

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Star Central Gas Pipeline, Inc.

Docket No. CP06-94-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued August 29, 2006)

1. On March 22, 2006, Southern Star Central Gas Pipeline, Inc. (Southern Star) filed an application pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for authority to abandon, construct, and operate certain facilities in order to provide an additional 24,562 Dth per day (Dth/d) of incremental firm transportation to serve growing markets in southwest Missouri (Ozark Trails Expansion project or expansion project). For the reasons discussed below, we will grant the requested abandonment and certificate authorizations subject to condition.

Background and Proposal

2. Southern Star is a jurisdictional natural gas company engaged in the transmission of natural gas across approximately 6,000 miles of pipeline located in Kansas, Oklahoma, Missouri, Wyoming, Colorado, Texas, and Nebraska.

3. Southern Star requests authority to abandon, construct and operate certain facilities to be located in Kansas and Missouri in order to provide an additional 24,562 Dth/d of incremental firm transportation service. Specifically, Southern Star proposes to: (1) extend the existing Springfield Loop (Line HS) in Christian County, Missouri by installing an additional 0.9 mile of 20-inch pipeline; (2) construct a 1.1 mile extension of the Springfield 16-inch pipeline (Line HQ-16) in Greene County, Missouri which requires abandonment of approximately one mile of the existing 8-inch Ash Grove-Galloway pipeline (Line HQ-8); (3) uprate the maximum allowable operating pressure on 13.5 miles of the Southern Trunk Loop (Line FR) 20-inch pipeline located in Montgomery and Labette Counties, Kansas; (4) make auxiliary installations and modifications at the Grabham and Saginaw Compressor Stations; (5) replace, install or relocate various auxiliary facilities on the FR 20-inch, HS 20-inch and HQ 16-inch

pipelines including valves, regulators, launchers and receivers; and (6) add one new delivery meter station.

4. Southern Star maintains that it has designed the construction of the new facilities in order to minimize the potential adverse effects to landowners and the surrounding communities. Specifically, Southern Star states that the pipeline construction is limited to approximately 1.0 mile of pipeline looping on land where Southern Star already has pipeline easement rights and another 1.0 mile of pipeline will be, for the most part, installed by removing existing 8-inch pipeline and replacing it with 16-inch pipeline in the same right-of-way. Southern Star also states that a section of this pipeline will be installed using a horizontal direction drill method to further minimize adverse effects around that neighborhood. In addition, Southern Star claims that compressor station modifications will be limited to work within the station yards with no ill effect on current noise or air emission levels.

5. Southern Star held an open season for the proposed incremental transportation service on January 26, 2005. Southern Star states that the open season resulted in the execution of precedent agreements with Missouri Gas Energy (MGE) and Southern Missouri Gas (SMG) for additional firm transportation capacity of 19,562 Dth/d and 5,000 Dth/d, respectively. Southern Star states that these shippers have signed twenty-year contracts and have agreed to pay the existing maximum FTS-M rate plus an incremental charge which will recover all the cost of the proposed Ozark Trails Expansion project.

6. Southern Star seeks to place the proposed facilities in service December 1, 2006, in order to meet the service requirements of both MGE and SMG.

Notice, Interventions and Comments

7. Notice of Southern Star's application was published in the *Federal Register* on April 13, 2006 (71 Fed. Reg. 19183). Timely unopposed motions to intervene were filed by BP America Production Company and BP Energy Company, City Utilities of Springfield, Missouri, Missouri Gas Energy, a Division of Southern Union Company, Atmos Energy Corporation, the Kansas Corporation Commission (KCC), and the Missouri Public Service Commission (MoPSC). Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹

¹ 18 C.F.R. § 385.214 (2006).

8. On April 19, 2006, John Scorse filed a motion to intervene stating he is a “landowner who has Southern Star pipeline on owned property in Southwest, Missouri.” On April 24, 2006, Southern Star filed an answer in opposition to Mr. Scorse’s intervention. Southern Star asserts that Mr. Scorse is not a landowner whose property will be directly affected by the Ozark Trails Expansion project because no construction proposed in this docket is to occur on any property owned by Mr. Scorse. Southern Star also maintains that Mr. Scorse does not qualify as an affected landowner requiring notification of the construction under sections 157.6(d)(2)(i) and (ii) of the Commission’s regulations. On May, 8, 2006, Mr. Scorse filed an answer in response to Southern Star’s answer indicating that his property directly adjoins the Empire Power Plant where construction activity will take place.

9. Although the Commission’s Rules of Practice and Procedure do not permit answers to answers, the Commission finds good cause to waive Rule 213(a) to admit the above-described answer of Mr. Scorse because it assists the Commission in reviewing the facts underlying Mr. Scorse’s motion to intervene.² Mr. Scorse has made a timely motion to intervene and has stated sufficient facts to show he has an interest which may be directly affected by the outcome of this proceeding. Accordingly, we will grant Mr. Scorse’s motion to intervene.

10. The KCC and the MoPSC filed comments raising issues regarding cost overruns and the rates/term of the expansion shippers’ contracts, respectively, which will be addressed below.

Discussion

11. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the abandonment, construction, and operation of the facilities are subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.

Public Convenience and Necessity

12. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.³ The Policy Statement established criteria for determining whether there is a need for a

² 18 C.F.R. § 385.213(a)(2) (2006).

³ *Certification of New Interstate Natural Gas Pipeline Facilities* (Policy Statement), 88 FERC ¶ 61,227 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128, *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

proposed project and whether the proposed project will serve the public interest. The Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

14. The threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Southern Star's project will not be subsidized by its existing customers. Southern Star proposes to charge the expansion shippers the existing maximum Rate Schedule FTS-M rate plus an incremental rate which will recover all the costs of the expansion project. Thus, there is no risk of subsidization of this expansion project by existing customers. Therefore, Southern Star's proposal meets the threshold test of the Policy Statement.

15. The project should not adversely affect Southern Star's existing customers, or other pipelines and their customers. The proposed facilities are designed to provide the incremental service without degradation of service to Southern Star's existing customers. In fact, Southern Star asserts that the proposed facilities will be fully integrated both physically and operationally with its existing facilities and provide benefits to existing customers in the form of enhanced reliability and greater security of deliveries for all customers downstream of the proposed facilities. In addition, since the proposal is designed to meet increased demand on the southwest Missouri portion of Southern Star's system, there is no evidence that service on other pipelines will be displaced or bypassed. Finally, because the construction of the proposed facilities will take place primarily on

existing right of way or within industrial site property any adverse impacts on landowners along the pipeline route will be minimal.

16. Because Southern Star's proposal will provide public benefits without significant adverse economic impacts on existing customers and pipelines or on landowners and the surrounding communities, we find Southern Star's proposal to construct and operate facilities to provide incremental transportation service is in the public convenience and necessity.

17. We also find that Southern Star's proposal to abandon approximately one mile of existing pipeline is permitted by the public convenience and necessity. Abandonment of these facilities will allow Southern Star to install a larger diameter pipeline that, in part, will enable Southern Star to provide the proposed incremental transportation service.

Rate Analysis

18. As noted above, Southern Star has executed precedent agreements with MGE and SMG for additional firm transportation capacity of 19,562 Dth/d and 5,000 Dth/d, respectively. These shippers have signed twenty-year contracts and have agreed to pay the existing maximum FTS-M rate of \$0.1139 per Dth plus an incremental rate of \$0.0688 per Dth. Southern Star states that the total rate will recover all of the cost of the proposed Ozark Trails Expansion project. The proposed total rate is based on a cost-of-service of approximately \$1.7 million and rate design volumes of 24,562 Dth/d based on the design capacity of the expansion project. In developing the cost-of-service for the expansion project, Southern Star has used the cost-of-service factors underlying its currently effective rates approved by the Commission in Docket No. RP04-276-000.⁴

19. The Commission finds that Southern Star's proposed recourse rates for service to the expansion shippers are appropriate given they are designed to recover the cost-of-service of the Ozark Trails Expansion project and, consistent with the Policy Statement, there will be no rate impact or subsidy by Southern Star's existing customers.

20. Southern Star states that it will separately account for the cost of these expansion facilities and recalculate the incremental rate in future rate proceedings, to ensure there are no financial subsidies from exiting customers in future rates. We will require Southern Star to maintain its records for the expansion facilities in a manner to comply with the requirements of section 154.309 of the Commission's regulations, as it has agreed.

⁴ *Southern Star Central Gas Pipeline, Inc., order approving uncontested settlement*, 111 FERC ¶ 61,069 (2005).

21. While noting the proposed expansion project could benefit all customers from improved throughput on Southern Star's existing mainline system, the KCC expresses concern that cost overruns could be a potential problem for existing customers because it is not clear that MGE and SMG would be financially responsible. Thus, the KCC requests that the Commission condition the certificate to require that any unreimbursed cost overruns be borne by Southern Star. We find that the KCC's concern is adequately addressed by the Policy Statement's threshold requirement that existing pipelines proposing a project cannot rely on subsidization from existing customers. Under this policy, Southern Star is prohibited from rolling in the costs of the expansion project including any cost overruns, unless it can demonstrate that the revenues from the expansion will exceed the costs of the expansion. Thus, existing ratepayers will be adequately protected from any adverse rate impact from the expansion project.

22. The MoPSC, while agreeing that MGE and SMG need additional capacity, expresses concern with the proposed rates and the twenty-year terms of the underlying contracts. The MoPSC maintains that contracts for new pipeline and storage projects are typically in the range of five to ten years. While recognizing that contracts for capacity projects having terms beyond ten years may be appropriate in special circumstances, the MoPSC states that it is not convinced that twenty-year contracts are justified here because there is nothing exceptional or extraordinary about this project. Specifically, the MoPSC states that it is concerned with the length of these contracts and/or that no provision was made to charge lower rates (negotiated or term differentiated rates modifying the return on equity) in exchange for entering into the longer-term service contracts.

23. Under section 284.10 of the Commission's regulations, pipelines are permitted flexibility to charge a rate to a shipper up to the maximum rate but not less than the minimum rate on file. Additionally, a pipeline and individual shippers are permitted to negotiate a contract's term with the caveat that a pipeline must provide service without undue discrimination or preference.⁵ MoPSC has not alleged that the rate or contractual term agreed to between the parties in the precedent agreements is inconsistent with these Commission requirements or any other Commission policy. Thus, based on this record, we find that MoPSC has provided insufficient basis to challenge the contractual terms mutually agreed to between Southern Star and both MGE and SMG.

Environmental Analysis

24. On April 6, 2006, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Ozark Trails Expansion Project and Request For

⁵ See 18 C.F.R. § 284.7 (2006).

Comments On Environmental Issues (NOI). We received responses to the NOI from the Kansas Department of Agriculture, the Department of Health & Human Services, Centers for Disease Control and Prevention, and the U.S. Department of Agriculture, Natural Resources Conservation Service. No significant environmental issues were raised in these responses. Mr. Scorse filed comments in this proceeding raising general concerns regarding landowner impacts that could result from the project and from Southern Star's failure to adequately comply with environmental mitigation measures such as properly restoring the pipeline right of way.

25. Our staff prepared an environmental assessment (EA) for Southern Star's proposal. The EA addresses cultural resources, geology and soils, land use, water resources, wetlands, vegetation, wildlife and fisheries, threatened and endangered species, air quality, noise, reliability and safety, polychlorinated biphenyl and alternatives. The EA concludes that if constructed and operated in accordance with the EA's recommended environmental mitigation measures, the proposed project will result in no significant environmental impact. We agree with the conclusions in the EA and adopt the environmental mitigation measures recommended in the EA as conditions to the authorizations granted herein. We find these conditions should adequately address Mr. Scorse's concerns regarding adverse landowner impacts. As to Mr. Scorse's concerns regarding potential non-compliance with these environmental conditions by Southern Star, we note that Commission staff conducts periodic field inspections during construction and restoration of the pipeline right of way to ensure compliance with the Commission's order.

26. Based on the discussion in the EA, we conclude that if constructed or operated in accordance with Southern Star's application and supplements, including responses to staff's data requests, approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

27. 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.⁶

⁶See, 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).

28. Southern Star 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 Star. Southern Star shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

29. The Commission on its own motion received and made a part of the record in this proceeding all filed evidence, including the application and exhibits thereto, and after consideration thereof.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Southern Star to construct and operate certain facilities, as more fully described in this order and in the application.

(B) Permission for and approval of Southern Star's abandonment of facilities, as more fully described in this order and in the application, are granted.

(C) The certificate authority issued in Ordering Paragraph (A) shall be conditioned on the following:

- (1) Southern Star's completion of the authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Southern Star's compliance with all applicable Commission 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 regulations; and
- (3) Southern Star's compliance with the environmental conditions listed in the appendix to this order.

(D) Southern Star 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 Star. Southern Star shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(E) Southern Star's proposed initial rates for firm transportation service are approved. Southern Star must maintain its records for the expansion project in a manner to comply with the requirements of section 154.309 of the Commission's regulations.

(F) Southern Star must file, no less than 30 days, or more than 60 days, prior to commencing service, actual tariff sheets consistent with its pro forma tariff sheets.

(G) Southern Star shall not commence construction until it executes firm contracts equal to the capacity to which the expansion shippers have committed to in signed precedent agreements, as described herein.

(H) Mr. Scorse's May 8, 2006 answer is accepted.

(I) Mr. Scorse's motion to intervene is granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

Environmental Conditions for Southern Star's Ozark Trails Expansion Project

1. Southern Star shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by this Order. Southern Star must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions to this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Southern Star shall file an affirmative statement with the Secretary, certified by senior company officials, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. **Before construction**, Southern Star shall conduct pre- and post-construction monitoring of well yield and water quality and within 30 days of placing the facilities in service, Southern Star shall file a report with the

Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved.