

119 FERC 61,281
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.

Gulf South Pipeline Company, L.P.

Docket Nos. CP06-446-000
CP06-446-002

Texas Gas Transmission, LLC

Docket No. CP06-441-000

ORDER ISSUING CERTIFICATES AND GRANTING ABANDONMENT

(Issued June 18, 2007)

1. On September 1, 2006, Gulf South Pipeline Company, L.P. (Gulf South) filed, in Docket No. CP04-446-000, an application under section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate its proposed East Texas to Mississippi Expansion Project. The proposed project consists of 241.9 miles of pipeline, and 110,604 horsepower (hp) of compression that will connect Gulf South's existing facilities in DeSoto Parish, Louisiana to Gulf South's pipeline in Simpson County, Mississippi. Gulf South also seeks authorization under section 7(b) of the NGA to abandon 62,180 Dth per day of capacity on the proposed facilities by lease to Texas Gas Transmission, LLC (Texas Gas). On September 1, 2006, Texas Gas, in Docket No. CP06-441-000, filed a companion application under section 7(c) of the NGA for authorization to lease the above-described 62,180 Dth per day of capacity from Gulf South.
2. On February 20, 2007, Gulf South filed an amendment to the September 1, 2006 application. In the amendment Gulf South proposes to substitute a heavier-walled and internally coated pipeline on a portion of its proposed project that would potentially increase the capacity of that portion of the pipeline.
3. For the reasons stated below, we are granting the requested authorizations, subject to conditions.

I. Background and Proposals

A. The Gulf South East Texas to Mississippi Expansion Facilities

4. Gulf South is a natural gas company which owns and operates approximately 7,500 miles of pipeline facilities extending from southern and eastern Texas through Louisiana, Mississippi, southern Alabama and western Florida. Gulf South states that the Texas region has been experiencing an increase in natural gas production, primarily from the Barnett Shale and Bossier Sands production areas in north and east Texas. This growth, says Gulf South, is expected to continue for at least the next decade as producers continue to invest heavily in drilling and gathering infrastructure to transport this gas to the Carthage, Texas area where it will enter the interstate pipeline grid. Gulf South states that many existing pipelines are at or near capacity, resulting in pipeline constraints that increasingly restrict producers' ability to transport their gas out of Texas. Gulf South states that the anticipated presence of additional LNG regasification facilities along the Gulf Coast has also increased pipelines' projected load factors. Gulf South avers that additional west to east pipeline infrastructure is needed to alleviate pipeline capacity bottlenecks by furnishing a critical bridge between developing onshore supply basins and the interstate pipeline grid. Damage to the Gulf of Mexico offshore pipeline infrastructure during the 2005 hurricane season also demonstrates the need for additional secure onshore pipeline infrastructure, states Gulf South.

5. Gulf South requests authorization here to expand its system by constructing and operating, (a) 3.3 miles of 36-inch diameter pipeline facilities to connect intrastate facilities of Enterprise Products Partners, LP and Enbridge Partners, LP to Gulf South's Carthage Junction Compressor Station in Panola County, Texas, and (b) approximately 238.6 miles of 42-inch diameter pipeline to connect Gulf South's existing pipeline facilities in DeSoto Parish, Louisiana to Gulf South's existing 30-inch diameter pipeline at Harrisville, in Simpson County, Mississippi.

6. To facilitate deliveries to the Midwest and Northeast, Gulf South proposes to construct new interconnects or upgrade existing interconnects with Texas Gas, Columbia Gulf Transmission Company, Texas Eastern Transmission, LP, Transcontinental Pipe Line Corporation, and Florida Gas Transmission, at various points in Louisiana and Mississippi. Gulf South also plans to construct taps along the route for potential interconnects in anticipation of providing service at those points in the future. In addition, Gulf South would connect the expansion pipeline with its own Middle 30 Pipeline at the new Vixen Compressor Station.

7. Along with the pipeline facilities, Gulf South proposes to install a total of 110,604 hp of new compression at existing and new compressor stations. At its existing Carthage Junction Compressor Station in Panola County, Texas, Gulf South proposes to install two

Mars 100 Solar units and a Taurus 70 Solar unit to add a total of 40,302 hp of compression. It also proposes to construct two new compressor stations in Louisiana, the Vixen Compressor Station in Ouachita Parish, and the Tallulah Compressor Station, in Madison Parish. At the Vixen Compressor Station Gulf South would install two Mars 100 Solar units which would provide 30,000 hp of compression to its system, and at the Tallulah Compressor Station it would install two Mars 100 Solar units and a Taurus 70 Solar unit which would provide 40,302 hp of compression.

8. The expansion facilities, including the new pipelines and compression, would add up to 1.7 Bcf per day of transportation capacity to Gulf South's system. Gulf South estimates the cost of the new facilities at \$766,882,000.

9. As the result of two open seasons, Gulf South states that it has entered into binding precedent agreements with 12 shippers to transport 1.38 Bcf per day which will be delivered at various pipeline interconnects along the expansion facilities or on Gulf South's existing system. Prior to placing the expansion facilities in service, Gulf South would execute contracts at negotiated rates with terms ranging from five to ten years. As discussed below, Gulf South also seeks authorization to abandon an additional 62,180 Dth per day of the new otherwise unsubscribed capacity by operating lease to Texas Gas.

1. Gulf South's Proposed Rates

10. Gulf South proposes an incremental recourse rate of \$0.2580 per Dth per day calculated on a 100 percent load factor basis for transportation service on the expansion facilities.¹ Gulf South states that this rate is based on the incremental annual cost of service incorporating the capital structure and return established in Gulf South's last rate case. To the extent customers use both expansion and existing facilities, Gulf South proposes to charge the incremental rate plus the system-wide generally applicable rate for each zone they utilize on the existing system.

11. Gulf South proposes to use the currently effective postage stamp fuel rate, including lost-and-unaccounted for gas, for transactions utilizing either the expansion facilities or both the expansion facilities and existing facilities. It explains that shippers would pay the fuel rate only once if they are using both expansion and existing facilities. Gulf South avers that this is consistent with both the networked nature of Gulf South's system and the fact that most expansion shippers will use both expansion and existing facilities. The proposal also ensures, Gulf South says, that the maximum tariff fuel rate

¹ This equates to a monthly reservation rate of \$7.8473 per Dth.

will not create a competitive advantage or disadvantage between expansion customers and existing customers transporting gas from east Texas to similar markets.

2. Gulf South's Amendment to the Application

12. Gulf South states that, since it filed its application, several new interstate pipeline projects to be located near Gulf South's proposed Tallulah Compressor Station have been announced by their sponsors. Gulf South anticipates that a market for increased gas deliveries will develop in the future and that there may be a need to increase the capacity of the expansion facilities between the Tallulah Compressor Station and Harrisville. To accommodate the greater volumes of gas that could be introduced into its system through existing or new interconnects, Gulf South proposes to increase the wall thickness of the pipe between the Tallulah Compressor Station and Harrisville and to coat the pipe internally to reduce its roughness. These modifications, states Gulf South, will increase the MAOP of this segment of the line from 1200 to 1333 psig. and allow Gulf South to increase the capacity of the expansion facilities to take advantage of future opportunities without the need to construct new facilities.²

13. Gulf South estimates that the cost of these modifications will increase the cost of its original proposal by an additional \$31 million. Because it is uncertain when the increased volumes that it anticipates would flow into its system, Gulf South does not at this time propose to modify the requested certificated system capacity or to recalculate the rates it proposed in the September 1, 2006 application. Instead, Gulf South proposes to absorb the costs associated with the increased pipeline thickness and coating; those costs will not be reflected in the initial incremental rates being proposed.³

B. The Texas Gas Lease

14. Texas Gas is a natural gas company engaged in the interstate transportation of natural gas, primarily from sources in Texas and Louisiana to delivery points on its pipeline system located throughout Louisiana, Arkansas, Mississippi, Tennessee, Kentucky, Indiana, Illinois, and Ohio. Texas Gas has entered into an operating lease agreement with Gulf South under which Texas Gas will lease from Gulf South 62,180

² Gulf South estimates that it would need to construct approximately 20 miles of additional pipeline looping to be able to reach the same level of capacity possible with the modified pipe design.

³ Gulf South would, however, begin to depreciate these costs upon the project's in-service date.

Dth per day of capacity on Gulf South's new expansion facilities for a primary term of six years, extending from year to year thereafter, unless terminated by either party. Additionally, the Lease Agreement provides that, upon termination of the lease, all the lease capacity will revert to Gulf South.

15. Under the Lease Agreement, Texas Gas will pay monthly lease charges consisting of a daily demand charge of \$0.1242 per Dth multiplied by 62,180 Dth per day times the number of days in the month and a commodity charge of \$.0066 per Dth transported under the Lease Agreement. In addition, under the Lease Agreement, Texas Gas agrees to provide a quantity of gas for fuel gas associated with the lease capacity equal to .7 percent for all gas delivered for the account of Texas Gas for redelivery to the primary delivery points.⁴ Texas Gas has a right to use this capacity on a firm basis, and will use the leased capacity to provide open access transportation service to its customers pursuant to its FERC Gas Tariff, subject to the right of Gulf South to maintain operational control of the facilities used to provide the lease capacity.⁵ The Lease Agreement further provides that Gulf South not take any action that would have an impact on Texas Gas' ability to use the lease capacity disproportionate to the impact on Gulf South's firm shippers.

16. After conducting an open season to determine the interest of its customers in such an arrangement, Texas Gas has entered into precedent agreements with two shippers⁶ for a total of 60,000 MMBtu per day.⁷ Under the agreements, Texas Gas will transport gas at negotiated rates through the lease capacity from East Texas to a point near Vixen, Louisiana where the gas will enter the Texas Gas system for further transportation to Ohio.

⁴ See section 4.4 of the Operating Lease Agreement.

⁵ Texas Gas has filed pro forma tariff sheets described below, establishing maximum firm and interruptible incremental rates applicable to the use of the lease capacity by its shippers.

⁶ The Cincinnati Gas & Electric Company, dba Duke Energy Ohio, Inc., and Constellation New Energy Gas.

⁷ The Lease Agreement volume of 62,180 Dth per day reflects the total volume of gas needed to satisfy the fuel retention requirement on the Texas Gas system. Texas Gas states that the term MMBtu, which is used in its tariff, is functionally "synonymous and interchangeable" with the term Dth.

17. Texas Gas proposes incremental recourse rates designed to recover the demand and commodity charge lease payments to Gulf South from only those shippers that will use the lease capacity. The incremental recourse rates are based on an Annual Capacity Lease Charge of \$2,820,485 divided by the total billing determinants of 21,900,000 Dth (60,000 Dth per day x 365 days) for a Daily Reservation Charge of \$.1288 per Dth. The commodity charge of \$.0068 per Dth reflects annual variable costs of \$74,896 divided by 10,950,000 Dth (50% load factor). The commodity charge also reflects an amount for Texas Gas fuel. The 100% load factor rate equals \$.1356 per Dth.⁸

18. In addition, Exhibit N to the Texas Gas application sets forth the revenues that will be generated from these incremental rates. These revenues, Texas Gas avers, will exceed Texas Gas' costs associated with the lease capacity.⁹ Texas Gas states that because only shippers using the lease capacity will be subject to the proposed incremental rates, other shippers will not subsidize the cost of lease capacity.

19. Texas Gas states that granting it the authority to lease capacity on the Gulf South system will allow the efficient use of otherwise unsubscribed capacity on both the Gulf South and Texas Gas systems. Texas Gas states the requested authorization does not require the construction of any additional pipeline facilities on the Texas Gas system. Gulf South will construct a new delivery point at a point of interconnection with Texas Gas near Bosco, Louisiana, where the lease volumes will be delivered into the Texas Gas system. Texas Gas further states the lease will utilize Gulf South's proposed pipeline infrastructure to effectively extend the Texas Gas system further into the supply rich areas of East and North Texas, thereby providing a needed market outlet for those natural gas supplies and providing markets served by the Texas Gas system with increased access to such supplies. Texas Gas states that the proposed lease will allow it to meet new market demands without environmental or landowner impacts.

⁸ The precedent agreements set forth the rates.

⁹ Exhibit N shows that Texas Gas' annual revenues of \$9,413,715 will exceed Texas Gas' expenses of \$3,120,659 associated with the lease capacity by \$6,293,056. Texas Gas' revenues (reservation and commodity) for the total 60,000 Dth per day under the precedent agreements include not only the lease charge rates (a daily demand rate of \$.1242 per Dth), but also the transportation rates for gas deliveries from Vixen, Louisiana to Lebanon, Ohio on the Texas Gas system (a daily demand rate of \$.2842 per Dth – Texas Gas' Zone 1-4 FT maximum reservation rate).

II. Notice and Interventions

20. Notices of the Gulf South application and the amendment to the application were published in the *Federal Register* on September 18, 2006 (71 Fed. Reg. 54635) and on February 28, 2007 (72 Fed. Reg. 8981), respectively. Southern Company Services, Inc., the City of Vicksburg, Mississippi, Wilmut Gas Company, Mobile Gas Service Corporation, CenterPoint Energy Entex, Atmos Energy Corporation, Florida Power Corporation, Sequent Energy Management, L.P., Louisiana Municipal Gas Authority, Chesapeake Energy Marketing, Inc., Merrill Lynch Commodities, Inc. and Kaiser Francis Oil Company, individually, and Virginia Natural Gas, Inc. and Pivotal Utility Holdings dba Elizabethtown Gas, jointly, filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹⁰ The United Municipal Distributors Group and Southern Natural Gas Company, individually, and BP Production Company and BP Energy Company, jointly, filed motions to intervene out-of-time. These entities have shown an interest in this proceeding, and their participation will not delay the proceeding or prejudice the rights of any other party. Accordingly, for good cause shown, we will permit their late intervention.¹¹

21. Notice of the Texas Gas application was published in the *Federal Register* on September 18, 2006 (71 Fed. Reg. 54639). Atmos Energy Corporation, Constellation NewEnergy-Gas Division, LLC, ProLiance Energy, LLC, individually, The Peoples Natural Gas Company, dba Dominion Peoples, and Hope Gas, Inc., dba Dominion Hope, jointly, and the Western Tennessee Municipal Group¹², Jackson Energy Authority, City of Jackson, Tennessee, and the Kentucky Cities (the Cities of Carrollton, Henderson, and Murray, Kentucky), jointly, filed timely, unopposed motions to intervene. PSEG Energy Resources & Trade LLC (PSEG) filed a motion to intervene out-of-time. PSEG has shown an interest in this proceeding, and its participation will not delay the proceeding or prejudice the rights of any other party. Accordingly, for good cause shown, we will permit its late intervention. ProLiance's intervention included a comment that the proposed lease will impact the entire Texas Gas system, so the Commission's analysis should ensure that there will be no detrimental impact on current system operations.

¹⁰ 18 C.F.R. § 385.214 (2007).

¹¹ 18 C.F.R. § 385.214(d) (2007).

¹² The Western Tennessee Municipal Group consists of fourteen distributor-customers located in Tennessee.

22. Merrill Lynch's intervention request in Docket No. CP06-446 also included a protest. On October 13, 2006, however, Merrill Lynch filed a notice with the Commission that it desired to withdraw its protest. No one filed a motion in opposition to the withdrawal, and the Commission has taken no action to disallow it. Accordingly, pursuant to Rule 216 of the Commission's Rules of Practice, the withdrawal became effective on October 30, 2006.¹³

III. Discussion

23. Because the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, their construction and operation, as well as the acquisition of capacity by lease, are subject to the requirements of section 7(c) of the NGA. The proposed abandonment of capacity is subject to the requirements of section 7(b).

A. The Gulf South Expansion Facilities

1. Certificate Policy Statement

24. On September 15, 1999, the Commission issued its Certificate Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.¹⁴ 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 responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

25. 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

¹³ See 18 C.F.R. § 385.216 (2007).

¹⁴ *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000).

applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers.

26. The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' 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, 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.

27. Gulf South's proposed East Texas to Mississippi Expansion Project, as conditioned below, meets the threshold test that its existing customers not subsidize the project and minimizes any adverse effects upon existing, expansion, and new customers. Furthermore, the project will not degrade any present services to existing customers. The project will likewise have no adverse impact on existing pipelines or their captive customers as the new facilities will be transporting new domestic sources of gas so that the project will not replace existing customers' service on existing pipelines.

28. We are also satisfied that Gulf South has taken appropriate steps to minimize adverse impacts on landowners. Gulf South has designed the pipeline route so that the majority of the right-of-way for the East Texas to Mississippi Expansion Project (approximately 76 percent) will parallel or be located on existing or proposed gas pipeline or electric power line rights-of-way. Gulf South states, moreover, that it has designed the expansion of its Carthage Compressor Station and the proposed locations for its new Vixen and Tallulah Compressor Stations in remote areas to minimize potential impacts on landowners.

29. The East Texas to Mississippi Expansion Project, as amended and conditioned, will benefit the public because it will provide an important new outlet to the interstate market for natural gas from capacity constrained production areas that are expected to serve as rich supply sources. Gulf South has already entered into contracts for a significant amount of the originally proposed capacity, and its amendment adding more capacity to the project demonstrates confidence in its ability to attract additional market support for the project. Therefore consistent with the criteria discussed in the Certificate Policy Statement and section 7(c) of the NGA, we find that the benefits of the project will outweigh any potential adverse effects, and that the proposed project is required by the public convenience and necessity.

30. Consistent with our standard practice, we will condition our certificate authorization so that construction cannot commence until after Gulf South executes contracts that reflect the levels and terms of service represented in its precedent agreements.¹⁵

31. The binding precedent agreements Gulf South entered into with shippers, are the result of two open seasons held in February and March of 2006. Some shippers have entered into two (2) distinct binding precedent agreements with Gulf South, each of which generally specifies a quantity, term, rate, and receipt and delivery points. In this situation, where a shipper has two distinct binding precedent agreements, it must adhere to those specifications set forth in each respective agreement. In the event that such a shipper may want to combine its two agreements in some manner, it must execute a new agreement detailing the combination with regard to quantity, term, rate, receipt and delivery points and describing any variance in the agreement provisions.

2. Gulf South's Rates

32. The Commission has reviewed Gulf South's rate proposal including its proposed incremental recourse rate for these facilities and associated pro forma tariff sheets reflecting stated rates for Rate Schedules FTS, ITS and NNS. The proposed expansion facilities will be integrated and operated as part of Gulf South's system. Gulf South states the addition of high-pressure pipeline facilities will enhance its ability to better manage the physical operation of its system by providing additional flexibility to accommodate changes in supply sources and market needs. In addition, Gulf South is proposing to charge its currently effective postage stamp fuel rate of 1.6 percent for transactions utilizing either the expansion facilities or both the expansion and the existing facilities, consistent with the reticulated nature of Gulf South's system and the fact that most of the expansion shippers will use both expansion and existing facilities. Nevertheless, Gulf South proposes to charge customers who use both the expansion and existing facilities an incremental rate for service on the expansion facilities plus the generally applicable system-wide transportation rates for service provided on the existing system. Given the configuration of Gulf South's existing system and proposed expansion, the Commission has not permitted incremental plus pricing. Therefore, we will modify Gulf South's proposal as discussed below.

33. For mainline expansion facilities, such as those proposed by Gulf South, the Commission has permitted pipelines to charge either an incremental rate for service utilizing such facilities if such rate is higher than the generally applicable firm

¹⁵ See, e.g., *Tennessee Gas Pipeline Company*, 101 FERC ¶ 61,360, P 21 (2002).

transportation rates,¹⁶ or their generally applicable transportation rates if the proposed incremental rate is less than the system-wide generally applicable rate.¹⁷ Here, the bulk of the contracted-for capacity is to be received at Carthage in Zone 1 and delivered to delivery points in Zone 3. The generally applicable FTS firm transportation rate for transportation from Zone 1 to Zone 3 is \$10.2702 per Dth per month (\$0.338 Dth per day) compared to the proposed incremental rate of \$7.8473 Dth per month (\$0.258 Dth per day).¹⁸ Accordingly, consistent with Commission policy, because the proposed rate is lower than the system rate, we will approve Gulf South's generally applicable system-wide transportation rates as initial recourse rates for service on the expansion facilities.¹⁹ However, because the proposed Gulf South expansion is not fully contracted at this time, it is not possible to make a predetermination regarding rate treatment.²⁰ If Gulf South seeks to roll-in the costs of these expansion facilities in a future Section 4 rate proceeding, it must demonstrate that existing customers will not subsidize the proposed project. We direct Gulf South to file actual tariff sheets reflecting the revision as directed by this order at least 30 days but no more than 60 days prior to the in-service date of the new facilities.²¹

34. With regard to fuel, given the network nature of Gulf South's system, we find that Gulf South's proposal to use its currently-effective system fuel rate of 1.6 percent for

¹⁶ See *East Tennessee Natural Gas Company*, 98 FERC ¶ 61,331 (2002).

¹⁷ See *Trunkline Gas Company, LLC*, 119 FERC ¶ 61,078 (2007).

¹⁸ We note that the proposed incremental rate is slightly higher than Gulf South's generally applicable rate for transportation from Zone 1 to Zone 2 of \$7.8456 Dth per month (\$0.2579 Dth per day). However, we note that Gulf South did not use its last approved settlement depreciation rate of 2.3 percent when computing its incremental cost of service, and thus the appropriately calculated incremental rate is likely to be lower than the Zone 2 system rate. See *Texas Eastern Transmission, LP*, 101 FERC ¶ 61,120 (2002).

¹⁹ Shippers using expansion facilities are permitted to use Gulf South's existing facilities on a secondary basis, and existing shippers are permitted to use expansion facilities on a secondary basis.

²⁰ See *Trunkline Gas Company, LLC*, 119 FERC ¶ 61,078 (2007).

²¹ When moving to make the pro forma tariff sheets effective, the then-currently effective ACA unit rate should be reflected on tariff sheet numbers 20 through 23.

transactions utilizing the expansion facilities or both the expansion and existing facilities is appropriate.²² Consistent with the Certificate Policy Statement, no existing customers will subsidize the proposed fuel related to transportation on the expansion facilities as the 1.6 percent is a stated rate.

35. All service agreements containing a negotiated rate must comply with the Commission's Alternative Rate Policy Statement²³ and the Commission's decision in *NorAm Gas Transmission Company (NorAm)*.²⁴ Gulf South must file either its negotiated rate contracts or numbered tariff sheets at least 30 but not more than 60 days prior to the commencement of service on the new pipeline, stating for each shipper paying a negotiated rate, the exact legal name of the shipper, the negotiated rate, the applicable receipt and delivery points, the volume to be transported, the beginning and ending dates of the contract term, and a statement that the agreements conform in all material respects with the pro forma service agreements in Gulf South's FERC Gas Tariff. Gulf South must also disclose all consideration linked to the agreements, and maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case.

B. The Texas Gas Lease

36. Historically, the Commission has viewed lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.²⁵ To enter into a lease agreement, the lessee generally needs to be a natural gas company under the NGA and needs section 7(c) certificate

²² As Gulf South notes, shippers will not be required to pay the fuel rate more than once if they are using both expansion and existing facilities.

²³ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines* (Alternative Rate Policy Statement), 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied*, *Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, *et al.*, U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998).

²⁴ *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011 (1996).

²⁵ *Texas Eastern Gas Transmission Corp.*, 94 FERC ¶ 61,139 at 61,530 (2001).

authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.²⁶

37. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits for using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease on a net present value basis; and (3) the lease arrangement does not adversely affect existing customers.²⁷ The Lease Agreement between Texas Gas and Gulf South satisfies these requirements.

38. First, the Commission has found that capacity leases in general have several potential public benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, and minimize environmental impacts.²⁸ In addition, leases can result in administrative efficiencies for shippers.²⁹ Here, the lease arrangement will allow the efficient use of otherwise unsubscribed capacity on Gulf South's expansion facilities and existing system. In addition, the lease arrangement will enable Texas Gas to extend its system without constructing new facilities and to interconnect with other pipelines, thereby benefiting its existing customers by providing access to additional gas supplies.

39. Second, the payments Texas Gas will make to Gulf South under the lease are less than Gulf South's generally applicable firm transportation rates, and therefore, less than Texas Gas would incur if it were to contract for comparable firm transportation service on Gulf South at the maximum applicable rate. As noted above, each month Texas Gas will pay lease charges consisting of a demand charge of \$0.1242 per Dth multiplied by 62,180 Dth times the days in the month, and a commodity charge of \$.0066 per Dth transported under the Lease Agreement.

²⁶ *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005).

²⁷ *Id.*

²⁸ *See, e.g., Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003); *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 9 (2005); *Islander East Pipeline Company*, 100 FERC ¶ 61,276, at P 70 (2002).

²⁹ *Wyoming Interstate Company, Ltd.*, 84 FERC ¶ 61,007, at p. 61,027 (1998), *order denying reh'g*, 87 FERC ¶ 61,011 (1999).

40. Third, the lease arrangement will not adversely affect Texas Gas' existing customers. The proposed lease of capacity will use available unsubscribed capacity on Gulf South's system. Therefore, the lease arrangement will not result in adverse operational impacts on existing Texas Gas customers or on any other pipelines or its customers. Texas Gas has designed incremental firm and interruptible rates, based on the lease charges Texas Gas will pay Gulf South under the lease, to recover the costs of the lease capacity from those shippers that will use the lease capacity. The incremental rate is \$.1356 per Dth on a 100 percent load factor basis. In addition, each shipper using the lease capacity will also pay the applicable fuel retention rate on both the Gulf South and Texas Gas pipeline systems. Gulf South's fuel rate will be fixed at 0.7 percent while the Texas Gas' fuel rates are seasonally based and adjusted annually. Only shippers using the lease capacity will be subject to the proposed incremental rates. Texas Gas will not be allowed to shift any costs associated with the leased capacity, including fuel costs, to its existing customers.

41. Based on the benefits the proposed lease will provide to the market and the lack of adverse effect on existing customers and other pipelines, we find that the public convenience and necessity requires approval of the proposed lease agreement. We approve Texas Gas' proposed incremental recourse rates. As we explained with reference to Gulf South's rate proposal, all service agreements containing a negotiated rate must comply with the Commission's Alternative Rate Policy Statement and the Commission's decision in the *Noram* proceeding, and Texas Gulf must file the same information with the Commission that we are requiring from Gulf South.

42. Gulf South shall treat the capacity lease as an operating lease for accounting purposes. Gulf South is directed to record the monthly receipts in Account 489.2, *Revenues from Transportation of Gas of Others Through Transmission Facilities*. We have authorized similar accounting treatment for transportation capacity lease agreements in other cases.³⁰ Further, during the term of the lease with Texas Gas, Gulf South will not be allowed to reflect in its system rates any of the costs (*i.e.*, the fully-allocated cost of service, including actual fuel costs) associated with the leased capacity.

Environment

43. The East Texas to Mississippi Expansion Project we have considered here was originally proposed by Gulf South as two separate projects – the East Texas Expansion Project and the Mississippi Expansion Project. The Commission approved using its Pre-

³⁰ See *Millennium Pipeline Company, L.P.*, 97 FERC ¶ 61,292 (2001), and *Trunkline Gas Company*, 80 FERC ¶ 61,356 (1997).

filing Review Process for each proposal. As part of our pre-filing review we issued a *Notice of Intent to Prepare an Environmental Impact Statement, Request for Comments on Environmental Issues for the East Texas Expansion Project* on March 28, 2006 followed by a *Notice of Site Visit and Public Meetings to Receive Environmental Comments* on June 7, 2006. We also issued a *Notice of Intent to Prepare an Environmental Impact Statement, Request for Comments on Environmental Issues and Notice of Public Scoping Meetings for the Mississippi Expansion Project* on May 23, 2006. These notices were published in the *Federal Register* and sent to: affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries; newspapers; and other interested parties.

44. In response to our notices, and at several public meetings held along the proposed pipeline route, we received numerous comments from landowners, concerned citizens, public officials, and government agencies regarding the proposed projects. These comments expressed concerns with the location of the proposed pipeline and the affects of the proposed project on numerous resources and land uses including soils, waterbodies, wetlands, wildlife, vegetation, threatened and endangered species, safety and reliability, timber production, and state- and federally-managed lands.

45. Because of the relationship between the two projects and the Commission staff's determination that a single environmental impact statement (EIS) would be prepared, Gulf South filed a single application with the Commission on September 1, 2006 for the East Texas to Mississippi Expansion Project consisting of the combined elements of the East Texas Expansion Project and Mississippi Expansion Project. As discussed above, Texas Gas filed a companion application to lease a portion of the capacity created by the East Texas to Mississippi Expansion Project. The leasing of capacity from Gulf South to Texas Gas would not affect the environment, and therefore an environmental review was not conducted.

Public Review

46. As required by the National Environmental Policy Act (NEPA) and the Commission's implementing regulations, a draft EIS was issued on February 9, 2007. Following a 45-day public comment period, a final EIS was issued on May 25, 2007. The final EIS was prepared in cooperation with the U.S. Army Corps of Engineers, the EPA, the U.S. Fish and Wildlife Service (FWS), the National Park Service (NPS), and the Natural Resource Conservation Service (NRCS). The United States Environmental Protection Agency (EPA) published a *Notice of Availability of the Final Environmental Impact Statement for the Proposed East Texas Expansion Project* in the *Federal Register* on June 1, 2007. Several hundred electronic and paper copies of the EIS were mailed to

affected property owners, federal and state resource agencies, interested individuals and organizations, and others parties as indicated on the environmental mailing list.

47. The final EIS describes and assesses the potential impacts including potential cumulative impacts to geology, soils, water resources, wetlands, vegetation, fish and wildlife, threatened and endangered species, land use, socioeconomics, cultural resources, air quality and noise, and safety resulting from construction and operation of the proposed project. The final EIS also addresses numerous comments provided by one individual, and six federal and state resource agencies during the draft EIS public comment period. Comments received during the draft EIS comment period generally expressed concern with crossing of managed lands, wetlands, vegetation, threatened and endangered species, land use, and right-of-way considerations.

48. Based on information provided by Gulf South, consultations with federal, state, and local agencies and individual members of the public, and information obtained through literature research, field investigations, alternatives and environmental analyses, the final EIS concluded that if constructed in accordance with the mitigation measures recommended in the final EIS, the construction and operation of the East Texas to Mississippi Expansion Project would result in limited adverse environmental impact.

Implementation Plan

49. The final EIS recommended (recommendation number 6) that, within 60 days of the acceptance of its certificate and prior to construction, the Commission require Gulf South to file an initial Implementation Plan (IP) with the Secretary for review and written approval by the Director of Office of Energy Projects describing how Gulf South will implement required mitigation measures. On March 21, 2007, Gulf South filed a draft IP. The draft IP described how Gulf South would implement the recommendations made in the draft EIS. The final EIS recommends and this order adopts, however, new conditions that were not addressed in the draft IP. In addition, several conditions contained in the appendix require review and approval prior to the authorization of construction activities. Therefore, this order includes a condition requiring Gulf South to file an initial IP that addresses all the environmental conditions in the appendix.

Land Use and Special Interest Areas

50. Approximately 3,763 acres of land would be disturbed during construction of the proposed project, including 3,394 acres of land for the nominal 100-foot wide pipeline construction right-of-way and additional temporary work spaces; 36 acres of land for the aboveground facilities; and 334 acres of land for pipe storage and contractor yards and access roads. Following construction, all affected areas outside the permanent pipeline

right-of-way and aboveground facility sites would be restored and allowed to revert to preconstruction conditions and uses.

51. The Commission received numerous comments expressing an interest in minimizing impacts associated with the construction and operation of the proposed pipeline, particularly in the instances where multiple utility rights-of-way may occur within a common corridor. In order to reduce the amount of land required for construction and operation of the proposed project, Environmental Condition Number 13 requires that Gulf South make use of up to 10 feet of existing pipeline rights-of-way as part of its 100-foot-wide nominal construction right-of-way and additional temporary workspaces. Additionally, Environmental Condition Number 14 requires Gulf South to limit the width of its construction right-of-way in rugged areas between MPs 186.3 and 191.6 to 175 feet or less.

52. Similarly, Environmental Condition Number 12 requires that Gulf South shall not exercise eminent domain authority granted under the NGA to acquire a permanent right-of-way greater than 50 feet in width. Gulf South proposed to use a 60-foot wide permanent pipeline right-of-way; however, the final EIS concluded that a 60-foot wide permanent right-of-way is wider than the industry standard and Gulf South was not able to justify the need for the additional width.

53. The proposed project would cross several recreation and special interest areas, including Conservation Reserve Program and Wetland Reserve Program (WRP) lands administered by the Farm Service Agency (FSA) and the NRCS, respectively. The proposed project would also cross the Ouachita Wildlife Management Area, the NPS-Nationwide Rivers Inventory (NRI)-listed Pearl and Big Black Rivers, two Louisiana Natural and Scenic Rivers (Black Lake Bayou and Saline Bayou), the Natchez Trace Parkway; and the Tensas National Wildlife Refuge. To minimize impacts to these resources, Gulf South has consulted with the respective management agencies, modified its proposed route, will adhere to site-specific crossing plans, and would use special construction techniques. Environmental Condition Numbers 16, 25, and 26 require Gulf South to complete consultation with the FSA and the NPS and to file with the Commission site-specific crossing plans for WRP crossings.

54. Visual resources along the proposed project route would be affected by the installation of certain aboveground facilities and through the alteration of existing vegetative patterns associated with the clearing and maintenance of the construction and permanent pipeline rights-of-way. The installation of the proposed aboveground facilities would not significantly affect visual resources. However, in response to landowner concerns about a mainline valve at milepost 129.8, Environmental Condition Number 27 requires Gulf South to finalize the development of a site-specific screening plan to address visual impact on the nearby residence.

Water Resources, Wetlands, and Vegetation

55. Approximately 889 waterbodies would be affected by construction and operation of the proposed project. Approximately 92 percent of all waterbodies, including most minor and intermediate waterbodies and seven major waterbodies, would be crossed using open-cut methods. Waterbodies that would be crossed using horizontal directional drills (HDDs) include twenty-one major and/or navigable streams, two designated Louisiana Natural and Scenic Rivers (Black Lake Bayou and Saline Bayou), two NRI-listed streams (the Big Black River and the Pearl River), the rivers most likely to contain habitat for federally-listed fish species (the Mississippi River, Red River, and Pearl River), and nine of the ten impaired waterbodies that would be crossed by the proposed pipeline. Gulf South proposes to file its HDD crossing plans as part of its final IP.

56. Approximately 122.4 acres of wetlands would be affected by construction of the proposed pipeline. No wetlands would be affected by construction of the proposed aboveground facilities. Numerous acres of forested, high quality, and managed wetlands including NRCS-managed WRP lands would be affected by the proposed project. Potential impacts to wetlands will be avoided, minimized and mitigated through Gulf South's incorporation of numerous route variations, implementation of agency recommendations and requirements, and development of site-specific crossing plans.

57. Construction and operation of the proposed project would affect agricultural, pasture, loblolly pine-hardwood forest, hardwood slope forest, pine plantation, and open lands vegetative communities. Several vegetative communities of special concern, extensive forested tracts, and areas containing exotic and/or invasive plant species would also be affected by construction of the proposed project. Gulf South would minimize impacts to vegetation by adhering to measures described in its Upland Erosion Control, Revegetation, and Maintenance Plan. Additionally, Environmental Condition Number 19 requires Gulf South to finalize its Exotic and Invasive Species Control Plan.

Federally-listed Species

58. The final EIS explained that construction and operations-related activities may affect, but are not likely to adversely affect ten federally-listed threatened or endangered species. The FWS' Arlington, Lafayette, and Jackson field offices indicated in letters to the Commission dated July 17, 2006; November 16, 2006; and March 22, 2006, respectively, that consultations with those offices are complete. Since the issuance of these letters by the FWS, however, Gulf South has made several modifications to the proposed project which have not yet been reviewed by the FWS. To ensure consultations are completed before construction is authorized, Environmental Condition Number 20 requires that Gulf South not begin construction until all consultations with the FWS are complete.

59. Although not listed as threatened or endangered, the Louisiana pine snake was identified by the FWS as a candidate species and a species of concern. Environmental Condition Number 24 requires Gulf South to file a plan with the Commission for avoiding or minimizing impacts to this species.

Noise Quality

60. Impacts to noise quality associated with construction of the proposed project will generally be temporary, minor, and limited to daylight hours, except at HDD sites, where drilling and related construction equipment will likely operate on a continuous basis for up to several days. As a result of this continual operation, noise levels at 14 of the 66 evaluated HDD sites could be significantly increased. To minimize this potential increase in noise levels and the resulting impacts to noise sensitive areas (NSAs), Gulf South developed a *Noise Mitigation and Compliance Plan for HDD Operations*. Gulf South has added a new HDD crossing at Baker's Creek, however, and Environmental Condition Number 29 of this Order requires Gulf South to file with the Commission a noise analysis identifying any NSAs within one half mile of Baker's Creek.

61. The proposed new compressor stations and the expanded Carthage Junction Compressor Station will generate noise on a continuous basis during operations. However, the predicted noise levels attributable to operations of the new compressor stations and the authorized units at the Carthage Junction Compressor Station should not result in significant effects on the NSAs nearest to those facilities. To ensure that noise levels are within acceptable limits, Environmental Condition Numbers 30 and 31 require Gulf South to file noise survey reports within 60 days after placing the compressor stations in service to confirm that noise levels are below 55dBA.

Conclusion

62. We have reviewed the information and analysis contained in the final EIS regarding the potential environmental impacts of the proposed project. Based on this information, we agree with the conclusion that construction and operation of the proposed project, if constructed and operated in accordance with the conditions set forth in the appendix to this order, would result in limited adverse environmental impacts.

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

approved by this Commission.³¹ Gulf South shall notify the Commission's environmental staff by telephone, email, or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Gulf South. Gulf South shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Gulf South pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations to construct, install, and operate natural gas facilities as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority in Ordering paragraph (A) shall be conditioned on the following:

- (1) Gulf South's completing the authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order pursuant to paragraph (b) of section 157.20 of the Commission's regulations;
- (2) Gulf South's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20;
- (3) Gulf South's compliance with the environmental conditions listed in the appendix to this order; and

³¹ See, 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., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

- (4) Gulf South's executing firm service agreements equal to the level of service represented in its precedent agreements with its customers for service prior to construction.

(C) Gulf South shall notify the Commission's environmental staff by telephone, email, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Gulf South. Gulf South shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(D) Gulf South is permitted to its generally applicable system-wide transportation rates as initial section 7 rates for service on the expansion facilities, as discussed in the body of this order.

(E) Gulf South must file actual tariff sheets in accordance with section 154.207 of the Commission's regulations not less than 30 days and not more than 60 days prior to commencing service, consistent with the discussion in this order.

(F) Gulf South is directed to file either its negotiated rate agreements or a tariff sheet fully describing the transaction no less than 30 days or more than 60 days prior to the commencement of interstate service.

(G) Authority is granted to Gulf South to abandon by lease the capacity described in the body of this order to Texas Gas.

(H) Gulf South is required to maintain proper accounting treatment for transportation capacity lease agreement with Texas Gas, as directed herein.

(I) A certificate of public convenience and necessity is issued to Texas Gas authorizing it to lease the subject capacity from Gulf South, as described and conditioned herein.

(J) Texas Gas' incremental recourse rates are approved as initial section 7 rates as discussed in the body of this order.

(K) Texas Gas must file actual tariff sheets in accordance with section 154.207 of the Commission's regulations not less than 30 days and not more than 60 prior to commencing service.

(L) Texas Gas is directed to file either its negotiated rate agreements or a tariff sheet fully describing the transaction no less than 30 days or more than 60 days prior to the commencement of interstate service.

By the Commission. Commissioner Wellinghoff concurring with a
separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Gulf South Pipeline Company, L.P.

Docket Nos. CP06-446-000
CP06-446-002

Texas Gas Transmission, L.L.C.

CP06-441-000

(Issued June 18, 2007)

WELLINGHOFF, Commissioner, concurring:

Lease arrangements like the one at issue here are becoming more prevalent in the industry. Therefore, I take this opportunity to explain my concerns regarding such lease arrangements.

In this proceeding, Texas Gas is leasing capacity on a new Gulf South facility. The Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as the lessee acquiring a property interest in the capacity of the lessor's pipeline. Once acquired, the lessee in essence owns that capacity, and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.

We are conditioning approval of the lease on use of a rate treatment that reflects that Texas Gas has acquired a property interest in the expansion facility. Specifically, Gulf South must separately account for a fully allocated share of the annual incremental cost of service associated with the leased capacity, as reflected by the recourse reservation rate,¹ during the term of the lease. During that time, Gulf South would not be permitted to roll the costs of the leased capacity into its system rates. If and when the leased capacity reverts to Gulf South, it will be treated as an incremental facility until Gulf South has justified rolled-in rate treatment.

¹ A recourse reservation rate is calculated by dividing the incremental cost of service by the total capacity of the facility. As such, it is the lowest fully allocated, cost-based reservation rate. Here, the recourse reservation rate is \$7.8473. Under the lease arrangement, Texas Gas is paying the equivalent reservation rate of \$3.7757.

In addition to its reservation rate, Texas Gas will pay a 0.7 percent fuel charge that was negotiated as part of the lease agreement. It is not clear whether that charge will recover the actual fuel gas associated with the leased capacity. Because Gulf South's currently effective system fuel rate is a stated rate of 1.6 percent, Gulf South's existing customers are not subsidizing the proposed fuel rate for the leased capacity. Nonetheless, Gulf South is provided notice that it will not be permitted to include in its system fuel rate any shortfall in fuel gas associated with the leased capacity.

Finally, lease arrangements may have implications our open access program. For example, because Texas Gas is not a shipper on Gulf South, it does not have flexible receipt and delivery points on the expansion facilities. Shippers using Texas Gas's leased capacity also cannot flex to points on Gulf South. I am concerned that competition will be hindered if shippers lose too much receipt and delivery point flexibility under a lease arrangement. In addition, I am concerned that having two tariffs govern service on the same facility will create seams and increase transaction costs. To date, we have had no complaints along these lines. However, I intend to base my consideration of such transactions on an affirmative showing that a proposed lease arrangement does not harm our open access program.

For these reasons, I respectfully concur in part.

Jon Wellinghoff
Commissioner

Appendix – Environmental Conditions

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

1. Gulf South shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff information requests), and as identified in the EIS, unless modified by the Order. Gulf South must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of OEP **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the Project. This authority shall allow:
 - a. the modification of conditions of the Commission's Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from Project construction and operation.
3. **Prior to any construction**, Gulf South shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, EIs, and contractor personnel will be informed of the EI'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(s) shall be as shown in the EIS, as supplemented by filed alignment sheets, and shall include all of the staff's recommended facility locations. **As soon as they are available, and prior to the start of construction**, Gulf South 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.

Gulf South's exercise of eminent domain authority granted under NGA Section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Gulf South'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. Gulf South 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 **prior to construction** in or near that area.

This requirement does not apply to route variations required herein or minor field realignments per landowner needs and requirements, which do not affect other landowners or sensitive environmental areas such as wetlands.

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

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

- a. how Gulf South will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - b. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - d. what training and instructions Gulf South will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change), with the opportunity for OEP staff to participate in the training session;
 - e. the company personnel (if known) and specific portion of Gulf South's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Gulf South 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. Gulf South shall employ one or more EIs per construction spread. The EIs 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 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.
8. Gulf South shall file updated status reports with the Secretary on a **weekly** basis **until all construction-related activities, including restoration, are complete for each phase of the Project**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints that may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Gulf South from other federal, state or local permitting agencies concerning instances of noncompliance, and Gulf South's response.
9. Gulf South must receive written authorization from the Director of OEP **before commencing service** from the Project. Such authorization will only be granted following a determination that rehabilitation and restoration of areas affected by the Project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Gulf South 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 Gulf South has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. Gulf South 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**, Gulf South shall mail the complaint procedures to each landowner whose property would be crossed by the Project.
 - a. In its letter to affected landowners, Gulf South shall:
 - (1) provide a local contact that the landowners should call first with their concerns; the letter shall 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 Gulf South'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 Gulf South's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030, or at hotline@ferc.gov.
 - b. In addition, Gulf South 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 and approximate location by MP;
 - (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.
12. Gulf South shall not exercise eminent domain authority granted under Section 7(h) of the NGA to acquire a permanent right-of-way greater than 50 feet in width. (**Section 2.2.1**)
13. **Prior to construction**, Gulf South shall file with the Secretary, for review and written approval by the Director of OEP, revised alignment sheets, plans, and associated agreements indicating the use of at least 10 feet of adjacent pipeline rights-of-way as part of its 100 foot-wide nominal construction right-of-way and for any additional

temporary workspaces that are needed. Where this is not possible, Gulf South shall identify the locations by milepost and provide site-specific justification explaining why the adjacent right-of-way cannot be used. (*Section 2.2.1*)

14. Gulf South shall limit the width of its construction right-of-way to 175 feet between MP 186.3 and 191.6. (*Section 2.3.2.5*)
15. **Prior to construction**, Gulf South shall file with the Secretary, for review and written approval by the Director of OEP, a final well monitoring and mitigation plan that describes standard testing procedures, and the measures that would be taken should a well be impacted such that it is no longer operable or that it becomes impaired. Gulf South shall also file a report with the Secretary, **within 30 days of placing its pipeline facilities in service**, identifying all private or domestic water wells or systems damaged by construction and describing how they were repaired. The report shall include a discussion of any complaints concerning well yield or quality and how each problem was resolved. (*Section 3.3.1.3*)
16. **Prior to construction**, Gulf South shall complete consultation with the NPS regarding its proposed HDD crossings of, and hydrostatic test water withdrawals from, the NRI-listed Big Black and Pearl Rivers, and file copies of those consultations with the Secretary. If applicable, Gulf South shall also file plans to address any additional mitigation measures recommended by the NPS. (*Section 3.3.2.3*)
17. **Prior to construction**, Gulf South shall file with the Secretary, its final Wetland Mitigation Plan. (*Section 3.4.4*)
18. **Prior to construction**, Gulf South shall finalize its revegetation procedures based on comments provided by the TPWD, and file these procedures with the Secretary for review and approval by the Director of OEP. (*Section 3.5.2*)
19. **Prior to construction**, Gulf South shall file with the Secretary, for review and written approval by the Director of OEP, a final Exotic and Invasive Species Control Plan developed in consultation with the FWS, TPWD, LDWF, and the MDWFP. This plan shall identify the specific measures that Gulf South would implement during construction and operation to control exotic and invasive plant species. Following approval, Gulf South shall also submit copies of the Exotic and Invasive Species Control Plan to the above-listed agencies. (*Section 3.5.3*)
20. Gulf South shall not begin construction activities **until**:
 - a. the staff completes Section 7 consultations with the FWS; and
 - b. Gulf South has received written notification from the Director of OEP that construction or use of mitigation may begin. (*Section 3.7.1*)

21. Gulf South shall file with the Secretary **as part of the final Implementation Plan** a description of measures, developed in consultation with the FWS, to train construction workers regarding awareness of bald eagles and nesting activity. Gulf South shall **immediately** notify the FERC staff and the FWS if bald eagles or their nests are observed within 1,500 feet of the proposed Project's facilities prior to or during construction. (*Section 3.7.1.1*)
22. Gulf South shall file with the Secretary **as part of the final Implementation Plan** a description of measures, developed in consultation with the FWS, to train construction workers in the identification of interior least terns and their nesting habitat in the vicinity of the Red and Mississippi River crossings. Gulf South shall **immediately** notify the FERC staff and the FWS if interior least terns are observed within 650 feet of proposed waterbody crossings in the Red and Mississippi River basins prior to or during construction. (*Section 3.7.1.2*)
23. Gulf South shall file with the Secretary **as part of the final Implementation Plan** a description of measures, developed in consultation with the FWS, to revegetate the bear management corridor located near the Tensas River NWR, and in accordance with FWS recommendations train construction workers regarding the elimination of activities that may serve as attractants to the Louisiana black bear, and to protect candidate denning trees. (*Section 3.7.1.4*)
24. **Prior to construction**, Gulf South shall file with the Secretary its final plan for avoiding or minimizing impacts to the Louisiana pine snake. (*Section 3.7.1.11*)
25. **Prior to construction**, Gulf South shall consult with the FSA to determine appropriate seed mixes and/or revegetation efforts that shall be implemented on CRP lands to minimize and mitigate construction and operations impacts. Gulf South shall also retain and have available for inspection any records of consultation(s) with the FSA indicating specific measures agreed upon by Gulf South and the FSA that would be implemented on CRP lands. (*Section 3.8.4.1*)
26. **Prior to construction**, Gulf South shall file with the Secretary, its final site-specific plans for WRP crossings. (*Section 3.8.4.1*)
27. **Prior to construction**, Gulf South shall file with the Secretary, for review and written approval by the Director of OEP, a final site screening plan for the proposed MLV at MP 129.8. (*Section 3.8.6.2*)
28. Gulf South shall defer implementation of any treatment plans/measures (including archaeological data recovery); construction of facilities; and use of all staging, storage, or temporary work areas and new or to-be-improved access roads **until**:

- a. Gulf South files with the Secretary cultural resources survey and evaluation reports; any necessary treatment plans; and the Texas, Louisiana, and Mississippi SHPO comments on the reports and plans; and
- b. The Director of OEP reviews and approves all cultural resources survey reports and plans, and notifies Gulf South in writing that treatment plans/procedures may be implemented and/or construction may proceed.

All material filed with the Secretary 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.” (Section 3.10.4)

29. **Prior to construction**, Gulf South shall file with the Secretary, for review and written approval by the Director of OEP, a noise analysis for the proposed HDD site at Baker’s Creek. This analysis shall identify any NSAs within one half mile of the proposed entry and exit sites. If NSAs exist within one mile, Gulf South shall identify existing background noise levels and estimated drilling noise contributions at the nearest NSAs along with any measures it would implement to control noise from the HDD. (*Section 3.11.2.3*)
30. Gulf South shall file with the Secretary **no later than 60 days after placing the authorized units at the Carthage Junction Compressor Station into service** compressor station noise surveys. If the noise attributable to the operation of the authorized units exceeds an Ldn of 55 dBA at any nearby NSAs, Gulf South shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year of the in-service date**. Gulf South shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days after it installs the additional noise controls**. (*Section 3.11.2.3*)
31. Gulf South shall file with the Secretary **no later than 60 days after placing the Vixen and Tallulah Compressor Stations into service** compressor station noise surveys. If the noise attributable to the operation of the Vixen or Tallulah Compressor Stations at full load exceeds an Ldn of 55 dBA at any nearby NSAs, Gulf South shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year of the in-service date**. Gulf South shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days after it installs the additional noise controls**. (*Section 3.11.2.3*)