

126 FERC ¶ 61,246  
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

Docket No. CP08-104-000

ORDER DENYING ABANDONMENT

(Issued March 19, 2009)

1. On April 3, 2008, Southern Natural Gas Company (Southern) filed an application in Docket No. CP08-104-000 under section 7(b) of the Natural Gas Act (NGA)<sup>1</sup> seeking authorization to abandon by sale to Regency Field Services, LLC (Regency Nexus FS)<sup>2</sup> certain transportation pipelines, a compressor station, meter stations and related appurtenant facilities located in Panola and Shelby Counties, Texas and DeSoto, Red River, and Bienville Parishes, Louisiana known as the West of Bienville System.

2. Southern also requests a determination that, upon closing of the sale, some of the facilities to be abandoned will be non-jurisdictional gathering facilities under section 1(b) of the NGA,<sup>3</sup> while the remaining facilities to be abandoned will be non-jurisdictional intrastate transmission facilities under section 2(16) of the Natural Gas Policy Act of 1978 (NGPA).<sup>4</sup>

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<sup>1</sup> 15 U.S.C. 717f(b) (2006).

<sup>2</sup> Southern's purchase and sale agreement for the facilities at issue in this proceeding was with Nexus Gas Holdings LLC (Nexus). Regency Nexus FS subsequently assumed Nexus's contractual rights and responsibilities under the agreement after a series of transactions in which Nexus merged with and into Regency Gas Holdings LLC (Regency Nexus), a wholly-owned subsidiary of Regency Energy Partners, LP (Regency Partnership), and Regency Nexus then merged with and into Regency Nexus FS. For clarity's sake, this order refers to Regency Nexus FS or its parent, Regency Partnership, rather than to Regency Nexus FS's predecessors-in-interest.

<sup>3</sup> 15 U.S.C. § 717(b) (2006).

<sup>4</sup> 15 U.S.C. § 3301(16) (2006).

3. As discussed below, we will deny Southern's abandonment request.

### **I. Background and Proposals**

4. Southern is a Delaware general partnership engaged in the operation of an interstate pipeline network for the transportation of natural gas in the States of Texas, Louisiana, Mississippi, Alabama, Georgia, South Carolina, Florida, and Tennessee. Southern is a natural gas company as defined by section 2(6) of the NGA<sup>5</sup> and is subject to the jurisdiction of the Commission.

5. The West of Bienville System is located at the upstream western end of Southern's North Main Pipeline System and straddles the border between Texas and Louisiana. Southern proposes to abandon by sale to Regency Nexus FS all of the pipelines, meter stations, and the compressor station located west (upstream) of Southern's Bienville Compressor Station in Bienville Parish, Louisiana (Bienville Station). More specifically, these facilities include approximately 135.9 miles of pipeline consisting of (i) approximately 33.6 miles of 10-inch pipeline (Carthage Line) extending from the Carthage field in Panola County, Texas to Southern's Logansport Compressor Station (Logansport Station) in DeSoto Parish, Louisiana, (ii) approximately 57.2 miles of 14-inch pipeline extending from the Spider/Benson Field in DeSoto Parish, Louisiana to the Bienville Station (14-inch Logansport Line), (iii) approximately 45.0 miles of 16-inch pipeline extending from the Logansport Station east towards the Bienville Station (16-inch Logansport Line) (a loop of the 14-inch Logansport line that does not extend to the Bienville station), (iv) approximately 0.15 miles of 4-inch pipeline connecting the Bull Bayou field in DeSoto Parish, Louisiana to the 14-inch Logansport Line (Bunn Supply line), and (v) all of the facilities appurtenant thereto. Southern also proposes to abandon by sale to Regency Nexus FS the Logansport Station, consisting of three 1,100-horsepower compressor units, and acreage near the Bienville Station. Collectively, these facilities are referred to as the West of Bienville System.

6. Southern states that all of the facilities covered by Southern's proposals are located in and around the Carthage gas field in Panola County, Texas, and the Logansport, Joaquin, Grand Cane, Spider, and Benson gas fields in DeSoto, Red River, and Bienville Parishes, Louisiana (Supply Basins). Southern states that production in the Supply Basins is directly or indirectly connected to the West of Bienville System through ten meter stations operated by Southern, six of which are owned by third parties. Southern states that, although the facilities are currently functionalized as transmission, there are no delivery points along the entire length of the West of Bienville System and its actual function is more accurately characterized as gathering (or as intrastate

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<sup>5</sup> 15 U.S.C. § 717a(6) (2006).

transportation in the case of the 14-inch Logansport line), as discussed in more detail below.

7. Southern states that the West of Bienville System was originally constructed to support Southern's merchant service in the Supply Basins. Southern continues that it has gradually disposed of all of its gathering facilities as a result of its transition to a transportation-only system. In 2004, Southern completed the sale of the last of its facilities functionalized as gathering by selling its Logansport gathering system to Dominion Gas Ventures, Inc. (Dominion).<sup>6</sup> Regency Nexus FS is now the owner of the Logansport gathering system.

8. In this proceeding, as discussed below, Southern requests (i) authority to abandon by sale the West of Bienville System to Regency Nexus FS, (ii) a determination that the Carthage line, the Logansport Station, and the 16-inch Logansport line (collectively, the Carthage/Logansport facilities) perform a non-jurisdictional gathering function, and (iii) a determination that the Bunn Supply line and the 14-inch Logansport line (collectively, the Bunn/Logansport facilities) perform a non-jurisdictional intrastate function.

**A. Proposed Sale of the West of Bienville System to Regency Nexus FS**

9. Southern and Regency Nexus FS executed a Purchase and Sale Agreement (PSA) on December 10, 2007. The PSA is subject to certain conditions including receipt of abandonment authority from the Commission and a finding that, following the closing of the sale, the Carthage/Logansport facilities will be exempt from Commission regulation under section 1(b) of the NGA and the Bunn/Logansport facilities will be exempt from Commission regulation under section 2(16) of the NGPA.

10. Southern proposes to transfer the West of Bienville System to the relevant subsidiary of Regency Nexus FS's parent, Regency Energy Partners LP (Regency Partnership). Specifically, according to Southern, it will transfer the Carthage/Logansport facilities to Regency Nexus FS and the Bunn/Logansport facilities to Regency Intrastate Gas LLC (RIGS), a Regency Partnership subsidiary with an extensive intrastate system in the area.

**B. Carthage/Logansport Facilities**

11. Southern states that although the West of Bienville System is currently functionalized as transmission, the Carthage and 16-inch Logansport lines and the Logansport Station perform a gathering function. Southern states that the West of

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<sup>6</sup> *Southern Natural Gas Co.*, 108 FERC ¶ 62,129 (2004).

Bienville System is connected to and has historically been operated in conjunction with the Logansport gathering system.

12. Southern states that after its transfer of the facilities to Regency Nexus FS, the Regency Partnership will cause the Carthage line, which is located in Texas, to be acquired by another Regency Partnership subsidiary, Regency Gas Utility LLC, a Texas gas utility that provides gathering service and is regulated by the Railroad Commission of Texas. Southern states that Regency Nexus FS will own the 16-inch Logansport line and the Logansport Station, both located entirely in Louisiana, and will operate them as a gathering facility. Although these facilities will be owned by separate Regency Partnership subsidiaries, Southern states that the Regency Partnership intends the facilities to operate as a single seamless gathering system along with the existing Logansport gathering system.

**C. Bunn/Logansport Facilities**

13. Southern states that the Regency Partnership plans to own and operate the Bunn/Logansport facilities as part of the existing RIGS intrastate system in northern Louisiana.<sup>7</sup> The RIGS intrastate system is 320 miles long and currently extends from near the Texas-Louisiana border to Winnsboro, Louisiana.

14. Southern states that the Bunn/Logansport facilities will be (i) physically segregated from the Carthage/Logansport facilities, (ii) physically connected to the RIGS system, and (iii) operated as part of the RIGS system. In addition, Southern states that the Bunn/Logansport facilities will provide intrastate service as well as interstate services under section 311 of the NGPA. Although these facilities are not currently connected to the RIGS system, Southern states that RIGS plans to build an interconnect on the 14-inch Logansport line near the Bienville Station. Southern states that RIGS's acquisition and operation of the Bunn/Logansport facilities is subject to the approval of the Louisiana Office of Conservation.

**D. Proposed Refunctionalization of the West of Bienville System**

15. Southern states that it and Regency Nexus FS intend to provide uninterrupted service to the producers and shippers currently utilizing the West of Bienville System. Following the closing of the PSA, Southern states that, pursuant to its blanket

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<sup>7</sup> Southern states that RIGS is an intrastate pipeline regulated by the Louisiana Office of Conservation and offers interstate transportation service under section 311 of the NGPA pursuant to its Operating Statement on file with the Commission. RIGS has approved rates for both firm and interruptible section 311 transportation services. *Regency Intrastate Gas LLC*, 112 FERC ¶ 61,340 (2005).

authorization under subpart F of section 157 of the Commission's regulations, it will construct and operate a new receipt point, to receive gas from the West of Bienville System.

16. Before construction of the new receipt point is complete, Southern states, it will operate the West of Bienville System for the Regency Partnership pursuant to the Construction, Installation, Operation, and Maintenance Agreement between them. Following the completion of construction of the new receipt point, Southern states that Regency Nexus FS will assume full operation of the facilities.

17. Southern states that the Regency Partnership plans to construct a 22-mile extension of the 16-inch Logansport line and a processing plant near the Bienville Station on land acquired from Southern at the terminus of the 16-inch Logansport line. According to Southern, the processing facilities will process gas gathered through the Logansport gathering system and the Carthage/Logansport facilities. On January 30, 2009, the Regency Partnership filed a supplement to its motion to intervene stating that it has revised its construction and operating plans so that the 22-mile extension of the 16-inch Logansport line will be built with a larger diameter pipe than originally anticipated and will be operated as an intrastate facility integrated with its RIGS intrastate pipeline on both the western and eastern portions of the 22-mile extension. The Regency Partnership states that the eastern portion of the 22-mile extension will be interconnected near Bienville, Louisiana with Southern and that it will construct the processing plant at the interconnection of the 16-inch Logansport line and the proposed 22-mile extension of that line, rather than near Southern's Bienville Station.

18. During the construction phase of the 22-mile extension to the 16-inch Logansport line and the processing facilities, Southern states that the Carthage/Logansport facilities will deliver gas to the westernmost end of the 14-inch Logansport line, at the existing terminus of the 16-inch Logansport line, for redelivery to Southern's system at the Bienville Station. Southern states that Regency Nexus FS also intends to lower the pressure on the Carthage line from about 800 pounds per square inch gauge (psig) to 500 psig and interconnect that line with the suction side of the Logansport Station.

19. Southern asserts that the proposed abandonment will not affect its system's capacity and expects it to increase the availability of gas supplies on its system. According to Southern, shippers with firm receipt points on the West of Bienville System can move their receipt points to the new receipt point at the Bienville Station with uninterrupted and otherwise identical service.

## **II. Notice, Interventions, Protests and Answers**

20. Notice of Southern's application in Docket No. CP08-104-000 was published in the *Federal Register* on April 16, 2008 (73 Fed. Reg. 22,143). The following parties filed timely motions to intervene: Southeast Alabama Gas District, Municipal Gas

Authority of Georgia, Austell Gas System, Alabama Municipal Distributors Group,<sup>8</sup> Texican Natural Gas System, Peoples Gas System, Classic Hydrocarbons, Alabama Gas Corporation, Dominion Gas Ventures, Marlin Midstream, L.L.C. (Marlin), and the Regency Partnership. South Carolina Electric & Gas and SCANA Energy Marketing, Inc. (SCE&G and SEMI) filed a joint motion to intervene. BP America Production Company and BP Energy Company (BP) also filed a joint motion to intervene.<sup>9</sup> The Regency Partnership submitted comments in support of Southern's application.

21. The following parties filed late motions to intervene: Atmos Energy, Florida Power Corporation (d/b/a Progress Energy Florida), Southern Company Services, Inc., the City of Cartersville, Georgia (Cartersville), the Cities of Tallassee, Trussville, and Wilton, Alabama and Cordelle and Tallapoosa, Georgia, jointly, and Atlanta Gas Light Company and Chattanooga Gas Company (Atlanta and Chattanooga), jointly. Cartersville submitted comments in opposition to Southern's application.

22. The parties filing the untimely motions have demonstrated an interest in this proceeding and have shown good cause for intervening out of time. Further, the untimely motions will not delay, disrupt, or otherwise prejudice this proceeding. Thus, we will grant the untimely motions to intervene.

23. The Alabama Municipal Distributors Group, the Austell Gas System, the Southeast Alabama Gas District, and Texican Natural Gas Company (collectively, Firm Shippers), Marlin, and SCE&G and SEMI filed protests to Southern's application.<sup>10</sup> Atlanta and Chattanooga filed a protest in support of the Firm Shippers' protest.

24. Both the Regency Partnership and Southern filed motions for leave to answer and answers to the protests filed. The Firm Shippers filed a motion for leave to reply and a

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<sup>8</sup> The members of the Alabama Municipal Distributors Group include: Boaz Gas Board; Brookside Gas System; City of Childersburg Water Works & Gas Board; City of Cordova; Cullman-Jefferson Counties Gas District; DeKalb-Cherokee Counties Gas District; Gas Board of the Town of Dora; Fultondale Water & Gas Board; Utilities Board, Town of Gordo; Huntsville Utilities; City of Jacksonville; Marshall County Gas District; Northwest Alabama Gas District; Utilities Board of the City of Oneonta; Pickens County Natural Gas District; Piedmont Water and Gas Board; Scottsboro Water, Sewer and Gas Board; The Southeast Alabama Gas District; Gas Board of the Town of Sumiton; Utilities Board, City of Sylacauga; and Wilcox County Gas District, Alabama.

<sup>9</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2008).

<sup>10</sup> BP filed a protest to Southern's application, but later withdrew it.

reply to the Regency Partnership's and Southern's answers.<sup>11</sup> The Regency Partnership filed a supplement to its motion to intervene in support of Southern's application and, on February 13, 2009, the Firm Shippers filed a reply to the Regency Partnership's supplement. Although our rules do not permit answers to protests and answers to answers,<sup>12</sup> our rules do provide that we may, for good cause, waive this provision.<sup>13</sup> We find good cause to do so in this instance because the Regency Partnership's and Southern's answers and the Firm Shippers' reply provide information that will assist us in our decision-making. We will address these pleadings below.

25. Cartersville requests a trial-type evidentiary hearing if the Commission does not reject Southern's proposal. Atlanta and Chattanooga request a technical conference. Since we are denying Southern's application, we will dismiss as moot both requests.

### **III. Discussion**

26. Because the facilities Southern proposes to abandon are certificated facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposed abandonment is subject to the requirements of section 7(b) of the NGA.<sup>14</sup>

27. Section 7(b) provides that the abandonment of natural gas facilities or services can only be granted "after due hearing, and a finding by the Commission . . . that the present or future public convenience or necessity permit such abandonment."<sup>15</sup> Historically, in reviewing a request for abandonment by sale, the Commission has considered: the needs of the two natural gas systems and the public markets they serve, the environmental effects of its decision, the economic effect on the pipelines and their customers, the

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<sup>11</sup> The members of the Firm Shippers included in the protest are Southeast Alabama Gas District, Municipal Gas Authority of Georgia, Austell Gas System, and Alabama Municipal Distributors Group. The following additional members are included in the Firm Shippers' reply to the answers: the Cities of Tallassee, Trussville, and Wilton, Alabama and Cordelle and Tallapoosa, Georgia. The reply states that these additional members of the Firm Shippers also protest the application. Since we have granted these five cities' late motions to intervene, we will also accept their protests.

<sup>12</sup> 18 C.F.R. § 385.213(a)(2) (2008).

<sup>13</sup> 18 C.F.R. § 385.101(e) (2008).

<sup>14</sup> 15 U.S.C. 717f(b) (2006).

<sup>15</sup> *Id.*

presumption in favor of continued service, and the relative diligence of the respective pipelines in providing for adequate natural gas supplies.<sup>16</sup> The Commission also weighs the claimed benefits of the abandonment against any detriments. Continuity and stability of existing service, however, are the primary considerations in assessing the public convenience and necessity of a permanent cessation of service under section 7(b) of the NGA.<sup>17</sup>

28. In support of its application, Southern states that the benefits of the abandonment of the West of Bienville System include (i) a reduction in Southern's current operating costs, including the cost of fuel consumed at the Logansport Station, (ii) the elimination of the need for future capital expenditures by Southern for repair, replacement, or abandonment of the facilities, (iii) improvement in the quality of the gas received into Southern's system, and (iv) a reduction in Southern's rate base. Furthermore, Southern states that the proposed abandonment would allow it to focus on its primary business of interstate natural gas transportation.

29. Southern asserts that the West of Bienville System is underutilized. Southern also states that, although the facilities are currently functionalized as interstate transmission, they were originally constructed to support Southern's former merchant function and thus, it argues, are no longer an integral part of its system. Southern asserts that the proposal will enhance Regency Nexus FS's gathering and processing services, thus providing greater market access to producers. Finally, Southern notes that since no facilities will be constructed or removed from service as a result of the abandonment, the proposal raises no environmental issues.

30. While taking note of the benefits Southern claims would result if we granted its request for abandonment, we find that Southern has failed to support its contention that the facilities are underutilized to the extent that they are not essential to the provision of its open-access interstate transportation service. The most pertinent issues in determining whether the proposed abandonment is in the public convenience or necessity are the impact of the abandonment on Southern's customers, those customers' current utilization rates of the West of Bienville System, and whether there are continuation of service issues for the current shippers using the facilities. For the reasons described below, we find that any potential benefits of the proposed abandonment and refunctionalization do

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<sup>16</sup> *Northern Natural Gas Co.*, 123 FERC ¶ 61,325, at P 12 (2008). *See also Transcontinental Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1330 (D.C. Cir. 1973).

<sup>17</sup> *KN Energy Inc.*, 69 FERC ¶ 61,377, at 62,428 (1994). *See also Gulf Oil v. FERC*, 575 F.2d 67, 69-70 (3d Cir. 1978); *Farmland Industries, Inc. v. Kansas-Nebraska Natural Gas Co.*, 349 F.Supp. 670, 680-81 (D.C. Neb. 1972), *aff'd* 486 F.2d 315 (3d Cir. 1973).

not outweigh the detriments to Southern's current customers. Therefore, we will deny Southern's request for abandonment authority. Although there is some overlap between the issues, we will address the impact on Southern's customers, utilization rates, and continuity of service in turn.

**A. Impact on Current Customers**

31. Southern states that the abandonment of the West of Bienville System will benefit its customers by reducing Southern's annual cost of service by approximately \$3.7 million and will also save an estimated \$1.4 million annually in compressor fuel costs. Southern also contends that following the sale its shippers will have access to more gas supplies from the Supply Basins upstream of the new receipt point because Regency Nexus FS plans to attach additional supplies.

32. The Firm Shippers state that the facilities Southern proposes to abandon constitute a gas supply line for which Southern's customers have paid over two decades and that it provides the only link between Southern and a producing area located on the western edge of Southern's system. They note that demand by Southern's customers for gas from this area has significantly exceeded Southern's capacity to bring the gas onto its system. They also note that drilling and expectations for additional gas supply in that area have increased dramatically in recent years. For these reasons, they state, the value to Southern customers of the facilities as a strategic gas supply asset is substantial.

33. The Firm Shippers and SCE&G and SEMI argue that Southern's proposed abandonment of facilities, which are a direct link to an established and growing supply area, is inconsistent with the public convenience and necessity and with Southern's expansion of its system into new producing areas on the western portion of its system through its Southeast Supply Header project.<sup>18</sup> Southern responds that the proposed abandonment in this proceeding and its participation in the Southeast Supply Header project are consistent with its goal of increasing the supply and diversity of gas available to be delivered on its system. Southern states that the proposed sale of the West of Bienville System will increase the supplies accessed by its system and Southern's shippers should therefore have both additional gas supplies and increased supply options as a result. Regency Nexus FS maintains that, although the proposed abandonment will not address constraints on Southern's system east of Bienville, the abandonment and proposed enhancements to be constructed by Regency Nexus FS will increase the pool of gas supplies available for existing and potential shippers to transport on the RIGS system and that this supply would not be diverted from Southern.

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<sup>18</sup> See *Southeast Supply Header, LLC*, 120 FERC ¶ 61,257 (2007).

34. The Firm Shippers state that this is the wrong time to transfer these facilities to Regency Nexus FS, an unregulated entity that, according to the application and Regency Nexus FS itself, has plans to transport gas off of the facilities and into the intrastate market.

35. The Firm Shippers and Marlin argue that Southern's customers will be harmed by the proposed abandonment because they will not be assured access to the producing areas and because Regency Nexus FS would likely charge its own fees for service over the abandoned facilities, which shippers will have to pay in addition to Southern's existing rate for service downstream of the Bienville Station. Cartersville raised similar concerns in its comments.

36. Southern states that while it is obvious that Regency Nexus FS will charge for its service, the impact of such costs should be mitigated by the cost savings on Southern's system and by increased competition. Southern argues that due to what it believes will be increased competition to deliver gas to Southern's system, it is unlikely that the purchasers of the gas for delivery will experience an increase in their gas costs. Both Southern and Regency Nexus FS argue that the Commission has recognized in previous abandonment orders that the unbundling and transfer of facilities formerly used for interstate transportation may well result in customers paying increased rates, but that such a result is not necessarily inequitable nor unwarranted.<sup>19</sup>

37. The Firm Shippers respond that the cases cited by Southern and Regency Nexus FS are inapplicable in this instance because they involve decisions in which the Commission recognized that the subject facilities were performing a gathering function and, hence, not subject to Commission jurisdiction.

### **Commission Response**

38. We agree with the Firm Shippers that the cases cited by Southern and Regency Nexus FS with respect to the charging of separate rates on abandoned facilities are inapplicable here, because in those cases, the Commission found that the facilities at issue were performing a gathering function at the time their applications were filed and thus, under NGA section 1(b), were excluded from our jurisdiction. In such circumstances, the Commission had no choice but to grant the abandonment, regardless of the rates for service on the abandoned facilities. In this case, however, we find that the facilities as currently configured perform a transmission, not a gathering, function and the protestors' concerns with respect to rate impacts are legitimate.

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<sup>19</sup> Southern and Regency Nexus cite *Transcontinental Gas Pipe Line Corp.*, 97 FERC ¶ 61,296 (2001) and *Trunkline Gas Co.*, 95 FERC ¶ 61,337 (2001) to support this proposition.

39. Although Southern states that the Carthage/Logansport facilities currently perform a gathering function, it does not support that statement with any analysis under the Commission's primary function test. Rather, Southern uses the primary function test to support its contention that the Carthage/Logansport facilities will perform a gathering function after the facilities are reconfigured by the Regency Partnership, not as the facilities are currently configured. The West of Bienville System facilities, including the Carthage/Logansport facilities, are in fact certificated facilities functionalized as transmission that perform interstate transportation under section 7 of the NGA.

40. To determine a facility's function the Commission currently relies on the modified "primary function test," which considers the physical and geographical attributes of a system including: (1) the length and diameter of pipelines; (2) the extension of the facilities beyond the central point in the field; (3) the facilities' geographical configuration; (4) the location of compressors and processing plants; (5) the location of the wells along all or part of a system; and (6) the operating pressures of the pipelines.<sup>20</sup> In addition to the physical and geographical factors, the Commission also considers the purpose, location, and operation of the facilities, the general business activities of the owner of the facilities, and whether the jurisdictional determination is consistent with the NGA and the NGPA. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.<sup>21</sup>

41. Applying these factors to the current configuration of the West of Bienville System facilities, we find that they exhibit substantial characteristics of interstate transmission. Typically, transmission lines, much like those here, are pipelines extending from a producing or other wholesale source of gas to a distribution area. The West of Bienville System receives gas from various production outlets and transports it through long line segments, with compression to maintain mainline pressures, through the Bienville Station and eastward to Perryville and other market destinations. Pressures on the Carthage and 16-inch Logansport lines are approximately 850 and 800 psig, respectively. Southern states that Regency Nexus FS plans to lower the pressure on the Carthage line to 500 psig in order to allow more wells to connect, which implies that at least some wells cannot currently connect directly to the Carthage line due to the high pressure. The Carthage line is connected to the discharge end of the Logansport Station indicating that compression is used to maintain pressure on the Carthage line sufficient for the purpose of transportation, not gathering. This is typical of a transmission function where field pressures are supplemented at intervals along the transmission lines by compressor stations to maintain a strong enough flow to move gas to its destination.

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<sup>20</sup> *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983) as modified by *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990).

<sup>21</sup> *Northern Natural Gas Co.*, 74 FERC ¶ 61,100, at 61,303 (1996).

42. Furthermore, there is no processing plant on the West of Bienville System and, although this is not determinative, the presence of a processing plant is a strong indicator of gathering. Although the length and diameter of the pipeline facilities do not indicate either transmission or gathering, the West of Bienville System, and the Carthage/Logansport facilities specifically, bear very little resemblance to the Logansport gathering facilities Southern abandoned in 2004,<sup>22</sup> but rather are similar to Southern's downstream facilities that serve an undisputed interstate transmission function.

43. In addition, the non-physical factors also weigh in favor of interstate transmission. The purpose, location, and operation of the West of Bienville System is interstate transmission. As Southern agrees, the facilities are currently operated as transmission and their purpose is to serve Southern's interstate transmission customers. Furthermore, Southern's general business activity is to offer interstate transmission service. Neither would the goals of the NGA be furthered by a finding that the West of Bienville System currently functions as gathering. When applying the primary function test, no one factor is determinative, but on balance, we find that the West of Bienville System does not currently perform a gathering function, but a transmission function.

44. We need not reach a decision on whether the Carthage/Logansport facilities would perform a gathering function after the addition of a processing plant, lowering of pressure, and separation from the Bunn/Logansport facilities in light of our decision that the proposed abandonment is not permitted by the public convenience and necessity because of the protests by many firm shippers that wish to continue to receive their contracted-for interstate transportation services through those facilities as currently configured.

45. The Commission has stated that in determining whether the abandonment of jurisdictional facilities to intrastate pipelines is in the public convenience and necessity it will consider the potential that shippers will be charged higher rates for the same services they are currently receiving.<sup>23</sup> Currently, Southern's shippers on the West of Bienville System can deliver gas as far eastward as Perryville under Southern's Zone 0 rate. However, if the proposed reconfiguration were authorized, current shippers on the West of Bienville System would have to pay an intrastate transportation rate and perhaps a gathering rate, as well as Southern's Zone 0 rate, for the same service they currently receive under Southern's Zone 0 rate alone. Under such circumstances, especially were there are strong objections from a large number of firm shippers, denial of abandonment authority is appropriate. We find any possible benefit to Southern's West of Bienville

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<sup>22</sup> *Southern Natural Gas Co.*, 108 FERC ¶ 62,129.

<sup>23</sup> *Transcontinental Gas Pipe Line Corp.*, 110 FERC ¶ 61,337, at P 43 (2005) (*Transco II*).

customers is outweighed by potential detriments including loss of open access service to important and growing supply basins and increased rates for similar service.

### **B. Utilization of the West of Bienville System**

46. Southern asserts that the 10-inch Carthage line has been idle until very recently and is still severely underutilized and that the 16-inch Logansport line is not fully utilized. Similarly, Regency Nexus FS maintains that while the 14-inch Logansport line is fully utilized, the Carthage and the 16-inch Logansport lines are not. Furthermore, Southern and Regency Nexus FS contend that even if the system were not underutilized the Commission nevertheless has granted abandonment of other such facilities.<sup>24</sup> In any event, both Southern and Regency Nexus FS state, only two firm shippers with primary receipt points on the West of Bienville facilities have protested Southern's proposal.

47. The Firm Shippers respond that, contrary to Southern's and Regency Nexus FS's statements, 16 firm shippers, not two, with primary receipt points on the West of Bienville System have protested the proposal. Southern has not refuted the Firm Shippers' statement. To underscore the importance of the West of Bienville System to these shippers, the Firm Shippers note that the system is the only direct link to Southern from the nearby producing areas. Further, they state, it is highly constrained because the capacity it provides is substantially less than the volumes of gas shippers seek to transport on Southern's system. Marlin states that the Carthage line is fully subscribed by Southern's shippers and that the line is currently transporting gas from a recently reactivated interconnect.

### **Commission Response**

48. Commission staff issued data requests to Southern on November 10 and December 5, 2008, seeking information from the last three years about the contracts held by Southern's firm customers with primary receipt points on the West of Bienville System and the flow rates and design capacity of the system. Southern filed responses to the requests on November 20 and December 12, 2008, respectively.

49. Southern's responses indicate that the West of Bienville System is almost fully utilized. Averaged over the past three years, the utilization rate is approximately 92 percent of the system's design capacity of 140 million cubic feet (MMcf) per day. Further, according to Southern's response, approximately 59 percent of the firm transportation capacity attributable to receipt points on the West of Bienville System is

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<sup>24</sup> Citing *Northern Natural Gas Co.*, 95 FERC ¶ 62,126 (2001) (*Northern Natural*); *Natural Gas Pipeline Co. of America*, 82 FERC ¶ 61,278, (1998) (*NGPA*); and *Texas Gas Transmission Corp.*, 75 FERC ¶ 61,287 (1996) (*Texas Gas*).

held by protestors in this proceeding.<sup>25</sup> While most of the firm service contracts, including those held by shippers that are not protestors in this proceeding, have primary terms that expire in 2010,<sup>26</sup> all of the contracts provide the customer with the right to renew the contract. Five firm shippers (four of which are protestors) have already exercised options to extend the primary term of their contracts. Therefore, we conclude that the facilities are not underutilized.

50. Although, as Southern and Regency Nexus FS point out, the Commission has granted abandonment of facilities that are not underutilized, we decline to do so here. The three cases cited by Southern where the Commission granted abandonment for facilities that were being utilized are inapposite because no protests were filed in two of the cases and the one shipper protesting in the third case did not hold capacity on the facilities being abandoned.<sup>27</sup> Here, we have 16 firm shippers that wish to continue receiving interstate transportation service over the West of Bienville System. We cannot find that abandonment of these facilities is in the public convenience and necessity when they are essential to Southern's meeting its existing service obligations.

### C. Continuation of Service

51. Regency Nexus FS and Southern state that they intend to provide uninterrupted service to the producers and shippers currently utilizing the West of Bienville System. Therefore, according to Regency Nexus FS, the proposed abandonment will not affect the capacity of Southern's pipeline system or the continuity and stability of service available to shippers currently utilizing the West of Bienville System. The Firm Shippers argue, however, that there has been no guarantee that transportation will continue to Southern's customers over the West of Bienville System if the proposed abandonment is approved.

52. The Firm Shippers also argue that the proposed abandonment contravenes Commission precedent and policy in a series of orders involving Transcontinental Gas Pipe Line Corporation (Transco)<sup>28</sup> and Tennessee Gas Pipeline Company (Tennessee

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<sup>25</sup> With regards to all firm shippers having primary receipt points on the West of Bienville System, the protestors hold approximately 70 percent of all the firm transportation capacity.

<sup>26</sup> Others end in 2012, 2013, 2014, 2015, and 2020.

<sup>27</sup> No parties protested in *Northern Natural* or *Texas Gas*. The only protestor in *NGPA* was not a shipper on the section of pipeline that was to be abandoned.

<sup>28</sup> See *Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,118 *reh'g* 102 FERC ¶ 61,074 (2003) (*Transco I*) and *Transco II*, 110 FERC ¶ 61,337.

Gas).<sup>29</sup> The Firm Shippers argue that *Transco I* and *Transco II* demonstrate that it is Commission policy not to authorize abandonment of natural gas supply facilities to an intrastate company when those facilities continue to provide significant volumes of gas for existing interstate shippers. The Firm Shippers continue that the Commission has stated that it would be unprecedented to do so where the abandonment is protested by a pipeline's customers. Furthermore, the Firm Shippers maintain, the Commission has rejected the argument that service under NGPA section 311 is an adequate alternative to continuation of service under NGA regulation. The Firm Shippers also argue that *Tennessee Gas* is directly applicable to Southern's proposal exemplifying a situation where the Commission found that NGPA section 311 service was an inadequate alternative to continued NGA regulation.

53. Southern argues that *Transco I*, *Transco II*, and *Tennessee Gas* are distinguishable from its proposal because those orders involved larger and more extensive facilities and *Tennessee Gas* involved a spin-down to an affiliate. Southern continues that the Firm Shippers are incorrect in asserting that the Commission has repeatedly rejected proposals similar to Southern's. In fact, Southern argues that in a series of orders involving Williams Gas Processing<sup>30</sup> that were related to *Transco I* and *II*, the Commission granted abandonment authority more often than not after analyzing the facts of each situation to determine whether the public convenience and necessity would be served by the abandonment.

54. Regency Nexus FS argues that *Transco I* and *II* are inapplicable to the present facts because the facilities involved in those orders were much larger than the West of Bienville System. Furthermore, Regency Nexus FS argues that in the *Transco* orders there were either very vague or no system changes planned as opposed to Southern's proposal which includes Regency Nexus FS's detailed plans to integrate the subject facilities into its own system.

55. In their reply, the Firm Shippers maintain the applicability of *Transco I*, *Transco II*, and *Tennessee Gas*, arguing that those orders did not stress the importance of the size of the systems in question, rather that the abandonment would cause the discontinuation of interstate transportation service for existing customers. The Firm Shippers argue that the critical principle expressed in those orders is the continuation and stability of existing jurisdictional service. In contrast to *Transco I*, *Transco II*, and *Tennessee Gas*, the Firm Shippers argue that the West of Bienville System facilities are not significantly underutilized and provide a valuable link to important gas supply areas. The Firm

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<sup>29</sup> *Tennessee Gas Pipeline Co.*, 70 FERC ¶ 61,244 (1995) (*Tennessee Gas*).

<sup>30</sup> See *Williams Gas Processing – Gulf Coast Co., L.P. v. FERC*, 331 F.3d 1011 (D.C. Cir. 2003) (*Williams Gas Processing*).

Shippers also point out that, in the Transco orders, the protestors were interruptible shippers, not firm shippers as in this case, and, nonetheless, the Commission found that their interests were sufficient to deny the requested abandonment. Furthermore, the Firm Shippers argue that Regency Nexus FS's claim that the proposals in the Transco orders were denied because the applicant's plans were speculative is misleading. According to the Firm Shippers, there were several grounds on which the denial rested, only one of which was based on the unsubstantiated plans.

56. The Firm Shippers contend that Southern's analysis of *Williams Gas Processing* is misleading. According to the Firm Shippers, in that case the Commission granted Transco abandonment authority based on a determination that the facilities involved performed a gathering function and were therefore outside of the Commission's jurisdiction. Southern's proposal in this case, the Firm Shippers argue, is different from *Williams Gas Processing* and more like *Transco I*, *Transco II*, and *Tennessee Gas*, because the West of Bienville System does not presently, nor did it historically, perform a gathering function.

### **Commission Response**

57. We have held that where a pipeline company seeks to transfer facilities to a non-jurisdictional entity we will presume that there are no continuity of service issues if no customer of the pipeline protests the abandonment of the facilities.<sup>31</sup> In this case a large number of shippers holding firm capacity on the West of Bienville System have protested. In fact, based on Southern's response to staff's data request, staff determined that approximately 59 percent of the subscribed firm transportation capacity on the facilities Southern proposes to abandon is currently held by protestors. Furthermore, a review of the protestors by Commission staff confirms the Firm Shippers' assessment that at least sixteen shippers with firm capacity have protested Southern's proposal. These factors evidence the importance of continued interstate transportation service on the West of Bienville System to shippers on Southern's system.

58. Further, the Firm Shippers have correctly characterized the import of the Commission's decisions in *Transco I*, *Transco II*, *Tennessee Gas*, and *Williams Gas Processing*. *Transco I*<sup>32</sup> reversed an earlier order<sup>33</sup> in which the Commission granted Transco abandonment authority, authorized the sale of the South Texas Pipeline Facilities to an intrastate pipeline, and determined that following the transfer the facilities would be

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<sup>31</sup> *Northern Natural Gas Co.*, 123 FERC ¶ 61,325 (2008).

<sup>32</sup> *Transco I*, 103 FERC ¶ 61,118.

<sup>33</sup> *Transcontinental Gas Pipe Line Corp.*, 102 FERC ¶ 61,074 (2003).

intrastate pipeline facilities exempt from our jurisdiction. In the earlier order, we found that the South Texas Pipeline Facilities were underutilized (averaging about 37 percent utilization over the previous five years) and that the intrastate pipeline would be able to integrate the facilities into its system, and therefore granted abandonment.

59. However, in *Transco I* we overturned the earlier order on the grounds that abandonment was not permitted by the public convenience and necessity. The Commission found that authorizing Transco to abandon the facilities to the intrastate pipeline would prevent Transco from honoring its long-term contractual agreements for the provision of interstate services and that it was unclear whether continuity of service would be assured if the facilities were transferred. Much like the present proposal, in *Transco I* we found that Transco failed to support its contention that the South Texas Pipeline Facilities were “underutilized to the extent that they were not essential to the provision of open-access interstate transportation service.”<sup>34</sup> Furthermore, we found that Transco’s application lacked evidence of benefits to its customers that would support a finding that the public convenience or necessity permitted abandonment. The Commission noted that where it has authorized interstate pipelines to abandon certificated pipeline facilities by transfer to intrastate entities, either no gas or small volumes of gas were flowing through the facilities and there were no protests by shippers with contracts for firm service on the facilities proposed to be abandoned.<sup>35</sup> While it is true we did take into account the speculative nature of the intrastate pipeline’s proposals, it was not the only, or major, factor we analyzed. Although there are factual distinctions between *Transco I* and Southern’s proposal, the analysis remains the same and we find it instructive here.

60. *Transco II* deals with another Transco proposal to abandon its South Texas Pipeline Facilities to an intrastate pipeline. In that order we again denied Transco abandonment authority based on a rationale similar to that in *Transco I*.<sup>36</sup> The proposal was protested by several shippers holding contracts for interruptible service on the subject facilities. We determined the facts of *Transco II* did not differ considerably from those in *Transco I* and found that because significant volumes of gas continued to flow in the South Texas Pipeline Facilities, the facilities were essential to Transco’s provision of open-access transportation. Further, we found that although there could be slight rate benefits to Transco’s customers on the rest of its system, the customers that needed to use the South Texas Pipeline Facilities would likely pay higher rates if abandonment were approved. Again, although the circumstances are slightly different in Southern’s

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<sup>34</sup> *Transco I* at P 16.

<sup>35</sup> *Transco I* at P 9.

<sup>36</sup> *Transco II*, 110 FERC at P 2.

proposal to abandon the West of Bienville System, we find the *Transco II* analysis instructive. As in *Transco II*, the facilities proposed to be abandoned in this proceeding continue to flow a considerable amount of gas. Approximately 130 MMcf of gas per day flows through the West of Bienville System since the spindown of the Logansport gathering system. As in *Transco II*, there would be a small rate benefit to Southern's customers if the abandonment were approved, but that would not outweigh the detriment to the shippers on the West of Bienville System.

61. In *Tennessee Gas*, we denied a request by Tennessee Gas to abandon facilities to an intrastate company. Tennessee Gas proposed to abandon a 30 percent interest in its facilities, or, in the alternative, to abandon all of its interest in the facilities. We denied the 30 percent proposal for reasons irrelevant to this discussion and denied the second proposal because it was not in the public interest. We grounded our decision on the fact that many affected parties opposed the abandonment, that the intrastate company's ownership would prevent Tennessee Gas from honoring its contractual agreements, and that granting the abandonment was likely to result in significant changes to Tennessee Gas's customers' rates.<sup>37</sup> In this case, as in *Tennessee Gas*, there are many protestors who represent a large portion of the subscribed capacity on the facilities. Furthermore, the West of Bienville System is almost fully subscribed until at least 2010 and five shippers, including four protestors, have clearly opted to extend their contracts, including at least one shipper that has made a commitment until 2020. Allowing abandonment under these circumstances would prevent Southern from honoring its commitments.

62. Southern's reliance on *Williams Gas Processing* is misplaced. Southern maintains that the Firm Shippers misrepresent Commission precedent by arguing that *Transco I* and *II* represent the Commission's repeated rejection of proposals similar to Southern's proposal in this proceeding. Southern argues that *Williams Gas Processing* is connected to *Transco I* and *II* and that in it the Commission granted the requested abandonments more often than not.

63. *Williams Gas Processing* and its progeny represent a series of orders that concerned the disposition of a large portion of Transco's offshore gathering facilities. As noted by the Firm Shippers, *Williams Gas Processing* concerned Transco's proposed spindown of a complex 3,100-mile pipeline system. We denied Transco's abandonment authority finding that the size and scope of the proposal was unprecedented in spindown cases and the system did not meet the criteria of the primary function test.<sup>38</sup> Transco later divided some of the facilities into three different proposals for abandonment, which we ultimately approved for the most part, because we found that the facilities served a

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<sup>37</sup> *Tennessee Gas*, 70 FERC ¶ 61,244 at 61,762.

<sup>38</sup> *Transcontinental Gas Pipeline Corp.*, 76 FERC ¶ 61,317, at 62,543 (1996).

non-jurisdictional gathering function and therefore, abandonment was required. However, *Williams Gas Processing* and the ensuing series of orders are inapplicable here. The size and complexity of the facilities addressed in those orders was unprecedented, the offshore facilities involved bear no resemblance to the West of Bienville System or Southern's comparatively small and straight-forward request. Further, no interstate transportation service was proposed to be converted to intrastate service as is the case in this proceeding. For these reasons, *Williams Gas Processing* and its progeny do not support Southern's argument.

#### **IV. Conclusion**

64. In view of the above considerations, the Commission finds that Southern's abandonment of the West of Bienville System is not permitted by the public convenience or necessity. We therefore do not reach the question of whether the two portions of the West of Bienville System may be refunctionalized and classified as gathering and intrastate facilities, respectively.

65. In reaching this decision, we have considered that many of the affected parties oppose the abandonment and transfer, that the protesting firm shippers affected by Southern's proposal represent a substantial portion, approximately 59 percent, of the subscribed capacity on the West of Bienville System, that the subject facilities are almost fully subscribed and utilized, that they are a vital link to important and growing supply basins, and that the abandonment of these facilities would cut off open access interstate transmission to this supply.

66. At a hearing held on March 19, 2009, 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) Southern's request for abandonment authority is denied.
- (B) The requests for a technical conference and adjudicatory hearing are dismissed.
- (C) The motions for late intervention are granted.

(D) The answers and replies to comments, protests, answers, and responses are accepted.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.