fact that Southern LNG designed a rate that is higher than the existing rate does not make the incremental rate correct and does not ensure that the expansion is not being subsidized by the existing customer. Marathon requests that the Commission set the incremental recourse rates for hearing.

Commission Response

64. Marathon's argument is that Rate Schedule LNG-3 customers will be using existing facilities that are already being paid for by existing customers. If costs of existing facilities were to be reallocated to reflect the inclusion of Rate Schedule LNG-3 use, fewer costs would be allocated to existing customers. Marathon alleges that Rate Schedule LNG-3's proposed cost of service is too low. The Commission rejects Marathon's argument for the following reasons.

65. In our Policy Statement we address the issue of how to ensure that expansion rates embody proper price signals. Placing existing customers in the position of subsidizing an expansion would send improper price signals, thereby inducing overbuilding and inefficient investment. Consequently, the Commission requires incremental rates for

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[51] Approved in Docket No. CP99-579-003, 112 FERC ¶ 61,314 (2005).

[52] Marathon cites the Answer of Southern LNG at p. 6.

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expansion services in appropriate cases.[53] Commission-approved incremental rate design requires that only incremental costs be reflected in the incremental cost of service and does not require existing shared facility or common costs to be reallocated to new incremental services.[54] In the context of an initial rate, this rate design limits the possibility that a pipeline will over-recover its cost of service.[55] Existing customers are not paying for anything more than what was necessary to render their service during the course of the initial rate period.

66. Marathon expresses concern that in its next rate case Southern LNG may propose a rate design that may result in future subsidization of the incremental services by existing customers. Such concern is speculative. Southern LNG has not requested current approval of a future proposal for rolled-in treatment. However, as this is an incremental expansion involving an initial incremental rate design, the Commission will require Southern LNG to maintain its accounts for these facilities in accordance with section 154.309 of the Commission's regulations, which applies to incremental expansions. The protections afforded existing customers by an incremental rate design are sufficient in the circumstances to protect Marathon's interests.

67. Marathon states that the Commission has no post EPAct 2005 authority to authorize or approve the initial rates proposed here.[56] Southern LNG argues to the contrary that the Commission has properly exercised its authority to assure the availability of appropriate recourse rates proposed by an applicant and established in

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[53] *Certification of New Interstate Natural Gas Pipeline Facilities* (Policy Statement), 88 FERC at 61,743-747, *order on clarification*, 90 FERC at 61,391-394.

[54] "[N]owhere in Commission pronouncements has the Commission required the assignment of existing facility costs to expansion customers." *Trailblazer Pipeline Company*, 106 FERC ¶ 63,005 at P 112 (2004); *see also Kern River Gas Transmission Company*, 117 FERC ¶ 61,077 at P 347 (2006).

[55] Over-recovery could occur as all existing common and shared costs are already being recovered through the existing customers' rates, and the pipeline would over recover by the amount these same costs are also allocated to incremental rates and recovered from the incremental customers. Existing customers' rates cannot be changed outside of proceedings under either NGA section 4 or 5.

[56] February 2, 2007 Motion for Order Rejecting Proposed Tariff Changes, Denying Request for Authorization, and Scheduling Hearing, at 4.

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accordance with Commission policy.[57] As noted above, we do not read the NGA as precluding our finding here.[58] Finally, we will deny Marathon's request for a hearing. An evidentiary trial-type hearing is required only where there are material issues of fact in dispute that cannot be resolved on the basis of the written record.[59] Here, Marathon's stated issues are resolved.

3. Tariff Proposal

68. Southern LNG filed pro forma tariff changes to reflect the addition of the proposed Rate Schedule LNG-3, which provides for the receipt, delivery, storage, vaporization, and firm terminal services to be provided by the Elba III Expansion. Southern LNG proposes incremental cost-based rates for new Rate Schedule LNG-3. Southern LNG does not propose to offer a separate interruptible service rendered with these facilities. Rather, Southern LNG proposes to use its existing interruptible Rate Schedule LNG-2.

69. Southern LNG proposes other tariff changes to reflect the new rate schedule. These changes include numerous changes to the GT&C to reflect the addition of Rate Schedule LNG-3. In addition, Southern LNG proposes other changes that it contends are necessary as the result of the addition of Rate Schedule LNG-3 but will apply to existing Rate Schedules LNG-1 and LNG-2. Some of these proposals include additional force majeure provisions permitting long-term customers a buy-out election, negotiated rates, and an additional Storage Charge. The proposed negotiated rates tariff provision provides that Southern LNG will file with the Commission either the contract or a revised rate sheet setting forth the name of the customer, the contract number, the contract date and the negotiated rate or negotiated rate formula applicable to such agreement.

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[57] (February 2, 2007 Answer to Motion of Marathon, at 4, n.4, *citing Trunkline Co., L.L.C.*, 117 FERC ¶ 61,339 (2006); *Dominion Cove Point LNG, L.P.*, 115 FERC ¶ 61,336 (2006).

[58] *See* n.48, *supra,* and accompanying text.

[59] *See, e.g., Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1980); *Cerro Wire & Cable v. FERC*, 677 F. 2d 124, 128-129 (D.C. Cir. 1982); it is settled that the Commission has "discretion reasonably to order its business as it [sees] fit and to leave petitioners to their remedies in another type of proceeding." *Southern Union Gas Co. v. FERC*, 840 F.2d at 971 (D.C. Cir. 1988).

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Comments

70. Marathon protests a number of Southern LNG's proposed changes to Rate Schedule LNG-1, including:

1) Proposed section 4.2 of Rate Schedule LNG-1 which changes the calculation of the rate to be charged for service under Rate Schedule LNG-1;

2) Proposed section 4.5 of Rate Schedule LNG-1 which deletes the existing minimum bill provision, replacing it with an entirely new and different force majeure provision;

3) Proposed section 4.5 of Rate Schedule LNG-1 references section 8.6 of the GT&C, which is a completely new section of the GT&C; and

4) Proposed section 9 of Rate Schedule LNG-1 deletes existing language related to inter-service commodity transfers.

71. Marathon submits that tariff changes affecting services other than Rate Schedule LNG-3 services cannot be made in an NGA section 3 proceeding. Marathon states that Southern LNG claims without authority the right, in an NGA section 3 proceeding, to obtain Commission approval of pro forma tariff sheets, to alter the terms and conditions of rate Schedule LNG-1 and the GT&C of Southern LNG's FERC-approved tariff, and to establish a new open access service under rate Schedule LNG-3 for the Elba III Expansion service. Rather, Marathon contends that the proposed changes must be made in a section 4 proceeding as they are intended to and will effect a change in an approved tariff.[60] Marathon states that Southern LNG is attempting to use the authority to develop a proprietary expansion under section 311 of EPAct 2005 to circumvent the requirements of NGA section 4 and the Commission's regulations. Marathon requests that the Commission reject Southern LNG's proposed changes affecting Rate Schedule LNG-1, Rate Schedule LNG-2, and the GT&C of Southern LNG's Open Access Tariff, in accord with Commission precedent,[61] and allow Southern LNG to determine whether it wishes to proceed under NGA section 4 and Part 154 of the Commission's regulations.

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[60] *See* Motions of Marathon filed November 29, 2006, February 2, 2007, and February 20, 2007.

[61] Marathon cites *Dominion Cove Point LNG, L.P.*, 115 FERC ¶ 61,336 (2006), 117 FERC ¶ 61,289 (2006), 118 FERC ¶ 61,023 (2007).

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72. Southern LNG filed an answer stating that it has not proposed any changes to the rate sheets for LNG-1 and LNG-2. Southern LNG did not address the other changes to Rate Schedule LNG-1 and LNG-2's terms and conditions of service.

4. Rate Schedules LNG-1 and LNG-2 Proposed Tariff Language

73. The Commission finds the proposed Rate Schedule LNG-3 and changes necessary to integrate Rate Schedule LNG-3 into its existing tariff acceptable. However, Southern LNG has proposed numerous changes to the existing Rate Schedules LNG-1 and LNG-2, and also changes to the existing GT&C that could change the rates, terms and conditions applicable to existing customers. These changes, which are identified by pro forma sheet number and tariff section number in Appendix A to this order, include proposing negotiated Rate Schedule LNG-1 and LNG-2 rates, removal of minimum bill language, a new Monthly Storage Charge applicable to Rate Schedule LNG-1, new force majeure options, changed requirements for in-place title transfers of gas between Rate Schedules LNG-1 and LNG-2, changed contract extension provisions, changed units by which capacity is contracted and other changes. These proposed changes are rejected.

74. Southern LNG is not proposing to change the facilities or services it renders to Rate Schedule LNG-1 and LNG-2 customers in this proceeding. If Southern LNG desires to make changes to the terms and conditions of service or rates of Rate Schedules LNG-1 and LNG-2, it should do so in a NGA section 4 filing made pursuant to Part 154 of the Commission's regulations. The Commission rejects the pro forma tariff sheets referenced in Appendix A without prejudice.

75. Southern LNG may change its tariff to incorporate Rate Schedule LNG-3. The Commission directs Southern LNG to file actual tariff sheets reflecting Rate Schedule LNG-3 and Rate Schedule LNG-3-specific changes, no later than 30 days and no sooner than 60 days prior to the commencement of service on the expansion facilities.

5. Negotiated Rate Authority

76. Southern LNG's proposed Article 25.4 provides for negotiated rates, including rates, rate components, charges, surcharges, reimbursement mechanisms, or credits for services that differ from those established or imposed by any applicable provision of Southern LNG's effective FERC Gas Tariff. The Commission approves negotiated rate authority for the Rate Schedule LNG-3 rates. The Commission finds that Southern LNG's negotiated rate proposal is consistent with the Alternative Rate Policy Statement, and the Commission's decision in *NorAm*. As noted above, the maximum firm transportation rate will serve as the recourse rate. Each time Southern LNG enters into a negotiated rate contract, it must file either the contract or numbered tariff sheets. If it chooses the latter, the tariff filing must state for each shipper the negotiated rate, all applicable charges, the applicable receipt and delivery points, the volume to be

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transported, the applicable rate schedule for the service, and a statement affirming that the affected service agreements do not deviate in any material aspect from the form of service agreement in Southern LNG's tariff. Southern LNG must also disclose any other agreement, understanding, negotiation, or consideration associated with the negotiated agreements. Southern LNG 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.[62] Finally, Southern LNG should abide by the terms and reporting requirements of the Alternative Rate Policy Statement as they may be modified from time.

77. Southern LNG has also proposed Exhibit F to the Form of Service Agreement for Rate Schedules LNG-1 and LNG-3. Exhibit F lays out the calculation of the negotiated rates Southern LNG has arranged with the shippers who signed the Rate Schedule LNG-3 precedent agreements. The Commission does not approve negotiated rate agreements in certificate proceedings.[63] Southern LNG's filing of Rate Schedule LNG-3 negotiated rate material in Exhibit F is premature. Southern LNG is directed to file its negotiated rate expansion contracts or numbered tariff sheets no later than 30 days and no sooner than 60 days prior to the commencement of service on the expansion facilities.

6. Miscellaneous Tariff Provisions

78. Southern LNG proposes in section 16.3 (a) of the GT&C, "Permanent Release", that "the Acquiring Customer shall be required to execute a separate Service Agreement with [Southern LNG] for the released capacity both (i) at the *higher of the negotiated or* maximum rate applicable to *or, if effective, the Negotiated Rate applicable to Releasing Customer's Service Agreement (and attachments thereto)*…" (emphasis supplied).

79. Section 284.8(e) of the Commission's Regulations states that "The pipeline must allocate released capacity to the person offering the highest rate (not over the maximum rate)…" Since Southern LNG's proposal would permit replacement shipper contracts at rates higher than the maximum stated rate, we will reject the language. Primary firm

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[62] Also, consistent with the Alternative Rate Policy Statement and *NorAm*, the Commission will not permit Southern LNG to recover from existing shippers any revenue shortfall due to the charging of negotiated rates.

[63] *See East Tennessee Natural Gas Co.*, 98 FERC ¶ 61,331 (2002); *Texas Eastern Transmission Corp.*, 95 FERC ¶ 61,057, *order on reh'g*, 95 FERC ¶ 61,367 (2001); and *Independence Pipeline Co.*, 91 FERC ¶ 61,102 and 92 FERC ¶ 61,022, *order on reh'g and clarification*, 92 FERC ¶ 61,367 (2000).

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contracts with negotiated rates may be in excess of the maximum recourse rate provided in the tariff. However, when that firm capacity is placed on the capacity release market, replacement shippers cannot pay more than the maximum recourse rate.

80. Southern LNG proposes in section 16.5 of the GT&C, "Billing and Payment," that "[i]f any of the *maximum* recourse rates billed to and paid by the Acquiring Customer under its Service Agreement exceed the maximum recourse rate which the Commission determines to be just and reasonable, and if Southern LNG is ordered to make refunds, then the Acquiring Customer shall be eligible to receive refunds to the extent of any payments it made in excess of the maximum recourse rates the Commission subsequently determines to be just and reasonable (emphasis supplied)."

81. The proposed language in this tariff provision allows Southern LNG to retain revenues that were paid in excess of what the Commission deems just and reasonable but below the maximum recourse effective rate.[64] When the Commission requires refunds, the amount to be refunded is any revenue derived from rates charged above the maximum just and reasonable rate, not just the revenue generated from those who were paying the maximum rate in effect prior to the Commission's finding. Therefore, the language proposed in section 16.5 of the GT&C is rejected.

7. Abandonment of Dock Facilities

82. Southern LNG seeks authority to abandon, pursuant to section 7(b) of the NGA, various dock facilities at its riverside dock which it asserts are no longer necessary to provide service. Southern LNG states that the facilities were installed pursuant to certificate authorizations issued pursuant to NGA section 7. Southern LNG states that removing the facilities will decommission the LNG unloading capability of the riverside dock and will reduce the amount of dredging needed for ongoing operations. Southern LNG states that by U.S. Coast Guard requirements the riverside dock was to be used only

[64] For example, if the original maximum rate is $5/Dth, and the Commission finds that $4/Dth is just and reasonable, then under this provision, only the customers who were paying the maximum rate of $5/Dth would receive a refund. Customers paying $4.50/Dth, or any price between $4/Dth and $5/Dth, would not be refunded because they were not originally paying the "maximum" rate. This language would allow Southern LNG to retain the revenues collected from those customers paying between $4/Dth and less than $5/Dth.

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in an emergency and thus the modification to the existing slip obviates the need for the unloading facilities at the riverside dock.[65]

Comments

83. Marathon protests Southern LNG's offsetting the capital costs of the Elba III Expansion by crediting over $5,000,000 attributable to the retirement of the riverside dock facilities to the Elba III Expansion. Marathon requests that the Commission set this matter for hearing.

84. Southern LNG answers that the cost of the facilities to be abandoned will not, as Marathon alleges, be credited against or used to offset the capital cost of the Elba III Expansion. The book cost will be credited to the gas plant account in which it is included and charged to Account 108 – Accumulated provision for depreciation of gas utility plant, which Southern LNG submits conforms to Gas Plan Instruction No. 10 of the Uniform System of Accounts. Southern LNG states that neither Exhibit K for the expansion recourse rates includes a "credit" or "offset" from the retirement. Southern LNG states that Marathon simply repeats the mischaracterization of the proposed accounting.

Commission Response

85. We find that Southern LNG's proposal to abandon the facilities at its riverside dock pursuant to NGA section 7(b) is permitted by the public convenience and necessity because the facilities are no longer necessary to provide service to Southern LNG's existing or new customers. We permit the abandonment of the riverside dock facilities independent of the approval of the facilities necessary for the Rate Schedule LNG-3 service. This abandonment is not related to or required by the proposed Rate Schedule LNG-3 facilities and service. The abandonment is effective the date of issuance of this order, and Southern LNG will be required to make the appropriate accounting entries. The separate subaccounts that the Commission is requiring Southern LNG to maintain for the Rate Schedule LNG-3 facilities and services should not reflect any entries related to the abandoned riverside dock facilities. Since this separate treatment removes any threat of subsidization, we will deny Marathon's request for hearing.

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[65] Included in the facilities to be abandoned are LNG unloading and vapor return arms which Southern LNG may reuse in the proposed expansion. If these facilities are not reused, Southern LNG will scrap the facilities.

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8. Additional Capacity and Addition of Spare Vaporizer

86. Staff's Data Request No. 8 asked Southern LNG to explain section 1(h) of the precedent agreement with Shell which discusses, among other things, the increase in the MDVQ under Shell's existing Rate Schedule LNG-1 service agreement and the increase in the guaranteed outlet pressure from Elba Island vaporization equipment. Also, Staff asked for an explanation of whether the 180 MMcf per day of MDVQ referenced in section 1(h) is included in the current application, and for a description of the relationship between the 180 MMcf per day of MDVQ and the spare vaporizer discussed in section 1.1 of Resource Report 1, among other things.

Southern LNG responded to staff's data request as follows:

> SLNG now operates 540 MMcfd of vaporizer capacity for service subscribed by Shell under Rate Schedule LNG-1. Shell's service agreement now provides for 360 MMcfd of firm sendout capacity, with the remaining 180 MMcfd of installed vaporization available as interruptible sendout capacity. Such interruptible sendout capacity is available to Shell except in events of scheduled (i.e., maintenance) or unscheduled (i.e., force majeure) outages. Following the addition of a new spare vaporizer (i.e., 180 MMcfd of capacity) by Southern LNG in this docket and the commencement of additional of takeaway capacity from the Elba Express Pipeline Project ("Initial TD Commencement Date"), Southern LNG intends to increase Shell's MDVQ and delivery pressure under Rate Schedule LNG-1 by amending its existing service agreement. The increase will contractually convert what is currently interruptible sendout capacity to firm sendout capacity. Southern LNG does not intend to make additional applications to modify these terms. The new spare vaporizer proposed in this docket is in addition to any increase in MDVQ under Rate Schedule LNG-1.

Comments

87. Marathon protests Southern LNG's answer as confusing, and argues that if the spare 180 MMcf per day of send-out capacity is needed to allow the Shell Elba II Expansion contract to be "firmed up" at 540 MMcf per day, then the 180 MMcf per day of spare vaporization capacity in this docket should be attributable to the Elba II Expansion, not the Elba III Expansion. Marathon states that due to the Commission's current lack of regulatory authority over the rates and terms and conditions of service associated with post-October 13, 2005 expansions, the costs associated with the regulated rates must be kept separate from the costs associated with the unregulated rates.

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88. Marathon states further that in the case of Elba Island, it is important to keep the costs of the Elba II Expansion separate from the costs of the Elba III Expansion, given the Commission's predetermination of rolled-in rate treatment for the Elba II Expansion. Shifting capital costs of the Elba II Expansion to the Elba III Expansion will reduce the capital costs of the Elba II Expansion, which will become relevant should Southern LNG decide to roll-in the costs of the expansion into the rates for the initial, recommissioned facilities. Marathon states that during the CP99-579-003 Settlement Agreement, Marathon reserved its right to contest any attempt by Southern LNG to roll the costs of the Elba II Expansion into the Rate Schedule LNG-1 rates. However, any reduction or shifting of Elba II Expansion costs to the Elba III Expansion will facilitate the ultimate roll-in of the Elba II Expansion into the LNG-1 Rate Schedule. Marathon states that the costs of the Elba II Expansion must be properly kept if Marathon's rights regarding roll-in are to be preserved.

89. Southern LNG answers that in Docket No. CP02-379-000, Southern LNG constructed additional storage and sendout facilities having a peak capacity of 540 MMcf per day. The precedent agreement with Shell stated that Southern LNG would offer 360 MMcf per day of this capacity on a firm basis. The difference between the firm and peak capacity, 180 MMcf per day, represented the margin of reliability with all installed facilities operating. In the instant docket, a new gas sendout system with a firm sendout of 900 MMcf per day and a peak sendout of 900 MMcf per day will be provided for the combined subscription of the expansion customers.

90. Southern LNG states that this increment of additional sendout capacity does not include a margin of reliability between firm and peak, which are the same. Southern LNG states that as a contingency for temporary loss of operating units, the project also includes spare units that will not operate other than during an outage. Southern LNG states that the precedent agreement with Shell for the Elba III Expansion provides Shell with the right to increase the firm quantity under its existing service agreement. Southern LNG submits that increasing the 360 MMcf per day to 540 MMcf per day will make the firm-to-peak ratio the same for the existing service agreement as for the expansion service agreement. Southern LNG states that Marathon's attempt to attribute costs from the expansion to the existing service mischaracterizes the purpose and operation of the spare units, as well as contradicts the prevailing theme of Marathon's protest, which states that more costs should be attributed from the existing service to the expansion.

Commission Response

91. We find that Marathon's argument, regarding the shifting of capital costs from the Elba II Expansion to the Elba III Expansion and potential for roll-in of the Elba II Expansion costs into the LNG-1 rates, is speculative. The future allocation of costs between the Elba II Expansion and Elba III Expansion is outside of the scope of this proceeding and more appropriately reviewed under a section 4 proceeding. Southern

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LNG has not requested current approval of a future proposal for rolled-in rate treatment. The Commission requires Southern LNG to maintain its accounts for the expansion facilities in accordance with Section 154.309 of the Commission's regulations. The protections afforded existing customers by an incremental rate design are sufficient in the circumstances to protect Marathon's interests.

92. In regard to Shell's acquisition of the additional 180 MMcf per day of firm capacity under its existing Rate Schedule LNG-1 service agreement, which is governed under Part 284 of the Commission's regulations, the Commission construes Southern LNG's application as indicating conformance with the terms of its tariff for making this additional firm capacity available to the market.

III. Environmental Analysis

A. Public Involvement

93. On February 1, 2006, the Commission initiated its pre-filing process for the Elba III Expansion, and on March 24, 2006, the Commission and the U.S. Coast Guard (Coast Guard) issued a *Notice of Intent to Prepare an Environmental Impact Statement and Coast Guard Letter of Recommendation for the Proposed Elba III Expansion, Request for Comments on Environmental Issues, and Notice of Public Comment Meetings* (NOI). In April 2006, staff conducted public scoping meetings in the towns of Pooler, Sylvania, Thomson, and Washington, Georgia, to provide an opportunity for the public to learn more about the Elba III Expansion and to provide comments on environmental issues to be addressed in the EIS. Comments ranged in substance from purpose and need, to project description, and to alternatives.

94. The Commission issued its draft Environmental Impact Statement (EIS) for the Elba III Expansion on March 30, 2007, and a final EIS on August 3, 2007. The final EIS was mailed to approximately 1,210 agencies, groups, and individuals on the environmental mailing list (see appendix A of the final EIS). The U.S. Environmental Protection Agency (USEPA) noticed issuance of the final EIS on August 10, 2007 (72 *Fed. Reg*. 45,034). The EIS was prepared with the participation and assistance of the U.S. Army Corps of Engineers (COE), the Coast Guard, and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS), which acted as cooperating agencies under the National Environmental Policy Act of 1969 (NEPA).

95. The final EIS responded to the issues and concerns raised in the comment letters received on the draft EIS, and also addresses geologic resources; soils; water resources; wetlands; vegetation; wildlife and aquatic resources; threatened, endangered, and other special status species; land use, recreation, and visual resources; socioeconomics; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives.

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96. We have consulted with the U.S. Department of Defense (DOD) as required by the Energy Policy Act of 2005 and section 3 of the NGA to determine if any training or activities on any military installations would be affected by the project. No comments or concerns were received from any branch of the military or any military installation in reply to the staff's scoping notice or in response to the draft EIS.

97. In addition, in letters dated March 30, 2006, to the Army, Navy, and Air Force at the Pentagon, our staff requested any information on effects on military installations. Since no effects have been identified, we conclude that there is no effect on military installations from this project. And therefore, no concurrence from the Secretary of Defense is required.[66]

B. Impact Summary

98. Based on information provided by Southern LNG and Elba Express and further developed by field investigations; scoping; literature research; alternatives analysis; comments from federal, state, and local agencies; and input from individual members of the public, the EIS determines construction and operation of the project is unlikely to result in significant adverse environmental impact. Although the likelihood of a cargo spill and resultant fire from an LNG vessel is extremely remote, such an incident could result in significant impacts on wetlands, vegetation, fisheries and wildlife, special status species, land use, people, cultural resources, and air quality.

99. The EIS concludes that if the project is constructed and operated in accordance with applicable laws and regulations, Southern LNG's and Elba Express's proposed mitigation, and the additional recommended mitigation measures, it would be an environmentally acceptable action. Although many factors were considered in this determination, the principal reasons are:

> the proposed LNG terminal facilities would be an expansion of an existing, fully-operating LNG import terminal with an established deep-water slip and established exclusion zones;
>
> the proposed additional LNG vessel traffic and associated escort vessels would utilize an existing shipping corridor currently used by LNG vessels, as well as other deep-draft vessels;
>
> safety features would be incorporated into the design and operation of the terminal expansion facilities and LNG vessels;

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[66] *See* NGA section 3(f)(3).

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the proposed pipeline would parallel existing ROWs for approximately 56 percent of its length;

the Coast Guard's preliminary finding that the waterway is suitable for increased LNG marine traffic (with conditions), the security provisions and operational controls that would be imposed by the local pilots, and the Coast Guard to direct movement of LNG vessels would maintain the risks of a marine LNG spill, either with or without ignition, at acceptable levels;

the environmental and engineering inspection and mitigation monitoring program for this project would ensure compliance with all mitigation measures that become conditions of certification;

the navigational controls and marine traffic safety and security measures make the likelihood of a spill from LNG vessels extremely remote; and

all appropriate consultations with the U.S. Fish and Wildlife Service, state historic preservation offices, and the Advisory Council for Historic Preservation, if required, and any appropriate compliance actions resulting from these consultations, would be completed before construction would be allowed to start in any given area.

Water and Wetland Resources

100. Southern LNG's proposed Terminal Expansion would involve construction within the Savannah River. Increased LNG marine and associated escort vessel traffic would minimally increase sedimentation from prop wash and shoreline erosion from wave action. The Elba Express Pipeline would cross 352 waterbodies. Waterbody crossings would be in accordance with applicable permits and Elba Express's project-specific Procedures, which would avoid or minimize impacts to a less than significant level. Elba Express has proposed to cross the Savannah and Broad Rivers by the Horizontal Directional Drill (HDD) method. We are requiring that Elba Express file the results of its geotechnical feasibility investigations for these waterbodies to minimize the likelihood of impacts from "frac-outs."

101. The proposed pipeline would cross about 237 acres of wetlands. About 45 percent of the wetlands crossed are forested wetlands. Based on COE wetland quality assessments, about 30 percent of the wetlands crossed by Elba Express's pipeline would be considered high quality. Impacts on forested wetlands would be of longer term due to the longer regeneration time than scrub-shrub and palustrine emergent wetlands. In addition, impacts would be permanent where forested wetlands are cleared and would be maintained in an herbaceous state over the pipeline centerline for safety reasons to facilitate pipeline inspections. However, the COE would require Elba Express to

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compensate (within the same watershed) for any wetlands that would be impacted as a result of the installation of the pipeline and appurtenant facilities. The USEPA questioned the mitigations banks Elba Express proposes to use, and we are requiring that Elba Express reevaluate these locations.

102. Elba Express would limit wetland impacts by reducing the width of the construction ROW, implementing its Procedures, and complying with the conditions of applicable authorizations, such as from the COE under section 404. Elba Express would also minimize impacts on forested wetlands by overlapping its temporary construction ROW, including temporary extra workspaces, on adjacent maintained and cleared ROW to the extent practicable. Elba Express would mitigate impacts on wetlands by implementing its compensatory wetland mitigation plan. No wetlands are expected to be impacted by construction of the Terminal Expansion or increased LNG marine traffic. Compensatory mitigation, use of Elba Express's Procedures, and complying with applicable authorizations would result in "no net loss" of wetlands and reduce impacts on wetlands to a less than significant level.

Vegetation and Wildlife

103. Impacts on vegetation from Southern LNG's construction of the Terminal Expansion would be limited to previously disturbed and maintained grass cover types. Temporary impacts could occur to fisheries within the Terminal Expansion project area during construction from sedimentation, and operation from increased vessel traffic. To reduce the likelihood of the entrainment of eggs and larvae within the project area, we are requiring that Southern LNG not withdraw water for hydrostatic testing its LNG storage tanks from April 1 through July 31 in accordance with NOAA Fisheries recommendations.

104. The primary upland vegetation cover type that would be crossed by the Elba Express Pipeline facilities is upland forest. The next two most prevalent vegetation cover types are open land and planted pine. To reduce impacts on vegetation within the temporary and permanent ROW and improve revegetation potential, Elba Express would utilize a portion of previously disturbed, existing pipeline corridor. By using existing ROW during construction, long-term impacts on upland forest, planted pine, and landscape cover types would be lessened and shifted to impacts on open cover types (which would be considered a short-term impact). However, a large portion of the route would not be adjacent to an existing corridor, and would have permanent impacts on the vegetation community. In forested areas, wildlife could shift from those preferring large undisrupted wooded tracts to those preferring edge habitat types. Elba Express would maintain the ROW in accordance with its project-specific Plan and reseed the disturbed area using Natural Resource Conservation Service- or landowner-approved seed mixes to minimize the impacts to these areas.

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Special Status Species

105. Based on consultations with the FWS and NMFS, 31 federally listed or proposed listed species were determined to potentially occur in the general vicinity of the proposed Terminal Expansion, waterway for LNG vessel traffic, and Elba Express Pipeline. On the basis of Southern LNG's and Elba Express's field survey reports, analysis of potential effects of the proposed actions, and informal consultations with the FWS and NMFS, staff concluded that with the implementation of Southern LNG's and Elba Express' proposed construction and mitigation plans, and conditions to this order (such as continued consultation with NMFS regarding pile driving noise, conducting additional surveys, and implementation of FWS recommended mitigation), the projects would have no effect on 10 species and are not likely to adversely affect the remaining 21 species. NMFS has concurred with our determinations; however, concurrence from the FWS has not yet been received. Neither Southern LNG nor Elba Express would be allowed to begin construction until staff completes its consultations with the FWS.

Land Use

106. Elba Island, solely owned by Southern LNG and occupied by the import terminal, would not change from its current industrial land use or affect any residential or recreational resources. The additional facilities proposed as part of the Terminal Expansion would have only minor impacts on visual resources.

107. Construction and operation of the proposed pipeline would include temporary and permanent impacts to upland forest, planted pine, open space, open water, residential properties, commercial/industrial lands, agriculture lands, and wetlands. The pipeline would be located within 50 feet of 18 residences or structures and cross eight planned developments. For those residences within 25 feet of the construction ROW, we are requiring that Elba Express provide a site-specific plan that describes the construction technique(s) to be used, how Elba Express would minimize the time that the trench would be open, and provide evidence of landowner concurrence if construction work areas were within 10 feet of a residence. Additionally, we are requiring that prior to construction, Elba Express file updated documentation of consultations detailing any site-specific construction and mitigation measures or restoration plans requested by developers crossed by or adjacent to its proposed route, and identifying what Elba Express has agreed to implement.

Socioeconomics

108. The temporary influx of workers during construction and operation of both the Terminal Expansion and the Elba Express Pipeline would be a nominal addition to the local population and have minimal impact on the availability of housing or the services of local government agencies. The localities where the Project would be built would benefit

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economically from the employment of local workers, the expenditure of payroll money, the purchase of local materials and supplies, and the addition of monies, both one-time and annual tax revenue. Because construction would move sequentially along the pipeline route, any transportation impacts would be temporary on any given roadway, and the transportation system would be minimally impacted by construction.

Cultural Resources

109. No cultural resources were identified by Southern LNG and the Georgia SHPO and staff concur that no historic properties would be affected. Therefore, there would be no impacts on historic properties, and compliance with section 106 of the NHPA for the Terminal Expansion portion of the proposed project is complete. Six of the archaeological sites identified by cultural resource surveys along the pipeline in Georgia are recommended as potentially eligible for the National Register of Historic Places (NRHP), and avoidance or further evaluation has been required. The Georgia SHPO has concurred with the recommendations for the archaeological resources. Three of the architectural resources have been recommended as eligible for the NRHP, and the SHPO has concurred. In addition, the SHPO has recommended that two additional architectural resources be considered eligible for the NRHP. Approximately 6.8 miles of pipeline and some ancillary areas remain to be surveyed due to denied access. Therefore, we are requiring that Elba Express defer construction until cultural resources studies and consultations have been completed. If any cultural resources determined eligible for the NRHP cannot be avoided, any impacts would be mitigated to less than significant levels through implementation of a data recovery/treatment plan.

110. There would be no impacts on historic properties by the Elba Express Pipeline in South Carolina, and compliance with section 106 of the NHPA for the proposed project in South Carolina is complete.

Air Quality

111. Construction of the Terminal Expansion and compressor station would result in temporary air emissions, but these emissions are not likely to significantly affect long term air quality in the region. The yearly construction-related emissions estimated for the Terminal Expansion would account for only a minimal portion of the county's yearly emissions inventory. Because pipeline construction moves through an area quickly, air emissions associated with Elba Express's pipeline would be intermittent and short-term.

112. The existing terminal is a major source as defined by Prevention of Significant Deterioration (PSD) regulations and the Terminal Expansion would constitute a major modification requiring PSD review. However, air dispersion modeling analyses predict air emissions from stationary or mobile sources would not significantly impact the

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existing air quality. Potential impacts on air quality due to the operation of the new significant sources would be minimized by adherence to applicable federal and state regulations and the installation of Best Available Control Technology.

113. Air quality impacts due to the operation of the Elba Express Compressor Station are anticipated to be minor and Elba Express would comply with all state and local air permitting requirements. Staff does not believe the operation of the pipeline facilities would have a significant effect on regional air quality.

Noise

114. Potential noise impacts would include short-term increases in noise during construction, and increases in noise levels associated with operation of the expanded terminal and the new compressor station. Construction activity and associated noise levels would vary depending on the phase of construction in progress at any one time. Considering the distance from the terminal to noise sensitive areas (NSA), the predicted noise levels during excavation, dredging, pile driving, and construction activities would be well below existing ambient noise levels and the FERC's threshold of an L_{dn} of 55 decibels on the A-weighted scale. Construction of the compressor station would primarily be limited to daylight hours and would not exceed FERC's standard; no mitigation would be required. Operation of the Terminal Expansion and Elba Express Compressor Station would generate noise on a continuous basis. However, the predicted noise levels attributable to operations would not result in significant effects on the nearest NSAs to the terminal or compressor station. Staff has included requirements for completion of post-construction noise surveys and implementation of additional mitigation measures, if required, to ensure that actual noise levels resulting from operation of the Terminal Expansion and compressor station would not reach significant levels.

Reliability and Safety

115. Elba Express would comply with the DOT's pipeline material and construction standards for natural gas pipelines. Where collocated with Southern's existing pipeline, the typical offset between pipeline centerlines would range between 20 to 25 feet, which greatly reduces the risk of pipeline damage from any repair activities on the adjacent pipelines. After construction, Elba Express must implement a pipeline integrity management plan to ensure public safety during operation of the proposed pipeline.

Commission Safety Review and Coast Guard Coordination

116. Staff evaluated the safety of both the proposed facilities and the related LNG vessel transit from the territorial sea through the Savannah River navigation channel. As part of staff's analysis, it performed a cryogenic design and technical review of the

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proposed terminal design and safety systems. Several areas of concern were noted with respect to the proposed facility, and staff identified specific requirements to be addressed by Southern LNG: prior to initial site preparation, prior to construction, after final design, prior to commissioning, or prior to commencement of service.

117. The Coast Guard has longstanding experience in controlling the movements of dangerous cargo vessels and LNG vessels in the Port of Savannah and other ports. Staff's marine safety analysis considers how vessel security requirements for LNG vessels calling on the terminal might affect other vessel and boat traffic in the Savannah River navigation channel.

118. The Coast Guard, with input from the Savannah Area Maritime Security Committee and other port stakeholders, has completed a review of Southern LNG's waterway suitability assessment (WSA) in accordance with the guidance in *Navigation and Vessel Inspection Circular – Guidance on Assessing the Suitability of a Waterway for Liquefied Natural Gas Marine Traffic* (NVIC 05-05). The WSA review focused on the navigation safety and maritime security risks posed by LNG vessel traffic, and the measures needed to responsibly manage these security risks. As a result of this review, the Coast Guard has preliminarily assessed that the Savannah River, based on existing measures and additional conditions, is suitable for the larger LNG vessels and the increase in LNG marine traffic associated with the Terminal Expansion. The Coast Guard also stated that, based on certain conditions for suitability, the Port of Savannah's experience with LNG import and the cooperative relationship between government agencies and port stakeholders, there would be sufficient capability within the port community to responsibly manage the safety and security risks introduced by the Terminal Expansion. Upon completion of its NEPA compliance obligations, the Coast Guard will issue a Letter of Recommendation (LOR) to address the suitability of the waterways for the proposed increase in LNG marine traffic.

119. In accordance with the Energy Policy Act of 2005, we are requiring the LNG terminal operator to develop an Emergency Response Plan in consultation with the Coast Guard and state and local agencies that we will approve prior to any final notice to begin construction. As part of the Emergency response plan, a Cost-Sharing Plan must also be developed that contains a description of any direct cost reimbursements the applicant agrees to provide to any state and local agencies with responsibility for security, safety, and emergency management at the LNG terminal and near vessels that serve the facility.

Cumulative Impacts

120. The majority of impacts staff has identified for the proposed Elba III Expansion would be temporary and minor. Their addition to impacts from other past, present, or reasonably foreseeable projects in the region would not result in an overall significant cumulative impact.

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Alternatives Considered

121. No reasonable alternatives for shipping routes or other variations were identified because the terminal is an existing import facility.

122. The No Action and Postponed Action Alternatives (as well as the negative and postponed LOR), would deny or defer the proposed project. While these alternatives would avoid any environmental impacts, they would also deny the power plant customers and other markets in Georgia and South Carolina access to additional supplies of natural gas made available by importation of LNG. This in turn could lead to higher natural gas prices, the use of alternative sources of energy, or alternative proposals to develop natural gas import and transmission infrastructure. While conservation and the development of other sources of energy are anticipated to play a part in meeting the future energy needs of the country, they are not expected to significantly reduce the long-term requirement for additional natural gas supplies. Therefore, staff concluded that the No Action and Postponed Action Alternatives are not preferable to the proposed action.

123. Other reasonable alternatives staff considered include different locations for both the Terminal Expansion and the Elba Express Pipeline. For the Terminal Expansion, staff examined using existing LNG import terminals in the region (rather than expanding the existing facility) and alternative terminal sites (locating the LNG storage tanks at a different location, a new import terminal within the Port of Savannah, and an entirely new site somewhere in the southeastern U.S.). Staff also studied alternatives that involved receiving the LNG off-shore and off-shore receipt, storage, and regasification.

124. Development of an entirely new LNG import terminal in the southeastern U.S. would require substantial disturbance of both on-shore and marine resources and a significant length of new, large-diameter pipeline to connect with the customers proposed to be served. Staff concluded that use of another existing terminal or construction of an alternative site, and the associated pipeline facilities that would be required, would not be environmentally preferable to the proposed action.

125. Staff considered a number of alternatives to the proposed Elba Express Pipeline, including the use of existing systems (Southern and South Carolina Pipeline Company), alternative routes for both the Southern Segment (to be constructed along Southern's existing ROW) and the Northern (greenfield) Segment, and route variations that would avoid crossing COE-managed lands. None of the alternatives examined would reduce environmental impact or provide a significant environmental advantage over the proposed route.

126. At the request of the COE, staff considered three route variations that would avoid crossing areas of COE-managed lands. All of the variations examined would increase the mileage of pipeline without providing a significant environmental advantage.

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127. Regarding aboveground facilities, staff reviewed Elba Express's proposed location for the Elba Express Compressor Station and found it environmental acceptable. Therefore, no alternative sites were identified. Further, staff's review of proposed sites for meter stations, MLVs, and pig launching/receiving facilities raised no issues that warranted evaluation of alternative sites.

C. Motion for Hearing and Comments

128. On July 27, 2007, we received a Motion for Hearing from Latha Anderson, *et al*. (Anderson), requesting a hearing to present evidence establishing that the Commission must deny construction authority for the Northern Segment of Elba Express' proposed pipeline. Anderson previously submitted the substance of its motion for hearing as its comments on the draft EIS. The merits of these comments have been fully analyzed and answered in section 6 of the final EIS (see table 6-2, letters P-5 through P-7). We note that Anderson has presented neither any new evidence nor any indication of what type of evidence could exist to support a denial of the requested construction authority. Nevertheless, because we will deny Anderson's motion for hearing, we will review its assertions.

129. The crux of Anderson's first contention is that appropriate review of reasonable alternatives to the Northern Segment of Elba Express' proposed pipeline route was not conducted in staff's analysis. Further, Anderson argues that the analyses in the draft EIS were manipulated, in an "intellectually dishonest" fashion, to make the Northern Segment route appear less damaging to the environment than any of the alternatives which were identified during the public scoping phase of this proceeding and subsequently assessed in the EIS. Anderson also states that staff misrepresented the project requirements and ignored the existing physical infrastructure by imposing imaginary project requirements to benefit private natural gas companies at the expense of the public.

130. During the scoping process, various commenters (including Anderson) requested that our staff consider alternatives to the Northern Segment that would follow existing pipeline ROWs.[67] The analysis presented in the draft EIS was commented on and revised for the final EIS. The alternatives that staff described in the final EIS for the Northern Segment are titled Alternatives A, B, and C. All three alternatives accomplish the stated

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[67] In particular, several commenters identified a portion of Southern's system to the west of Elba Express' pipeline route (between Wrens and Thomaston, Georgia, and then to an interconnection with Transco's system near Jonesboro, Georgia) as an alternative to the Northern Segment. This alternative (ultimately titled Alternative B) and others were analyzed in the draft EIS and found to result in greater environmental impact than that associated with Elba Express' route.

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goal of following existing rights-of-way and interconnecting with both Zone 4 (Georgia) and Zone 5 (South Carolina) on the Transco system. Further, Commission staff considered three partial colocation route alternatives making partial use of existing utility corridors.[68] The analysis showed that the use of such existing corridors would not provide a significant environmental advantage over the proposed route.

System Alternative (Alternative A)

131. Staff developed Alternative A as an alternative to the entire pipeline system proposed by Elba Express. Alternative A would consist of:

(1) a Southern Segment, requiring the looping of Southern's system from Port Wentworth to Wrens, Georgia,(about 105 miles of 42-inch-diameter pipeline and about 10,000 horsepower of compression, which is similar to the proposed Southern Segment of Elba Express' proposed pipeline);

(2) an Eastern Leg of the Northern Segment to interconnect with Transco's Zone 5 in South Carolina, requiring the looping of Southern's system eastward from Wrens to Aiken, South Carolina, and the looping of South Carolina Pipeline Corporation's (SCPC) system between Aiken and Spartanburg (overall about 175 miles of 36- and 42-inch-diameter pipeline and 8,000 horsepower of additional compression at the Wrens Compressor Station); and

(3) a Western Leg of the Northern Segment interconnecting with Transco Zone 4 in Georgia, requiring three segments of loop along Southern's system between Wrens and Thomaston (about 50.5 miles of 30- and 36-inch-diameter pipeline loop), and looping Southern's system between Thomaston and Jonesboro (about 56.2 miles of 42-inch-diameter loop), 8,500 horsepower of additional compression at two existing compressor stations and reconfiguring piping at these stations to accommodated bi-directional gas flow (overall about 106.7 miles of pipeline and 8,500 horsepower of compression).

132. Alternative A would result in about 386.7 miles of new pipeline (about 198.8 more miles of pipeline than Elba Express' proposed route); 4,876 acres of temporary construction right-of-way (about 2,128 acres more than the proposed route); about 1,618 acres of permanent right-of-way (about 657 acres more than the proposed right-of-way); and 26,500 horsepower of compression (about 16,500 horsepower more than the proposed route). This alternative would be more than twice the length of pipeline proposed by Elba Express and require more than twice the horsepower of compression.

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[68] *See* FEIS, 3-22 to 3-25, Figure 3.3-3.

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The impact of this alternative on many resources, particularly land use, vegetation, and air quality, would be much greater than the proposed project due simply to the increase in affected acreage and compression.

Northern Segment Alternatives

133. Alternatives B and C focus only on route alternatives to Elba Express' Northern Segment. Alternative B consists of the Eastern Leg portion of Alternative A. As stated above, the Eastern Leg portion of Alternative A was developed to make deliveries into Transco's Zone 5 in South Carolina. In order to meet the project objectives of interconnections with Transco in both Zone 4 and Zone 5, Elba Express would need to extend the Eastern Leg for about 57.3 miles along Transco's system to the southwest to interconnect with Transco on the Georgia side of the Savannah River. Alternative C consists of the western leg portion of Alternative A, which would be extended to cross the Savannah River into South Carolina to meet the project objective of interconnecting with both Transco Zone 4 and Zone 5.

Alternative B

134. Alternative B would require about 232.3 miles of pipeline (149.2 miles longer than the proposed Northern Segment of Elba Express' pipeline); about 4,224 acres of temporary construction ROW (about 3,098 acres more disturbance than the proposed pipeline); about 2,816 acres of permanent ROW (about 2,189 acres more than the proposed pipeline); and about 8,000 additional horsepower (no horsepower is associated with the Northern Segment). Alternative B would cross areas similar to that crossed by the proposed Northern Segment. Although this alternative would follow existing pipeline corridors, it would be constructed by Elba Express on a new right-of-way adjacent to existing rights-of-way, and such construction would simply shift impacts from one group of landowners and communities to another group of landowners and communities.

Alternative C

135. Alternative C would require about 114 miles of pipeline from Wrens to Thomaston, Georgia; 56.2 miles of 42-inch-diameter pipeline from Thomaston to Jonesboro, Georgia; and 101.3 miles of 36- and 42-inch-diameter pipeline parallel to Transco's system between Jonesboro, Georgia, and the South Carolina side of the Savannah River (about 188.4 miles longer than the proposed pipeline); 4,936 acres of temporary construction ROW (about 3,810 acres more disturbance than the proposed ROW), about 3,291 acres of permanent ROW (about 2,664 acres more than the proposed ROW) and about 13,500 horsepower of compression (no compression is associated with the Northern Segment).

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136. As with Alternative B, Alternative C would cross areas similar to that crossed by the proposed Northern Segment and require construction of more than three times the length of pipeline and additional compression.

137. The notable difference between the alternatives and the proposed Northern Segment is that the Northern Segment follows no established utility corridor. However, staff identified no significant impacts associated with the proposed Northern Segment that these alternatives would avoid, so the additional disturbance and air emissions associated with constructing substantially more pipeline and compression facilities would provide no environmental benefit. Therefore, Elba Express's pipeline route would be environmentally preferable to the alternatives.[69] We agree with staff's conclusion.

138. No evidence has been attempted or identified indicating any manipulation of staff's analysis. Indeed, the final EIS presents the proposed action and clearly identifies the interconnections with Transco's system on both sides of the Savannah River in Transco's Zone 4 and 5 as part and parcel of the project's specific objectives. To assert that project requirements have been imposed for the purpose of favoring one route over another is baseless and erroneous.

Second, Anderson asserts that the "Greenfield Condemnation Corridor" (i.e., the Northern Segment route) "was chosen for the sole purpose" of enabling Elba Express to tie into the Transco System on both the east and west sides of the Savannah River, so that Elba Express "can provide over $54,000,000 of annual savings to its two customers, Shell and BG Group."

139. Pipeline routes are generally selected as a result of several factors, including market demands, terrain to be crossed, engineering, environmental impact, cost, etc. As stated in the final EIS,[70] Elba Express designed the pipeline route to be responsive to the market requirements of BG and Shell. Upon issuance of this certificate, Elba Express will become an open-access transporter for all those shippers, including BG and Shell, who seek to use its services. Customers who contract with BG and Shell, for deliveries from Transco's system in either Zone 4 or 5 will face charges reflecting their use of the

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[69] Anderson asserts that use of the Northern Segment route will cause the destruction of "pristine" land in one of the "most unspoiled and historically significant areas" in Georgia, and that use of an alternative route would result in "de minimus net impact" to the environment. Staff's analysis clearly documents that greater environmental impacts would result from construction of the alternatives.

[70] *See* response P5-8, final EIS page 6-50.

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Transco system. Further, the final EIS articulated a number of benefits of the project to the State of Georgia, the State of South Carolina, and the overall southeastern United States.[71]

140. Third, Anderson alleges that Elba Express has manipulated and misrepresented the available capacity on Transco's system, stating that there is no evidence that enough gas is removed from the Transco Pipeline before Elba Express' proposed tie-ins at Anderson, South Carolina to make room for the 1 bcf per day that the Elba Express Pipeline will add to the Transco System.

141. In our Preliminary Determination in this proceeding, we found on the basis of evidence submitted in the application that Elba Express has identified a need for its project by the execution of long-term agreements for the entire capacity of both phases of the pipeline project.[72] We noted that Elba Express' proposal will benefit existing pipelines and their customers by providing additional access to LNG supplies from the Elba Island Terminal. Indeed, the proposed interconnections between Elba Express and Transco will provide customers along the eastern seaboard access to Elba Island supplies. The availability to such customers of rate savings resulting from interconnections between Elba Express and Transco in both Rate Zones 4 and 5 is not an insignificant aspect of the proposal, in terms of making available reasonably priced gas supplies.[73] We made the determination that, pending completion of our environmental review, approval of Elba Express' pipeline is required by the public convenience and necessity.

142. Anderson asserts that a snapshot of Transco's pipeline capacity situation along the Georgia/South Carolina border shows no need for the proposed project. Anderson overstates dramatically the significance of such a single capacity snapshot. The shippers on the Elba Express system will be able to offer incremental supplies that may be attractive to markets for differing reasons. Some markets may need more competitively priced supplies, others may need replacement supplies, while others may simply need more, incremental sources. The markets will respond according to their needs, and Transco's pipeline capacity will be made available pursuant to such market demand and in accord with service contracts written and executed to be responsive to such changing

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[71] *See* Final EIS, p. 2-8 and pp. 4-133 – 135. *See also* response to comment P5-3, p. 6-47.

[72] April 4 Order at P 19-23.

[73] *Compare Transcontinental Gas Pipe Line Corporation, et al.*, 91 FERC ¶ 61,180 at 61,652 (2000).

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needs.[74] The availability of two interconnections with Transco, in its two rate zones, will make such supplies all the more commercially attractive. The record evidence in support of Commission's prior finding of need for this project is substantial.

143. Additionally, Anderson states the draft EIS does not include an evaluation of the balancing of interests between the economic benefit to the pipeline companies and the affected landowners. As stated in response P5-14 of the final EIS, the Commission's Policy Statement makes clear that we (not the Commission staff) will balance the economic interests and public benefits of proposals when a Preliminary Determination on Non-Environmental Issues is issued. As noted above, we issued a Preliminary Determination for the proposed Elba Express Pipeline on April 4, 2007, in which we found, subject to completion of the environmental review and the fulfillment of conditions enumerated therein, that the benefit of Elba Express' proposed pipeline will outweigh any potential adverse effects, and is required and permitted by the public convenience and necessity. Anderson has neither sought rehearing of the April 4 Order nor offered any good reason why further evidentiary analysis is appropriate.[75] The Commission's staff has conducted a close and penetrating analysis of a number of alternative paths in which the proposed pipeline might be located. The consistent and well-supported conclusions have been that each possible alternative route would cause more environmental degradation. The final EIS thus constitutes the detailed statement required of us.[76]

144. Finally, Anderson states the No Action Alternative was not adequately analyzed. Anderson states that the Commission has not taken a "hard look" into the No Action Alternative, and is basing its decision on a fear of veiled threats to cut off supply. Anderson claims that the Commission will have acted arbitrarily and capriciously by not evaluating any data, studies, or reports in the No Action Alternative.

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[74] As stated in response P5-6 in the final EIS, Transco's west-to-east capacity (in excess of 3 bcf/d in the vicinity of the interconnect of the western leg portion of Alternative A at Jonesboro, Georgia) is currently under contract to other shippers on Transco's system.

[75] Mere allegations of disputed facts are insufficient to mandate a hearing, and considerable deference is due to Commission determinations that a petitioner has failed to "make an adequate proffer of evidence to support [its allegations of disputed facts]." *Cerro Wire & Cable v. FERC, supra,* 677 F.2d at 129 (D.C. Cir. 1981) *(citing General Motors Corp. v. FERC,* 656 F. 2d 791, 798 n.20 (D.C. Cir 1981).

[76] *See National Resources Defence Council, Inc. v. Morton,* 458 F.2d 827 (D.C. Cir 1972).

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145. As stated in comment response P5-19 of the final EIS, staff has reviewed the discussion of the No Action Alternative. If the proposal were withdrawn (or delayed for a significant period of time), the LNG supplies proposed for importation to the Elba Island facility would be marketed elsewhere, including other international markets. Staff does not believe that this concept requires the support of studies or reports. We agree. Further, we do not believe that selection of the No Action Alternative is appropriate in this proceeding, given the clear need for the supplies to be made available.

146. In fact, section 3.2.1 of the final EIS discusses two existing LNG import terminals that have recently undergone expansion to receive additional LNG supplies. Additionally, staff has clarified the No Action Alternative discussion to better explain that without projects like the Elba III Expansion, natural gas customers in the area proposed to be served "may have fewer and potentially more expensive options for obtaining natural gas in the near future." We believe this conclusion is fully supported in the EIS.

147. On August 6, 2007, we received a comment from David Purcell stating that the EIS did not consider the following impacts related to ongoing and long-term climate change: potential sea level rise in areas around Elba Island, resulting in impacts on the terminal and its infrastructure; potential shoreline reduction; and storm surge flooding impact at the terminal.

148. Because the project is an expansion of an existing facility, and the LNG vessel traffic necessitates the location of the project on a deepwater port, we believe analyzing the impacts of shoreline reduction is not warranted. Further, we believe that any sea level rise would be at such a slow and incremental rate that there would be time to perform facility and/or shoreline modifications before any impacts were manifested. In addition, any attempt to assess specific impacts from possible sea level rise would be speculative at this time.

149. On September 11, 2007, the EPA filed a letter commenting on our staff's final EIS and making suggestions related to future environmental documents. We will address the comments relevant to this proceeding.

150. EPA commented on the additional air dispersion modeling presented in the final EIS and requested that we identify the regional sources included in the modeling. EPA also asserted that the EIS discounted the exceedance of the sulfur dioxide (SO_2) 24-hour National Ambient Air Quality Standard (NAAQS) because the major terminal contributions are a result of indirect marine activities. EPA charges that the final EIS minimized the importance of the exceedance based on the fact that the receptors of concern are just outside of the safety zone over the Savannah River. EPA recommended that we consider mitigation measures to correct the SO_2 exceedance.

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151. As stated in the EIS,[77] industrial sources in the surrounding region were also included in the modeling where regional source inventories of emissions were compiled from data provided by Georgia Department of Natural Resources (GDNR) Environmental Protection Division and the South Carolina Department of Health and Environmental Control, which is public information.

152. The EIS did not discount or minimize the modeled exceedance of the SO_2 24-hour NAAQS standard. On the contrary, the final EIS presents the modeled result and then places this result in context by describing the conservative approach taken in the modeling and factors which largely contributed to the finding that under certain circumstances, the 24-hour standard would be exceeded. We note that the affected area is a narrow band over water and immediately adjacent to the boundary of Elba Island at the river dock and the safety zone at the docking area. Material in the record which graphically portrays the affected area leads us to believe it extremely unlikely that the public will be present in this area during the offloading activities during which the exceedance is predicted to occur. The intent of the discussion in the EIS was not to minimize the importance of the exceedance within an area that is accessible to the general public, but simply to qualify that public impacts would be rare.

153. Exceedance of the 24-hour SO_2 standard may occur in a very limited area and may occur infrequently (or may simply be the result of overly-conservative assumptions in the air quality model), but this result nevertheless indicates a *potentially significant* impact on air quality.

154. Having said that, we note that (a) the model addresses the *entire* facility and other nearby regional air emission sources, which are beyond the terminal expansion action we are authorizing in this Order; (b) this Commission does not set air quality emission standards for foreign-flagged LNG vessels; and (c) the State of Georgia has already issued the air quality permit needed for the terminal expansion to go forward. As such, the EPA's recommendation that we consider mitigating measures is not warranted. Indeed, any mitigation designed to control SO_2 emissions should be developed at the regional level and include all ocean-going vessels, not simply those incrementally associated with the terminal expansion.

155. EPA recommends that our Order include documentation from the COE, FWS, and GDNR which shows that these agencies concur with Elba's proposal to cross Beaverdam Creek, Coldwater Creek, and Little River using the open-cut technique rather than pursuing the use of the more costly HDD. EPA also requested that we identify Elba's Best Management Practices (BMP) used to minimize the effects of the open-cut crossings on water quality.

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[77] *See* 4-172.

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156. Documentation from the COE, FWS, and GDNR were included in appendix M to the final EIS. This appendix references numerous conversations, site visits, and meetings between the COE and other natural resource agencies, and includes letters of agreement between the COE, FWS, and GDNR. Although the rivers may not be spelled out by name, Little River is located within the Clarks Hill Wildlife Management Area and Beaverdam Creek and Coldwater Creek are located within the Richard B. Russell Lake Project. Both of these areas are managed by the COE. The proposed BMPs are also specified within appendices M, E, and F.

157. Finally, EPA recommends that in addition to mitigation for forested wetlands, the functions of herbaceous wetlands and riparian vegetation also be mitigated. EPA recommends that the applicant and our staff continue to explore, in conjunction with the COE, FWS, and GDNR, alternatives that avoid and minimize wetland impacts, such as reducing the number of crossings of the Savannah River, and that a mitigation plan covering wetlands and riparian vegetation impacted by this project be provided in our Order.

158. Elba's Wetland and Waterbody Construction and Mitigation Procedures are consistent with our staff's procedures, which are designed to ensure that the functional values of herbaceous wetlands are returned to preconstruction levels. For example, measure VI.D.4 specifies that wetland revegetation shall be considered successful if the cover of herbaceous and/or woody species is at least 80 percent of the type, density, and distribution of the vegetation in adjacent wetland areas that were not disturbed by construction. If revegetation is not successful at the end of 3 years, Elba will develop and implement (in consultation with a professional wetland ecologist) a remedial revegetation plan to actively revegetate the wetland. Elba will continue revegetation efforts until wetland revegetation is successful. We believe this commitment by Elba to restore all wetlands to their previous function will negate the need for additional mitigation.

159. In addition, the pipeline will cross the Savannah River only once, and that crossing would be via the HDD technique which will minimize impacts on this river to the extent practicable and avoid the associated riparian zone. Alternatives to waterbody crossings located on COE lands were discussed in section 3 of the final EIS. Elba will coordinate development of the final mitigation plan for disturbed wetlands with the COE. Coordination with the Georgia Environmental Protection Division would be conducted for riparian areas in Elba's Erosion and Sediment Control Permit. Both the COE and Georgia Environmental Protection Division would require that the mitigation plans be in place prior to any pipeline construction. We believe this process, in addition to the measures outlined in Elba's Plan and Procedures will provide adequate mitigation for wetland and riparian vegetation disturbed by pipeline construction.

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Conclusion

160. We have reviewed the information and analysis contained in the EIS regarding potential environmental effects of the project. Based on our consideration of this information, we agree with the conclusions presented in the EIS and find that Southern LNG and Elba Express' projects, if constructed and operated as described in the EIS and in accordance with recommended environmental mitigation measures in Appendix B to this order, is environmentally acceptable. Therefore, we are including the environmental mitigation measures recommended in the EIS as conditions to the authorizations issued to Southern LNG and Elba Express by this order.

161. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.[78] Southern LNG and/or Elba Express shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Southern LNG and/or Elba Express. Southern LNG and/or Elba Express shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

At a hearing held on September 20, 2007, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) In Docket No. CP06-470-000, Southern LNG is authorized under section 3 of the NGA to site, construct, and operate its proposed Elba III Expansion facilities at Elba Island, Georgia, as more fully described in this order and in the application and conditioned herein.

(B) In Docket No. CP06-470-000, Southern LNG is authorized under section 7(b) of the NGA to abandon the dock facilities as more fully described in this order and in the application and as conditioned herein.

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[78] *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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(C) In Docket No. CP06-471-000, Elba Express is authorized under section 7(c) of the NGA to construct, operate, and maintain natural gas facilities and to acquire an undivided ownership interest in Southern's Twin 30s pipeline facilities, as described in this order, the April 4 Order, and the application, and as conditioned herein.

(D) In Docket No. CP06-472-000, Elba Express is issued a blanket construction certificate under Subpart F of Part 157 of the Commission's regulations.

(E) In Docket No. CP06-473-000, Elba Express is issued a blanket transportation certificate under Subpart G of Part 284 of the Commission regulations.

(F) In Docket No. CP06-474-000, Southern is authorized under section 7(b) of the NGA to transfer to Elba Express an undivided ownership interest in Southern's Twin 30s pipeline facilities as described in this order, the April 4 Order, and the application, and as conditioned herein.

(G) In Docket No. CP06-474-000, Southern is authorized under section 7(c) of the NGA to acquire, if Southern proceeds with Phase III of its Cypress Expansion Project, an undivided ownership interest in Elba Express' proposed pipeline facilities from Port Wentworth to Rincon, Georgia, equal to 500 MMcf per day, as described in this order, the April 4 Order, and as conditioned herein. This authorization is conditioned upon Southern's amending its Cypress Expansion Project to reflect the facility modifications discussed above.

(H) In Docket No. CP06-474-000, Southern is authorized under section 7(c) of the NGA to acquire, if Southern does not proceed with Phase III of the Cypress Expansion Project, an undivided ownership interest in Elba Express' proposed pipeline facilities from Port Wentworth to Wrens, Georgia, equal to 55 MMcf per day, as described in this order, the April 4 Order, and as conditioned herein.

(I) The authorizations in the above ordering paragraphs are conditioned upon Southern LNG and Elba Express, as applicable:

(1) placing the proposed Phase A facilities in service by June 1, 2010 and the Phase B facilities in service by December 31, 2012;

(2) complying with all regulations under the NGA including but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) complying with the specific environmental and engineering conditions listed in Appendix B of this order.

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(J) Applicants are directed to account for the acquisition and disposition of the above natural gas facilities in accordance with Gas Plant Instruction No. 5 and Account 102, Gas Plant Purchased or Sold, of the Uniform System of Accounts. Applicants shall file their proposed accounting with the Commission within six months of the date the transfer is consummated, and the accounting submissions shall provide all the accounting entries related to the transfer along with narrative explanations describing the basis for the entries.

(K) Southern LNG is directed to file actual tariff sheets no sooner than 60 days but no later than 30 days prior to the commencement of service to place the Rate Schedule LNG-3 rates and Rate Schedule LNG-3 specific changes to its tariff into effect, including the red-lined tariff sheets reflecting how its actual tariff filing differs from its *pro forma* sheets, including those changes discussed in this order.

(L) Southern LNG is directed to file its negotiated rate expansion contracts or numbered tariff sheets no later than 30 days and no sooner than 60 days prior to the commencement of service on the expansion facilities. Southern LNG 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.

(M) Elba Express is directed to file actual tariff sheets no sooner than 60 days but no later than 30 days prior to the commencement of service to place the rates approved into effect, including the red-lined tariff sheets reflecting how its actual tariff filing differs from its *pro forma* tariff, including those changes discussed in the April 4 Order. Elba Express shall make a filing within four years after its in-service date for the Phase A facilities, either justifying its existing recourse rates or proposing alternative rates, as discussed in the April 4 Order.

(N) Elba Express is directed to file its negotiated rate contracts or numbered tariff sheets no later than 30 days and no sooner than 60 days prior to the commencement of service on the Elba Express facilities. Elba Express shall maintain separate books, accounts, and records for transportation provided under negotiated rates and for transportation provided under cost-based rates as described in the April 4 Order.

(O) Southern LNG and Elba Express must execute contracts for the volumes covered by their precedent agreements for each specific phase of their respective projects prior to commencing construction of that specific phase.

(P) Marathon's and Anderson's requests for an evidentiary hearing are denied.

(Q) Shell's request for rehearing the April 4 Order is denied.

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(R) Applicants shall notify the Commission within 10 days of the dates of the abandonments of the facilities and interests identified in the applications, the April 4 Order, and this order.

(S) Southern LNG and/or Elba Express shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Southern LNG and/or Elba Express. Southern LNG and/or Elba Express 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 A

Rejected Pro Forma Tariff Sheets, Southern LNG Inc. Pro Forma Original Volume No. 1			
Line	Tariff Sheet	Reference	Commentary
1	First Revised Sheet No. 10, First Revised Sheet No. 24	4.1, 4.2	4.1- SLNG proposes to add negotiated rates to LNG-1 and LNG-2. 4.2- SLNG proposes to add Monthly Storage Charge adder to Rate Schedule LNG-1.
2	First Revised Sheet No. 11, Original Sheet Nos. 11A-11B, First Revised Sheet No. 12	4.5, 4.5.1, 4.5.2, 4.5.3	SLNG deletes the "Minimum Bill" section of the Rate Schedule LNG-1 and replaces it with "Force Majeure Relief for Firm Service"
3	First Revised Sheet No. 16, First Revised Sheet No. 28	5.9	Changes "day" to "nomination cycle" in Rate Schedules LNG-1 and LNG-2, respectively.
4	First Revised Sheet No. 19, First Revised Sheet No. 30	9	Removes language referring to notices for the transfer of LNG in Rate Schedules LNG-1 and LNG-2 respectively.
5	First Revised Sheet No. 41A, Original Sheet No. 41B	2(e)	SLNG deletes language and adds additional provisions regarding "evergreen" or "rollover" provisions in the GT&C.
6	First Revised Sheet No. 60, Original Sheet Nos. 60A-60E	8.6	SLNG adds a section to their GT&C regarding "Buyout Election for Extended Force Majeure", which SLNG also added references to throughout LNG-1, hence modifying Rate Schedule LNG-1.
7	First Revised Sheet No. 61	12.1(a)	SLNG adds language regarding the conversion of MDVQ, expressed in Mcf, into a "BTU Factor", in the GT&C, which modifies existing rate schedules.
8	First Revised Sheet No. 66	12.5	Changes existing language regarding the scheduling priorities for delivery nominations
9	First Revised Sheet No. 70	13.5	Adds an Adjustment for Btu factor, which could possibly affect the LNG-1 and LNG-2 rates
10	First Revised Sheet No. 131	2	Adds clause "Unless agreed otherwise in writing," which could impact LNG-1 customers.

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Rejected Pro Forma Tariff Sheets, Southern LNG Inc. Pro Forma Original Volume No. 1			
Line	Tariff Sheet	Reference	Commentary
11	Second Revised Sheet No. 133	MSQ & MDVQ	Changes the measuring units for MSQ and MDVQ from Dth to Mcf.

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Appendix B

Environmental Conditions for the Elba III Expansion

1. Southern LNG and Elba Express shall each follow the construction procedures and mitigation measures described in the applications, supplemental filings (including responses to staff data requests), and as identified in the Environmental Impact Statement, unless modified by the Commission Order. Southern LNG and Elba Express 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. For pipeline facilities, 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 Elba III Expansion (Project). This authority shall allow:

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

3. For liquefied natural gas (LNG) facilities, the Director of OEP has delegated authority to take all steps necessary to ensure the protection of life, health, property, and the environment during construction and operation of the Project. This authority shall include:

    a. stop-work authority and authority to cease operation; and
    b. the design and implementation of any additional measures deemed necessary to assure continued compliance with the intent of the conditions of the Commission Order.

4. The authorized facility locations shall be as shown in the EIS, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Southern LNG and Elba Express shall each file any revised detailed

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

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

5. Southern LNG and Elba Express shall each file detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally-listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area 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 either Southern LNG's or Elba Express's project-specific Upland Erosion Control, Revegetation, and Maintenance Plans and/or 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.

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6. **Prior to construction of the respective Project components**, Southern LNG and Elba Express shall each file initial Implementation Plans for the Terminal Expansion and the Elba Express Pipeline, for review and written approval by the Director of OEP describing how Southern LNG and Elba Express will implement the mitigation measures required by the Order. Southern LNG and Elba Express must each file revisions to its respective plan as schedules change. Each plan must identify:

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

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

7. Elba Express shall develop and implement an environmental complaint resolution procedure for at least 3 years following the completion of construction. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the Elba Express Pipeline and restoration of the ROW. **Prior to construction of the pipeline**, Elba Express shall mail the complaint procedures to each landowner whose property would be crossed by the pipeline project.

    a. In its letter to affected landowners, Elba Express shall:

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(1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
(2) instruct the landowners that if they are not satisfied with the response, they should call Elba Express's Hotline; the letter should indicate how soon to expect a response; and
(3) instruct the landowners that if they are still not satisfied with the response from Elba Express's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030 or at hotline@ferc.gov.

b. In addition, Elba Express shall include in its weekly status reports a copy of a table that contains the following information for each problem/concern:

(1) the identity of the caller and the date of the call;
(2) the identification number from the certificated alignment sheet(s) of the affected property and the location by milepost;
(3) the description of the problem/concern; and
(4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.

8. Southern LNG shall employ at least one EI, while Elba Express shall employ a team of EIs per construction spread. The EIs shall be:

a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Commission Order and other grants, permits, certificates, or other authorizing documents;
b. responsible for evaluating the construction contractors' implementation of the environmental mitigation measures required in the respective contracts (see condition 6 above) and any other authorizing document;
c. empowered to order correction of acts that violate the environmental conditions of the 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 the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
f. responsible for maintaining status reports.

9. **Prior to any construction**, Southern LNG and Elba Express shall each file affirmative statements, certified by a senior company official, that all company personnel, EIs, and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental

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mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

10. Southern LNG and Elba Express shall each file updated status reports prepared by the head EI on a weekly basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

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

11. Elba Express must receive written authorization from the Director of OEP **before commencing service from each phase of the Elba Express Pipeline portion of the Project**. Such authorization will only be granted following a determination that rehabilitation and restoration of the ROW and other areas of project-related disturbance are proceeding satisfactorily.

12. Southern LNG must receive written authorization from the Director of OEP **before commencing service from each phase of the Terminal Expansion portion of the Project**. Such authorization will only be granted following a determination that the facilities have been constructed in accordance with Commission approval and applicable standards, can be expected to operate safely as designed, and the rehabilitation and restoration of areas affected by the project are proceeding satisfactorily.

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13. **Within 30 days of placing the facilities in service**, both Southern LNG and Elba Express shall each file an affirmative statement, certified by a senior company official:

    a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
    b. identifying which of the conditions in the Order Southern LNG and Elba Express has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

14. **Prior to the commencement of blasting**, Elba Express shall file a revised Blasting Specification Plan that includes:

    a. the locations (by milepost [MP]) where bedrock blasting would be required;
    b. any applicable state blasting regulations; and
    c. a pre-blast survey assessment of structures, wells, and utilities within 150 feet of the construction ROW.

    In the event property owners identify any damage or change to the properties, or if excessive peak particle velocities have been recorded during the blasting operations, Elba Express shall complete follow-up surveys of the potentially impacted property.

15. **Prior to construction**, Elba Express shall file the locations by MP of all springs, seeps, and wells identified within 150 feet of its construction ROW.

16. Elba Express shall file a report **within 30 days of placing the pipeline facilities in service**, identifying all water supply wells/systems damaged by construction and how they were repaired. The report shall include a discussion of any complaints concerning the well yield or quality and how each problem was resolved.

17. Southern LNG shall not conduct hydrostatic test water withdrawals for LNG storage tank testing in estuarine habitats from **April 1 through July 31**.

18. Southern LNG shall work with LNG vessel owners to identify and implement methods that have the potential to reduce water withdrawal volumes while the vessels are berthed. Southern LNG shall file an annual report for the first three years of operating the Terminal Expansion facilities, detailing the measures that were successfully implemented for each vessel**.**

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19. Elba Express shall file the results of its horizontal directional drill (HDD) geotechnical feasibility investigations for crossing the Broad River and the Savannah River. If its planned HDD crossing is not feasible, then Elba Express shall develop a site-specific alternative crossing plan and sediment control plan for activities within these waterbodies in consultation with all relevant agencies (*e.g.*, the U.S. Army Corps of Engineers [COE], Georgia Department of Natural Resources [GDNR], U.S. Fish and Wildlife Service [FWS], U.S. National Park Service [NPS], and National Marine Fisheries Service [NMFS]). Elba Express's plan shall be filed for review and written approval by the Director of OEP **prior to construction at each waterbody location**.

20. Elba Express shall reevaluate the local wetland mitigation options, in consultation with the COE, in order to determine one or more suitable banks that provide in-kind mitigation in the same watershed as project impacts. Elba Express shall file its reevaluation for review and approval by the Director of OEP **prior to construction.**

21. Southern LNG shall continue to consult with NMFS to minimize noise impacts associated with pile driving activities and file the results of this consultation **prior to construction.**

22. Where protected species or their habitat exists, and surveys were conducted over one year prior to the start of construction, Elba Express shall consult with the FWS to assess the need for additional surveys **prior to construction**. In addition, any areas where access has been denied during initial surveys shall also be surveyed for threatened and endangered species **prior to construction**.

23. **Prior to construction,** Elba Express shall file completed surveys for flatwoods salamander habitat along the pipeline route (i.e. MP location of suitable habitat), and provide copies of any correspondence with the FWS including recommended mitigation measures.

24. If Canby's dropwort, pondberry, and/or poolsprite are identified during re-surveys of potentially suitable habitat along the Elba Express Pipeline route, Elba Express shall contact the FWS to obtain guidance regarding a course of action to be taken to avoid or minimize impacts on these species during construction. **Prior to construction**, Elba Express shall file the completed survey report that contains the following information:

    a. name(s) and qualifications of the person(s) conducting the survey;
    b. method(s) used to conduct the survey;
    c. date(s) of the survey;
    d. area surveyed (include the MP surveyed); and

e. proposed mitigation that would substantially minimize or avoid the potential impacts.

Copies of all coordination, including any recommended mitigation measures, shall be filed for review and approval by the Director of OEP.

25. Southern LNG and Elba Express shall **not begin construction** of facilities for the respective projects **until**:

a. all outstanding biological surveys have been completed
b. the staff completes any necessary consultations with FWS and NMFS; and
c. Southern LNG and Elba Express have received written notification from the Director of OEP that construction and/or use of mitigation (including implementation of conservation measures) may begin.

26. Elba Express shall file, for the review and written approval of the Director of OEP, the results of consultation with the GDNR regarding avoidance or minimization of impacts on the bluebarred pygmy sunfish **prior to construction.**

27. Elba Express shall not withdraw water for hydrostatic testing from the Broad River or its tributaries during the period **April 1 to July 31**. However, if Elba Express believes water withdrawal must occur during this period, Elba Express shall develop a hydrostatic test water withdrawal plan (containing measures to minimize impacts on the sandbar shiner and robust redhorse) for the Broad River in consultation with the GDNR. Either a statement indicating Elba Express's commitment to abide by the FWS time-of-year restrictions or copies of correspondence with the FWS and GDNR approving the hydrostatic test water withdrawal plan shall be filed **prior to construction**.

28. Elba Express shall not construct its crossing of the Ogeechee Creek or its tributaries during the period **June 1 to August 30** unless Elba Express receives written approval from the Director of OEP. **Prior to construction,** Elba Express shall file either a statement indicating Elba Express's commitment to abide by the FWS time-of-year restriction or copies of correspondence with the GDNR approving a summer crossing plan that contains measures to minimize impacts on the Atlantic pigtoe mussel. Alternatively, Elba Express shall file documentation that the GDNR has determined that the proposed project would not likely affect the Atlantic pigtoe mussel.

29. **Prior to construction,** Elba Express shall file survey reports for Broad River burrowing crayfish and lean crayfish. If Broad River burrowing crayfish or lean crayfish are found during surveys, then Elba Express shall **not begin construction in the Broad River watershed until** it files the results of GDNR consultation

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regarding avoidance or minimization of impacts on these species for review and written approval by the Direction of OEP.

30. For each residence closer than 25 feet to the construction work area, Elba Express shall file a site-specific plan for the review and written approval of the Director of OEP **prior to construction**. These plans shall include:

    a. a description of construction techniques to be used (such as reduced pipeline separation, centerline adjustment, use of stovepipe or drag-section techniques, working over existing pipelines, pipeline crossover, bore, etc.), and include a dimensioned site plan that shows:

        (1) the location of the residence in relation to the new and existing pipelines;
        (2) the edge of the construction work area;
        (3) the edge of the new permanent ROW; and
        (4) other nearby residences, structures, roads, or waterbodies.

    b. a description of how Elba Express would ensure the trench is not excavated until the pipe is ready for installation and the trench is backfilled immediately after pipe installation; and
    c. evidence of landowner concurrence if the construction work area and fencing would be located within 10 feet of a residence.

31. **Prior to construction**, Elba Express shall file updated documentation of consultations detailing any site-specific construction and mitigation measures or restoration plans requested by developers crossed by or immediately adjacent to the pipeline route, and identifying what measures Elba Express has agreed to implement.

32. **Prior to construction,** Elba Express shall file updated documentation of consultations with the appropriate local officials or managers of the Di-Lane Plantation and Clark Hill Wildlife Management Areas (WMAs) regarding field surveys, easement acquisitions, and permitting processes. The documentation shall identify any agreed-upon mitigation measures or restoration plans developed during the consultations.

33. Elba Express shall **not begin construction** of the Elba Express Pipeline facilities **until** it files a copy of the Coastal Zone consistency determination issued by the GDNR.

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34. Elba Express shall **defer construction** of the pipeline, compressor station, meter stations, and establishment and use of all staging, storage, and temporary work areas and new or to-be-improved access roads **until**:

    a. Elba Express files a cultural resources survey report for the denied access areas, and any additional or newly identified areas requiring survey, evaluation report(s), any required avoidance or treatment plan(s), and the Georgia State Historic Preservation Office's comments and any COE comments, as appropriate, on the reports and any plan(s); and
    b. the Director of OEP reviews all cultural resources survey and evaluation reports and plans and notifies Elba Express in writing that construction may proceed.

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

35. Southern LNG shall file a noise survey for the Terminal Expansion **no later than 60 days** after placing the expansion facilities into service. If the noise attributable to the operation of the terminal exceeds a day night sound level (L_{dn}) of 55 decibels on the A weighted scale (dBA) at any nearby noise sensitive areas (NSAs), Southern LNG shall file a report on what changes are needed and shall install additional noise controls to meet that level **within 1 year** of the in-service date. Southern LNG shall confirm compliance with this requirement by filing a second noise survey **no later than 60 days** after it installs the additional noise controls.

36. Elba Express shall file a noise survey for the Elba Express Compressor Station **no later than 60 days** after placing the station into service. If the noise attributable to the operation of the station under full load conditions exceeds an L_{dn} of 55 dBA at any nearby NSAs, Elba Express shall file a report on what changes are needed and shall install additional noise controls to meet that level **within 1 year** of the in-service date. Elba Express shall confirm compliance with this requirement by filing a second noise survey **no later than 60 days** after it installs the additional noise controls.

37. Until the commencement of service, Southern LNG shall **annually** review its Waterway Suitability Assessment (WSA) relating to LNG marine traffic for the project; update the assessment to reflect changing conditions which may impact the suitability of the waterway for LNG marine traffic; provide the updated assessment to the cognizant Captain of the Port/Federal MARSEC Coordinators

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(COTP/FMSC) for review and validations and, if appropriate, further action by the COTP/FMSC relating to LNG marine traffic; and provide a copy to FERC staff.

Recommendations 38-62 apply to the Terminal Expansion and construction details. Information pertaining to these specific recommendations shall be filed for review and approval by the Director of OEP either: prior to initial site preparation; prior to construction of final design; prior to commissioning; or prior to commencement of service as indicated by each specific condition. Specific engineering, vulnerability, or detailed design information meeting the criteria specified in Order No. 683 (Docket No. RM06-24-000), including security information, should be submitted as critical energy infrastructure information (CEII) pursuant to 18 CFR 388.112. *See Critical Energy Infrastructure Information*, Order No. 683, 71 Fed. Reg. 58,273 (October 3, 2006), FERC Stats. & Regs. ¶ 31,228 (2006). Information pertaining to items such as: offsite emergency response; procedures for public notification and evacuation; and construction and operating reporting requirements would be subject to public disclosure. This information should be submitted a minimum of 30 days before approval to proceed is required.

38. Complete plan drawings and a list of the hazard detection equipment shall be filed **prior to initial site preparation**. The list shall include the instrument tag number, type and location, alarm locations, and shutdown functions of the proposed hazard detection equipment. Plan drawings shall clearly show the location of all detection equipment.

39. Southern LNG shall provide a technical review of its proposed facility design that:

    a. identifies all combustion/ventilation air intake equipment and the distances to any possible hydrocarbon release (LNG, flammable refrigerants, flammable liquids and flammable gases); and
    b. demonstrates that these areas are adequately covered by hazard detection devices and indicates how these devices would isolate or shutdown any combustion equipment whose continued operation could add to or sustain an emergency.

    Southern LNG shall file this review **prior to initial site preparation.**

40. Complete plan drawings and a list of the fixed and wheeled dry-chemical, fire extinguishing, and other hazard control equipment shall be filed **prior to initial site preparation.** The list shall include the equipment tag number, type, size, equipment covered, and automatic and manual remote signals initiating discharge of the units. Plan drawings shall clearly show the planned location of all fixed and wheeled extinguishers.

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41. Facility plans showing the proposed location of, and area covered by, each monitor, hydrant, deluge system, hose, and sprinkler, as well as piping and instrumentation diagrams, of the fire water system shall be filed **prior to initial site preparation.**

42. A copy of the hazard design review and list of recommendations that are to be incorporated in the final facility design **prior to initial site preparation**.

43. Southern LNG shall develop an updated Emergency Response Plan (including evacuation) and coordinate procedures with the Coast Guard; state, county, and local emergency planning groups; fire departments; state and local law enforcement; and appropriate federal agencies. This updated plan shall include at a minimum:

    a. designated contacts with state and local emergency response agencies;
    b. scalable procedures for the prompt notification of appropriate local officials and emergency response agencies based on the level and severity of potential incidents;
    c. procedures for notifying residents and recreational users within areas of potential hazard along the transit route and in the South Channel;
    d. evacuation routes/methods for residents and other public use areas that are within any transient hazard areas along the route of the LNG marine transit;
    e. locations of permanent sirens and other warning devices; and
    f. an "emergency coordinator" on each LNG vessel to activate sirens and other warning devices.

    The Emergency Response Plan shall be filed for review and written approval by the Director of OEP **prior to initial site preparation**. Southern LNG shall notify FERC staff of all planning meetings in advance and shall report progress on the development of its Emergency Response Plan at **3-month** intervals.

44. The Emergency Response Plan shall include a Cost-Sharing Plan identifying the mechanisms for funding all project-specific security/emergency management costs that would be imposed on state and local agencies. In addition to the funding of direct transit-related security/emergency management costs, this comprehensive plan shall include funding mechanisms for the capital costs associated with any necessary security/emergency management equipment and personnel base. The Cost-Sharing Plan shall be filed for review and written approval by the Director of OEP **prior to initial site preparation.**

45. The **final design** of the fixed and wheeled dry-chemical, fire extinguishing hazard control equipment shall identify manufacturer and model.

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46. The **final design** shall include an updated fire protection evaluation carried out in accordance with the requirements of National Fire Protection Association Standard 59A 2001, chapter 9.1.2.

47. The **final design** shall include a shutoff valve at the suction and discharge of each high pressure LNG pump.

48. The **final design** of the vaporizers shall include double block isolation on the suction and double block isolation and check valve on the discharge of each vaporizer. One of the valves on the suction and one valve on the discharge shall be automatically actuated.

49. The **final design** of the minimum flow recycle line from the secondary pumps to downstream of the isolation valve to the LNG storage tanks shall specify pipe with the same pressure and temperature rating as the discharge piping for the secondary pumps.

50. The **final design** shall include details of the shut down logic, including cause and effect matrices for alarms and shutdowns.

51. The **final design** shall include emergency shutdown of equipment and systems activated by hazard detection devices for flammable gas, fire, and cryogenic spills, when applicable.

52. The **final design** shall specify that the hazardous area classification of the LNG pump area and vaporizer LNG inlet and outlet piping areas are classified as Class 1 Group D, Division 1.

53. The **final design** shall include details of the air gaps to be installed downstream of all seals or isolations installed at the interface between a flammable fluid system and an electrical conduit or wiring system. Each air gap shall vent to a safe location and be equipped with a leak detection device that shall continuously monitor for the presence of a flammable fluid, shall alarm the hazardous condition, and shall shutdown the appropriate systems.

54. The **final design** shall include a hazard and operability review of the completed design. A copy of the review and a list of the recommendations shall be filed.

55. The **final design** of the sendout piping from the vaporizers to the shut-off valve upstream of the meter station shall specify the same pressure rating as the vaporizer discharge piping.

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56. All valves including drain, vent, main, and car sealed, or locked valves shall be tagged in the field during construction and **prior to commissioning.**

57. The design details and procedures to record and to prevent the tank fill rate from exceeding the maximum fill rate specified by the tank designer shall be filed **prior to commissioning.**

58. A tabulated list of the proposed hand-held fire extinguishers shall be filed **prior to commissioning.** The information shall include a list with the equipment number, type, size, number, and location. Plan drawings shall include the type, size, and number of all hand-held fire extinguishers.

59. Operation and Maintenance procedures and manuals, as well as safety procedure manuals, shall be filed **prior to commissioning.**

60. **Prior to commissioning**, Southern LNG shall coordinate, as needed, with the U.S. Coast Guard to define the responsibilities of Southern LNG's security staff in supplementing other security personnel and in protecting the LNG vessels and terminal.

61. The FERC staff shall be notified of any proposed revisions to the security plan and physical security of the facility **prior to commencement of service.**

62. Progress on construction of the Expansion Project shall be reported in filed **monthly** reports with the Secretary. Details shall include a summary of activities, projected schedule for completion, problems encountered and remedial actions taken. Problems of significant magnitude shall be reported to the FERC **within 24 hours.**

In addition, recommendation numbers 63 through 66 shall apply throughout the life of the facility.

63. The facility shall be subject to regular FERC staff technical reviews and site inspections on at least an **annual basis** or more frequently as circumstances indicate. Prior to each FERC staff technical review and site inspection, Southern LNG shall respond to a specific data request including information relating to possible design and operating conditions that may have been imposed by other agencies or organizations. Up-to-date detailed piping and instrumentation diagrams reflecting facility modifications and provision of other pertinent information not included in the semi-annual reports described below, including facility events that have taken place since the previously submitted semi-annual report, shall be submitted.

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64. **Semi-annual** operational reports shall be filed with the Secretary to identify changes in facility design and operating conditions, abnormal operating experiences, activities (including vessel arrivals, quantity and composition of imported LNG, vaporization quantities, boil-off/flash gas, etc.), plant modifications including future plans and progress thereof. Abnormalities shall include, but not be limited to: unloading/shipping problems, potential hazardous conditions from offsite vessels, storage tank stratification or rollover, geysering, storage tank pressure excursions, cold spots on the storage tanks, storage tank vibrations and/or vibrations in associated cryogenic piping, storage tank settlement, significant equipment or instrumentation malfunctions or failures, non-scheduled maintenance or repair (and reasons therefore), relative movement of storage tank inner vessels, vapor or liquid releases, fires involving natural gas and/or from other sources, negative pressure (vacuum) within a storage tank and higher than predicted boiloff rates. Adverse weather conditions and the effect on the facility also shall be reported. Reports shall be submitted **within 45 days** after each period ending **June 30 and December 31.** In addition to the above items, a section entitled "Significant plant modifications proposed for the next 12 months (dates)" also shall be included in the semi-annual operational reports. Such information would provide the FERC staff with early notice of anticipated future construction/maintenance projects at the LNG facility.

65. In the event the temperature of any region of any secondary containment, becomes less than the minimum specified operating temperature for the material, the Commission shall be notified **within 24 hours** and procedures for corrective action shall be specified.

66. Significant non-scheduled events, including safety-related incidents (i.e., LNG or natural gas releases, fires, explosions, mechanical failures, unusual over pressurization, and major injuries) and security related incidents (i.e., attempts to enter site, suspicious activities) shall be reported to FERC staff. In the event an abnormality is of significant magnitude to threaten public or employee safety, cause significant property damage, or interrupt service, notification shall be made **immediately,** without unduly interfering with any necessary or appropriate emergency repair, alarm, or other emergency procedure. In all instances, notification shall be made to Commission staff **within 24 hours.** This notification practice shall be incorporated into the LNG facility's emergency plan. Examples of reportable LNG-related incidents include:

    a. fire;
    b. explosion;
    c. estimated property damage of $50,000 or more;
    d. death or personal injury necessitating in-patient hospitalization;
    e. free flow of LNG that results in pooling;

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f. unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability, structural integrity, or reliability of an LNG facility that contains, controls, or processes gas or LNG;
g. any crack or other material defect that impairs the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG;
h. any malfunction or operating error that causes the pressure of a pipeline or LNG facility that contains or processes gas or LNG to rise above its maximum allowable operating pressure (or working pressure for LNG facilities) plus the build-up allowed for operation of pressure limiting or control devices;
i. a leak in an LNG facility that contains or processes gas or LNG that constitutes an emergency;
j. inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of an LNG storage tank;
k. any condition that could lead to a hazard and cause a 20 percent reduction in operating pressure or shutdown of operation of a pipeline or an LNG facility;
l. safety-related incidents to LNG vessels occurring at or en route to and from the LNG facility; or
m. an event that is significant in the judgment of the operator and/or management even though it did not meet the above criteria or the guidelines set forth in an LNG facility's incident management plan.

In the event of an incident, the Director of OEP has delegated authority to take whatever steps are necessary to ensure operational reliability and to protect human life, health, property or the environment, including authority to direct the LNG facility to cease operations. Following the initial company notification, Commission staff would determine the need for an on-site inspection by Commission staff, and the timing of an initial incident report (normally within 10 days) and follow-up reports.