151 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Palmetto Products Pipe Line LLC — Docket No. OR15-13-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued May 1, 2015)

1. On January 23, 2015, Palmetto Products Pipe Line LLC (Palmetto) filed a petition for declaratory order requesting that the Commission approve the rates, and terms and conditions of service for a new pipeline system that Palmetto is developing to transport refined petroleum products and denatured fuel ethanol from origin points in Louisiana, Mississippi, and South Carolina to destination points in South Carolina, Georgia, and Florida. Palmetto requests that the Commission act on the petition no later than April 30, 2015, to allow Palmetto to meet the requirements for timely completion of the pipeline and to permit Palmetto to meet its transportation service obligations for the pipeline. For the reasons discussed below, the Commission grants Palmetto's petition.

Background

2. Palmetto states that it has developed a pipeline project that will provide significant benefits to the energy industry by offering an alternative source of supply, and the first major pipeline source, of refined petroleum products and denatured fuel ethanol to consumers in the southeast portion of the United States. Palmetto states that it will transport refined petroleum products, including gasoline, petroleum oil distillates, biodiesel blend, and renewable diesel blend, from origin points in Baton Rouge, Louisiana; Collins and Pascagoula, Mississippi; and Belton, South Carolina to destination points in North Augusta, South Carolina; Savannah, Georgia; and Jacksonville, Florida. The pipeline will also transport denatured fuel ethanol as a purity product, on a batched basis, from the Belton origin point to each of the destination points.

3. The pipeline will provide approximately 125,000 barrels per day (bpd) of capacity for shipments that originate from Baton Rouge, Collins, and Pascagoula for delivery to the destination points (Segment One Pipeline Capacity). The pipeline will provide an additional 42,000 bpd of capacity for shipments from Belton for delivery to the destination points (Segment Two Pipeline Capacity). The total design capacity of the pipeline is approximately 167,000 bpd.

4. Palmetto states the Segment One Pipeline Capacity will be acquired by Palmetto via a long-term lease with Plantation Pipe Line Company (Plantation). Palmetto will lease two types of capacity from Plantation: (1) capacity that has been historically and consistently underutilized on Plantation's system (Underutilized Capacity), and (2) capacity that Plantation will create on its system through expansion and construction efforts (Expanded Capacity). The Underutilized Capacity that Plantation will lease to Palmetto extends from Pascagoula, Mississippi to Collins, Mississippi and will equal approximately 32,350 bpd. Palmetto submits that this capacity has not been used by any shipper on Plantation's system for at least ten years. The Expanded Capacity that Plantation will lease to Palmetto will consist of approximately 121,000 bpd from Baton Rouge, Louisiana to Collins, Mississippi and approximately 125,000 bpd from Collins, Mississippi to Belton, South Carolina. Plantation will create the Expanded Capacity by constructing and/or modifying existing pump stations, pumps and motors, tankage and appurtenances on its system. Plantation will recover the costs for such Expanded Capacity solely through the lease payments from Palmetto. Palmetto submits that because the leased capacity is either being newly constructed by Plantation or has not been used by any shipper on Plantation's system for an extended period, Plantation's current shippers will not be impacted by Plantation's lease of this capacity to Palmetto.

5. Palmetto asserts that its pipeline will promote competition in the Savannah and Jacksonville markets, which could decrease prices to consumers, because it will provide these markets with their first major pipeline source of refined petroleum products. Palmetto states that these markets are currently only supplied with refined petroleum products via truck or marine transportation. Palmetto also states that the pipeline will help ensure that the supply needs of the markets are served during inclement weather conditions because unlike marine transportation vessels, the pipeline will not be directly affected by such events. Palmetto states that the pipeline will benefit the North Augusta market because it is only served by one pipeline source and as a result the market has experienced supply constraints over the long term. Palmetto submits that the pipeline should help to alleviate such constraints because it is expected to deliver at least 40,000 bpd of refined petroleum products directly into the market. Palmetto states that the pipeline will provide each of the destination markets with their first pipeline source of denatured fuel ethanol. Currently, ethanol is supplied to these markets either by railroad or truck.

6. Palmetto states that it will be required to invest in excess of $1 billion in order to develop the pipeline. In order to determine interest in the pipeline, Palmetto held an open season from August 4, 2014, to October 30, 2014. The open season was widely publicized through a press release reported through the trade press and extensive marketing efforts by Palmetto. Interested parties were given an Open Season Notice providing a summary of the proposed terms and conditions of service and were also given the opportunity to provide comments on the proposed terms and conditions. Palmetto states that it incorporated many of the comments into the Open Season documents

including the Transportation Services Agreement (TSA). Potential shippers who executed confidentiality agreements were given a *pro forma* TSA, the proposed rates, and the proposed rules and regulations tariff. Palmetto states that by the close of the Open Season it concluded that the level of volume commitments it had received from Committed Shippers was sufficient to proceed forward with the development of the pipeline.[1]

Palmetto's Proposed Terms of Service

7. Under Palmetto's proposal, committed shippers would receive 90 percent of the pipeline capacity and uncommitted shippers would receive 10 percent of the pipeline capacity. Committed shippers make a Volume Commitment to ship-or-pay for a specified volume each year during the term of its TSA. Committed shippers could elect a five-year or ten-year term. A committed shipper's Volume Commitment divided by 12 months equals its Monthly Volume Commitment. In addition to the Volume Commitment, committed shippers will be required to specify the types of products to be shipped and the origin and destination points. This will ensure that there is sufficient capacity to fulfill all Volume Commitments because capacity varies between origin and destination points and depending on the products shipped. Committed shippers will receive firm capacity that is not subject to prorationing except in instances of *force majeure* or operational disruptions. In order to receive firm service, committed shippers will pay higher rates than uncommitted shippers. Similar to committed shippers, uncommitted shippers will pay rates that depend on the volume of products shipped during a particular month. The volume tiers for the committed and uncommitted rates will be the same. The TSA permits Palmetto to adjust the committed rates based on the Commission's indexing methodology and to file the committed rates as settlement rates.

8. Committed shippers will also have the ability to nominate volumes on a firm basis that vary or exceed their Monthly Volume Commitments. Flexible-Service Barrels allows a shipper to change the product types or origin and destination points. Incremental Barrels allows a shipper to exceed its Monthly Volume Commitment. The flexibility provided to committed shippers will only be provided in the event that it is operationally feasible; all committed shippers have been allocated their Monthly Volume Commitment; and 10 percent of capacity always remains reserved for uncommitted

[1] Palmetto also established a capacity allocation plan in the event that volume commitment by committed shippers exceeded the committed capacity. Implementation of the plan was not necessary and Palmetto gave committed shippers the right to make an additional commitment for a period of seven days following the conclusion of the open season.

shippers. To the extent that a committed shipper's transportation charges do not meet or exceed its yearly contractual commitment, it will be required to make a shortfall payment.

9. Palmetto established a prorationing policy to allocate capacity in the event that it receives more nominations for transportation service in a month than it is able to provide. With respect to committed capacity, Palmetto will first allocate capacity up to the shipper's Monthly Volume Commitment provided that it does not vary by product or origin and/or destination. Any additional nominated capacity will be treated as Flexible-Service Barrels. Capacity will then be allocated to Flexible Service Barrels and such capacity will be allocated on a *pro rata* basis if the Flexible Service Barrels exceeds available capacity. Assuming capacity is available, Palmetto would then allocate Incremental Barrels. Incremental Barrels will be allocated on a *pro rata* basis if there was not enough available capacity. Non-priority capacity will be allocated to uncommitted shippers based on a historical prorationing model. Regular Shippers who ship for 6 months out of a 12-month defined period would receive 90 percent of the non-priority capacity. Regular Shippers would receive the lesser of their nominated volumes or their percentage of capacity shipped during the 12-month base period. New Shippers, who are uncommitted shippers who are not Regular Shippers, would receive 10 percent of the non-priority capacity. New shippers would be allocated their nominations or *pro rata* share. If any capacity remains, Palmetto would allocate Non-Priority Incremental Barrels to committed shippers who had unmet nominations.

10. Palmetto states that the TSA provides that Palmetto and Plantation may agree to establish a joint tariff for movements from origin points on Plantation's system to destination points on Palmetto's system. Palmetto states that joint tariff rates would be similar to the committed rates in the TSA and committed shippers would pay a premium relative to uncommitted rates. Any potential uncommitted joint rates would be offered volume-incentive rates. Palmetto also states that the prorationing policy of each component pipeline would govern allocations of capacity for the portion of the joint movement that occurs on that pipeline.

11. To the extent that certain segments of the pipeline become available for use before other segments, the TSA allows Palmetto to provide transportation service on a limited basis prior to the in-service date of the pipeline. Palmetto would file a tariff with the Commission establishing the rates, rules, and regulations for such interim service and they could differ from those provided in the TSA. There would be no firm service and capacity would be allocated among all potential shippers on a *pro rata* basis.

12. In order to achieve the most efficient use of the leased capacity, the lease between Palmetto and Plantation contemplates that Palmetto will release any portion of the leased capacity that is not used by Palmetto shippers in any month back to Plantation for the potential use by Plantation's shippers during such month. Prior to the in-service date or interim in-service date all the leased capacity that is then available will be released

automatically to Plantation each month. Following the in-service date or interim in-service date, the release will occur each month only if a portion of the leased capacity remains available after Palmetto fulfills all requested nominations. The releases will occur month-to-month and will revert back to Palmetto at the end of each month.

13. In the event Palmetto elects to expand the capacity of the pipeline, the TSA provides that Palmetto will provide all committed shippers a first right to submit binding nominations to ship-or-pay for a committed volume of products on the expansion capacity without first holding an open season for such capacity. The amount of the expansion capacity that will be available for volume commitments will not exceed 90 percent of the total available expansion capacity.

14. Each committed shipper elected an initial term for the agreement of five or ten years. The TSA will automatically renew for a five-year period upon the expiration of the initial term unless Palmetto or the committed shipper terminates the agreement by giving at least one year's notice. After the renewal term ends, the TSA will automatically renew for successive one-year terms unless either party terminates upon at least six months' notice.

Requested Rulings in Palmetto's Petition

15. Palmetto asks the Commission to approve as just and reasonable and not unduly discriminatory or preferential the requests discussed below.

16. Palmetto requests that the TSA will be honored and its provisions will be upheld and will govern the transportation services Palmetto provides to a committed shipper during the term of the TSA.[2]

17. Palmetto requests that the Commission find that it has jurisdiction over the interstate transportation of denatured fuel ethanol by pipeline and therefore has authority to approve the proposed terms and conditions of service related to the pipeline's transportation of ethanol. To date, the Commission has not ruled on whether its jurisdiction under the Interstate Commerce Act (ICA) extends to interstate transportation of this commodity by pipeline. However, based on the analysis set forth in *Gulf Central*[3]

[2] Citing, *e.g., Mid-America Pipeline Co.*, 136 FERC ¶ 61,087, at PP 9, 18-19 (2011); *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at P 22 (2012); *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 17 (2013).

[3] Citing, *Gulf Central Pipeline Co.*, 50 FERC ¶ 61,381 (1990) (*Gulf Central*), *aff'd*, *CF Industries Inc. v. FERC*, 925 F.2d 476 (1991) (*CF Industries*).

regarding the scope of the Commission's jurisdiction under Section 306 of the Department of Energy Organizational Act of 1977 (DOE Act), Palmetto submits that jurisdiction over the interstate transportation of ethanol by pipeline resides with the Commission.

18. Palmetto requests that a committed shipper may receive firm transportation on the pipeline in exchange for paying a premium rate for such transportation, as compared to the rate applicable to a similarly-situated uncommitted shipper.[4]

19. Palmetto requests that it may transport Flexible-Service Barrels and Priority Incremental Barrels on a priority basis, at the committed rates, provided that its transportation of such barrels does not reduce the amount of capacity reserved for uncommitted shippers.[5]

20. Palmetto requests that it may use the leased capacity, including the underutilized capacity, to provide firm transportation services pursuant to the TSA. Palmetto submits that the Commission has approved oil pipelines' offering of firm transportation services on newly constructed capacity in multiple instances, and the Commission should afford the same treatment to the lease of underutilized capacity presented here.[6] In doing so, Palmetto asserts that the Commission should confirm that such a lease of underutilized capacity is separate and distinct from the factual situation presented in *Colonial*,[7] where the Commission rejected the pipeline's attempt to offer preferential capacity rights on an existing, but fully utilized, portion of its system.

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[4] Citing, *e.g.*, *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007); *MarkWest Liberty Ethane Pipeline, L.L.C.*, 145 FERC ¶ 61,287, at P 24 (2013); *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 40 (2010); *Shell Pipeline Co.*, 139 FERC ¶ 61,228, at P 21 (2012).

[5] Citing, *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 29 (2013); *Enable Bakken Crude Services, LLC*, 148 FERC ¶ 61,048 (2014).

[6] Citing, *e.g.*, *Medallion Pipeline Co., LLC*, 148 FERC ¶ 61,095 (2014) (approving firm service on a new greenfield liquids pipeline system); *Oxy Midstream Strategic Development, LLC and Magellan Midstream Partners, L.P.*, 141 FERC ¶ 61,005, at P 19 (2012) (approving firm service on a new crude oil pipeline system); *CCPS Transportation, LLC*, 122 FERC ¶ 61,123 (2008) (approving firm service on expansion capacity).

[7] *Colonial Pipeline Company*, 146 FERC ¶ 61,206 (2014) (Colonial).

21. Palmetto requests that it may allocate up to 90 percent of the total capacity available on the pipeline to committed shippers, while reserving the remaining 10 percent of capacity for uncommitted shippers.[8]

22. Palmetto requests that it may include the proration policy, as set forth in the TSA, to govern the allocation of capacity on the pipeline during months when the pipeline is in prorationing.[9]

23. Palmetto requests that it may file, at its election, the committed rates as settlement rates during the term of the TSA, including upon the initial filing of the committed rates in Palmetto's tariff, pursuant to section 342.4(c) of the Commission's regulations.[10]

24. Palmetto requests that in the event a joint tariff is established, committed shippers may transport barrels on a priority basis on the pipeline under such joint tariff, provided the committed shippers pay the committed shipper joint rates for such transportation service.

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[8] Citing, *e.g.*, *See, e.g.*, *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at P 27 (2014)*; Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at P 12 (2013)*; Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at PP 6-15 (2011)*; CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 17 n.33 (2007); *Enbridge (U.S.) Inc.*, 124 FERC ¶ 61,199, at P 35 (2008).

[9] Citing, *e.g.*, *Belle Fourche Pipeline Co.*, 28 FERC ¶ 61,150, at 61,281-82 (1984) (giving pipelines the authority to develop prorationing programs); *Mid-America Pipeline Co., LLC*, 106 FERC ¶ 61,094, at P 14 (2004) (citing *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,115 (1999) and *Total Petroleum, Inc. v. Citgo Products Pipeline Co.*, 76 FERC ¶ 61,164, at 61,947 (1996) (no single allocation method, giving pipelines latitude to meet operational circumstances); *Oxy Midstream Strategic Development, LLC*, 141 FERC ¶ 61,005, at P 15 (2012) (approving proration policy allocating capacity first to Committed Shippers, then New Shippers up to 10 percent of capacity, then Regular Shippers based on historical shipments); *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040, at P 24 (2006) (approving proration policy that reserved a percentage of available capacity to regular shippers while reserving 10 percent of capacity for new shippers).

[10] Citing, *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at P 21 (2012); *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 17-18 (2013); *Seaway Crude Pipeline Co. LLC*, 142 FERC ¶ 61,201, at P 12 (2013)*; MarkWest Liberty Ethane Pipeline, L.L.C.*, 145 FERC ¶ 61,287, at P 26 (2013).

25. Palmetto requests that it may provide transportation service on the pipeline during the interim service period, subject to the terms outlined in the TSA.[11]

26. Palmetto requests that it may release any unused portion of the leased capacity to Plantation each month, in accordance with the terms of the lease and the TSA.

27. Palmetto request that it may provide a committed shipper with the expansion commitment rights specified in the TSA in the event Palmetto decides to expand the capacity of the pipeline.[12]

28. Palmetto requests that it may implement automatic extensions of the initial term of the TSA in accordance with the provisions of the TSA.[13]

Discussion

29. In its petition for declaratory order Palmetto is seeking approval of the rates, and terms and conditions of service for its pipeline project that will transport refined petroleum products and denatured fuel ethanol throughout the southeastern part of the United States. In accordance with Commission precedent Palmetto has sought advance guidance through the declaratory order process.[14] Palmetto informed potential shippers of the project through a widely publicized open season. The Commission finds that the rates, and terms and conditions of service offered to the potential committed shippers during the open season are consistent with the ICA and Commission precedent and policy. The various aspects of Palmetto's terms of service such as committed and uncommitted rates, priority service for committed shippers at a premium rate, 10 percent of capacity reserved for uncommitted shippers, treatment of the committed rates as settlement rates, expansion and extension rights for committed shippers, interim service, and the ability to file a joint tariff are consistent with prior Commission rulings. Since many of the issues raised in Palmetto's petition have been addressed by the Commission before, no further discussion is necessary. However, the Commission will separately

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[11] Citing, *Sunoco Pipeline L.P.*, 149 FERC ¶ 61,191 (2014).

[12] Citing, *Enbridge Pipelines (Southern Lights) LLC*, 141 FERC ¶ 61,244, at P 26 (2012).

[13] Citing, *CenterPoint Energy Bakken Crude Services, LLC,* 144 FERC ¶ 61,130, at P 34 (2013).

[14] *Express Pipeline Partnership*, 76 FERC ¶ 61,245 (1996), *reh'g denied*, 77 FERC ¶ 61,188 (1996).

discuss its jurisdiction over fuel ethanol, Palmetto's use of the leased and underutilized capacity on Plantation, and the monthly release of unused capacity since these issues have not been addressed before and in order to provide guidance to other pipelines who may seek similar rulings in declaratory orders for future projects.

30. The first issue to be addressed is whether the Commission has jurisdiction under the ICA over the interstate transportation of denatured fuel ethanol, one of the products that Palmetto will transport. Palmetto states that the Commission has not ruled on whether its jurisdiction under the ICA extends to this commodity. As a result of the DOE Act, the Federal Energy Regulatory Commission was given jurisdiction over the rates for the transportation of oil. In the Commission's order in *Gulf Central*, which was later affirmed in *CF Industries*, the Commission addressed the issue of whether it had jurisdiction over the transportation of anhydrous ammonia by pipeline. Anhydrous ammonia is an agricultural fertilizer derived from natural gas or petroleum refinery gas. In its decision to disclaim jurisdiction over anhydrous ammonia the Commission, among other things, determined the meaning of oil and petrochemicals, and investigated the legislative history of the DOE Act for purposes of determining how certain energy resources were to be regulated. As a result of its analysis, the Commission set forth the principles for determining its jurisdiction over the transportation of oil: (1) whether the commodity is a fuel source in that it has heating value and is used for energy-related purposes; (2) whether the cost of transportation will have an impact on energy markets; and (3) whether the commodity will compete with oil or other refined products for capacity in the pipeline.

31. In applying the principles of *Gulf Central* to denatured fuel ethanol, the Commission finds that it has jurisdiction over its transportation under the ICA. Ethanol is a fuel source and is used for energy-related purposes. As Palmetto submits, ethanol is a direct substitute for gasoline and federal law requires ethanol to be blended with transportation fuels prior to the fuels being sold in the market. In addition, the Energy Information Administration has recognized that ethanol has its own energy content and has classified it as a fuel source. The cost of the transportation of ethanol will have an impact on energy markets because, as Palmetto states, ethanol accounts for ten percent of the total volume of motor gasoline, and that volume is likely to increase given federal renewable fuel standards. As ethanol consumption increases, more pipeline capacity will be required causing the cost to transport other liquids to change. Finally, ethanol will compete for the same pipeline capacity as the oil and other refined products regulated by the Commission. In fact, as Palmetto states, it will batch the ethanol on the pipeline in exactly the same manner it batches the other refined products.

32. The next issue to be addressed is whether Palmetto can use the leased and underutilized capacity on Plantation to provide firm transportation services under the TSA. Specifically, Palmetto requests the Commission to confirm that the lease of underutilized capacity is distinguishable from the factual situation presented in *Colonial*.

In *Colonial*, the Commission denied a petition for declaratory order where the pipeline offered contract or committed rates for existing capacity but did not propose any change or expansion to its system. The Commission stated:

> [T]he Commission's body of precedent has approved contract rates with respect to new pipelines, expansion projects, or, at the very least, reversals or reconfigurations of existing pipelines in order to serve new markets or respond to changing market conditions. In all of the cases approving contract rates, contractual commitments of shippers were necessary to, among other things, determine support for construction of the project, obtain financing, ensure the initial financial viability of the project, or to determine the support in new or growing markets. Even in the case of existing pipelines seeking to reverse or reconfigure their systems, contract rates ensure that a pipeline's investments to serve new markets are necessary in the long term.[15]

33. In this proceeding, Palmetto proposes a new pipeline project consisting of a combination of its own newly constructed facilities and leased capacity on Plantation comprised of expanded capacity as well as underutilized capacity. Palmetto will provide new transportation services for refined products to new committed and uncommitted shippers on its pipeline. Unlike in *Colonial* where the pipeline was simply trying to convert existing capacity into contract capacity without any changes to the system, Palmetto is creating a new pipeline project, part of which enables use of underutilized existing capacity on an affiliated pipeline. Palmetto's use of the underutilized capacity on Plantation, which has not been used for ten years and will not affect Plantation's existing shippers, is analogous to a reversal or reconfiguration of an existing pipeline to serve new markets or respond to changing market conditions. Accordingly, Palmetto's request is granted as consistent with Commission precedent.

34. The final issue to be addressed is whether Palmetto may release any unused portion of the leased capacity to Plantation each month. The release of the leased capacity would occur automatically each month prior to any in-service date of the pipeline since Palmetto would not be able to provide transportation. After the in-service date, the leased capacity will be released to Plantation each month provided that all of Palmetto's nominations are met and no shipper chooses to use the excess leased capacity. The capacity would revert back to Palmetto at the end of each month. The Commission finds that Palmetto's capacity release process is an efficient use of the leased capacity

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[15] *Colonial*, 146 FERC ¶ 61,206 at P 35.

both prior to and after Palmetto becomes operational because it will allow potential shippers on Plantation to use the leased capacity rather than have it sit idle. As Palmetto stated in its petition, all potential shippers were put on notice during the Open Season of how the capacity lease arrangement would work following the in-service date, and each shipper had an opportunity to submit comments to Palmetto regarding the arrangement. In addition, Palmetto submits that the arrangement will not undermine any of the rights that Palmetto has promised to committed shippers because (i) the leased capacity will only be released to Plantation in the event that no shipper on the pipeline wishes to use such capacity, and (ii) the leased capacity will automatically become available for Palmetto's use the following month. Accordingly, the Commission finds that the capacity release arrangement contemplated in the lease is reasonable and not unduly discriminatory or preferential.

The Commission orders:

Palmetto's petition for declaratory order is granted, consistent with the discussion above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.