

123 FERC ¶ 61,310
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.

Southeast Supply Header, LLC

Docket Nos. CP07-44-002
CP07-45-001

ORDER AMENDING CERTIFICATE

(Issued June 27, 2008)

1. On February 1, 2008, Southeast Supply Header, LLC (SESH) filed an application under section 7(c) of the Natural Gas Act, to amend its certificate issued on September 20, 2007.¹ The amendment, providing for the construction and operation of the Hi Fields Lateral facilities (Hi Fields), would allow SESH to transport approximately 175 million cubic feet of natural gas per day (MMcf/day) to Southern Company Services, Inc.'s (SCS) Daniel Electric Generating Plant facilities in Jackson County, Mississippi. For the reasons discussed below, the Commission will grant the requested authorizations, subject to certain conditions.

Background and Proposal

2. SESH is a Delaware limited liability company headquartered in Houston, Texas. SESH was formed as a joint venture between CenterPoint Energy Southeastern Pipelines Holding, LLC and Spectra Energy Corporation, each of which holds a 50 percent interest. CenterPoint Energy Southeastern Pipelines Holding, LLC is an indirect, wholly-owned subsidiary of CenterPoint Energy, Inc., a publicly traded company. Upon completion of the construction authorized in the September 20 Order and initiation of facility operations, SESH will be a natural gas company engaged in the transportation of natural gas in interstate commerce.

3. On May 17, 2007, in Docket Nos. CP07-44-000 and CP07-45-000, the Commission issued a preliminary determination (P.D.) addressing the non-environmental issues of SESH's and Southern Natural Gas Company's request for certificate

¹ *Southeast Supply Header, LLC*, 120 FERC ¶ 61,257, *Errata Notice*, 121 FERC ¶ 61,031 (2007) (September 20 Order).

authorization to construct and operate 269 miles of new natural gas transmission facilities in Louisiana, Mississippi, and Alabama.² On September 20, 2007, the Commission granted SESH a certificate to proceed with the facility's construction and operation.³

4. The September 20 Order states that SESH entered into four precedent agreements accounting for approximately 945 MMcf/day of firm transportation service, about 94.5 percent of the overall SESH project capacity. Included among the agreements filed was a precedent agreement with SCS, executed after SESH filed its original application.⁴ SESH states that the SCS precedent agreement provides for 175 MMcf/day of firm service, at a negotiated rate, and provides for the construction of the Hi Fields facilities.

5. SESH intended service on the Hi Fields facilities to be among the initial services it would provide later this year. SESH states that when it entered into the precedent agreement with SCS it planned to construct the Hi Fields facilities under its subpart F blanket construction certificate authorization. However, a portion of the Hi Fields route traverses habitat of the gopher tortoise, a federally listed threatened species in Mississippi and Alabama.

6. The U.S. Fish and Wildlife Service requires SESH to adhere to certain specific conditions in treating any gopher tortoises it encounters. Therefore, the Hi Fields facilities could not be constructed pursuant to the SESH's blanket certificate.⁵ Accordingly, SESH's amendment seeks discrete authority for the construction and operation of the Hi Fields facilities.

7. The proposed Hi Fields Lateral consists of approximately 11.0 miles of new 16-inch outside diameter natural gas pipeline, extending in a southwesterly direction from SESH's mainline pipeline in Mobile County, Alabama, to an existing 20-inch diameter pipeline connection to SCS's Daniel Electric Generating Plant facilities in Jackson

² *Southeast Supply Header, LLC*, 119 FERC ¶ 61,153 (2007) (May 17 Order).

³ In the September 20 Order, SESH was also granted: in Docket No. CP07-46-000, a Part 157, subpart F blanket construction certificate; and, in Docket No. CP07-47-000, a Part 284, subpart G blanket natural gas transportation certificate.

⁴ On March 2, 2007, SESH filed precedent agreements with three additional shippers with the Commission.

⁵ Section 157.206(b)(4) of the blanket certificate regulation specifies that "any transaction authorized under a blanket certificate shall not have a significant adverse impact on a sensitive environmental area." 18 C.F.R. § 157.206(b)(4) (2007).

County, Mississippi. Two mainline valves will be installed on each end of the 16-inch lateral. The Hi Fields pipeline will operate at approximately 1,200 pounds per square inch gauge and will cost about \$19.4 million.

8. SESH also requests waiver of the Certificate Policy Statement such that the Hi Fields facilities may be treated for ratemaking purposes as a project approved under its Part 157, subpart F blanket certificate. SESH expects the Hi Fields Lateral to go into service coincident with the initial operation of the SESH mainline in November 2008. Therefore, SESH requests Commission issuance of the necessary authorizations and waivers in this proceeding on or before September 1, 2008.

Notice and Interventions

9. Public notice of SESH's February 1, 2008 application for a certificate amendment was published in the *Federal Register* on February 20, 2008 (73 Fed. Reg. 9,319). The Arkansas Public Service Commission filed a timely, unopposed notice of intervention.⁶ No protests or adverse comments to the application were filed.

Discussion

A. Certificate Policy Statement

10. The Commission, in the previous orders in this proceeding, has found that SESH's project is consistent with the Commission's Policy Statement⁷ and is in the public convenience and necessity.⁸ We agree that the Hi Fields facilities should be considered as part of the certificated SESH project, regardless of whether they qualify for construction under SESH's blanket certificate, because service to SCS was specifically part of the underlying market support for the original project. We find that nothing in the current proposal changes our previous findings. Therefore, the same rationale for approving the original SESH project applies here as well. We find that the amendment application will have no adverse impacts on existing customers and will not create a financial subsidy because SESH has not yet commenced service and therefore has no existing customers. Moreover, the Hi Fields facilities would not adversely affect other

⁶ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2007).

⁷ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order further clarifying policy*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

⁸ *See* September 20 Order, 120 FERC ¶ 61,257 at P 13; May 17 Order, 119 FERC ¶ 61,153 at P 28.

pipelines and their customers. Finally, as discussed below, the Hi Fields facilities will be constructed in a manner that will mitigate potential adverse impacts to the environment and landowners.

11. Therefore, in consideration of the facts in the record, we affirm our previous finding that SESH's proposal is in the public convenience and necessity and authorize SESH to construct and operate the Hi Fields facilities.

B. Rolled-in Rate Treatment

12. SESH states that it is not seeking any changes to the initial recourse rates approved in the May 17 and September 20 Orders to recover the additional facility costs, since the Hi Fields facilities were always contemplated to be part of the whole SESH project. Therefore, it is appropriate to allow the cost of the Hi Fields facilities to be rolled into the SESH project initial rates and no waiver is necessary.

C. Environmental Analysis

13. On February 21, 2008, we issued a Notice of Intent to Prepare an Environmental Assessment (EA) for the proposed Hi Fields Lateral Project and Request for Comments on Environmental Issues (NOI). The NOI was sent to affected landowners; federal, state and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local newspapers and libraries. On March 10, 2008, Commission staff conducted an inspection of the proposed pipeline route. In response to the NOI, we received comments from the U.S. Fish and Wildlife Service (USFWS), the State of Alabama Historical Commission (AHC), and the Department of Health and Human Services (DHHS). These comments were addressed in the EA as described below.

14. The USFWS in its letter to staff identified the threatened and endangered species potentially affected by the proposed project and stated that the proposed project is not likely to adversely affect the Alabama red-bellied turtle, black pine snake, eastern indigo snake, Louisiana quillwort, Louisiana black bear, Mississippi gopher frog, pearl darter, red-cockaded woodpecker, and yellow blotched map turtle. The USFWS also stated that the proposed project is likely to adversely affect the gopher tortoise. Based on these comments and staff's analysis as described in the EA, staff prepared a biological assessment for the proposed project as required by section 7 of the Endangered Species Act. Staff has determined that construction and operation of the proposed project would not affect the Louisiana quillwort and the Mississippi gopher frog; is not likely to adversely affect the yellow blotched map turtle, eastern indigo snake, Alabama red-bellied turtle, red-cockaded woodpecker, and the Louisiana black bear; and may affect

the gopher tortoise. Since construction and operation of the proposed project may affect the gopher tortoise, staff has requested the initiation of formal consultation with the USFWS for the proposed project.

15. The AHC affirmed that it had concurred with the findings of SESH's cultural resources study and agreed that no significant archaeological sites or other historic properties are located in the area potentially affected by the proposed project. Our EA finds that no cultural resources listed on or eligible for the National Register of Historic Properties would be affected by the proposed project.

16. The DHHS comments identified areas of potential public health concern that it believed should be considered and addressed if appropriate in the EA, including air quality, water quality and quantity, wetlands and flood plains, hazardous materials and wastes, non-hazardous solid waste and other materials, noise, occupational health and safety, land use and housing, and environmental justice. DHHS' concerns were considered during staff's review and were addressed as appropriate in the EA.

17. The EA for SESH's proposal was issued on May 30, 2008. The EA addresses geology and soils, water resources, wetlands, vegetation, wildlife and fisheries, threatened and endangered species, land use, cultural resources, air and noise quality, and alternatives.

18. In response to the EA, we received only one comment letter. SESH requests that we modify the EA to be consistent with its data response dated April 25, 2008 regarding its proposed horizontal directional drill (HDD) at the Escatawpa River and associated wetland complex. SESH states that it proposes to extend the HDD by 1,000 feet in length, not 2,000 feet as recommended by environmental recommendation number 11 of the EA.

19. Based on the size of the wetland complex, the relative lack of disturbance to it, observations made by Commission staff during a site visit regarding the quality of the wetland complex, and in consideration of other agency concerns, staff recommends in the EA that SESH prepare a site specific HDD crossing plan for the river and wetland complex beginning at approximately MP 7.1, and that the plan should indicate an approximately 2,000 foot extension of the originally proposed HDD, so that the entire HDD would be approximately 3,000 feet in length.

20. We believe the extension of the HDD to 3,000 feet is reasonable, given recent successes of construction of 42-inch-diameter pipeline projects with HDDs of similar distances. In considering SESH's comments and staff's recommendation in the EA, we have revised environmental condition number 11 in the appendix of this order to clarify the beginning and ending points (by milepost) illustrating the total distance of the HDD.

21. Based on the analysis described in the EA, we conclude that if constructed and operated in accordance with SESH's application, supplements, and the conditions in the appendix to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

22. 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.⁹

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

The Commission orders:

(A) SESH's certificate of public convenience and necessity issued on September 20, 2007, is amended to authorize SESH to construct, own, and operate the natural gas facilities, as described and conditioned herein and as more fully described in the application.

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

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

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

⁹ 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).

(C) SESH shall execute service agreements equal to the level of service represented in its precedent agreement prior to commencing construction.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. SESH shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff information requests), and as identified in the EA, unless modified by the Commission's order. SESH must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the 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 OEP **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Commission's 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**, SESH shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, EIs, and contractor personnel will be informed of the EIs' authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA and as supplemented by filed alignment sheets. **As soon as they are available, and prior to the start of construction**, SESH shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Commission's order. All requests for modifications of environmental conditions of the Commission's order or site-specific clearances

must be written and must reference locations designated on these alignment maps/sheets.

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

5. SESH shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, 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, and documentation of landowner approval, whether any cultural resources or federally-listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

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

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or would affect sensitive environmental areas.
6. **Within 60 days of the acceptance of a certificate and prior to construction,** SESH shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how SESH will implement the mitigation measures required by the Commission's order. SESH must file revisions to the plan as schedules change. The plan shall identify:

- a. how SESH will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - b. the number of 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. what training and instructions SESH 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;
 - e. the company personnel (if known) and specific portion of SESH's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) SESH will follow if noncompliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (i) the completion of all required surveys and reports;
 - (ii) the mitigation training of onsite personnel;
 - (iii) the start of construction; and
 - (iv) the start and completion of restoration.
7. SESH shall employ one or more EIs per construction spread. The environmental inspectors shall be:
- a. responsible for monitoring and ensuring compliance with all mitigative measures required by the Commission's order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Commission's 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.
8. SESH shall file updated status reports prepared by the lead EI with the Secretary on a **weekly** basis **until all construction-related activities, including restoration, are complete for each phase of the Project**. On request, these

- status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. 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 that may relate to compliance with the requirements of the Commission's order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by SESH from other federal, state or local permitting agencies concerning instances of noncompliance, and SESH's response.
9. SESH must receive written authorization from the Director of OEP **before commencing service** for each phase of the Project. Such authorization will only be granted following a determination that rehabilitation and restoration of areas affected by the Project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, SESH shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions SESH 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.
11. Prior to construction, SESH shall file for review and written approval of the Director of OEP, a site-specific HDD plan for the forested wetland associated with the Escatawpa River. This plan shall illustrate a 3,000-foot-long HDD extending from about MP 7.1 to MP 7.6.
12. **SESH shall not begin construction activities** until:
- a. the staff completes section 7 consultations with the FWS; and

- b. SESH has received written notification from the Director of OEP that construction or use of mitigation may begin.
13. **SESH shall defer construction of the proposed facilities** until SESH receives concurrence from the Mississippi SHPO on SESH's cultural resource reports and the SHPO's comments.
14. SESH shall limit vegetation removal above HDD paths to the maximum extent practicable, except for clearing of brush and saplings using hand tools to facilitate the use of HDD tracking systems, hydrostatic test water lines, the placement of a water withdrawal pump, and installation of pipeline markers. No vegetation shall be removed with power tools or construction equipment without **prior written approval** by the Director of OEP.
15. **SESH shall not begin construction activities** until it files with the Secretary a copy of the determination of consistency with the Coastal Zone Management Plan issued by the Department of Marine Resources.
16. **Prior to any construction**, SESH shall file a HDD noise mitigation plan for drilling activities occurring over a 24-hour day at the Escatawpa River crossing for NSA #1 for review and written approval by the Director of OEP. This plan should provide a commitment as to which noise mitigation measure SESH would use and when and how this mitigation measure would be implemented to reduce noise impacts to below significant.
17. **Prior to any construction**, SESH shall file with the Secretary for review and written approval by the Director of OEP, a revised route variation that would avoid disturbance of sensitive wildlife habitat, at approximately MP 5.0.