

155 FERC ¶ 61,222  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

First ECA Midstream LLC

Docket No. CP16-35-000

ORDER ISSUING CERTIFICATES

(Issued June 1, 2016)

1. On December 18, 2015, First ECA Midstream LLC (FECAM) filed an application, pursuant to section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations,<sup>2</sup> for a certificate of public convenience and necessity authorizing FECAM to operate an existing 16-mile, 4- to 16-inch-diameter pipeline (Existing Pipeline) in Clearfield and Elk Counties, Pennsylvania, as an interstate pipeline. The Existing Pipeline is currently operated solely as a gathering line.<sup>3</sup> FECAM also requests a blanket certificate under Subpart F of Part 157 of the Commission's regulations to perform certain routine construction activities.<sup>4</sup> In addition, FECAM requests acceptance of its firm negotiated rate transportation agreements as its FERC Gas Tariff, or in the alternative, a blanket certificate under Subpart G of Part 284 of the Commission's regulations to provide open-access transportation services.<sup>5</sup>

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<sup>1</sup> 15 U.S.C. § 717f(c) (2012).

<sup>2</sup> 18 C.F.R. pt. 157 (2015).

<sup>3</sup> NGA section 1(b) exempts from the Commission's jurisdiction "facilities used for . . . the production or gathering of natural gas." 16 U.S.C. § 717(b) (2012).

<sup>4</sup> 18 C.F.R. pt. 157, Subpart F (2015).

<sup>5</sup> 18 C.F.R. pt. 284, Subpart G (2015).

2. This order grants FECAM's request to convert its Existing Pipeline to interstate service and issues blanket certificates under Parts 284 and 157 of the Commission's regulations, subject to the conditions discussed below.

**I. Background and Proposal**

3. FECAM is a limited liability company organized under the laws of the state of Delaware, and is authorized to do business in West Virginia and Pennsylvania. FECAM is owned by First ECA Holdings LLC, which in turn is owned by Energy Corporation of America (ECA) and FREIF Midstream Holdings LLC. FECAM owns non-jurisdictional natural gas gathering facilities in West Virginia and Pennsylvania, and owns and operates the 8000 System in Pennsylvania, which is a former Columbia Gas Transmission Corporation facility subject to a limited jurisdiction certificate granted by the Commission.

4. FECAM states that the Existing Pipeline is currently used solely for the gathering of natural gas from producing wells owned by FECAM's affiliate, ECA, for delivery to the interstate pipeline systems of Dominion Transmission, Inc. (Dominion) and National Fuel Gas Supply Corporation (National Fuel). FECAM explains that it is proposing to operate its Existing Pipeline as a jurisdictional interstate pipeline so that it can also receive natural gas from Dominion<sup>6</sup> for delivery to a power plant operated by NRG REMA LLC (REMA) in Shawville, Pennsylvania.<sup>7</sup> In this regard, FECAM states it has entered into a firm transportation agreement with REMA to provide up to 152,000 dekatherms per day (Dth/day) of transportation service from a primary receipt point at the interconnection with Dominion to a primary delivery point at an interconnection with the power plant line.<sup>8</sup> FECAM states that its existing shipper on its gathering system, ECA, has also contracted for up to 150,000 Dth/day of transportation service on the Existing Pipeline. FECAM states that both shippers have entered into negotiated rate agreements.

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<sup>6</sup> FECAM states that the interconnection with Dominion will become bi-directional. At this time, FECAM states that National Fuel will remain only a delivery point.

<sup>7</sup> FECAM states that the generating units at the power plant previously were coal-fired, but REMA is currently adding natural gas capability and plans to place the generating units back in service, with the ability to burn natural gas, by early summer 2016.

<sup>8</sup> FECAM explains that REMA will also have the option to purchase on-system gathered gas from ECA, which will be delivered by displacement.

5. FECAM requests that the Commission issue a certificate authorizing the proposed transportation service for REMA and ECA, and accept its firm negotiated rate transportation agreements with these shippers as its FERC Gas Tariff, or in the alternative, issue it a blanket certificate pursuant to Part 284, Subpart G of the Commission's regulations and accept its *pro forma* tariff. In addition, FECAM seeks waivers of certain regulatory requirements, including certain of the Commission's interstate pipeline accounting, posting, and reporting requirements.

6. FECAM also requests issuance of a blanket certificate, pursuant to Subpart F of Part 157 of the Commission's regulations, authorizing certain routine construction activities.

7. FECAM requests expedited authorization so that the REMA power plant can receive interstate natural gas and recommence service in the PJM Interconnection electric market by early summer 2016.

## **II. Notice, Interventions, and Comments**

8. Notice of FECAM's application was issued on December 22, 2015, and published in the *Federal Register* on December 29, 2015.<sup>9</sup> REMA and Dominion filed timely, unopposed motions to intervene.<sup>10</sup> REMA also filed comments in support of the project.

## **III. Discussion**

9. Because FECAM seeks authorization to use the existing pipeline for jurisdictional transportation of natural gas in interstate commerce, the operation of the pipeline is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.<sup>11</sup>

### **A. Application of the Certificate Policy Statement**

10. Although the Commission's Certificate Policy Statement<sup>12</sup> was developed to provide guidance for evaluating proposals seeking to certificate authority to construct

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<sup>9</sup> 80 Fed. Reg. 81,305.

<sup>10</sup> 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 (2015).

<sup>11</sup> 16 U.S.C. §§ 717f(c) and (e) (2012).

<sup>12</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

new facilities, the Commission also applies the Certificate Policy Statement in assessing applications for certificate authority to acquire existing facilities<sup>13</sup> or, as is the case here, to operate existing non-jurisdictional facilities to provide jurisdictional services.<sup>14</sup> The Certificate Policy Statement establishes criteria for determining whether granting certificate authority for a company to construct, acquire, or operate facilities will serve the public interest.

11. The Certificate Policy Statement explains that in deciding whether to authorize the construction of new pipeline facilities, or as applied, the acquisition and/or operation of existing and/or previously non-jurisdictional facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's 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.

12. Under this policy, the threshold requirement for a pipeline 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, we 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 we proceed to complete the environmental analysis where other interests are considered.

13. As discussed 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 its existing customers. While FECAM has no existing jurisdictional customers, we note that its existing gathering customer, ECA, has entered

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<sup>13</sup> See, e.g., *Tennessee Gas Pipeline Co., L.L.C.*, 123 FERC ¶ 61,153, at P 31 (2008).

<sup>14</sup> See, e.g., *Regency Fields Services LLC*, 153 FERC ¶ 61,054 (2015) (*Regency*) (applying the Certificate Policy Statement in deciding whether to issue a certificate authorizing the continued operation of a 8.1-mile-long pipeline, originally constructed as a gathering line, that was being used to provide jurisdictional service).

into a long-term agreement for jurisdictional transportation service at negotiated rates. Moreover, FECAM states that service to REMA will not result in any costs being shifted to ECA. Accordingly, we find that the threshold requirement of no subsidization is met.

14. Next, we find there will be no adverse impact on existing pipelines in the market or their captive customers because FECAM's proposal is for service to its existing shipper, ECA, and a new natural gas customer, REMA, and not intended to replace existing customers' services on any other pipeline. No objections have been expressed to FECAM's proposal by competing companies or their captive customers.

15. We also find that the construction required for FECAM to use the Existing Pipeline for NGA service will have minimal impacts on landowners and surrounding communities. FECAM states in its application that the construction contemplated under its blanket certificate is minor and will take place on property owned, leased or controlled by FECAM, REMA, or their affiliates.<sup>15</sup>

16. Granting FECAM certificate authority will enable the company to provide jurisdictional transportation service to a new customer, REMA, as well as to ECA, both of which have signed firm service agreements. Based on the benefits FECAM's service will provide and the lack of adverse effects on existing customers, other pipelines and their captive customers, and landowners and the surrounding communities, we find, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of FECAM's proposal, subject to the conditions discussed below.

## **B. Transportation Authorization**

17. FECAM states that only two shippers have subscribed to service on the Existing Pipeline and that those shippers have both agreed to negotiated rates. FECAM further states that it does not expect any other party to request transportation service on the Existing Pipeline. Based on these circumstances, FECAM avers the Commission should treat FECAM as a small, single-purpose pipeline and grant certificate authorization for FECAM to provide transportation service to these shippers in accordance with the terms of their existing service agreements. FECAM further requests permission to file the two negotiated rate agreements as its FERC Gas Tariff, in lieu of filing an open-access tariff providing for services in accordance with Part 284 of the regulations, until such time as it receives a valid request for service from a new party. FECAM urges that the administrative burden and cost of implementing and maintaining an open-access tariff, including terms and conditions, as well as other features of the Commission's interstate

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<sup>15</sup> FECAM's Application at 10.

pipeline regulatory program, are unnecessary given that there are only two shippers on a 16-mile pipeline with limited receipt and delivery points and given the strong likelihood of no other potential shippers. FECAM filed, as Exhibit P, Alternative 1, the two transportation agreements in the form of a FERC Gas Tariff.

18. FECAM's Alternative 1 is, in effect, a request for case-specific authorizations under Part 157 of the regulations to provide service for the existing shipper, ECA, and the new shipper, REMA. However, case-specific certificate authorizations under Part 157 do not provide shippers the rights (e.g., capacity release rights) that Part 284 shippers have,<sup>16</sup> and the Commission therefore "has a strong policy favoring open access transportation on interstate pipelines and as a general rule has declined to issue cases specific certificates in contravention of that policy [when an applicant] has not provided any compelling reason why the Commission should create an exemption to its open access policy."<sup>17</sup> Further, in two of the cases cited by FECAM where the Commission made limited exceptions to its general policy on open-access and tariff requirements,<sup>18</sup> the pipeline company was using a residue line downstream of a processing plant and was transporting only gas owned by it or affiliated producers. In the third order, where the company also used the residue line to transport gas for non-affiliated producers, the Commission allowed the company to file its transportation service agreements in lieu of a tariff in order not to disrupt the current contractual rights and long-standing service arrangements for shippers.<sup>19</sup> We do not find that an exception to our open-access policies is justified or appropriate here, and we therefore will deny FECAM's Alternative 1 request and grant its Alternative 2 proposal.

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<sup>16</sup> Order 636-A clarified that services certificated pursuant to Part 157 of the Commission's regulations are not subject to the rights or requirements of Part 284 services. *Pipeline Service Obligations to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol and Order Denying Rehearing in Part, Granting Rehearing in Part, and Clarifying Order No. 636*; Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, at 30,565 (1992). See also *Tennessee Gas Pipeline Co.*, 898 F.2d 801, 804 (D.C. Cir. 1990) (upholding the Commission's policy of declining to issue case-specific certificates for services that may be provided under Part 284 open-access blanket transportation certificates).

<sup>17</sup> *Northwest Natural Gas Co.*, 105 FERC ¶ 61,024, at P 34 (2003).

<sup>18</sup> See *Whiting Oil and Gas Corp.*, 126 FERC ¶ 62,119 (2009); *Western Gas Resources, Inc.*, 119 FERC ¶ 61,308, at P 20 (2007).

<sup>19</sup> *Regency*, 153 FERC ¶ 61,054 at PP 14 and 20.

We will issue FECAM an open-access transportation certificate under Part 284 of our regulations, as we did in *Collbran Valley Gas Gathering, LLC*.<sup>20</sup>

19. As part of the documentation in support of FECAM's Alternative 2 proposal, FECAM proposes a *pro forma* open-access tariff and initial, cost-based recourse rates. These are discussed below.

**C. Blanket Construction Certificate**

20. FECAM requests a Part 157, Subpart F blanket certificate, authorizing performance of certain routine construction, operation, and abandonment activities with respect to the Existing Pipeline. Under this blanket authority, FECAM states that it intends to construct a tap facility at the delivery point off the Existing Pipeline to REMA's power plant line, upgrade measurement and regulating facilities to enable FECAM to receive natural gas from Dominion, and construct minor re-piping around an unused compressor station on the system.<sup>21</sup> Because FECAM will become an interstate pipeline with the issuance of a certificate to operate the Existing Pipeline, FECAM is granted a Part 157, Subpart F blanket certificate.

**D. Rates**

21. FECAM proposes to provide firm transportation (Rate Schedule FT) and interruptible transportation (Rate Schedule IT) services under Part 284 of the Commission's regulations at cost-based recourse rates. FECAM derived its initial Rate Schedule FT recourse transportation rate using a straight fixed-variable cost classification based on the cost of its facilities already in service. The FT recourse rate is designed

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<sup>20</sup> 128 FERC ¶ 61,186 (2009).

<sup>21</sup> Typically, the Commission requires a pipeline requesting authorization to operate as an interstate pipeline to also request in its certificate application the authority to construct any facilities necessary to commence interstate service on day one. However, given the limited nature of the facilities FECAM proposes to construct under its blanket certificate, and to avoid delay in commencing interstate service to the power plant so that the power plant can commence electric service for the summer peak season, we will make an exception and allow FECAM to construct those facilities under its blanket certificate issued in this order. In this regard, we note that FECAM must comply with the environmental conditions set forth in section 157.206(b) of the Commission's regulations, which ensure that activities performed under a blanket certificate will not have a significant impact on the environment. 18 C.F.R. § 157.206(b) (2015).

based on a projected annual throughput of 14,562,000 Dth,<sup>22</sup> and a first year cost of service of \$13,186,999. For Rate Schedule FT, FECAM proposes a maximum monthly reservation charge of \$27.5446 per Dth and a zero commodity charge. For Rate Schedule IT, FECAM proposes a maximum rate of \$0.9056 per Dth based on the 100 percent load factor equivalent of its FT rate. FECAM also proposes a fixed one percent Gas Retainage Charge to compensate it for any system gas used, including fuel gas, and gas for lost and unaccounted-for volumes (LAUF) volumes. FECAM's shippers have elected to receive service at negotiated rates.

22. A review of FECAM's proposed cost of service, allocation, and rate design finds that they reasonably reflect current Commission policy with one exception. FECAM has proposed a total rate of return of 11.08 percent. This figure was calculated utilizing a capital structure of 32.64 percent debt and 67.36 percent equity, a cost of debt of 3 percent, and a proposed return on equity (ROE) of 15 percent. In support of its request for a 15 percent ROE, FECAM asserts that it will face substantial risk of recovering its regulated cost of service as it has no expectation of additional shippers and that REMA, its largest shipper, could elect to convert to lower recourse rates after the initial term of its contract.

23. While the Commission has allowed returns up to 14 percent for new greenfield pipeline projects, FECAM is not constructing new pipeline facilities but is continuing to operate facilities that are already in service and have been operating for many years. FECAM has not provided a discounted cash flow analysis or any evidence in support of its requested 15 percent ROE, other than providing references to returns the Commission has previously approved for new pipelines. We find FECAM has more in common with existing pipelines than with the greenfield pipeline projects that have received returns of 14 percent. In the absence of any support for the proposed ROE in an NGA section 7 certificate proceeding, the Commission believes it is more appropriate to use the most recent ROE approved in a litigated NGA section 4 rate case in determining FECAM's ROE.<sup>23</sup> The last litigated ROE applicable to this situation was from *El Paso Natural Gas*

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<sup>22</sup> FECAM's projected annual throughput is based on: (1) 2,000 Dth/day times 365 days for ECA, which is ECA's current average production; and (2) 152,000 Dth/day times 91 days for REMA. REMA's power plant is a peaking facility and not always operating. For facilities that are already constructed, the Commission has permitted pipelines to base their rates on projected demand for capacity as opposed to physical capacity. See *Tennessee Gas Pipeline Co., L.L.C.*, 143 FERC ¶ 61,196, at P 211 (2013).

<sup>23</sup> See, e.g., *ANR Pipeline Company and TC Offshore, LLC*, 139 FERC ¶ 61,238, at P 127, *reh'g denied*, 143 FERC ¶ 61,225, at PP 61-62 (2013).

*Company*, where the Commission adopted an ROE of 10.55 percent.<sup>24</sup> Therefore, the Commission believes that an ROE of 10.55 percent is appropriate for FECAM, and FECAM will be required to recalculate its rates accordingly.

24. FECAM's proposed recourse rates as initial rates for service on its pipeline are accepted subject to modification as discussed above.

### **1. Interruptible Services Revenue Crediting**

25. FECAM designed its recourse rates without an allocation of costs to Rate Schedule IT service or a provision requiring the crediting of Rate Schedule IT revenues to shippers.

26. The Commission's general policy regarding new interruptible services requires the pipeline to either credit 100 percent of the interruptible revenues, net of variable costs, to firm and interruptible customers or to allocate costs and volumes to these services.<sup>25</sup> The purpose of interruptible revenue credits is to protect the pipeline's customers from too low an allocation of costs to interruptible service, as an allocation of too little costs to interruptible service causes both the firm and interruptible maximum rates to be too high.<sup>26</sup> Therefore, FECAM is directed to either revise its system rates with an allocation of costs to these services or revise its tariff to provide for a mechanism to credit 100 percent of the interruptible and authorized overrun service revenues, net of variable costs, to its maximum rate firm and interruptible shippers.

### **2. Fuel and Lost and Unaccounted for Gas**

27. FECAM proposes a fixed one percent Gas Retainage Charge to compensate it for any system gas used, including fuel and LAUF volumes.<sup>27</sup> FECAM states that it does not require compression to provide transportation for REMA and ECA, and therefore, does

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<sup>24</sup> *El Paso Natural Gas Co.*, Opinion No. 528, 145 FERC ¶ 61,040, at P 642 (2013), *reh'g denied*, Opinion No. 528-A, 154 FERC ¶ 61,120 (2016).

<sup>25</sup> *See, e.g., Creole Trail LNG, L.P.*, 115 FERC ¶ 61,331, at P 27 (2006); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 51 (2005).

<sup>26</sup> *Transcontinental Pipe Line Corp.*, 78 FERC ¶ 61,057, at 61,209 (1997).

<sup>27</sup> FECAM's proposed transportation agreements with REMA and ECA provide for negotiated Gas Retainage Charges. FECAM has agreed to limit REMA's retainage charge to 0.75 percent on an annualized basis and ECA will be assessed zero.

not currently have any active compressor stations in service. The Commission accepts FECAM's proposed fixed one percent Gas Retainage Charge. However, the Commission will require FECAM to file data detailing any system gas used, including lost and unaccounted-for volumes, along with its cost and revenue study at the end of its first three years of service, as discussed below.

### 3. Negotiated Rate Agreements

28. FECAM states that it will provide service under negotiated rate agreements. Consistent with the Commission's negotiated rate policies, if a pipeline files a tariff record reflecting the terms of an agreement, it must include a statement that the agreement conforms in all material respects with its *pro forma* service agreement.<sup>28</sup> On the other hand, if a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.<sup>29</sup> Moreover, if a negotiated rate agreement includes material deviations from the form of service agreement,<sup>30</sup> the Negotiated Rate Policy Statement requires that the pipeline clearly delineate differences between its negotiated contractual terms and that of its form of service agreement in redline/strikeout and provide a detailed narrative outlining the terms of its negotiated rate contract, the manner in which such terms differ from its form of service agreement, the effect of such terms on the rights of the parties, and why such deviation does not present a risk of undue discrimination.<sup>31</sup>

29. As discussed above, FECAM filed its negotiated rate agreements as support for its Alternative 1 proposal to adopt these agreements as its FERC Gas Tariff, which we denied. FECAM also filed a *pro forma* tariff record reflecting the terms of the

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<sup>28</sup> A material deviation is any provision in a service agreement that: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (2) affects the substantive rights of the parties. *See, e.g., Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001).

<sup>29</sup> 18 C.F.R. § 154.1(d) (2015)

<sup>30</sup> *See Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134, at P 33 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *reh'g dismissed and clarification denied*, 114 FERC ¶ 61,304 (2006) (Negotiated Rate Policy Statement).

<sup>31</sup> *Id.*; *see also East Tennessee Natural Gas Co.*, 105 FERC ¶ 61,162, at P 16 (2003).

agreements but did not include a statement that the agreements conform in all material respects with its *pro forma* service agreement. FECAM's application did not otherwise address whether the negotiated rate agreements contain any non-conforming provisions. In this regard, we note that the negotiated rate agreements provide for an extension of the primary term of the respective agreement. The Commission has only permitted a pipeline to negotiate contract extension provisions if the pipeline's tariff contains a provision offering to negotiate such provisions on a not unduly discriminatory basis.<sup>32</sup>

Accordingly, when FECAM files its actual tariff records, as required in this order, it is directed to either: (1) remove the contract extension provision; (2) offer the provision to all shippers in a non-discriminatory manner through a generally applicable tariff provision; or (3) explain why the provision is not unduly discriminatory. FECAM is also directed to identify and disclose any other non-conforming provisions or agreements affecting the substantive rights of the parties and otherwise comply with the Alternative Rate Policy Statement<sup>33</sup> and the Commission's negotiated rate policies.<sup>34</sup>

#### **4. Rate Changes and Three-Year Filing Requirements**

30. Consistent with Commission precedent, FECAM is required to file a cost and revenue study, including data detailing any system gas used, and LAUF volumes, at the end of its first three years of jurisdictional service to justify its existing cost-based firm and interruptible recourse rates.<sup>35</sup> In its filing, the projected units of service should be no lower than those upon which FECAM's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost of service data.<sup>36</sup> FECAM's cost and revenue

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<sup>32</sup> See, e.g., *Columbia Gas Transmission, LLC*, 137 FERC ¶ 61,092, at P 7 (2011); *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 39 (2010).

<sup>33</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, clarification granted, 74 FERC ¶ 61,194 (1996).

<sup>34</sup> See Negotiated Rate Policy Statement, 104 FERC ¶ 61,134, order on reh'g and clarification, 117 FERC ¶ 61,042, reh'g dismissed and clarification denied, 114 FERC ¶ 61,304.

<sup>35</sup> *Bison Pipeline, LLC*, 131 FERC ¶ 61,013, at P 29 (2010); *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224, at P 57 (2009); *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, at P 34 (2008).

<sup>36</sup> 18 C.F.R. § 154.313 (2015).

study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, FECAM is advised to include, as part of the eFiling description, a reference to Docket No. CP16-35-000 and the cost and revenue study.<sup>37</sup> After reviewing the data, the Commission will determine whether to exercise its authority under NGA section 5 to investigate whether the rates remain just and reasonable. In the alternative, in lieu of this filing, FECAM may make a NGA general section 4 rate filing to propose alternative rates for transportation to be effective no later than three years after the FERC jurisdictional in-service date.

## **E. Tariff**

31. FECAM filed as Exhibit P, Alternative 2, a pro forma open access FERC Gas Tariff. The Commission approves the proposed *pro forma* tariff, as conditioned below.

### **1. Gas Quality**

32. Section 8.2 of the General Terms and Conditions (GT&C) of FECAM's *pro forma* tariff sets forth FECAM's gas quality and interchangeability standards for natural gas on its system. On June 15, 2006, the Commission issued its *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*.<sup>38</sup> Paragraph 45 of the Gas Quality Policy Statement states that the Commission intends to apply its new policy on gas quality and interchangeability in its review of *pro forma* tariffs filed as part of section 7(c) certificate applications. Specifically, paragraph 45 states that applicants: (1) should ensure that their Exhibit P *pro forma* tariff include general terms and conditions addressing gas quality and interchangeability; (2) should include relevant information about the gas quality and interchangeability specifications of interconnecting pipelines and of the competing pipelines serving customers to be served directly by the new entrant as well as the relevant information about the gas supplies to be received by the new entrant for transportation or storage; and (3) must show how they derived gas quality and interchangeability specifications stated in their *pro forma* tariff.

33. FECAM's *pro forma* tariff simply states that delivered gas should meet the quality specifications set forth in Dominion's effective FERC tariff. This statement is not consistent with the Commission's Gas Quality Policy Statement because it only refers to another company's tariff and does not specifically state the gas quality specifications for natural gas on FECAM's system. In addition, FECAM has not complied with

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<sup>37</sup> *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

<sup>38</sup> 115 FERC ¶ 61,325 (2006) (Gas Quality Policy Statement).

parts (2) and (3) of the Gas Quality Policy Statement because its application does not include information about the gas quality and interchangeability specifications of interconnecting pipelines and of competing pipelines or derivation of its own gas quality specifications. Therefore, when FECAM files actual tariff records, it should comply with parts (1) through (3) of the Gas Quality Policy Statement. If FECAM intends to use in its tariff the gas quality specifications set forth in Dominion's tariff and not the gas quality specifications of another interconnected pipeline, FECAM should explain why this is appropriate.

## **2. Scheduling and Curtailment**

34. GT&C section 9.2 provides the order in which FECAM "shall schedule receipts and deliveries of gas which have been properly nominated and confirmed." GT&C section 9.3(a)(i) provides that if FECAM needs to curtail capacity, it will do so "in reverse of the order listed in section 9.2." The Commission's policy provides that, once scheduled, all firm service is assigned the same priority for curtailment purposes, irrespective of whether the capacity is utilized on a primary, flow path secondary, or secondary basis.<sup>39</sup> When FECAM files actual tariff records, it is directed to modify GT&C section 9.3(a)(i) accordingly.

## **3. Penalty Revenue Crediting**

35. GT&C section 10 is entitled "INVOICING, PAYMENTS, AND PENALTY REVENUE CREDITING," but this section contains no provisions for penalty revenue crediting. When FECAM files actual tariff records, it is directed to include a provision for the crediting of penalty revenue consistent with Commission policy.<sup>40</sup>

## **4. Force Majeure and Reservation Charge Crediting**

36. In general, the Commission requires all interstate pipelines to provide reservation charge credits to their firm shippers during both *force majeure* and non-*force majeure* outages. With respect to non-*force majeure outages*, where the curtailment occurred due to circumstances within a pipeline's control, including planned or scheduled maintenance, the Commission requires the pipeline to provide firm shippers a full

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<sup>39</sup> *Dominion South Pipeline Co., L.P.*, 113 FERC ¶ 61,064, at P 41 (2005).

<sup>40</sup> The Commission requires that any penalty revenues are to be credited to non-offending shippers. See *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,315 (2000).

reservation charge credit for the amount of primary firm service they nominated for scheduling which the pipeline failed to deliver. The Commission requires that the pipeline provide partial reservation charge credits during *force majeure* outages in order to share the risk of an event not in the control of the pipeline.<sup>41</sup>

37. The Commission has defined *force majeure* outages as events that are both unexpected and uncontrollable. The Commission has held that routine, scheduled maintenance is not a *force majeure* event, even on pipelines with less excess capacity where such maintenance may require interruptions of primary firm service.<sup>42</sup> Commission policy recognizes that even if such outages are considered to be uncontrollable, they are expected. The U.S. Court of Appeals for the District of Columbia Circuit affirmed this policy in *North Baja Pipeline, LLC v. FERC*.<sup>43</sup>

38. We find that GT&C section 15 entitled “EXCUSE OF PERFORMANCE AND REMEDIES” complies with these policies with the exception of the following provisions. GT&C section 15.2 defines *force majeure* to include:

restraints imposed by the government, either federal, state or local, civil or military; the binding order of any court, legislative body, or governmental authority that has been resisted in good faith by all reasonable legal means . . . the necessity for testing of facilities (as required by governmental authority or as deemed necessary by the testing party for the safe operation thereof) or for making repairs or alterations to machinery or lines of pipe . . . .

To the extent that these provisions are intended to treat all service interruptions for testing, repair, and maintenance in compliance with government orders as *force majeure*

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<sup>41</sup> The Commission has held that it is just and reasonable for pipelines to provide partial reservation charge credits for outages of primary firm service to comply with order issued by the Pipeline and Hazardous Materials Safety Administration pursuant to section 60139(c) of Chapter 601 of Title 49 of the United States Code, added by section 23(a) of the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011, for a two-year transitional period consistent with Commission policy. *See, e.g., Gulf South Pipeline Co., LP*, 141 FERC ¶ 61,224 (2012), *order on reh’g*, 144 FERC ¶ 61,215 (2013).

<sup>42</sup> *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262, at P 15 (2003).

<sup>43</sup> 483 F.3d 819, 823 (D.C. Cir. 2007), *affirming*, *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh’g*, 111 FERC ¶ 61,101 (2005).

events, this provision is contrary to Commission policy.<sup>44</sup> When FECAM files actual tariff records, it is directed to remove the referenced tariff language, or to clarify that planned or scheduled testing, repairs, or maintenance do not constitute a *force majeure* event.

39. GT&C section 15.4 states:

[I]n the event Transporter fails to redeliver on any Gas Day the quantity of gas scheduled at the primary delivery point up to the [Maximum Daily Quantity (MDQ)], the reservation fee shall be decreased by an amount equal to the reservation fee on a 100 percent load factor basis for that Gas Day multiplied by the lesser of the quantity requested and not delivered or the MDQ.

Commission policy provides that credits are determined by volumes nominated by the shipper that the pipeline fails to schedule or deliver.<sup>45</sup> When FECAM files actual tariff records, it is directed to modify the referenced tariff language accordingly.

40. GT&C section 15.5 states “Transporter shall not be obligated to adjust the reservation fee pursuant to section 15.4 of these General Terms and Conditions when Transporter’s failure to deliver: (a) is the result of Shipper or the upstream or downstream operator of the facilities at the receipt or delivery point.” Commission policy provides that pipelines are not obligated to adjust a shipper’s reservation charges, provided that the failure to deliver is based on events due solely to that shipper,<sup>46</sup> or due solely to the upstream or downstream pipeline and outside the control of the pipeline.<sup>47</sup> When FECAM files actual tariff records, it is directed to modify the referenced tariff language accordingly.

41. GT&C section 15.5(b) further states that FECAM shall not be obligated to adjust the reservation fee if its failure to deliver “is the result of an Operational Flow Order [OFO] in effect on such Gas Day.” Commission policy provides that the issuance of an

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<sup>44</sup> *Kinder Morgan Louisiana Pipeline LLC*, 154 FERC ¶ 61,145, at PP 29-31 (2016) (*Kinder Morgan*) and *Texas Eastern Transmission, LP*, 140 FERC ¶ 61,216, at P 88 (2012) (*Texas Eastern*).

<sup>45</sup> *Southern Natural Gas Co.*, 137 FERC ¶ 61,050, at P 19 (2011).

<sup>46</sup> *Kinder Morgan*, 154 FERC ¶ 61,145 at P 20.

<sup>47</sup> *Rockies Express Pipeline LLC*, 142 FERC ¶ 61,075, at P 15 (2013).

OFO cannot justify a complete exception from the reservation charge crediting requirement. The only issue is whether the issuance of the OFO is due to a *force majeure* event outside the pipeline's control, in which case partial credits are required.<sup>48</sup> When FECAM files actual tariff records, it is directed to clarify the referenced tariff language accordingly.

#### **F. Requests for Waivers**

42. FECAM requests waiver of section 284.7(d) of the Commission's regulations that require open access pipelines to permit firm shippers to segment their capacity.<sup>49</sup> The Commission denies this request. FECAM states that it intersects with two other jurisdictional pipelines. Thus, there is an opportunity for firm customers to request secondary receipt and delivery points on FECAM's system. However, the Commission grants FECAM an extension of time to comply with the Commission's regulation and the North American Energy Standards Board (NAESB) Standards through which segmentation is implemented until 30 days after one of FECAM's customers requests the opportunity to segment its capacity.

43. FECAM requests waiver of the requirement to enter into Operation Balancing Agreements (OBAs). NAESB Wholesale Gas Quadrant (WGQ) Standard 2.3.29 states "[a]t a minimum, Transportation Service Providers should enter into Operational Balancing Agreements at all pipeline-to-pipeline (interstate and intrastate) interconnects." FECAM will have an interconnection with both Dominion and National Fuel, and as such should have an OBA in place with both. Accordingly, the Commission denies the request for waiver, and directs FECAM, when it files actual tariff records, to include a provision for OBAs.

44. FECAM requests waiver of the Commission's accounting and reporting requirements, Parts 158, 201 (including the Uniform System of Accounts), 225, 250 and 260 (including Form 2/2A and 3Q) of the Commission's regulations (other than page 520 of Form 2/2A, which is utilized for purposes of calculating the Annual Charge Adjustment).<sup>50</sup> FECAM further requests waivers of: (i) sections 284.12(b)(3) and 284.13 of the Commission's regulations to allow FECAM to have an informational-only website in lieu of a full electronic bulletin board; (ii) the NAESB Standards related to Electronic Data Interchange (EDI), Electronic Data Management (EDM), and Internet

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<sup>48</sup> *Texas Eastern*, 140 FERC ¶ 61,216 at P 91.

<sup>49</sup> 18 C.F.R. § 284.7(d) (2015).

<sup>50</sup> 18 C.F.R. pts. 158, 201, 225, 250 and 260 (2015).

Electronic Transport (IET); (iii) NAESB Standards 4.3.90, 4.3.92, 4.3.93, and 4.3.95, eliminating the reporting of gas quality specifications; and (iv) the Commission's reporting requirements to keep FECAM's books and records according to the Uniform System of Accounts.<sup>51</sup> FECAM states that, as a small, limited purpose pipeline with only two negotiated rate shippers and no other markets or producers in the area, requiring FECAM to implement these accounting and reporting requirement would pose an undue burden. FECAM recognizes that, in the unlikely event that a new party requests transportation service, FECAM may have to comply with these requirements.

45. The Commission grants waivers of sections 284.12(b)(3)<sup>52</sup> and 284.13(d)<sup>53</sup> of its regulations to allow FECAM to have an informational-only website in lieu of a full electronic bulletin board. FECAM's waiver requests for NAESB Standards related to EDI, EDM, IET, gas quality, and NAESB Standards 4.3.90, 4.3.92, 4.3.93, and 4.3.95 are addressed below.

46. With regard to FECAM's request for waiver of the accounting and reporting requirements, Parts 158, 201 (Uniform System of Accounts), 225, 250 and 260 (including Form 2/2A and 3Q) of the Commission's regulations, the Commission has granted such waivers in the past, but only for pipelines that intended to transport gas on behalf of themselves or their affiliates.<sup>54</sup> Such is not the case with FECAM, and accordingly, FECAM's request for waiver is denied.

#### **G. NAESB Standards**

47. On October 16, 2015, the Commission issued its Final Rule on *Standards for Business Practices of Interstate Natural Gas Pipelines; Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, in Docket Nos. RM96-1-038 and RM14-2-003.<sup>55</sup> In this Final Rule, the Commission stated that to implement the current NAESB Standards each interstate natural gas pipeline will be required to file a separate tariff record reflecting the changed Standards. The

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<sup>51</sup> As support for its request, FECAM cites to *Dominion South Pipeline Co., LP and Gulf Shore Energy Partners, LP*, 141 FERC ¶ 62,183 (2012).

<sup>52</sup> 18 C.F.R. § 284.12(b)(3) (2015) (Communications protocols).

<sup>53</sup> 18 C.F.R. § 284.13(d) (2015) (Capacity and flow information).

<sup>54</sup> See *Hiland Partners Holding, LLC*, 153 FERC ¶ 62,062 (2015).

<sup>55</sup> Order No. 587-W, FERC Stats. & Regs. ¶ 31,373 (2015) (Final Rule).

Commission explained in footnote 31 of the Final Rule that “[t]o aid in compliance, promptly after issuance of this Final Rule, the Commission will post a sample tariff record on the Commission’s website. . . . All pipelines are to file their tariff records in conformance with this sample tariff record.” FECAM is directed to follow the model tariff record which may be found on the Commission’s website.

48. NAESB Standards should be (a) incorporated by reference, (b) inserted verbatim into the tariff, or (c) included in the list of Standards for which waiver or extension of time to comply have been granted. To cite one inconsistency in this regard, FECAM includes NAESB Standard 1.3.22 in the waiver list, but the tariff language in GT&C section 9.1(i) seems similar to the language of this Standard. NAESB Standards inserted into the tariff should be both inserted verbatim *and* excluded from the list of Standards incorporated by reference and from the waiver list. When FECAM files actual tariff records, it is directed to ensure that NAESB Standards are incorporated by reference, *or* inserted verbatim into the tariff, *or* included in the waiver list.

49. Section 29 of FECAM’s proposed GT&C contains a number of deviations from the sample tariff record referenced above. Regarding the general layout, the introductory paragraph in section 29 of the GT&C should reflect the language in the sample tariff record verbatim. Further, the order of Standards in section 29 should reflect the layout in the sample tariff record. There is also a minor typographical error, as Standard “4.3, 95” should read “4.3.95”.

50. Regarding specific Standards, a number of Standards throughout section 29 should have an asterisk next to them, indicating that they have been revised by Minor Corrections 15003, 15004, 15005, 15009, and 15012.<sup>56</sup> A number of Standards are completely unaccounted for and should be inserted into the tariff, incorporated by reference, or included in the waiver list.<sup>57</sup> Finally, a number of Standards are not required to be accounted for and should be removed, as per the sample tariff record.<sup>58</sup>

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<sup>56</sup> These Standards are: 1.3.1, 0.4.2, 0.4.1, 1.1.15, 1.3.5, 1.3.8, 1.3.9, 1.3.11, 1.3.33, 1.4.1, 1.4.2, 1.4.3, 1.4.4, 1.4.5, 1.4.6, 1.4.7, 2.4.1, 2.4.3, 2.4.4, 2.4.5, 3.4.1, 5.3.56, 5.4.16, 5.4.20, 5.4.21, 5.4.22, 5.4.24, and 5.4.26.

<sup>57</sup> These Standards are: 0.2.5, 0.3.23, 0.3.24, 0.3.25, 0.3.26, 0.3.27, 0.3.28, 0.3.29, 0.4.4\*, 2.3.66, 4.3.103-4.3.105, and 5.3.73.

<sup>58</sup> These Standards are: 0.3.19, 1.3.47, 1.3.49, 1.3.50, 1.3.52, 1.3.54, 1.3.57, 1.3.59, 1.3.60, 1.3.61, 1.3.63, 2.3.33-2.3.39, 2.3.49, 2.4.12-2.4.16, 3.3.1, 3.3.2, 4.1.31, 4.3.5, 4.3.29, 4.3.39, 4.3.51, 4.3.56, 4.3.59, 4.3.65, 4.3.73, 4.3.74, 4.3.76, 5.3.27, and 10.3.2.

51. FECAM asserts in section 29 of its proposed GT&C that it has inserted Standards 1.3.2 and 5.3.2 into its tariff, but these Standards do not appear verbatim. The language of Standard 1.3.2 varies substantively. It also appears as “1.3.2,” but should read “1.3.2(i-vi)” as per the sample tariff record. FECAM claims that Standard 5.3.2 appears in section 11.4, but the Standard is not there. The language of 5.3.2 should be inserted into the tariff verbatim, and in the “Tariff Section” cited.

52. FECAM requests waiver for NAESB Standards 4.3.90, 4.3.92, 4.3.93, and 4.3.95, eliminating the reporting of gas quality specifications. FECAM states that it is a small, limited purpose pipeline with only two negotiated rate shippers and no other markets or producers in the area. On March 29, 2016, the Commission issued an order addressing pipelines’ filing of tariff records to adopt Version 3.0 of the NAESB WGQ Standards.<sup>59</sup> In the March 29 Order, the Commission granted waiver of Standards 4.3.90, 4.3.92, 4.3.93, and 4.3.95 for certain pipelines that have a limited number of customers and scope of operations, and that do not separately measure gas quality.<sup>60</sup> Consistent with the March 29 Order, the Commission grants FECAM waiver of these four Standards, conditioned upon FECAM’s verification that it does not separately measure gas quality.

53. Aside from Standards 4.3.90, 4.3.92, 4.3.93, and 4.3.95, FECAM also requests waiver of NAESB Standards related to EDI, EDM, and IET. FECAM must specify the exact EDI, EDM, and IET Standards for which it is requesting waiver and ensure that these are accurately reflected in the waiver list in section 29 of its proposed GT&C. In the March 29 Order, the Commission addressed several pipelines’ requests for waivers and extensions of various Standards related to EDI, EDM, and IET. The Commission will address FECAM’s requests pertaining to EDI, EDM, and IET in a manner consistent with the March 29 Order.

54. Even a cursory analysis of section 29 of FECAM’s proposed GT&C reveals that there are a number of additional NAESB Standards – apart from the reporting of gas quality specifications and EDI, EDM, and IET – included in the waiver list. For

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<sup>59</sup> *Order on Filings in Compliance with Order Nos. 587-W and 809*, 154 FERC ¶ 61,250 (2016) (March 29 Order).

<sup>60</sup> March 29 Order, 154 FERC ¶ 61,250 at P 10.

example, a number of principles and definitions are included in the waiver list.<sup>61</sup> These additional Standards should either be incorporated by reference or inserted into the tariff verbatim. To the extent FECAM is requesting waiver of additional Standards, FECAM is directed to provide supporting justification for such a waiver.

#### **H. Environmental Analysis**

55. This order is limited to authorizing FECAM to operate its Existing Pipeline as an interstate pipeline. Environmental review of this proposal under section 380.4 of the Commission's regulations confirms that this action qualifies as a categorical exclusion under section 380.4(a)(27).<sup>62</sup>

56. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments and upon consideration of the record,

#### **The Commission orders:**

(A) A certificate of public convenience and necessity is issued to FECAM to operate its Existing Pipeline in interstate commerce, as described and conditioned herein, and as more fully described in the application and the body of this order.

(B) The certificate authorization issued in Ordering Paragraph (A) above will not otherwise affect the non-jurisdictional status of FECAM's production and gathering facilities and operations.

(C) A blanket construction certificate pursuant to Part 157, Subpart F, of the Commission's regulations is issued to FECAM, as discussed in the application and the body of this order.

(D) A blanket transportation certificate pursuant to Part 284, Subpart G, of the Commission's regulations is issued to FECAM, as discussed in the application and the body of this order.

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<sup>61</sup> Principles are optional. Accordingly, to the extent FECAM does not wish to incorporate them by reference or include them in its tariff, it should simply omit them completely (i.e., they do not need to be included in the waiver list).

<sup>62</sup> 18 C.F.R. § 380.4(a)(27) (2015). *See* Environmental Assessment Report issued on December 18, 2015.

(E) FECAM's initial rates and the language contained in its *pro forma* tariff are approved, as conditioned and modified in this order.

(F) FECAM must file actual tariff records that comply with the requirements contained in the body of this order not less than 30 days and not more than 60 days prior to the commencement of interstate service. That filing should be made as a compliance filing under filing code type 580 and will be assigned an RP docket. In addition, FECAM is advised to include as part of the eFiling description, a reference to Docket No. CP16-35-000.<sup>63</sup>

(G) Within three years after its FERC jurisdictional service commences, as discussed herein, FECAM must make a filing to justify its existing cost-based firm and interruptible recourse rates, and Gas Retainage Charge. FECAM's cost and revenue study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, FECAM is advised to include as part of the eFiling description, a reference to Docket No. CP16-35-000 and the cost and revenue study.

(H) FECAM's request for waiver of certain accounting, posting, and reporting requirements are granted, in part, and denied, in part, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>63</sup> *Electronic Tariff Filings*, 130 FERC ¶ 61,047 at P 17.