

117 FERC ¶ 61, 015
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.

Golden Pass Pipeline LP

Docket No. CP04-400-001

ORDER AMENDING CERTIFICATE

(Issued October 4, 2006)

1. On March 31, 2006, Golden Pass Pipeline LP (Golden Pass) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) to amend the certificate of public convenience and necessity issued on July 6, 2005 in order to modify the pipeline facilities and route certificated in that order.¹ As discussed and conditioned below, we find that the requested amendment is required by the public convenience and necessity.

I. Background and Proposed Amendment

2. The July 6, 2005 Order authorized construction and operation of two parallel, 43-mile long, 36-inch diameter pipelines (mainline and loop) extending from the Golden Pass LNG Terminal, also authorized in the July 6, 2005 Order, to an interconnection in Texas with the American Electric Power (AEP) Texoma Pipeline, an intrastate pipeline. The Golden Pass pipeline facilities are designed to transport up to 2.5 Bcf/d of regasified liquefied natural gas (LNG).

3. After issuance of the July 6, 2005 Order, Golden Pass identified certain changes in the design and routing of the certificated pipeline that would reduce its overall construction footprint and impact on wetlands without requiring additional compression or having an adverse effect on transportation capacity or service. Golden Pass also indicates that the modified proposal will mitigate the total cost increase that would be associated with construction of the originally authorized Golden Pass Pipeline project.

¹ *Golden Pass Pipeline LP*, 112 FERC ¶ 61,041 (2006).

Accordingly, Golden Pass seeks amended certificate authorization:

- to construct and operate under NGA section 7(c) a single 33-mile long, 42-inch diameter pipeline between the Golden Pass LNG terminal and the AEP Texoma interconnection in lieu of the two previously certificated 43-mile long, 36-inch diameter pipelines;
- to modify the certificated route between MP 14.1 and MP 34.9 to reduce the pipeline length between these two points from 20.8 miles to 11.9 miles;
- to relocate the interconnections with Kinder Morgan (KM) Tejas Pipeline, KM Texas Pipeline, and Centana Gas Pipeline along the realigned pipeline; and
- for revised cost-based, initial recourse rates.

4. Golden Pass asserts that use of a single-line pipeline became feasible by increasing the operating pressure in the Golden Pass LNG Terminal and shortening the pipeline route, as described. The proposed 42-inch diameter pipeline will operate at the same maximum allowable operating pressure (MAOP) of 1,480 psig as authorized in the July 6, order. After deviating from the currently certificated route at MP 14.05, the revised route rejoins the original route at MP 34.88. The proposal will reduce the pipeline route by approximately nine miles and will include installation of a permanent pig launcher at the beginning of the pipeline within the LNG terminal. As amended, the Golden Pass pipeline facilities will include metering facilities at interconnections with six other pipeline systems.

5. Golden Pass estimates that the total capital cost of the facilities, as amended, will be \$425.7 million. This represents a \$98.1 million increase over the \$327.6 million in capital costs considered in the July 6, 2005 Order. Golden Pass contends this is because increases in material and construction costs since the time of its initial application have more than offset the cost savings to be realized from its proposed facilities variations. Nevertheless, Golden Pass maintains that its proposed modifications will result in lower overall project costs, as compared to its currently certificated configuration. Golden Pass estimates an annual cost of service for its modified proposal of \$76,186,550 (compared to the \$58,232,514 approved in the July 6, 2005 Order). Applying the same Rate Schedule FT-1 billing determinants of 31,210,920 dekatherm (Dth) per year, Golden Pass proposes to increase the initial cost-based FT-1 reservation charge from \$1.87 per Dth per month, as approved by the July 6 Order, to \$2.44 per Dth.

II. Notice and Interventions

6. Notice of Golden Pass' application to amend its certificate was published in the *Federal Register* on May 2, 2006 (71 Fed. Reg. 25,829). Interventions were due on or before May 17, 2006. One timely, unopposed motion to intervene was filed by Mr. Roy Breaux of Port Neches, Texas. Timely, unopposed motions to intervene are automatically granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.² No protests were filed.

III. Discussion

7. Since the proposed pipeline facilities will be used 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 NGA section 7.

A. The Certificate Policy Statement

8. On September 15, 1999, the Commission issued a Policy Statement providing guidance as to how proposals to construct new natural gas pipeline facilities will be evaluated.³ Specifically, the Policy Statement explains that the Commission, in deciding whether to certificate the construction of new pipeline facilities, 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 responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment and the unneeded exercise of eminent domain in evaluating new pipeline construction.

9. Under this policy the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from 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 a new

² 18 C.F.R. § 385.214 (2006).

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

pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission 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 the Commission then proceed to complete the environmental analysis where other interests are considered.

10. As discussed in the July 6, 2005 Order, the Commission found Golden Pass' original proposal satisfied the criteria for certification of new facilities set forth in the Policy Statement. The proposed amendment does not alter that conclusion. Because Golden Pass will be a new pipeline company, it has no existing customers and thus there is no potential for subsidization. The total footprint of the project is decreased substantially by the proposed modifications. There will be no adverse effect on existing services because Golden Pass has no current customers. As previously determined, the new pipeline should benefit interconnecting pipelines by providing new sources of gas for them to transport. No existing shippers, pipelines in the area, or landowners have protested the amended filing.

B. Revised Initial Rates

11. The July 6, 2005 Order approved Golden Pass' proposed initial maximum cost-based FT-1 reservation rate of \$1.87 per Dth and its proposed initial maximum IT-1 rate of \$0.0615 per Dth. The approved FT-1 usage rate is \$0.00 per Dth. As discussed above, due to increased materials and construction costs, the estimated total capital cost of Golden Pass' amended proposal is \$425.7 million and the revised annual cost of service is \$76,186.550. Golden Pass has recalculated its initial rates using the July 6, 2005 Order's approved FT-1 billing determinants, straight fixed variable (SFV) rate design methodology, capital structure and cost of service components, including return on equity, return on debt, and depreciation rate. We will approve Golden Pass' proposal to revise its initial section 7 recourse rates to reflect a maximum FT-1 reservation rate of \$2.44 per Dth and a maximum IT-1 rate of \$0.0802 per Dth.

12. Consistent with Commission precedent and our July 6, 2005 Order,⁴ we will require, pursuant to Ordering Paragraph (D) of this order, that Golden Pass file a cost and revenue study at the end of its first three years of actual operation to justify its existing

⁴ 112 FERC ¶ 61,041 at P 32 and Ordering Paragraph (G).

cost-based firm and interruptible recourse rates. In that filing, the projected units of service should be no lower than those upon which Golden Pass' approved revised initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the regulations to update cost of service data. After reviewing the data, we will determine whether to exercise our authority under NGA section 5 to establish just and reasonable rates. In the alternative, in lieu of that future filing, Golden Pass may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

C. Environment

13. Golden Pass requested use of the Commission's National Environmental Policy Act (NEPA) pre-filing process to deal with its proposed changes to the facilities certificated in Docket No. CP04-400-000. On December 2, 2005, this request was granted, and pre-filing Docket No. PF06-8-000 was established to place in the public record information filed by Golden Pass, related Commission documents, and stakeholder comments. The NEPA pre-filing process provided opportunities for interested stakeholders to become involved early in project planning and assisted in the identification of issues prior to Golden Pass' filing its application to amend its certificate.

14. On January 6, 2006, we issued in Docket No. PF06-8-000, a Notice of Intent to Prepare an Environmental Assessment for the Proposed Golden Pass Optimized Pipeline Project and Request for Comments on Environmental Issues (NOI). We received responses to the NOI from Shirla McFadden Howard, Ray Peterson, and Roy Breaux.

15. Ms. Howard and Mr. Peterson expressed concerns regarding impacts to wetlands and wildlife due to pipeline construction. Impacts to wildlife and wetlands, including wetland restoration, were addressed in both the environmental assessment (EA) for the proposed amendment and in the final environmental impact statement issued for the Golden Pass LNG Terminal and Pipeline Project (Golden Pass FEIS). In connection with its original authorization, Golden Pass developed an Aquatic Resource Mitigation Plan (July 29, 2005) to address issues related to wetland impact mitigation and compensation as required by the U.S. Army Corps of Engineers pursuant to its permit issued under section 404 of the Clean Water Act. The final Aquatic Resource Mitigation Plan was included as appendix D of the EA issued in this proceeding on August 14, 2006.

16. Ms. Howard was also concerned about the project's impact on the duck hunting club on her property. The EA explains that Golden Pass would work with landowners to schedule construction activities to minimize disturbance during high use periods such as hunting seasons, and would construct and restore properties so that current property use is unchanged. Mr. Peterson and Mr. Breaux both submitted comments regarding the LNG facility that was approved in the July 6, 2005 Order in Docket No. CP04-386-000.

However, the amendment at issue here does not involve any changes to the previously approved LNG terminal facilities.

17. Mr. Breaux also expressed concerns that the pipeline would be a safety hazard if there were a failure and suggested that it be built in another area where there are fewer people. He suggested an alternative route (Breux Route Variation 1) and subsequently a variation to his alternative route (Breux Route Variation 2). The EA notes that neither the proposed route nor Mr. Breaux' alternatives would be within 100 feet of any residence and concludes that Mr. Breaux' alternative routes would result in greater environmental impact than the proposed route and would transfer similar construction impacts to other landowners.

18. The Department of Transportation (DOT) is solely responsible for establishing criteria and requirements for the safety of natural gas pipeline facilities. DOT sets standards for the design, construction, inspection, and operation of natural gas pipelines in accordance with the Natural Gas Pipeline Safety Act of 1968, as amended. DOT's safety standards specify material selection and qualification, minimum design requirements, and protection from internal, external, and atmospheric corrosion. Any applicant for a certificate from the Commission is required to verify that the proposed facilities would meet DOT safety standards. Since Golden Pass will construct, operate, and maintain its pipeline in compliance with the requirements of the DOT's regulations, it should operate in a safe manner.

19. On August 14, 2006, the Commission issued its EA with comments due on September 14, 2006. The EA addresses nonjurisdictional facilities, geology, soils, water resources, wetlands, land use, air quality, noise, reliability and safety, and alternatives. On September 14, 2006, Golden Pass filed a comment to clarify some of the information that was presented in the EA. It clarifies the information about the impact to wetland areas along the proposed Optimized Route Variation (variation). Golden Pass explains that while 84.73 acres of wetlands would be within the construction right-of-way boundary, approximately 24.53 acres would be avoided by use of horizontal directional drilling. Thus, Golden Pass states that approximately 60.2 acres of wetlands would be affected by construction of the variation, compared to 102.12 wetland acres along the corresponding portion of the previously approved pipeline route. The clarification of the wetland information does not require a modification to the recommendations in the EA.

20. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by

this Commission.⁵ Golden Pass 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 Golden Pass. Golden Pass shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

21. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with Golden Pass' application and supplement(s) filed March 31, 2006 and the conditions in the Appendix to this order, approval of this proposal will not constitute a major federal action significantly affecting the quality of the human environment.

22. Accordingly, consistent with the Certificate Policy Statement and NGA section 7(c), we find that the public convenience and necessity requires approval of Golden Pass' proposed amendment to its certificate.

The Commission Orders:

(A) The certificate issued on July 6, 2005, in Docket No. CP04-400-000 is amended as discussed in the body of this order and in the certificate application and subject to the environmental conditions in the Appendix to this order. In all other respects, the certificate is unchanged.

(B) The proposed Rate Schedule FT-1 and Rate Schedule IT-1 revised initial recourse rates are approved as discussed in the body of this order.

(C) Golden Pass must make a tariff filing no sooner than 60 but no later than 30 days prior to commencement of service to place the rates approved herein into effect, including redlined tariff sheets reflecting how its actual tariff filing differs from its *pro forma* filing.

(D) Within three years after its in-service date, Golden Pass must make a filing to justify its existing cost-based firm and interruptible recourse rates. In its filing, the projected units of service should be no lower than those upon which Golden Pass' approved initial rates are based. The cost and revenue study must be in the form specified in section 154.313 of the regulations to update cost-of-service data. In the alternative, in lieu of this filing, Golden Pass may make an NGA section 4 filing to

⁵See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

propose alternative rates to be effective no later than 3 years after the in-service date for its proposed facilities.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

Golden Pass Pipeline LP Docket No. CP04-400-001

The authorizations granted in this order are subject to the following environmental conditions:

1. Golden Pass Pipeline LP shall follow the construction procedures and mitigation measures described in its application, supplemental filings and as identified in the EA, unless modified by the Order. Golden Pass must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. For pipeline facilities, 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 Golden Pass OP Project (Project). This authority shall include:
 - a. the modification of conditions to the Commission's Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Golden Pass 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 locations shall be as shown in the EA, as supplemented by filed alignment sheets, and shall include all of the staff's recommended facility locations. **As soon as they are available, and before the start of construction,**

Golden Pass 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.

5. Golden Pass shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the 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. Golden Pass shall file **at least 60 days before that start of construction;** Golden Pass shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Golden Pass will implement the mitigation measures required by the Order. Golden Pass must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Golden Pass will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;

- b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions Golden Pass will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - e. the company personnel (if known) and specific portion of Golden Pass' organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Golden Pass will follow if noncompliance occurs; and
 - g. 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. Golden Pass 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 right-of-way. **Prior to construction**, Golden Pass shall mail the complaint procedures to each landowner whose property would be crossed by the Project.
- a. In its letter to affected landowners, Golden Pass shall:
 - (1) provide a local contact that the landowners shall call first with their concerns; the letter shall indicate how soon a landowner shall expect a response;
 - (2) instruct the landowners that, if they are not satisfied with the response, they shall call Golden Pass' 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 Golden Pass' Hotline, they shall contact the Commission's Enforcement Hotline at (888) 889-8030.
 - b. In addition, Golden Pass shall include in its weekly status report a copy of 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;

- (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. Golden Pass shall employ a team of environmental inspectors. The environmental inspectors shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation 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. Golden Pass shall file updated status reports prepared by the environmental inspector with the Secretary on a weekly 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(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. 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 Golden Pass from other federal, state or local permitting agencies concerning instances of noncompliance, and Golden Pass' response.
10. Golden Pass must receive written authorization from the Director of OEP **before commencing service of the Project**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the Project are proceeding satisfactorily.
11. **Within 30 days of placing the certificated facilities in service**, Golden Pass shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Golden Pass 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. Golden Pass shall file the following information on nonjurisdictional facilities:
 - a. a map showing the final location of all nonjurisdictional facilities as listed on table 1.5-1 of the OP Project EA;
 - b. documentation of consultations with the appropriate agencies and the status of federal, state, or local permits or approvals required for their construction; and
 - c. status, and copies of agency clearances (or copies of any surveys and reports prepared) for wetlands, threatened and endangered species, and cultural resources.

Golden Pass shall defer obtaining service from or providing service to any nonjurisdictional facility until this information has been filed with the Secretary.
13. Golden Pass shall file a site-specific plan for contractor/pipe yards A and B that identifies the type of equipment, materials, and fuels/lubricants that would be stored in the yard, and the location of erosion controls/fencing and travel ways within the contractor/pipe yard. If the contractor/pipe yard would be used to store fuels/lubricants or for parking of vehicles or construction equipment, the site-specific plan shall include procedures that would be implemented to avoid or minimize impacts on wetlands or waterbodies from spills or leaks. These site-

specific plans shall be filed with the Secretary for review and written approval by the Director of OEP **before use of the contractor/pipe yard.**

14. Between MPs 0.0 to 14.1, MPs 0.0 (OV) to 11.9 (OV), and MPs 34.9 to 42.8, Golden Pass shall provide site-specific justification to support its request for construction right-of-way widths greater than 75 feet in wetlands for review and written approval by the director of OEP before construction.
15. Before construction, Golden Pass shall file with the Secretary copies of documentation of consultation with the SHPO on the proposed *Unanticipated Discoveries Plan*.