

125 FERC ¶ 61,307
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 Gas Storage, LLC

Docket No. CP08-418-000

ORDER ISSUING CERTIFICATES

(Issued December 18, 2008)

1. On June 6, 2008, Southeast Gas Storage, LLC (Southeast) filed an application in Docket No. CP08-418-000 under section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the construction and operation of a natural gas storage facility and associated facilities (Black Warrior Storage Project) in Monroe and Lowndes Counties, Mississippi. Southeast also requests a blanket construction certificate under subpart F of Part 157 of the Commission's regulations and a blanket certificate to provide open-access firm and interruptible storage and hub services under subpart G of Part 284, of the Commission's regulations. In addition, Southeast requests authority to charge market-based rates for the proposed storage services and waiver of certain Commission filing requirements for storage providers proposing cost-based rates. Southeast also requests approval of its proposed pro forma gas tariff.

2. As discussed below, the Commission finds that Southeast's proposed Black Warrior Storage Project is required by the public convenience and necessity and issues the requested certificate authorizations, subject to conditions. The Commission also grants Southeast's requests for market-based rate authority for its storage services and waiver of certain filing and other requirements.

I. Background

3. Southeast is a limited liability company and a subsidiary of El Paso Corporation (El Paso). El Paso formed Southeast as a separate entity to accommodate potential equity investments by unaffiliated parties. Southeast currently does not own any jurisdictional assets, does not offer or provide natural gas storage service of any kind, and does not

have any existing customers. Upon acceptance of the requested certificate authorizations, Southeast will become a jurisdictional natural gas company within the meaning of NGA section 2(6).¹

II. Proposal

A. Need for the project

4. Southeast proposes to develop the Black Warrior Storage Project to satisfy the growing demand for natural gas storage. Southeast states that the project is strategically located in a region where it will be able to store gas from Gulf Coast producers, LNG terminals, and additional supply coming from the midcontinent via new pipeline projects. Southeast also states that the project will provide needed deliverability to end users in the eastern United States. Southeast asserts that, in addition to providing much needed storage capacity in the Gulf Coast region, Southeast will be able to offer its customers varying levels of deliverability that only a high deliverability storage field like the one proposed can offer. Southeast held a non-binding open season from April 14, 2008, through May 14, 2008, and received bids for approximately 60 Bcf of capacity, or almost three times the capacity of the project. Southeast asserts that these bids, which were received from LDCs, power generators, industrials, natural gas marketers, LNG importers and natural gas producers, demonstrate that there is substantial market demand for the project's services.

B. New facilities

5. Southeast proposes to construct and operate a multi-cycle natural gas storage facility that will be converted from an existing natural gas production field known as the Buttatchie Field. The storage facility will include the interval from 100 feet above the Millerella Limestone to 100 feet below the base of the Lewis formation that includes the Carter and Lewis sands. Southeast proposes to develop its storage reservoir in the Carter sand formation. Southeast will maintain observation wells in the Lewis sand formation to ensure gas does not migrate from the storage field. The caprock will consist of the 100 feet of Millerella Limestone and the 70 feet of shale directly above the Carter sand formation. The proposal includes drilling fifteen new storage wells; converting two existing wells into storage wells; converting thirteen existing wells into observation wells; constructing a 4.6-mile, 24-inch pipeline header; constructing approximately 2.8 miles of 24-inch storage lines; constructing a 24,000 horsepower (hp) compressor station;

¹ 15 U.S.C. § 717a(b).

constructing a meter and regulator station; and constructing certain non-jurisdictional facilities.

6. Southeast states that the project will have a maximum total capacity of 34.7 Bcf (24.7 Bcf working gas and 10 Bcf cushion gas), a maximum withdrawal rate of 500 MMcf per day, and a maximum injection rate of 400 MMcf per day. Southeast will locate its storage facility on approximately 200.2 acres.²

7. Southeast proposes to operate the storage field to cycle either two or three times per year in order to facilitate customer demand. In the case of a two cycles per year storage service, the maximum base gas capacity of the field will be 10 Bcf (with 24.7 Bcf working gas). If Southeast operates the storage facility on a three cycles per year basis, the maximum base gas capacity of the field will be 12.7 Bcf (with 20 Bcf working gas).

8. The project will include a compressor station consisting of three 8,000 hp electric driven reciprocating compressor units for a total compression of 24,000 hp, as well as gas processing and dehydration facilities. Southeast proposes to construct a 4.6-mile, 24-inch pipeline, which will interconnect with Tennessee Gas Pipeline Company.

C. Market-Based Rates

9. Southeast proposes to offer its firm and interruptible storage services at market-based rates. Southeast supports its proposal with a market power analysis in Exhibit I to its application that concludes that Southeast will lack market power with respect to the services that it provides.

D. Tariff

10. Southeast's pro forma tariff includes open-access firm and interruptible storage services as well as interruptible loan hub services under the following rate schedules: Firm Storage Service (FSS Rate Schedule), Advanced Interruptible Storage Service (AISS Rate Schedule), Advanced Interruptible Loan Service (AILS Rate Schedule), Interruptible Loan Service (ILS Rate Schedule), and Interruptible Storage Service (ISS

² The construction and development of the storage field, including the protective buffer zone, will encompass approximately 8,080 acres. Permanent surface disturbance of the proposed project will be limited to a total of 200.2 acres.

Rate Schedule).³ These rate schedules are similar to the firm and interruptible storage service rate schedules of most gas storage service providers.⁴

E. Requests for Waivers

11. Southeast proposes to charge market-based rates, and requests waiver of certain of the Commission's filing, accounting, and reporting requirements applicable to cost-based rate proposals, which the Commission has previously found inapplicable to storage providers that are granted market-based rate authority.

III. Notice, Interventions, and Comments

12. Public notice of Southeast's application was published in the *Federal Register* on June 30, 2008 (73 Fed. Reg. 36,853). Monroe Gas Storage Company, LLC and Merrill Lynch Commodities, Inc. filed timely motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations.⁵ Merrill Lynch Commodities, Inc.'s filing included comments in support of the application. Carl E. Logan filed comments opposing the project. Marvin D. Neil filed an untimely motion to intervene expressing concerns over land ownership and mineral rights. Mr. Neil's motion shows that he has a direct and substantial interest in this proceeding, and that granting the motion will not delay the proceeding or cause undue prejudice to the other parties. For good cause shown, Mr. Neil's motion will be granted.⁶ No other protests, motions to intervene in opposition, or adverse comments were filed.

13. Mr. Logan claims that the Black Warrior Storage Project may have negative effects upon local recreation, wildlife and land values. Mr. Logan's environmental concerns are addressed in the Environmental Assessment (EA).⁷ The land value issue

³ Southeast plans to lend its system-owned gas (including base gas) from time to time on an interruptible basis pursuant to Rate Schedules AILS and ILS to the extent it is operationally feasible and will not impair Southeast's ability to meet its firm storage service obligations.

⁴ Rate Schedules AISS and AILS have a higher priority than Rate Schedules ISS and ILS. *See* General Terms and Conditions (GT&C), section 4 at p. 36.

⁵18 C.F.R. § 385.214 (2008).

⁶18 C.F.R. § 385.214 (d) (2008).

⁷ EA at p. 37. *See* section G of this order.

raised by Mr. Logan, is a contractual matter between the parties. To the extent Mr. Logan seeks additional compensation under new or existing mineral lease agreements, the remedy lies in the court with the appropriate jurisdiction.⁸ Likewise, Mr. Neil's concerns over property ownership and mineral rights are matters that must be resolved between the parties or in the court of appropriate jurisdiction. The Commission has considered all the valid factors in balancing the adverse effects of this project against the public benefits and has determined to authorize the project. Mr. Logan and Mr. Neil have presented no facts or arguments that convince us to alter that decision.

IV. Discussion

14. Since Southeast will use the proposed facilities to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. The Certificate Policy Statement

15. The Commission's September 15, 1999 Certificate Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction.⁹ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances 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

⁸ Under section 7(h) of the NGA, when the certificate holder cannot acquire rights-of-way by contract or is unable to agree with the property owner on the amount of compensation, the certificate holder may acquire the property rights by exercising the right of eminent domain in a court action. It is incumbent upon the applicant to make good faith efforts to negotiate with landowners for any needed rights. However, if the parties cannot reach agreement, issues of compensation for land taken by a pipeline under the eminent domain provisions of the NGA are matters for state or federal court.

⁹ *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) (Certificate Policy Statement).

responsibility for unsubscribed capacity, the avoidance of unnecessary disruption of the environment, and the unneeded exercise of eminent domain.

16. 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.

17. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Southeast is a new entrant in the natural gas storage market and has no existing customers. Therefore, there will be no subsidization. Moreover, under its market-based rate proposal, Southeast assumes the economic risks associated with the costs of the project's facilities to the extent that any capacity is unsubscribed. Thus, the Commission finds that Southeast has satisfied the threshold requirement of the Certificate Policy Statement.

18. The Black Warrior Storage Project will have no impact on existing services since Southeast is a new company that has no current customers or services. Further, the project should not have any adverse impact on existing storage providers or their customers. As discussed below, the proposed project will be located in a competitive market and will serve demand in a region that is experiencing rapid growth in natural gas usage. The proposal will also enhance storage options available to existing pipelines and their customers and, thus, will increase competitive alternatives. Further, no storage company in Southeast's market area has protested Southeast's application.

19. In addition, there will be minimal adverse impacts on landowners associated with the construction and operation of this storage project. Southeast has taken steps to minimize the environmental impact of their project with respect to the design of the compressor station, site selection, use of existing pipeline corridors, and use of directional drilling. Accordingly, consistent with the Certificate Policy Statement and NGA section 7, we find approval of Southeast's proposal to be required by the public convenience and necessity, as conditioned herein.

B. Market-Based Rates

20. Generally, the Commission evaluates requests to charge market-based rates for storage under the analytical framework of its 1996 Alternative Rate Policy Statement (1996 Policy Statement).¹⁰ Under that policy, the Commission will approve market-based rates for storage providers where the applicant has demonstrated it lacks market power¹¹ or has adopted conditions that significantly mitigate market power.¹² The Commission has approved requests to charge market-based rates for storage services based on a finding that the proposed projects would not be able to exercise market power due to small size, anticipated share of the market, and numerous competitors.¹³

21. The Commission's analysis of whether an applicant has the ability to exercise market power includes three major steps: (1) definition of the relevant markets;¹⁴ (2)

¹⁰ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076; *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom., Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998), *criteria modified, Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006), Order No. 678-A, *order on clarification and reh'g*, 117 FERC ¶ 61,190 (2006).

¹¹ Market power is defined as the ability to profitably maintain prices above competitive levels for a significant period of time. Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,230.

¹² Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006), *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

¹³ *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395 (2001); *Moss Bluff Hub Partners, L.P.*, 80 FERC ¶ 61,181 (1997); *Egan Hub Partners, L.P.*, 77 FERC ¶ 61,016 (1996).

¹⁴ In order No. 678, the Commission expanded the definition of the relevant product market and permitted storage applicants to include non-storage products and services, including pipeline capacity, local production and LNG supply in calculating their market concentration and market share. *Rate Regulation of Certain Natural Gas Storage Facilities*, 115 FERC ¶ 61,343 at P 26, *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

measurement of a firm's market share and market concentration; and (3) evaluation of other relevant factors. If an applicant is unable to, or elects not to, demonstrate that it lacks market power, it may still receive market-based rates when such rates are deemed to be in the public interest to encourage construction of natural gas storage, where customers are adequately protected.¹⁵

22. Southeast's market power analysis: (1) defines the relevant product and geographic markets, (2) measures market share and concentration in the relevant markets by calculating the HHI and (3) analyzes other factors that mitigate market power. Southeast identifies the relevant product market as firm and interruptible natural gas storage. Southeast identifies the relevant geographic market region as south and east Texas, Louisiana, Mississippi and Alabama (the Gulf Coast Supply Area).

23. Exhibit G-1 of the market power analysis lists over 60 storage facilities including expansions and new facilities expected to be in service in the Gulf Coast Supply Area by December 31, 2010. Exhibit G-1 shows that the project will bring the total working gas capacity controlled by El Paso to approximately 12.3 percent of the relevant market and the total deliverability controlled by El Paso to approximately 5.4 percent of the relevant market.¹⁶ Southeast provided a second market power analysis, shown in Exhibit D-1B, to measure the anticipated impact of El Paso's ownership of the underground gas storage and LNG terminal capacity in the Gulf Coast Supply Area including Elba Island and Gulf LNG.¹⁷ Exhibit D-1B reveals that including LNG in the market share analysis shows that El Paso would still only have market shares of 12.8 percent and 7.8 percent of working gas capacity and deliverability, respectively. The relatively small market shares show that, with or without LNG terminal capacity, Southeast will not be able to exert market power in the relevant market area.

24. The Commission uses the Herfindahl Hirschman Index (HHI) test to determine market concentration for gas pipeline and storage markets. The Alternative Rate Policy Statement states that a low HHI – generally less than 1,800 – indicates that sellers cannot exert market power because customers have sufficiently diverse alternatives in the

¹⁵ Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006); *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

¹⁶ See Southeast's Application at 18, Exhibit I, Statement G and Statement I at 7 and 8.

¹⁷ See Southeast's Application, Exhibit I, Statement I at 9.

relevant market.¹⁸ While a low HHI suggests a lack of market power, a high HHI – generally greater than 1,800 – requires a closer scrutiny in order to make a determination about a seller’s ability to exert market power. Exhibit G-1 of the Market Power Analysis shows the Gulf Coast Supply Area is competitive, with a 660 HHI for working gas capacity and a 535 HHI for peak day deliverability.¹⁹ Including LNG as shown in Exhibit D-1B of the market power analysis, results in a 594 HHI for working gas capacity and a 462 HHI for peak day deliverability. Since, these HHIs are significantly below the 1,800 HHI level, they do not require a closer scrutiny.

25. In addition, Southeast does not possess market power because the relevant market is easy to enter. The Commission has found previously that barriers to entry in the Gulf Coast Supply Area are not significant.²⁰

26. We find that Southeast’s analysis demonstrates that its proposed storage facilities will be in a highly competitive area where numerous storage service alternatives exist for potential customers. We also find that Southeast’s analysis properly identifies good alternatives²¹ and that Southeast’s entry will increase the storage alternatives in the Gulf Coast Supply Area. Furthermore, we find that, within the relevant market, Southeast’s prospective market shares are low and that the market concentration is below the threshold which would require closer scrutiny. Finally, we find that barriers to entry are likely to be low in the relevant market. Thus, we conclude that Southeast will lack significant market power. Further, Southeast’s proposal for market-based rates is unopposed.

¹⁸ Order No. 678 at P 55 (which notes that the Commission is not changing the 1,800 HHI threshold level).

¹⁹ *See also* Southeast’s Application, Exhibit I, Statement G at 11.

²⁰ *See e.g.*, Tarpon Whitetail Gas Storage, LLC, 123 FERC ¶ 61,274, at P 28 (2008); Enstor Houston Hub Storage and Transportation, LP, 123 FERC ¶ 61,019, at P 32 (2008); Port Barre Investments, L.L.C., 116 FERC ¶ 61,052, at P 25 (2006); Katy Storage and Transportation, L.P., 106 FERC ¶ 61,145, at P 19 (2004); Unocal Keystone Gas Storage, LLC, 106 FERC ¶ 61,033, at P 16 (2004).

²¹ A good alternative is an alternative that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute it for an applicant's proposed service. Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,231.

27. With the exception of interruptible wheeling service,²² the Commission considers hub services to be variations of firm and interruptible storage services, and thus they represent substitutes for firm and interruptible storage service in the consideration of the appropriateness of market-based rate authority for hub services.²³ The Commission has stated "parking, loaning, balancing, and imbalance trading hub services are essentially variations of storage service."²⁴ Therefore the Commission will rely on the market share and market concentration analyses presented for storage services as also demonstrating that Southeast lacks market power for its ILS and AILS Rate Schedule hub services.

28. For these reasons, we will approve Southeast's request to charge market-based rates for all firm and interruptible storage and hub services. Nevertheless, Southeast must notify the Commission if future circumstances significantly affect its present market power status. Thus, our approval of market-based rates for the indicated services is subject to re-examination in the event that: (a) Southeast adds storage capacity beyond the capacity authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to Southeast; or (d) Southeast, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Southeast. Since these circumstances could affect its market power status, Southeast shall notify the

²² Southeast has not proposed to offer wheeling service. The Commission considers interruptible wheeling service to be a distinct service that is not identical to storage service. Therefore, if Southeast should decide to offer wheeling services, it will have to file to identify wheeling service as a separate product market and calculate Southeast's market power for interruptible wheeling services separately. To do this, Southeast will have to identify other market area hubs, as well as pipeline interconnections in the proximity of the project, that would provide customers with alternatives to the wheeling services that would be proposed to be offered by Southeast. Southeast will need to perform two analyses consistent with the Commission's approach to evaluating interruptible wheeling services: (a) a "bingo card" analysis demonstrating the various alternatives to the project that market participants will have for wheeling natural gas between pipelines, showing the available capacity at each interconnection; and (b) a market share and market concentration analysis for the competitive alternatives to the wheeling services the project will provide, showing the available capacity at each receipt and delivery point and showing whether the proposed wheeling service can be bypassed.

²³ See, e.g., *Liberty Gas Storage LLC*, 113 FERC ¶ 61,247 (2005)(*Liberty*); *Unocal Keystone Gas Storage, LLC*, 106 FERC ¶ 61,033 (2004).

²⁴ See *Liberty*, 113 FERC ¶ 61,247 at 61,976 (2005).

Commission within 10 days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship to Southeast.²⁵ The Commission also reserves the right to require an updated market power analysis at any time.

C. Waivers of Filing, Reporting, and Accounting Requirements

29. In light of its request for authority to charge market-based rates and the fact that it has no pre-existing facilities, Southeast requests that the Commission waive section 157.6(b)(8) of the Commission's regulations,²⁶ which would require Southeast to submit cost and revenue information otherwise necessary for the Commission to make an up-front determination of the rate treatment for the Black Warrior Storage Project. Southeast also requests that the Commission waive the filing requirements of section 157.14(a)(13), (14), (15), (16) and (17), and section 157.16(c), which require submission of Exhibits K (Cost of Facilities), Exhibit N (Revenues, Expenses, and Income), Exhibit O (Depreciation and Depletion), and Exhibit S (Accounting), since these exhibits are required for cost-based rate authority. Southeast requests such additional waivers of the Commission's regulations as necessary to carry out the authorizations requested in the Application and as are customarily issued. For the same reasons, Southeast requests waiver of the accounting and annual reporting requirements under Part 201 (accounting and reporting requirements of Uniform System of Accounts) and sections 260.1 and 260.2 (which require natural gas companies to file annual reports in FERC Form Nos. 2 and 2-A) of the Commission's regulations. Southeast also requests waiver of the rate and cost information filing requirements of sections 157.6(b)(8) and 157.20(c)(3) to submit total gas supply data, as being inapplicable to natural gas storage services.

30. The cost-related information required by the above-described regulations is not relevant in light of our approval of market-based rates for Southeast's proposed services. Thus, consistent with our findings in previous orders,²⁷ we will grant Southeast's request for waiver of the regulations requiring cost-based related information for these services.

²⁵ See, e.g., *Port Barre*, 116 FERC 61,052 (2006); *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

²⁶ 18 C.F.R. § 157.6(b)(8) (2008).

²⁷ See, e.g., *Port Barre*, 116 FERC ¶ 61,052 (2006) at P 33; *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029, at P 26 (2002)(*SG Resources*); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395, at 62,473 (2001) and 99 FERC ¶ 61,269, at 62,142 (2002).

We will also grant a waiver of section 157.16(c), which requires an applicant to submit gas supply data, which is inapplicable to storage operations.

31. In addition, the Commission grants the requested waiver of the requirement to file an annual report (Form Nos. 2 and 2-A), contained in section 260.2 of the Commission's regulations, except for the information necessary for the Commission's assessment of annual charges.²⁸ Southeast is required to file pages 520 and 520a of Form No. 2-A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment (ACA) charge.²⁹

32. Southeast has failed to provide good cause to support its request for waiver of the posting requirements in sections 284.13(b)(1)(iii-iv), (b)(2)(ii-iii), (c)(2)(vii), and (e)(5) of the Commission's regulations.³⁰ The Commission explained in *SG Resources Mississippi, L.L.C.*, that the transactional posting requirements are "necessary to provide shippers with the price transparency they need to make informed decisions, and the ability to monitor transactions for undue discrimination and preference. Shippers need to know the price paid for capacity over a particular path to enable them to decide, for instance, how much to offer for the specific capacity they seek."³¹ Further, the Commission made clear in *SG Resources* that the section 284.13 reporting requirements

²⁸ However, we will require Southeast to maintain sufficient records of cost and revenue data, consistent with the Uniform System of Accounts, should the Commission require Southeast to produce this report in the future.

²⁹ See *Wyckoff Gas Storage Co., LLC*, 105 FERC ¶ 61,027, at P 65 (2003).

³⁰ 18 C.F.R. § 284.13(b)(1)(iii-iv), (b)(2)(ii-iii), (c)(2)(vii), and (e)(5) (2008).

³¹ 125 FERC ¶ 61,191 P 20 (2008) (*SG Resources*), citing, *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,324 (Order No. 637), *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 (Order No. 637-A), *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

apply to storage providers granted market-based rates.³² Therefore, Southeast's request for waiver of these posting requirements is denied.

D. Tariff Provisions

33. Southeast proposes to offer firm and interruptible storage and interruptible loan services on an open-access basis under the terms and conditions set forth in the pro forma tariff, attached as Exhibit P to the application. Southeast's proposed tariff is based on the Commission-approved tariffs of other storage providers whose FERC Gas Tariffs the Commission has reviewed and found to comply with the requirements of Part 284 of the Commission's regulations.³³ We find that Southeast's proposed tariff generally complies with Part 284 of the regulations; however, certain provisions are discussed further below.

1. Segmentation

34. Section 284.7(d) of the Commission's regulations provides that an interstate pipeline must permit a shipper to make use of the firm capacity for which the shipper has contracted by segmenting that capacity into separate parts for the shipper's own use, or for the purpose of releasing that capacity to replacement shippers to the extent that segmentation is operationally feasible. Southeast requests a waiver of the Order No. 637 segmentation requirements contained in section 284.7(d), contending that it will not be offering stand-alone transportation services and that segmentation is not operationally feasible on its system.

35. In *Clear Creek Gas Storage Co.*,³⁴ we found that the requirements of section 284.7(d) did not apply to pipelines engaged solely in natural gas storage with no stand-alone transportation services. Southeast meets the *Clear Creek* requirement. Thus, we hold that the requirements of section 284.7(d) do not apply to Southeast. Other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented release and within-the-path scheduling, also do not apply to Southeast.

³² *SG Resources*, 125 FERC ¶ 61,191 at P 26, *citing*, Order No. 678 at P 78.

³³ *See Caledonia Energy Partners, L.L.C.*, 111 FERC ¶ 61,095 (2005).

³⁴ 96 FERC ¶ 61,071 (2001) (*Clear Creek*).

2. **Acquisition of Off-System Capacity and Waiver of Shipper Must Have Title Policy**

36. Southeast requests a generic waiver of the “shipper must have title” policy for any off-system capacity it may need to acquire in order to provide storage services, to enable it to use that capacity to transport natural gas owned by other parties. Section 21 of Southeast’s pro forma General Terms and Conditions (GT&C) provides:

SGS may, from time to time, acquire transportation and/or storage capacity on other interstate and intrastate pipeline systems. SGS will use such capacity for operational reasons or to provide storage and related services for others pursuant to its open access Tariff and subject to its rates, as such Tariff and rates may change from time to time. The “shipper must hold title” policy is waived to permit such use.³⁵

37. This language implements the Commission's policy with respect to pipelines' acquisition of off-system capacity. In *TETCO*,³⁶ the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline, provided the acquiring pipeline has filed tariff language specifying that it will only transport for others using off-system capacity pursuant to its existing tariff and rates. Southeast’s proposed tariff language is consistent with the requirements set forth in *TETCO* and authorizations granted other storage companies authorized to charge market-based rates.³⁷

38. Therefore, we accept Southeast’s proposed tariff language and grant waiver of the shipper must have title policy, with the following clarifications. Because Southeast has proposed only to offer firm and interruptible storage and hub services, and has proposed no rates or tariff provisions relating to any other transportation services, Southeast may only use capacity obtained on other pipelines pursuant to the *TETCO* waiver to move gas into and out of storage, pursuant to that pipeline’s open access tariff and Commission-approved rates. That is, Southeast may not use its facilities and its capacity on other pipelines to transport gas which will not physically or contractually enter its storage facility unless and until it has received Commission authorization to provide such transportation services. Furthermore, Southeast’s authorized use of the *TETCO* waiver to

³⁵ Southeast’s Application, Exhibit P at 56.

³⁶ *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000), *reh’g denied*, 94 FERC ¶ 61,139 (2001) (*TETCO*).

³⁷ *See, e.g., SG Resources*, 101 FERC ¶ 61,029, at P 30-33 (2002).

provide storage service shall be limited to the geographic area covered by its market study.

39. To ensure that Southeast uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and to satisfy our responsibility to monitor and prevent the exercise of market power, we direct Southeast, once it becomes operational, to make an annual informational filing regarding its provision of service using off-system capacity, as detailed below.

40. Within 30 days after its first full year of operation, and every year thereafter, Southeast is directed to file, for each acquisition of off-system capacity:

- a. the name of the off-system provider;
- b. the type, level, term and rate of service contracted for by Southeast;
- c. a description of the geographic location – boundaries, receipt and delivery points, and segments comprising the capacity;
- d. the operational purpose(s) for which the capacity is utilized;
- e. a description of how the capacity is associated with specific transactions involving customers of Southeast; and
- f. an identification of total volumes, by Southeast's rate schedule and customer, that Southeast has nominated on each off-system provider during the reporting period.

3. Implementation of NAESB Standards

41. The Commission adopted, in Part 284 of its regulations, various standards for conducting business practices and electronic communication with interstate pipelines as promulgated by the North American Energy Standards Board (NAESB).³⁸ These

³⁸ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, 57 Fed. Reg. 13,267 (April 16, 1992), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,939, at pp. 30,425-427 (April 8, 1992), *order on reh'g*, Order No. 636-A., 57 Fed. Reg. 36,128 (August 12, 1992), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,950 (August 3, 1992), *Order on reh'g*, Order No. 636-B, 7 Fed. Reg. 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (1992), *notice of denial of reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part* (continued...)

standards govern nominations, allocations, balancing measurement, invoicing, capacity release, and mechanisms for electronic communication between pipelines and those with whom they do business. Southeast's pro forma tariff complies with Order No. 637 and Order No. 587-S, which adopted Version 1.7 of the NAESB Standards,³⁹ the latest version of the standards adopted by the Commission at the time Southeast filed its certificate application.⁴⁰ Southeast is directed to modify its tariff before placing it into effect to reflect the then-current Commission-adopted NAESB standards.

42. Southeast requests a limited waiver of section 284.12(a)(1)(iv) of the Commission's regulations, which require interstate pipelines to comply with the electronic data interchange (EDI) standards developed by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB). Southeast requests a limited waiver in the form of an extension of time to comply with the NAESB standards related to EDI requirements so as to allow Southeast to postpone implementation until 90 days following receipt by Southeast of a request to send information via EDI.

43. Consistent with precedent,⁴¹ the Commission will grant Southeast's request for an exemption of the EDI standards, but will require Southeast to implement the EDI standards within 90 days following the receipt of such a request, as it has proposed.

4. Creditworthiness

44. Pursuant to Part 284 of its regulations, the Commission issued a Creditworthiness Policy Statement setting forth its approach to credit issues relating to transportation on

and vacated and remanded in part, United Dist. Companies v. FERC, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997). NAESB was formerly called the Gas Industry Standards Board (GISB).

³⁹ In Southeast's Application, Exhibit P, Section 15 of the GT&C of Southeast's pro forma tariff contains the Version 1.7 NAESB standards adopted by reference. *See* p. 53 of Original Pro Forma Volume No. 1.

⁴⁰ *See Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-S, FERC Stats. & Regs. ¶ 31,179 (2005).

⁴¹ *See, e.g., MoBay Storage Hub, Inc*, 117 FERC ¶ 61,298 (2006), at P 44-46, *Unocal Windy Hill Gas Storage, LLC*, 115 FERC ¶ 61,218 (2006) (*Unocal Windy Hill*) and *Rendezvous*, 112 FERC ¶ 61,141 (2005).

natural gas pipelines.⁴² In the Creditworthiness Policy Statement, we stated that pipelines must establish and use objective criteria for determining creditworthiness.⁴³ The Commission finds that Southeast's creditworthiness provisions are consistent with the Policy Statement with the following exceptions.

45. First, section 23.3 of Southeast's GT&C provides that, if Southeast determines that a customer is, or subsequent to the commencement of service on Southeast's system has become uncreditworthy, Southeast will notify the customer via e-mail and facsimile stating that the customer has been determined to be uncreditworthy. In the Creditworthiness Policy Statement, we held that if a service provider finds a shipper to be uncreditworthy, it should promptly inform the shipper in writing of the reasons for that determination, so that the shipper can evaluate and challenge the determination.⁴⁴ However, although section 23.3 provides that Southeast will provide a written explanation within 10 days of notification, it is not clear when Southeast intends to communicate its initial determination, or notification. Southeast is directed to revise section 23 to clarify when it intends to communicate its initial determination on creditworthiness to shippers under section 23.

46. Second, although section 23.4(e) provides that the customer will have one business day to comply with a notification by Southeast of insufficient credit support, it is not clear that this requirement will not start until the customer has received its written explanation under section 23.3. Southeast is directed to revise section 23 to clarify that this requirement will not start until Southeast communicates its determinations on creditworthiness in writing to shippers under section 23.3.

47. Third, section 23.5 provides that the customer's obligation to provide financial assurances will terminate when the customer has performed or satisfied all of its obligations under the service agreements, and that upon the customer's performance or satisfaction of all its obligations under the service agreement, Southeast will return to the customer, if applicable, the financial assurances held by Southeast as security then in its possession. Section 23.5 also provides that Southeast will return the financial assurances to the extent it has not applied any such funds pursuant to the tariff to the payment of charges for service rendered under the service agreements or to debts, expenses, costs,

⁴² *Creditworthiness Standards for Interstate Natural Gas Pipelines*, 111 FERC ¶ 61,412 (2005) (Creditworthiness Policy Statement).

⁴³ *Id.* P 10.

⁴⁴ *Id.* P 10.

assessments and liabilities payable by the customer to Southeast pursuant to the provisions of the service agreements. However, it is not clear whether Southeast will return the accrued interest provided for under section 23.6. Furthermore, it is not clear that Southeast is responsible for any expenses related to the maintenance of the escrow account. Therefore, Southeast must revise section 23 to provide that if a customer obtains credit approval by providing an advance deposit and subsequently satisfies the credit criteria, Southeast will return the advance deposit plus interest. Finally, we will require Southeast to revise section 23 to provide that in such situations, Southeast is responsible for any expenses related to the maintenance of this escrow account. We direct Southeast to clarify its tariff accordingly.

5. Injection Ratchets

48. Southeast proposes to include provisions in its service agreements whereby a customer's Maximum Daily Injection Quantity and Maximum Daily Withdrawal Quantity may be subject to injection ratchets. Southeast proposes to offer a customer three options for receiving ratcheted firm storage service and also an option for receiving unratcheted firm storage service. Southeast's pro forma tariff contains blanks for the injection ratchet percentages that will apply to its ratcheted services.⁴⁵ The Commission has previously allowed storage service providers to offer this option.⁴⁶ Consistent with our acceptance of ratchets for other storage service providers, the Commission will accept Southeast's proposed use of ratchets, subject to Southeast including the injection ratchet values in its actual tariff sheet filing.

6. Gas Retention Penalties

49. Southeast proposes to retain a customer's gas improperly left in storage in two circumstances: (1) when gas is not withdrawn from storage prior to the expiration of the

⁴⁵ Service Request Forms for Rate Schedule FSS, at 62 and 63, Rate Schedule AISS at 65 and 66, Rate Schedule ISS at 65 and 66, Rate Schedule AILS at 67 and Rate Schedule ILS at 68 and 69 of Southeast's pro forma tariff. *See also* Appendix A to service agreements for Rate Schedules FSS on 76, Rate Schedule AISS on 84, Rate Schedule ISS on 89, Rate Schedule AILS on 93 and Rate Schedule ILS on 97 of Southeast's pro forma tariff.

⁴⁶ *See Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253, at 53-54 (2007); *Windy Hill Gas Storage, LLC*, 119 FERC ¶ 61,291, at P 43-44 (2007) (*Windy Hill*).

customer's service agreement;⁴⁷ and (2) when gas is not withdrawn from storage by an interruptible storage or loan customer following notice by Southeast that it is going to interrupt the customer's service and directing the customer to remove its gas.⁴⁸ In the first situation, Southeast proposes to retain the gas of FSS, AISS and ISS shippers if the shipper does not remove or transfer all of the gas by the end of the term or within 15 days of termination. In the instance of Rate Schedules AILS and ILS, Southeast will replace the gas and charge the customer the replacement cost of the loaned gas plus 10 percent of the loaned quantities. In the second situation, Southeast proposes to cash out the balance that AISS and ISS customers failed to remove at the sales price of the gas less 10 percent of the balance not removed. In the instance of Rate Schedules AILS and ILS, Southeast proposes to cash out the loan balance that AILS and ILS customers failed to remove at the replacement cost of the gas plus 10 percent of any loan balance not removed.

50. The Commission has accepted similar gas retention proposals by other storage providers, stating that the retention of gas left in storage at the end of the withdrawal period is an operationally-justified deterrent to shipper behavior that could threaten the system or degrade service to firm shippers.⁴⁹ If capacity exists, we would expect that a customer would be able to contract for interruptible service if needed. However, if capacity does not exist, Southeast would be unable to provide such service. For these reasons, we find that Southeast's gas retention proposals are consistent with Commission precedent and are accepted.

7. Index Pricing

51. Southeast proposes to use index pricing for calculating the penalties to be assessed when a customer violates an operational flow order (OFO).⁵⁰ Specifically, Southeast proposes to use the "Tennessee, La. 500 leg" daily index as published in *Gas Daily* for calculating OFO penalties. This price index satisfies the criteria that the Commission has established for inclusion of price indices in jurisdictional tariffs.⁵¹ Therefore, the

⁴⁷ Southeast's Application, Exhibit P, sections 9 of Rate Schedules FSS, AISS, ISS, AILS and ILS.

⁴⁸ Southeast's Application, Exhibit P, sections 7 of Rate Schedules AISS, ISS, AILS and ILS.

⁴⁹ *Windy Hill*, 119 FERC ¶ 61,291 at P 51-56.

⁵⁰ Southeast's Application, Exhibit P, GT&C, section 4.5.2.

Commission will accept Southeast's proposal.

8. Negotiated Right of First Refusal

52. Southeast seeks Commission authorization to allow it to negotiate with its firm storage customers, on a not unduly discriminatory basis, whether they will be provided with a Right of First Refusal (ROFR). Section 8 of Rate Schedule FSS includes Southeast's proposed ROFR provisions⁵² and section 8(a) provides that the ROFR will be negotiated on a not unduly discriminatory basis. Consistent with *Windy Hill*, the Commission will accept Southeast's proposal to negotiate ROFR provisions with its customers.⁵³

9. Tariff Sheet Numbering

53. Southeast omitted the tariff sheet numbers from Original Pro Forma Volume No. 1 of its proposed FERC Gas Tariff. Southeast is directed to include the tariff sheet numbers in its actual tariff sheet filing.

E. Engineering Analysis

54. Commission staff analyzed Southeast's engineering proposal for the natural gas storage facility, including the design capacity. Based on this analysis, we conclude that the facilities are properly designed to provide 34.7 Bcf of total storage capacity (maximum 24.7 Bcf working gas and minimum 10 Bcf base gas) and up to 500 MMcf per day of withdrawal. Southeast's proposed minimum base gas requirement of 10 Bcf is adequate to maintain end-of-cycle deliverability. Therefore, Southeast may vary the amount of base gas above the minimum level up to a maximum of 12.7 Bcf, as required to facilitate storage operations. Further, since Southeast proposes to provide service at market based rates, the varying of base gas does not present a rate issue. Southeast shall comply with the engineering conditions listed in Appendix A to this order.

⁵¹ *Price Discovery in Natural Gas and Elec. Mkts.*, 109 FERC ¶ 61,184, (Ordering Paragraph D) (2004).

⁵² Southeast's Application, Exhibit P at 10.

⁵³ *See Unocal Windy Hill*, 115 FERC ¶ 61,218, at P 49 and 50 (2006).

F. Blanket Certificates

55. Southeast has applied for a Part 157, subpart F blanket certificate. The Subpart F blanket certificate gives a natural gas company authority under section 7 of the NGA to perform automatically, or after prior notice, certain activities related to the construction, acquisition, abandonment, and replacement and operation of pipeline facilities. Because Southeast will become an interstate pipeline with the issuance of a certificate to construct and operate the proposed facilities, we will issue the requested Part 157, subpart F blanket certificate.

56. Southeast requests a Part 284, subpart G blanket certificate in order to provide open-access storage services. Under a Part 284 blanket certificate, Southeast will not need to receive individual authorizations to provide storage services to particular customers. Southeast filed a pro forma Part 284 tariff to provide open-access storage services. Since a Part 284 blanket certificate is required for Southeast to offer these services, we will grant Southeast a Part 284 blanket certificate, subject to the conditions imposed herein.

G. Environmental Analysis

57. On July 21, 2008, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Black Warrior Storage Project and Request for Comments on Environmental Issues* (NOI). In response to the NOI we received comments from the U.S. Environmental Protection Agency (EPA), the U.S. National Park Service (NPS), the Mississippi Department of Wildlife, Fisheries and Parks (MDWFP), and one landowner. The primary issues raised by agencies included construction impacts on environmental justice populations, sedimentation, crossing of the Buttahatchie River, and impacts on wetlands and special-status species.

58. An EA was issued on October 21, 2008. The EA addressed the project's purpose and need, geology, soils, water resources, wetlands, vegetation, fish and wildlife, threatened and endangered species, land use, recreation, cultural resources, air quality and noise, and alternatives. The EA also addressed all substantive comments raised in the scoping comment letters and Mr. Logan's comments to the Notice of Application.

59. Mr. Logan expressed concerns about potential impacts on local wildlife and recreation. The EA discusses local wildlife habitats and concludes that impacts would be minimal based on Southeast's construction and mitigation plan, which is described in its Upland Erosion Control, Revegetation, and Maintenance Plan and its Wetland and Waterbody Construction and Mitigation Procedures. In addition, the EA also determined that the project is not located within 0.25 mile of any federal, state, or local parks, scenic highways, nature preserves, wildlife refuges, wilderness areas, game management areas,

or private preservation groups lands. Therefore, there should be minimal impacts on local recreation. Mr. Logan was sent a copy of the EA but did not provide comment on the EA during the public comment period.

60. We received letters with comments on the EA from Southeast⁵⁴ and Mr. Marvin Neil. Southeast requested modification of the EA's recommended environmental condition concerning the three archeological sites requiring additional Section 106 review. Southeast requested that this condition specify that Southeast should defer construction and use of only those portions of the project in the vicinity of the sites pending Section 106 completion. We agree and environmental condition No. 13 attached to this order reflects this determination.

61. Mr. Neil is concerned that members of his family and other property owners may not have received adequate notice of the project. The NOI was sent to agencies and affected properties, as well as local newspapers and libraries. The environmental mailing list included about 350 properties within the boundary of the storage field and the buffer zone. Mr. Neil personally communicated with Commission staff, was mailed a copy of the EA, and submitted written comments in time for consideration in this order.

62. Mr. Neil also questioned the ownership of the mineral rights purchased by Southeast from Pruet Production Company. As discussed earlier, this issue is beyond the Commission's jurisdiction and the resolution of such dispute would not effect the certification of this project.

63. Based on the analysis in the EA, we have determined that if Southeast constructs the facilities in accordance with its application and supplements and the mitigation measures included in Appendix B to this order, approval of this project will not constitute a major federal action significantly affecting the quality of the human environment.

64. Any state or local permits issued with respect to facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local

⁵⁴ Southeast also offered several clarifications to text discussions of the EA and provided updated information which do not affect the analysis in the EA.

agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁵⁵

H. Conclusion

65. For the reasons discussed above, the Commission finds that the Black Warrior Storage Project is required by the public convenience and necessity and that a certificate authorizing the construction and operation of the facilities described in this order and in the application should be issued, subject to the conditions discussed herein and listed in Appendices A and B.

66. At a hearing held on December 18, 2008, the Commission, on its own motion, received and made part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Southeast in Docket No. CP08-418-000, authorizing the construction and operation of the subject storage facilities, as described more fully in this order and in the application.

(B) A blanket construction certificate is issued to Southeast under subpart F of Part 157 of the Commission's regulations, except that Southeast may not rely on the blanket certificate for automatic authorization to increase storage capacity.

(C) A blanket transportation certificate is issued to Southeast under subpart G of Part 284 of the Commission's regulations.

(D) The facilities authorized in this order shall be constructed and made available for service within two years from the date of this order's issuance, in accordance with section 157.20(b) of the Commission's regulations.

(E) Maximum inventory of natural gas stored in the Southeast storage facility shall not exceed the certificated levels of 34.7 Bcf. The minimum inventory of base gas in the Southeast storage facility shall not be less than 10 Bcf.

⁵⁵ *Schneidewind v. ANR Pipeline*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n.*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(F) The certificate issued in Ordering Paragraph (A) is conditioned upon Southeast's compliance with the engineering and environmental conditions set forth in Appendices A and B to this order.

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

(H) Southeast's request to charge market-based storage rates for firm and interruptible storage and hub services is approved, as discussed and subject to the conditions in this order.

(I) Southeast is granted waivers of the portions of Parts 201 and 260 of the Commission's regulations as discussed in this order; however, the waiver does not extend to the Commission's assessment of annual charges, and Southeast is required to maintain records to separately identify the original cost and related depreciation on its storage gas facilities and to file pages 520 and 520-A of Form 2-A for calculation of ACA.

(J) Waiver is granted of the Commission's regulations that have been deemed inapplicable to storage providers with market-based rates, as discussed in this order.

(K) Waiver is granted of the Commission's "shipper must have title" policy, subject to the conditions discussed in the body of this order.

(L) Waiver of the posting requirements in section 284.13(b)(1)(iii-iv), (b)(2)(ii-iii), 284.13(c)(2)(vii), and 284.13(e)(5) of the Commission's regulations is denied.

(M) Southeast shall file revised tariff sheets that comply with the requirements contained in the body of this order not less than 60 days prior to the commencement of service.

(N) Within 30 days after its first full year of operation, and every year thereafter, Southeast is directed to file an annual informational filing on its provision of service using off-system capacity, as detailed in this order.

(O) Waiver is granted of section 284.12(a)(1)(iv) of the Commission's regulations to exempt Southeast from compliance with the electronic data interchange (EDI) standards established by NAESB, subject to the conditions discussed herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Engineering Conditions for Southeast's Proposed Project

1. Maximum inventory of natural gas stored in the Southeast storage facility shall not exceed the certificated levels of 34.7 Bcf at 14.73 psia and 60 degrees Fahrenheit, and the maximum shut-in bottom hole storage pressure shall not exceed 2,300 psi without prior authorization of the Commission.
2. The project shall be operated in such manner as to prevent/minimize gas loss or migration.
3. Southeast shall conduct an annual inventory verification study on the storage field, and file results with the Commission.
4. Southeast shall submit semiannual reports (to coincide with the termination of the injection and withdrawal cycles) containing the following information (volumes shall be stated at 14.73 psia and 60 degrees Fahrenheit and pressures shall be stated in psia):
 - (1) The daily volumes of natural gas injected into and withdrawn from the storage reservoir;
 - (2) The volume of natural gas in the reservoirs at the end of the reporting period;
 - (3) The maximum daily injection and withdrawal rates experienced during the reporting period, average working pressure on such maximum days, taken at a central measuring point where the total volume injected or withdrawn is measured;
 - (4) Results of any tracer program by which the leakage of injected gas may be determined. If leakage of gas exists, the report should show the estimated total volume of gas leakage, the volume of recycled gas, and the estimated remaining inventory of gas in the reservoir at the end of the reporting period;
 - (5) Any surveys of pressures in gas wells, and the results of back-pressure tests and inventory verification studies conducted during the reporting period;
 - (6) The latest revised structure contour maps showing location of the wells and the location of the gas-water contact if one exists. These maps need not be filed if there is no material change from the maps previously filed;

(7) For the reporting period, a summary that includes the below ground surface depth and casing settings of wells drilled, worked over, or recompleted. Additionally, summarize results of reservoir characteristics from any logs or cores taken in each well;

(8) Discussion of current operating problems and conclusions and

(9) Such other data or reports which may aid the Commission in the evaluation of the storage project.

Southeast shall continue to file these reports semiannually until the storage inventory volume and pressure have reached or closely approximate the maximum permitted in this order. Thereafter, the reports shall continue on a semiannual basis for a period of one year.

Appendix B

Environmental Conditions for Southeast's Proposed Project

1. Southeast 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, unless modified by the order. Southeast 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 the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the 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**, Southeast shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility location shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Southeast 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 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.

Southeast's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the order must be consistent with these authorized facilities and locations. Southeast'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. Southeast 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 route variations required herein or extra workspace allowed by Southeast's *Upland Erosion Control, Revegetation, and Maintenance Plan*, minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Prior to the start of construction**, Southeast shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP

Southeast must file revisions to the plan as schedules change. The plan shall identify:

- a. how Southeast will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Southeast 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;
 - c. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - e. the training and instructions Southeast will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Southeast's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Southeast will follow if noncompliance occurs; and
 - h. 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. Southeast shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the Project and restoration of the ROW. **Prior to construction**, Southeast shall mail the complaint procedure to each landowner whose property would be crossed by the Project.

- a. In its letter to affected landowners, Southeast shall:
 - (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 Southeast's Hotline; the letter shall indicate how soon to expect a response; and
 - (3) instruct the landowners that, if they are still not satisfied with the response from Southeast's Hotline, they should contact the Commission's Enforcement Hotline at (1-888-889-8030) or by email at hotline@ferc.gov.
 - b. In addition, Southeast shall include in its biweekly status report a table that contains the following information for each problem/concern:
 - (1) the date of the call;
 - (2) the identification number from the certificated alignment sheets of the affected property and approximate location by milepost or station number;
 - (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. Southeast shall employ at least one environmental inspector. The environmental inspector (EI) shall be:
- a. responsible for monitoring and ensuring compliance with all mitigative measures required by the 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 (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. Southeast shall file updated status reports prepared by the EI with the Secretary on a **biweekly** 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 project, 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 environmental inspector 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. 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 order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Southeast from other federal, state or local permitting agencies concerning instances of noncompliance, and Southeast's response.
10. Southeast must receive written authorization from the Director of OEP **before commencing service** for the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the ROW is proceeding satisfactorily.
11. **Within 30 days of placing the certificated facilities in service**, Southeast shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed/installed 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 Southeast 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.

12. **Prior to the crossing of the Buttahatchie River**, Southeast shall file with the Secretary of the Commission for review and written approval by the Director of OEP, a site-specific plan for the crossing of the Buttahatchie River which includes:
 - a. the locations of all HDD equipment, mud pits, pipe assembly, construction disturbance, and frac-out reduction methods;
 - b. the locations of all erosion containment structures;
 - c. the source of water for the drilling mud;
 - d. the length of the drill and the distance between the river and the HDD entry and exits points;
 - e. locations and dimensions of areas vegetative clearing needed for placement of the HDD drill bit guide wires, hydrostatic testwater sump pumps; and
 - f. identification of extra temporary work spaces to be cleared as part of the HDD.

13. Southeast shall **not begin construction of the Line 547 M-100 pipeline and its associated ancillary facilities, staging, storage, and temporary work areas; and the wellpads associated with the Dobbs Unit 30-7 #1 well and the Joyce House 23-16 #1 well until** it files with the Secretary cultural resource reports and treatment plans, as appropriate, and the State Historic Preservation Office's comments, and the Director of OEP reviews and approves all reports and treatment plans and notifies Southeast in writing that it 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.**

14. **Prior to construction**, Southeast shall file with the Secretary, for review and written approval by the Director of OEP, a well drilling noise analysis identifying existing and projected noise levels at the NSAs within 0.5 mile of each well location. For those NSAs where the noise attributable to the well drilling is projected to be above 55 dBA, Southeast shall provide a plan to reduce the projected noise levels. During drilling operations, Southeast shall monitor noise and make all reasonable efforts to restrict noise from drilling operations to no more than an Ldn of 55 dBA at the nearest NSAs.

15. **Prior to the start of the Buttahatchie River crossing**, Southeast shall file with the Secretary, for review and written approval by the Director of OEP, a noise analysis identifying the existing and projected noise levels at each NSA within 0.5

mile of the HDD entry and exit sites. If noise attributable to the HDD is projected to be above 55 dBA at an NSA, provide a plan that includes mitigation to reduce the projected noise levels at these NSAs. During drilling operations, Southeast shall monitor noise and make all reasonable efforts to restrict noise from drilling operations to no more than an Ldn of 55 dBA at the nearest NSAs.

16. Southeast shall make all reasonable efforts to ensure its predicted noise levels from the New Hamilton Compressor Station are not exceeded at nearby NSAs and file a noise survey showing this **no later than 60 days** after placing the compressor station into service. However, if the noise attributable to the operation of the New Hamilton Compressor Station at full load exceeds an L_{dn} of 55 dBA at any nearby NSA, Southeast 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. Southeast shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.