

126 FERC ¶ 61,093  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Natural Gas Company  
Magnolia Enterprise Holdings, Inc.

Docket No. CP08-5-001

ORDER AMENDING CERTIFICATE AND GRANTING ABANDONMENT

(Issued February 5, 2009)

1. On October 2, 2008, Southern Natural Gas Company (Southern) and Magnolia Enterprise Holdings, Inc. (Magnolia) jointly filed a petition to amend the order issued in *Southern Natural Gas Co. and Magnolia Enterprise Holdings, Inc.*<sup>1</sup> In that order, the Commission authorized Southern, among other things, to construct and operate compression and metering facilities, abandon an undivided interest in certain pipeline facilities by sale to Magnolia, and lease capacity from Magnolia. In addition, the order denied Southern's proposed maximum incremental rate for providing firm transportation service over the leased facilities.

2. In the petition to amend, Southern explains that it, Atlanta Gas Light Company (Atlanta Gas), and AGL Resources, Inc. (parent company to Magnolia) have amended the Purchase and Sale Agreement and Form of Capacity Lease Agreement underlying the proposed project in order to accommodate the requirements of the Commission's July 17 Order. Southern also states that it held an open season for the capacity to be created by the project and Atlanta Gas submitted the winning bid. In accordance with the amended agreements, Southern seeks authority to abandon by sale to Magnolia two meter stations and to lease from Magnolia the two meter stations as part of the Leased Facilities.<sup>2</sup> Further, to accommodate the terms of its proposed service arrangements with Atlanta Gas, Southern seeks authority to include non-conforming language in its firm transportation (FT) agreement with Atlanta Gas. Finally, Southern requests the Commission extend the time period to construct the facilities authorized in the July 17 Order. Southern also notes that it intends to charge a discounted reservation rate for

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<sup>1</sup> 124 FERC ¶ 61,058 (2008) (July 17 Order).

<sup>2</sup> See *infra* P 6.

Southern's firm transportation service for Atlanta Gas on the Leased Facilities. For the reasons discussed below, we will grant the requested authorizations, subject to certain conditions.

## **I. Background**

3. Southern proposed the sale, lease, abandonment, and construction transactions as part of a plan to transport gas from Southern LNG's facility at Elba Island, Georgia, to the Atlanta, Georgia area for Atlanta Gas. Southern stated that the transactions will enhance supply opportunities and provide infrastructure to support anticipated growth in demand for natural gas service in Georgia.

4. Specifically, the July 17 Order authorized Southern to construct and operate a 7,700 horsepower (hp) compressor unit at the Riceboro Compressor Station on Southern's Cypress Line<sup>3</sup> which will create an additional 82,000 Mcf of capacity on Southern's system. Additional volumes of natural gas will flow from Southern LNG's Elba Island liquefied natural gas (LNG) terminal through Southern's facilities described below into Atlanta Gas's existing Brunswick Line. The July 17 Order denied Southern's request to construct the East Brunswick and MM3 meter stations under its Part 157 blanket certificate and required that the stations be constructed as part of the certificate proceeding.

5. The July 17 Order also authorized Southern to abandon by sale to Magnolia an undivided interest equal to a percentage equivalent of 82,000 Mcf in the following Southern facilities: the Twin 30s Pipelines extending from Southern's interconnection with the Elba Island LNG facility to Port Wentworth in Chatham County, Georgia and Jasper County, South Carolina; 10 miles of the Wrens to Savannah Second Loop Line, from the interconnection with the Twin 30s Pipelines in Port Wentworth, Georgia to the Rincon Gate in Effingham County, Georgia; the Cypress Pipeline extending from the Wrens to Savannah Lines to the interconnection with Atlanta Gas's Brunswick Pipeline in Glynn County, Georgia; the Brunswick Pipeline extending from Southern's Jackson Measurement Station in Laurens County, Georgia to Jones County, Georgia; and the East Brunswick measurement station at the interconnection of Southern's Cypress Line and Atlanta Gas's Brunswick Line in Glynn County, Georgia. Collectively, these facilities are known as the Sales Facilities. In a separate transaction, not subject to the Commission's jurisdiction, Atlanta Gas agreed to sell to Magnolia 107.5 miles of Atlanta Gas's intrastate Brunswick Line extending west from the interconnection with Southern's Cypress Line to the interconnection with Southern's Brunswick Line.

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<sup>3</sup> See *Southern Natural Gas Co. and Florida Gas Transmission Co.*, 115 FERC ¶ 61,328 (2006) (authorizing the construction and operation of the Riceboro Compressor Station as part of its Cypress Project).

6. In addition, the July 17 Order authorized Southern to lease from Magnolia the undivided interest in the Sales Facilities, including the new 7,700-hp compressor unit at the Riceboro Compressor Station, along with the previously described portion of Atlanta Gas's Brunswick Line (Leased Facilities), so that Southern could operate all the involved facilities as a part of its system under the terms of its tariff.

7. In conjunction with these transactions, Southern agreed to provide Atlanta Gas an additional 82,000 Mcf per day of firm transportation capacity on the Leased Facilities under Rate Schedule FT (FT package). Southern will transport the gas to delivery points along the Leased Facilities and the new MM3 delivery point in Jones County. The FT package will have a primary term of 15 years and will run concurrently with the term of the capacity lease.

8. The July 17 Order rejected Southern's proposed incremental rate of \$6.31 per dekatherms (Dth) per month for FT service to Atlanta Gas,<sup>4</sup> explaining that where the cost-based incremental rate is lower than the existing system rate, the Commission has required pipelines to charge their generally applicable transportation rate as the initial recourse rate. As a result, the Commission found that the maximum initial recourse reservation rate for service over the Leased Facilities should be Southern's existing Zone 3 rate of \$11.89 per Dth per month. The Commission declined to make a predetermination regarding future rate treatment for the costs associated with the proposal. Although the Commission approved the capacity lease agreement, the Commission found that Southern would have to support all costs associated with the lease payment in any general section 4 rate case in order to recover the cost of the lease payment in its rates.

## **II. Proposals**

9. As noted above, Southern has renegotiated its Purchase and Sale Agreement and Form of Capacity Lease Agreement with AGL Resources, Inc. and Atlanta Gas. In order to implement the changes in the agreements, Southern proposes to abandon by sale to Magnolia the East Brunswick and MM3 meter stations. Southern also proposes to lease the meter stations back from Magnolia as part of the Leased Facilities in order to provide transportation to Atlanta Gas.

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<sup>4</sup> The proposed incremental reservation rate was based upon an annual cost of service of \$6,344,390, which consisted of a lease payment of \$5,978,591 paid by Southern to Magnolia under the capacity lease agreement, plus \$365,799 of other operation and maintenance expenses, and all applicable surcharges, including the Zone 3 to Zone 3 fuel retention percentage, as set forth in Southern's tariff.

10. Pursuant to the revised terms of the agreements, the lease agreement may be terminated at any time in the event the FT service agreement is terminated.<sup>5</sup> In addition, section 7 of the revised lease agreement provides for early termination of the lease agreement in the event that (i) the rate associated with the FT service, for any reason, is not given discounted rate treatment with a downward adjustment to the imputed billing determinants associated with the FT service to reflect the discount for the purposes of deriving Southern's maximum system-wide rates;<sup>6</sup> (ii) Southern is not allowed recovery of any part of the lease payment to Magnolia in the derivation of Southern's maximum system-wide rates; or (iii) in any given calendar year, the cumulative capital expenditures are above the cost threshold for the year in which the work associated with the capital expenditures is completed.<sup>7</sup>

11. Southern requests authorization to include non-conforming language in the FT agreement with Atlanta Gas to allow for termination of service provided over the Leased Facilities in the event the lease terminates prior to the end of the 15-year primary term. Southern states that the non-conforming termination provision is appropriate and nondiscriminatory because it does not provide service on any other facilities that are leased from a third party and to which this circumstance would apply. Also, Southern states that it cannot provide service on the Leased Facilities if the lease terminates. Moreover, Southern claims the provision is not discriminatory because it must receive Commission approval in order to abandon the lease, so the consequences of the termination of service to Atlanta Gas would be addressed in such abandonment proceeding. Lastly, Southern asserts such treatment of leased capacity is consistent with the language set forth in section 23 of the General Terms and Conditions of Southern's tariff regarding off-system capacity.

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<sup>5</sup> See section 1.4 of the Revised Capacity Lease Agreement in Exhibit D of Southern's application.

<sup>6</sup> As noted, Southern states that it will charge Atlanta Gas a discounted reservation rate estimated to be \$6.77 per Dth per month for transportation on the Leased Facilities, plus applicable fuel and surcharges. Southern states the discounted reservation rate will reflect the total actual capital costs and sale costs of the Leased Facilities.

<sup>7</sup> The revised lease agreement also provides that upon termination of the lease agreement, in the event that Magnolia does not elect to sell the Leased Facilities, or if Southern or Atlanta Gas do not elect to purchase their portion of the Leased Facilities, such facilities would become part of a separate interstate pipeline system run by Magnolia, upon Magnolia obtaining the appropriate authorization to operate the Leased Facilities separate from Southern's system. See sections 7.1-7.4 of the Revised Capacity Lease Agreement in Exhibit D of Southern's application.

12. Finally, Southern requests amendment of Ordering Paragraph (F) to the July 17 Order, which requires Southern to have the compression and measurement facilities constructed in one year, i.e., by July 17, 2009. Southern states that it only placed the order for the compressor once it decided to accept the July 17 certificate, that manufacturing the compressor will take nine months, and that once the compressor is delivered to the site, it will take approximately six months to install the compressor and ancillary systems. Accordingly, Southern requests that Ordering Paragraph (F) be amended to allow it 17 months to place the facilities in service from the date the instant order is issued.

### **III. Notice and Protests**

13. Notice of the application was published in the *Federal Register* on October 22, 2008 (73 Fed. Reg. 62,980). BP America Production Company, ExxonMobil Gas & Power Marketing Company, and Chevron Global Gas (jointly known as Indicated Shippers) and the Alabama Municipal Distributors Group, Austell Gas System and the Southeast Alabama Gas District (jointly known as Municipals) separately filed timely protests. Southern and Magnolia filed a joint answer to the protests. While answers to protests are generally prohibited by our Rules of Practice and Procedure, we find good cause to waive Rule 213(a)<sup>8</sup> to allow Southern and Magnolia's joint answer because it provides information that has assisted us in our decision-making.<sup>9</sup> We will address the protest below.

### **IV. Discussion**

14. Because the facilities included in the lease agreement will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, operation of the facilities is subject to the requirements of sections 7(c) and 7(e) of the Natural Gas Act (NGA).<sup>10</sup> The proposed abandonment by Southern is subject to the requirements of section 7(b) of the NGA.<sup>11</sup>

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<sup>8</sup> 18 C.F.R. § 385.213(a)(2) (2008).

<sup>9</sup> See, e.g., *Pan Gas Storage, LLC*, 120 FERC ¶ 61,223, at P 10 (2007), *Northern Natural Gas Co.*, 119 FERC ¶ 61,111, at P 13 (2007), *Texas Gas Transmission, LLC*, 117 FERC ¶ 61,261, at P 9 (2006).

<sup>10</sup> 15 U.S.C. §§ 717f(c) and 717f(e) (2006).

<sup>11</sup> *Id.* § 717f(b).

## A. Certificate Policy Statement

15. The July 17 Order analyzed Southern's proposals in light of the Commission's Certificate Policy Statement<sup>12</sup> and found that the proposals were in the public convenience and necessity.<sup>13</sup> Specifically, the order found that the proposals would provide Atlanta Gas and its customers direct access to Elba Island LNG, affording them greater supply security and diversity to support anticipated growth in natural gas demand in Georgia.<sup>14</sup> Further, the July 17 Order found that the project could proceed without subsidization from existing customers.<sup>15</sup> In addition, the July 17 Order determined that there would not be any adverse effects on existing pipelines or their customers and that adverse impacts to landowners and communities affected by the project would be minimal.<sup>16</sup>

### 1. Discounted Reservation Rate

16. In the petition to amend, Southern proposes to provide 82,000 Mcf per day of capacity to Atlanta Gas at a discounted reservation rate of \$6.77 per Dth per month, plus applicable fuel and surcharges, which reflects the total actual capital costs and sale costs of the Leased Facilities, including the cost of the additional two meter stations.

17. Indicated Shippers and the Municipals state that the Commission rejected the \$6.31 per Dth per month incremental rate, as initially proposed by Southern, for service provided on the Leased Facilities based on Commission precedent and policy because the cost-based incremental rate was lower than Southern's existing system rate of \$11.89 per Dth. Indicated Shippers and the Municipals contend that accepting the proposed discounted rate of \$6.77 per Dth per month would require existing customers to subsidize the new firm service to Atlanta Gas and that the extent of the subsidization would be essentially the same as if the Commission had accepted the incremental rate of \$6.31 per Dth per month as initially proposed. They maintain that Southern did not seek rehearing of the July 17 Order and cannot now seek reversal of that ruling by proposing a

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<sup>12</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) (Certificate Policy Statement), *clarified*, 90 FERC ¶ 61,128, (2000), *further clarified*, 92 FERC ¶ 61,094 (2000).

<sup>13</sup> *See* July 17 Order, 124 FERC ¶ 61,058 at P 33.

<sup>14</sup> *See id.*

<sup>15</sup> *See id.*

<sup>16</sup> *See id.* P 31-32.

rate that would require subsidization by existing customers or, alternatively, the right to seek to terminate service.

18. Southern and Magnolia reply that that Indicated Shippers and the Municipals misinterpret the Commission's ruling, specifically Paragraph 38 of the order, which concludes "we find that the maximum initial recourse reservation charge for service over the Lease Facilities should be Southern's existing Zone 3 rate of \$11.89 per Dth per month, not the \$6.31 per Dth per month incremental rate proposed by Southern."<sup>17</sup> Southern and Magnolia assert that the protesters misinterpret this sentence as stating that Southern must charge the existing maximum Zone 3 rate for the transportation service subscribed by Atlanta Gas. Southern and Magnolia, however, maintain that the operative words in the above sentence, "recourse reservation charge," clearly refute the protesters' position. Southern and Magnolia maintain that the July 17 Order does not deny Southern the right to charge a discounted rate to Atlanta Gas for service provided over the Leased Facilities.

## **2. Commission Rate Determination**

19. Southern is correct in its reading of the July 17 Order. The July 17 Order denied Southern's proposal to charge its proposed incremental rate as the initial recourse rate for service to Atlanta Gas utilizing the Leased Facilities. The July 17 Order did not address whether Southern could discount its rate for service to Atlanta Gas. The July 17 Order made no finding with respect to the actual rate to be charged to Atlanta Gas under the terms of the FT agreement. In this amendment, Southern is proposing to sell to Magnolia and lease back two additional meter stations as part of the Leased Facilities. Southern does not propose in the instant filing to amend the previously approved initial recourse rate for service utilizing the Leased Facilities, which is Southern's Zone 3 rate (currently \$11.89 per Dth per month). The facility changes proposed herein are *de minimis* and do not require a change to the Commission's finding in the July 17 Order that the appropriate initial recourse rate for services over the Lease Facilities is Southern's Zone 3 rate.

20. In accordance with its tariff authority, Southern states it will assess a discounted reservation rate, estimated to be \$6.77 per Dth per month, plus applicable fuel and surcharges for service to Atlanta Gas utilizing the Leased Facilities. Southern states that the discounted rate reflects the total actual capital costs and sales costs of the Leased Facilities, including the cost of the additional two meter stations. Southern's tariff permits it to discount rates. However, we emphasize that the Commission is not modifying here the finding in the July 17 Order that Southern will be required to demonstrate that its proposed rate treatment will not result in subsidization of this

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<sup>17</sup> *Id.* P 38.

expansion by its existing shippers when Southern files a section 4 proceeding to recover costs associated with the lease.<sup>18</sup> Should Southern seek discount adjustments for the lease payments in a future section 4 rate proceeding, shippers will have the opportunity to oppose that request and Southern will have the burden of demonstrating that its proposed rate treatment will not result in subsidization by its existing customers.

### 3. Conclusion

21. The July 17 Order authorized Southern's proposals based on the findings discussed above and the representations in Southern's application. Southern's proposal to amend its proposal by abandoning the East Brunswick and MM3 meter stations by sale to Magnolia and leasing them back as part of the Leased Facilities does not change the basis for any of our findings in the July 17 Order. Accordingly, consistent with the public convenience and necessity, we will amend our previous authorizations to allow Southern to abandon the East Brunswick and MM3 meter stations by sale to Magnolia and to lease those meter stations back from Magnolia as part of the Leased Facilities.

#### B. Non-conforming FT Agreement Language

22. Southern requests authorization to include non-conforming language in the FT agreement with Atlanta Gas, which allows termination of service utilizing the Leased Facilities in the event the lease terminates prior to the end of the 15-year primary term.

23. Sections 154.1(d) and 154.112(b) of the Commission's regulations require that natural gas companies file with the Commission service agreements which deviate in any material aspect from the form of service agreement in the tariff.<sup>19</sup> In *Columbia Gas Transmission Corporation*,<sup>20</sup> the Commission clarified that a material deviation is any provision in a service agreement that: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff and (2) affects the substantive rights of the parties.<sup>21</sup> Such a filing enables the Commission and interested parties to determine whether the contract with the material deviations complies with the requirements of the NGA, including the prohibition of undue discrimination.<sup>22</sup> Therefore, there are two general categories of material deviations: (1) provisions the Commission must prohibit

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<sup>18</sup> See *id.* P 40.

<sup>19</sup> See 18 C.F.R. §§ 154.1(d) and 154.112(b) (2008).

<sup>20</sup> 97 FERC ¶ 61,221 (2001).

<sup>21</sup> See *id.* at 62,002.

<sup>22</sup> See *id.* at 62,004.

because they present a significant potential for undue discrimination among shippers, and (2) provisions the Commission can permit without a substantial risk of undue discrimination.<sup>23</sup>

24. Southern's Rate Schedule FT is a service provided pursuant to its open-access transportation certificate. While Rate Schedule FT authorization provides for pregranted abandonment of transportation service upon expiration of the contract term,<sup>24</sup> Southern's proposed termination provision goes beyond its tariff's pro forma Rate Schedule FT service agreement's simple fill-in-the-blank format.<sup>25</sup> Therefore, Southern's proposed conditional termination language is a material deviation from its pro forma service agreement. However, the Commission does not find it unduly discriminatory. The Certificate Policy Statement encourages parties to address the risks in the event a project does not develop as anticipated.<sup>26</sup> Here, Atlanta Gas and Southern have agreed to terminate the FT contract in the event of early termination of the lease.<sup>27</sup> This arrangement is reasonable. The Commission will not require that Southern make this provision a part of its generally applicable tariff. The lease arrangement is unique on Southern's system. Thus, we will require Southern to file the executed service agreement if it contains this provision as a non-conforming service agreement 30 to 60 days prior to placing the facilities into service in accordance with section 154.112(b) of the Commission's regulations.

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<sup>23</sup> *See id.* at 62,003.

<sup>24</sup> *See* 18 C.F.R. § 284.221(d) (2008).

<sup>25</sup> Southern's pro forma service agreement provides a blank space on a row on Exhibit B (Southern's 7<sup>th</sup> Revised Volume No. 1, Second Revised Sheet No. 300).

<sup>26</sup> Under the Certificate Policy Statement, the pipeline bears the risk for the financial consequences of an expansion decision unless expansion customers agree to share the risk with the pipeline by specifying what will happen to rates under certain circumstances, such as when anticipated volumes do not develop or there are cost overruns. The Commission encourages pipelines to reach agreement with new shippers concerning specific elements of risk. *See* Certificate Policy Statement at 61,747.

<sup>27</sup> As Southern acknowledges in its application, termination of the lease agreement does not terminate Southern's certificate obligations with respect to the Leased Facilities. Appropriate disposition of the Leased Facilities at the end of the lease can only be determined by the Commission in a section 7(b) abandonment proceeding.

**C. Amendment of Ordering Paragraph (F)**

25. Southern requests Ordering Paragraph (F) of the July 17 Order be amended. Southern explains that it placed an order for the authorized compressor on August 1, 2008, and that manufacturing of the unit will take approximately nine months. Once the unit is delivered, Southern states it will need approximately six months to install the compressor and ancillary systems.

26. For good reason provided by Southern, the Commission will grant Southern's request that Ordering Paragraph (F) of the July 17 Order be amended to allow Southern 17 months from the date of this order to place the facilities in service.

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

The Commission orders:

(A) Southern's proposed amendment, as more fully described in this order and the petition, is approved.

(B) Southern is granted permission to abandon by sale to Magnolia the East Brunswick and MM3 facilities, as more fully described in this order.

(C) Southern must file with the Commission not less than 30 days and no more than 60 days prior to the commencement of service of these facilities any executed service agreement that deviates in any material aspect from the form of service agreement in accordance with section 154.112(b) of the Commission's regulations.

(D) Ordering Paragraph (F) is amended so that Southern may complete construction of the facilities authorized in the July 17 Order and make them available for service within 17 months of the issuance of this order.

(E) In all other respects, the July 17 Order shall remain in full force and effect.

By the Commission. Commissioner Kelliher is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.