

144 FERC ¶ 61,196
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Gulf Crossing Pipeline Company LLC

Docket No. CP13-64-000

ORDER ISSUING CERTIFICATE

(Issued September 12, 2013)

1. On February 1, 2013, Gulf Crossing Pipeline Company LLC (Gulf Crossing) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ requesting a certificate of public convenience and necessity authorizing it to construct and operate natural gas pipeline facilities to serve Panda Sherman Power, LLC's (Panda Sherman) electric power plant under construction in Grayson County, Texas (Panda Sherman Project). The Commission will grant the requested authorization.

I. Background and Proposal

2. Gulf Crossing is an interstate natural gas pipeline company consisting of approximately 354 miles of 42-inch diameter pipeline that provides transportation services in the States of Alabama, Louisiana, Mississippi, Oklahoma and Texas. Panda Sherman, a merchant power plant developer, is constructing a 758 megawatt, gas-fired turbine power plant, known as the Panda Sherman Power Plant I, in Grayson County, Texas, near the City of Sherman.²

3. Gulf Crossing proposes to construct and operate a 16.5 mile, 16-inch diameter pipeline lateral, with associated meters and auxiliary facilities, extending from Gulf Crossing's Sherman Compressor Station near Sherman, Texas, to an interconnection with Panda Sherman's electric power plant under construction. The proposed lateral will be capable of providing up to 278,400 dekatherms (Dth) per day of firm transportation

¹ 15 U.S.C. § 717f (2012).

² Gulf Crossing states that Panda Sherman's power plant will serve approximately 750,000 residential customers in the north central and northeast regions of Texas.

service. Gulf Crossing estimates that the proposed facilities will cost \$26,300,000, and proposes to charge its systemwide Part 284 transportation rates as the initial recourse rates for the project. Gulf Crossing also seeks a predetermination that it may roll the costs associated with the project into its existing Part 284 transportation rates in a future NGA section 4 general rate proceeding.

4. Gulf Crossing conducted an open season for its proposed project from April 12 through July 12, 2012. As result of the open season, Gulf Crossing entered into a transportation agreement with Panda Sherman under Gulf Crossing's Rate Schedule FTS to provide up to 125,000 Dth per day of firm service to the power plant for a term of 20 years at negotiated rates.

II. Public Notice and Interventions

5. Notice of Gulf Crossing's application was published in the *Federal Register* on February 22, 2013 (78 Fed. Reg. 12,303), with comments and motions to intervene due by March 8, 2013. Panda Sherman filed a timely unopposed motion to intervene and comments in support of the project.³

III. Discussion

A. Certificate Policy Statement

6. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

7. The Certificate Policy Statement provides guidance on how the Commission will evaluate proposals for certificating new construction.⁴ 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 explained that in deciding whether to authorize the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the

³ Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2013).

⁴ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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.

8. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, 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 proceed to complete the environmental analysis where other interests are considered.

9. As noted above, 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 existing customers. An incremental rate calculated to recover the projected costs of the proposed project would be \$0.0461 per Dth, which is less than Gulf Crossing's existing Part 284 systemwide rate under Rate Schedule FTS of \$0.4283. Therefore, we find that Gulf Crossing's proposal to charge its existing systemwide rates as the initial recourse rates for service on the proposed facilities is appropriate and will avoid subsidization by existing customers.

10. We also find no evidence that the project will degrade service to Gulf Crossing's existing customers and further find that the project will not adversely impact existing pipelines and their shippers. Additionally, we find that because most of the proposed project will be constructed within existing pipeline rights-of-way, Gulf Crossing has taken steps to minimize impacts on landowners and surrounding communities.

11. The proposed project will enable Gulf Crossing to provide 125,000 Dth per day of natural gas service to the Panda Sherman Power Plant I. Based on the benefits the project will provide and the minimal adverse effect on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, the Commission finds, consistent with the Certificate Policy Statement and subject to the environmental conditions discussed below, that the public convenience and necessity requires approval of Gulf Crossing's proposal, as conditioned in this order.

B. Initial Recourse Rates

12. Gulf Crossing proposes to charge its existing systemwide rates as the initial recourse rates for service provided over the new facilities.⁵ The daily 100 percent load factor rate for firm transportation service is \$0.4283 per MMBtu.

13. Where an incremental rate calculated to recover the costs associated with an expansion project would be lower than the pipeline's existing rate for service, the Commission has found it appropriate to establish the existing rate as the initial recourse rate for project service.⁶ As described above, that is the case here. Therefore, Gulf Crossing's proposal to charge its systemwide firm transportation rates as the initial recourse rates for service on the project's facilities is approved.

C. Rolled-in Rate Proposal

14. Gulf Crossing requests a predetermination that it may roll the costs of the project into its systemwide rates in its next NGA section 4 general rate proceeding. Gulf Crossing seeks to support its request for a predetermination favoring rolled-in rate treatment for project costs by demonstrating that the systemwide rates applied to the total design project billing determinants of 278,000 Dth per day would result in revenues that exceed incremental project costs.⁷

15. In considering such a request, the Commission has generally compared project costs with the revenues that would be generated if all project services under contract were provided at the maximum recourse rate, regardless of whether the service would actually be provided at a lower (or higher) negotiated rate. However, we note that Gulf Crossing's tariff includes a provision permitting it to seek discount-type adjustments for negotiated rates in section 4 proceedings.⁸ Therefore, for purposes of making a determination in this certificate proceeding as to whether it would be appropriate to roll the costs of the Panda Sherman Project into Gulf Crossing's systemwide rates in a future

⁵ These rates were approved in *Gulf Crossing Pipeline Company LLC*, 123 FERC ¶ 61,100 (2008), as initial rates for the Gulf Crossing system.

⁶ *Southern Natural Gas Company*, 124 FERC ¶ 61,058 (2008) and *Trunkline Gas Company*, 119 FERC ¶ 61,331 (2007).

⁷ Application at 6-7, n. 4, and Revised Exhibit N.

⁸ Gulf Crossing Pipeline Company LLC, FERC NGA Gas Tariff, First Revised Volume No. 1, Section 6.9, General Terms and Conditions, ACA, Discounting, and Negotiated Rates, 3.0.0.

NGA section 4 proceeding, we will compare project costs to the revenues that will be generated from the contracted volumes at the negotiated rates, which are lower than Gulf Crossing's maximum recourse rates.

16. Gulf Crossing's application⁹ projects that the firm transportation revenues resulting from Panda Sherman's 125,000 Dth per day contracted-for maximum daily quantity and the negotiated demand/commodity rates will equal \$3,704,750 during each of the first three years of service. This projected annual revenue is less than the annual cost of service in each of the first three years of operation.¹⁰ Therefore, we find that if the project costs were to be rolled into Gulf Crossing's systemwide rates in its next NGA general section 4 general rate proceeding, existing customers might be required to subsidize the project. Accordingly, we will deny Gulf Crossing's request for a predetermination that it may roll the costs of the project into its systemwide recourse rates in its next general rate proceeding, without prejudice to Gulf Crossing's bearing the burden of proof in a future rate case that its proposed rates will not result in subsidization by existing customers.

17. Consistent with the Certificate Policy Statement, Gulf Crossing must account for the construction and operating costs and revenues of the Panda Sherman Project separately in accordance with section 154.309 of the Commission's regulations.¹¹ The information must be provided consistent with Order No. 710.¹² The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, J and other Statements contained in section 154.312 of the Commission's regulations.¹³ Such measures will assist the Commission and

⁹ Revised Exhibit N at 8.

¹⁰ The negotiated daily demand rate of \$0.0775 multiplied by the annual contracted volume (125,000 daily Dth times 365 days per year) equals \$3,535,937 of projected demand revenue. The \$0.0037 commodity rate multiplied by the annual volume (125,000 Dth multiplied by 365 days per year) equals \$168,813 of commodity revenue. The total annual revenue equal \$3,535,000 plus \$168,813, or \$3,704,750. Gulf Crossing calculates an incremental cost of service of \$4,686,336 for Year 1; \$4,533,676 for Year 2; and \$4,358,908 for Year 3. Revised Exhibit N at 2.

¹¹ 18 C.F.R. § 154.309 (2013).

¹² *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs., ¶ 31,267 (2008).

¹³ 18 C.F.R. § 154.312 (2013).

parties to a future rate proceeding to determine the costs of the project and enable them evaluate whether the rates proposed satisfy the requirement that existing customers not subsidize the Panda Sherman Project.

D. Fuel Rate

18. Gulf Crossing also proposes to charge its existing systemwide fuel rate (one percent), for transportation on the capacity associated with the project facilities. Gulf Crossing states that existing shippers on its system will not subsidize or be adversely affected under this proposal because all shippers on the Gulf Crossing system either pay the fixed fuel rate or have negotiated rate contracts with fixed fuel rates. Further, Gulf Crossing demonstrated that the additional facilities should result in decreased fuel use.¹⁴ Thus, we will approve Gulf Crossing's request to charge project customers its existing Rate Schedule FTS Base Tariff Fuel Rate.¹⁵

E. Negotiated Transportation Agreement

19. Gulf Crossing states that it will provide service to Panda Sherman under a negotiated rate agreement pursuant to negotiated rate authority in its General Terms and Conditions.¹⁶ Gulf Crossing must file either its negotiated rate agreements or tariff records setting forth the essential terms of the agreements associated with the project, in accordance with the Alternative Rate Policy Statement¹⁷ and the Commission's negotiated rate policies.¹⁸ Gulf Crossing must file the negotiated rate agreements or tariff

¹⁴ Exhibit G.

¹⁵ Gulf Crossing does not have a fuel tracker. Section 4.1, Currently Effective Rates for FTS Service to Gulf Crossing's FERC NGA Gas Tariff, First Revised Volume No.1 states Gulf Crossing's fixed Rate Schedule FTS fuel rates.

¹⁶ Section 6.9.

¹⁷ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996).

¹⁸ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

records at least 30 days, but not more than 60 days, before the proposed effective date for such rates.

F. Environmental Analysis

20. On March 4, 2013, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; public interest groups; Native American tribes; other interested parties; and local libraries and newspapers.

21. In response to the NOI, the Commission received comments from the Texas Parks and Wildlife Department (TPWD). The primary issues raised were construction impacts on aquatic species and habitat (including state-listed species), streams, and wetlands; avoiding aquatic organisms including mussels; clearing of migratory bird habitat; and revegetation of native prairie species.

22. To satisfy the requirements of the National Environmental Policy Act, the Commission's staff prepared an Environmental Assessment (EA) for Gulf Crossing's project. The EA was placed into the public record on June 18, 2013. The analysis in the EA addresses geology, soils, wetlands, and water resources; vegetation and wildlife, including migratory birds and fisheries; federally threatened and endangered species; land use, air quality and noise, cultural resources and safety; cumulative impacts; and alternatives to the proposal. All substantive comments received in response to the NOI are addressed in the EA.

23. The EA addresses the TPWD's concerns by discussing the project's expected short term impacts on waterbodies, habitat, and species resulting from the pipeline's location in the same right-of-way with other utilities and the use of horizontal directional drilling (HDDs) to avoid or minimize impacts on those resources.¹⁹ Additionally, the EA discussed the mitigation measures Gulf Crossing would use, including its Wetland and Waterbody Construction and Mitigation Procedures (Procedures), Spill Prevention, Containment and Countermeasures Plan, Plan for the Unanticipated Discovery of Contaminated Environmental Media, Containment of Inadvertent Release of Drilling Mud for HDD crossings, and its procedures for controlling invasive weeds. The EA states that these measures and plans are acceptable.

24. In its comments in response to the NOI, the TPWD recommended that Gulf Crossing train its construction personnel about the importance of avoiding impacts on state-listed species and Species of Greatest Conservation Need in Texas, and that it educate workers about the measures that should be taken to avoid impacts on wildlife

¹⁹ EA at 9-14, and 18.

encountered during construction. The EA includes a recommendation for such training to occur as part of Gulf Crossing's environmental training.²⁰ We adopt this recommendation as environmental condition 11.

25. TPWD also commented that the project would affect migratory birds primarily during the clearing of vegetation. The EA found that impacts on migratory birds would be minimal given Gulf Crossing's location in the same right-of-way with existing utilities; its efforts to reduce construction workspaces; construction occurring outside the migratory bird nesting season time window; and adherence to the numerous impact minimization and restoration measures described in its Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and Procedures.²¹ The EA further states that while Gulf Crossing proposes to construct its project outside of the migratory bird nesting season time window, it did not consult with the U.S. Fish and Wildlife Service (FWS) specifically about migratory birds. We, however, believe such consultation is necessary and consistent with our efforts to avoid and minimize impacts on migratory birds. The EA includes a recommendation, which is included as environmental condition 12, that prior to construction, Gulf Crossing consult with the FWS regarding project impacts on migratory birds and file documentation of this consultation, and any recommendations, with the Secretary of the Commission (Secretary).

26. Based on the analysis in the EA, if Gulf Crossing constructs and operates the facilities in accordance with its application and supplements, and the conditions included herein, approval of this project would not constitute a major federal action significantly affecting the quality of the human environment.

27. 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.²²

²⁰ EA at 12.

²¹ EA at 13-15.

²² See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 US 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).

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Gulf Crossing to construct and operate the Panda Sherman Project, as described more fully in the application and in the body of this order.

(B) The certificate issued in Ordering Paragraph (A) is conditioned on Gulf Crossing's:

(1) compliance with all of the applicable regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20;

(2) completing the authorized construction of the proposed facilities and making them available for service within one year of the date of this order in accordance with paragraph (b) of section 157.20 of the Commission's regulations; and

(3) compliance with the environmental conditions listed in the Appendix to this order.

(C) Gulf Crossing must file its negotiated rate agreements or tariff records describing the essential elements of the agreements at least 30 days but not more than 60 days prior to commencement of the proposed service.

(D) Gulf Crossing's proposal to use its currently-effective systemwide rates as initial recourse rates for service on the project facilities is approved.

(E) Gulf Crossing's request for a predetermination that it may roll the costs associated with the proposed facilities into its systemwide rates in a future NGA section 4 rate proceeding is denied.

(F) Gulf Crossing shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies

Gulf Crossing. Gulf Crossing shall file written confirmation of such notification with the Secretary within 24 hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions

This order is subject to the following environmental conditions:

1. Gulf Crossing shall follow the construction procedures and mitigation measures described in its application and supplemental filings (including responses to staff data requests) and as identified in the EA unless modified by the Order. Gulf Crossing must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of life, health, property and the environment during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impacts resulting from project construction and operation.

3. **Prior to any construction**, Gulf Crossing shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (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 locations shall be as shown in the EA, as supplemented by filed alignment sheets or plot plans. **As soon as they are available, and before the start of construction**, Gulf Crossing 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 Crossing'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 Crossing'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 Crossing 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 work space allowed by Gulf Crossing's Plan and/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 could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and before construction begins,** Gulf Crossing shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Gulf Crossing must file revisions to the plan as schedules change. The plan shall identify:

- a. how Gulf Crossing will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
- b. how Gulf Crossing will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
- c. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
- d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
- e. the location and dates of environmental compliance training and instructions Gulf Crossing will give to all personnel involved with construction and restoration;
- f. the company personnel (if known) and specific portion of Gulf Crossing's organization having responsibility for compliance;
- g. the procedures (including use of contract penalties) Gulf Crossing will follow if noncompliance occurs; and
- h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 1. the completion of all required surveys and reports;
 2. the environmental compliance training of onsite personnel;
 3. the start of construction; and
 4. the start and completion of restoration.

7. **Beginning with the filing of its Implementation Plan**, Gulf Crossing shall file updated status reports with the Secretary **on a monthly 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. an update on Gulf Crossing's efforts to obtain the necessary federal authorizations;
- b. the 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;
- c. 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);
- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;

- e. the effectiveness of all corrective actions implemented;
 - f. 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
 - g. copies of any correspondence received by Gulf Crossing from other federal, state, or local permitting agencies concerning instances of noncompliance, and Gulf Crossing's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Gulf Crossing shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
 9. Gulf Crossing must receive written authorization from the Director of OEP **before placing the project into service**. 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.
 10. **Within 30 days of placing the authorized facilities in service**, Gulf Crossing 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 Crossing 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. As part of its environmental training, Gulf Crossing shall inform all construction personnel about the importance of avoiding impacts on wildlife, particularly state-listed species and Species of Greatest Conservation Need, and what measures should be taken to avoid impacts on wildlife encountered during construction.
 12. **Prior to construction**, Gulf Crossing shall consult with the FWS regarding impacts on migratory birds and file documentation of this consultation with the Secretary. This documentation shall also address any recommendations provided by the FWS regarding impacts on migratory birds.

13. **Prior to construction,** Gulf Crossing shall file for review and approval by the Director of OEP, a pre- and post-construction well monitoring plan containing the following provisions:
 - a. perform, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for any private water supply well discovered to be within 150 feet of the project's limits;
 - b. provide a temporary source of water for and restore any damaged supply well or system to its former capacity if that well or system is adversely affected by its construction; and
 - c. prohibit refueling activities and storage of hazardous liquids within at least a 400-foot radius of all municipal or community water supply wells during construction activities.