119 FERC ¶ 61,015
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Elba Express Company, L.L.C.	Docket Nos. CP06-471-000
Southern Natural Gas Company	CP06-472-000
	CP06-473-000
	CP06-474-000

PRELIMINARY DETERMINATION ON NON-ENVIRONMENTAL ISSUES

(Issued April 4, 2007)

1. On September 29, 2006, in Docket No. CP06-471-000, Elba Express Company, L.L.C. (Elba Express) filed an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for a certificate of public convenience and necessity to: (i) acquire an undivided ownership interest of up to a volume equal to 1,175 MMcf per day in Southern Natural Gas Company's (Southern) twin 30-inch diameter pipelines (Twin 30s) which extend from Southern LNG Inc.'s (Southern LNG) Elba Island (Georgia) LNG terminal to an interconnection with Southern's pipeline system in Port Wentworth, Georgia; (ii) construct and operate a new 36-inch and 42-inch diameter pipeline extending from Port Wentworth through Georgia to interconnections with the interstate pipeline facilities of Transcontinental Gas Pipe Line Corporation (Transco) in Georgia and South Carolina; and (iii) construct and operate, in a second phase, a 10,000 horsepower compressor station in Jenkins County, Georgia. Upon installation of the compression, Elba Express would be able to provide up to 1,175 MMcf per day of firm transportation from the Elba Island LNG terminal to the interconnections with Transco.

2. In Docket No. CP06-472-000, Elba Express requests a Part 157, subpart F blanket certificate authorizing it to construct, operate, and/or abandon certain eligible facilities and services. Also, in Docket No. CP06-473-000, Elba Express requests a blanket certificate pursuant to Part 284, subpart G of the Commission's regulations to provide open access transportation services and requests approval of its proposed recourse rates and *pro forma* tariff.

3. Concurrently with the filing of Elba Express' application, Southern filed an application, in Docket No. CP06-474-000, pursuant to sections 7(b) and 7(c) to: (i) sell an undivided ownership interest of up to a volume equal to 1,175 MMcf per day in its Twin 30s pipelines to Elba Express; and (ii) acquire an undivided ownership interest of up to a volume equal to 500 MMcf per day in Elba Express' proposed pipeline from Port Wentworth, Georgia, to another interconnection with Southern at Rincon, Georgia.

4. Finally, in Docket No. CP06-470-000 (Elba III Terminal Expansion Project), Southern LNG requests authority pursuant to section 3 of the NGA to expand its Elba Island LNG terminal in two phases by: (i) constructing two 4.22 billion cubic feet equivalent (Bcfe) LNG storage tanks; (ii) increasing vaporization capacity by 900 MMcf per day; and (iii) modifying existing marine facilities to accommodate larger LNG tankers and to permit the simultaneous unloading of two LNG tankers. In addition, Southern LNG seeks approval of a new incremental rate schedule for the expanded service and other modifications to its existing tariff. Southern LNG also seeks approval pursuant to section 7(b) of the NGA, separate from the proposed expansion, to abandon unutilized facilities at a dock. As discussed more fully below, Southern LNG contemplates placing the Phase A facilities into service no later than June 1, 2010, and the Phase B facilities into service no later than December 31, 2012.

5. In this order, we reach a preliminary determination supporting approval, as specifically conditioned below, of Elba Express' and certain of Southern's proposals. This order, however, does not consider or evaluate any of the environmental issues in this proceeding nor does it address any issues associated with Southern LNG's proposed expansion of its LNG import terminal or abandonment of dock facilities in Docket No. CP06-470-000. Those issues remain under review and will be addressed in a subsequent order, following completion of our environmental analysis. Nothing in this order limits our actions with respect to that pending environmental analysis. Thus, final authorizations for Elba Express' and Southern's proposals depend on a favorable environmental analysis.

I. Background and Proposals

Southern LNG

6. Southern LNG is a Delaware corporation whose parent is Southern, also a Delaware corporation. Southern LNG operates an LNG import terminal on Elba Island, in Chatham County, Georgia, five miles downstream from the city of Savannah, Georgia, on the Savannah River.[1] Southern LNG commenced operations at the Elba Island

[1] Initial authorization for the Elba Island facility was issued in *Southern Energy Co.*, 47 FPC 1624 (1972).

terminal in 1978 and by 1980, when market demand slowed, had received 55 LNG shipments. From 1980 to 1982, Southern LNG provided peak shaving service with the remaining inventory of LNG. Between 1982 and 2000, Southern LNG operated the terminal on standby mode. In a series of orders from 1999 to 2001, the Commission authorized the re-commissioning and expansion of the Elba Island facility (Elba I).[2] In 2002 and 2003, the Commission authorized a further expansion of the Elba Island terminal (Elba II).[3] This expansion was placed into service on February 1, 2006. As currently configured, the Elba Island terminal has an LNG storage capacity of 7.3 Bcf, a firm sendout rate of 806 MMcf per day, and a maximum sendout rate of 1,215 MMcf per day.

7. In its application in Docket No. CP06-470-000, Southern LNG proposes, in its Elba III Expansion, to expand the storage capacity of its Elba Island LNG import terminal by 8.44 Bcf and its vaporization capacity by 900 MMcf per day in two phases. Specifically, in Phase A, Southern LNG proposes to: (i) construct a new 200,000 cubic meter tank (1.25 million barrels) having a storage capacity of 4.22 Bcfe of LNG with a boil-off recondenser and three boil-off gas compressors; (ii) install submerged combustion vaporizers with a firm send-out capacity of 405 MMcf per day; and (iii) modify the existing unloading docks to accommodate larger LNG ships and to facilitate simultaneous unloading of two LNG ships.

8. In Phase B, Southern LNG proposes to: (i) construct an additional 200,000 cubic meter tank (1.25 million barrels) with a storage capacity of 4.22 Bcfe; and (ii) install submerged combustion vaporizers with a firm send-out capacity of 495 MMcf per day. In addition, Southern LNG proposes, separate and apart from the proposed expansion, to abandon certain unutilized facilities at its riverside dock. Southern LNG anticipates placing the Phase A facilities into service on June 1, 2010, and the Phase B facilities into service on December 31, 2012. Southern LNG estimates that the combined cost of both phases of the expansion will be $416,641,364.

9. Southern LNG has entered into precedent agreements with Shell NA LNG LLC (Shell) and BG LNG Services, LLV (BG) for the entire firm capacity of Phase A and Phase B, respectively. Southern LNG proposes to provide service for the Elba III

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[2] *Southern LNG, Inc.*, 89 FERC ¶ 61,314 (1999), *reh'g denied*, 90 FERC ¶ 61,257 (2000); *Southern LNG, Inc.*, 94 FERC ¶ 61,188 (2001); *Southern LNG, Inc.*, 96 FERC ¶ 61,083 (2001).

[3] *Southern LNG, Inc.*, 101 FERC ¶ 61,187 (2002), *order on reh'g*, 103 FERC ¶ 61,029 (2003).

Expansion under its proposed new Rate Schedule LNG-3. Both Shell and BG have agreed to pay a negotiated rate for service from Southern LNG.

Southern

10. Southern is a natural gas company engaged in the operation of an interstate natural gas system in the southeast United States. Southern's pipeline system includes the 13.25-mile Twin 30s pipelines, which extend from Southern LNG's Elba Island LNG terminal to an interconnection with the rest of Southern's pipeline system near Port Wentworth, Georgia.[4] In its application in Docket No. CP06-474-000, Southern seeks approval to transfer to Elba Express, at net book value, an undivided ownership interest up to a volume equal to 1,175 MMcf per day in the Twin 30s pipelines. Southern will retain sufficient capacity in the Twin 30s pipelines to meet its contractual obligations and asserts that Carolina Gas' ownership interest in the Twin 30s pipelines will be unaffected by the instant proposal.

11. Southern also seeks to acquire an undivided ownership interest in Elba Express' proposed pipeline between Port Wentworth and Rincon, Georgia, up to a volume equal to 500 MMcf per day, if Southern elects to proceed with Phase III of its previously authorized Cypress Expansion Project.[5] Southern explains that it was authorized in Phase III of its Cypress Expansion Project[6] to construct a 9.85-mile, 30-inch diameter pipeline loop on its pipeline system downstream of Port Wentworth along the route of the proposed Elba Express pipeline. Southern states that acquiring an interest in the Elba Express pipeline would reduce construction costs and environmental impacts by eliminating the construction of two pipelines in the same right-of-way. Southern will pay

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[4] Southern was authorized in September 2002 to transfer an undivided ownership interest in the Twin 30s equal to a volume of 190 MMcf per day to SCG Pipeline, Inc. (SCG). *Southern Natural Gas Co. and SCG Pipeline, Inc.*, 99 FERC ¶ 61,345 (2002), r*eh'g denied*, 100 FERC ¶ 61,284 (2002). In an order issued on July 20, 2006, the Commission approved the merger of SCG with South Carolina Pipeline Corporation to form Carolina Gas Transmission Corporation (Carolina Gas). *Carolina Gas Transmission Corp., SCG Pipeline, Inc., and South Carolina Pipeline Corp.,* 116 FERC ¶ 61,049 (2006).

[5] Southern states that in the event it does not proceed with Phase III of the Cypress Expansion Project, it seeks authority to acquire only an undivided ownership interest equal to 55 MMcf per day in the Elba Express pipeline between Port Wentworth and an interconnection with Southern at Wrens, Georgia.

[6] *Southern Natural Gas Co.*, 113 FERC ¶ 61,199 (2005); *Southern Natural Gas Co.*, *Florida Gas Transmission Co.*, 115 FERC ¶ 61,328 (2006).

Elba Express the net book value of its proportional share of capacity in the pipeline at the time of closing.

Elba Express

12. Elba Express, a subsidiary of Southern, is a Delaware limited liability company formed to provide open-access transportation service for others under the Commission's jurisdiction. In addition to acquiring an undivided ownership interest in Southern's Twin 30s pipelines, Elba Express proposes in Phase A to construct and operate a new 42-inch and 36-inch diameter pipeline extending approximately 189 miles, from Port Wentworth through Effingham, Screven, Jenkins, Burke, Jefferson, Glascock, Warren, McDuffie, Wilkes, and Elbert Counties, Georgia, to interconnections with Transco in Hart County, Georgia, and Anderson County, South Carolina. The 42-inch diameter segment would extend approximately 115 miles from Port Wentworth to a proposed interconnection with Southern at Wrens, Georgia, and the 36-inch diameter segment would continue north for approximately 74 miles from Wrens to interconnections with Transco.

13. The acquired capacity on the Twin 30s and the Phase A facilities will allow Elba Express to provide up to 945 MMcf per day of transportation capacity from the Elba Island LNG terminal to the Transco interconnections. In addition, Elba Express has designed the pipeline to accommodate the transfer of an undivided ownership interest equal to a volume of 500 MMcf per day to Southern on the approximately 10-mile segment of the 42-inch diameter pipeline from Port Wentworth to an interconnection with Southern's Cypress Expansion at Rincon, Georgia.

14. In Phase B, Elba Express proposes to construct a 10,000 horsepower compressor station on the 42-inch diameter segment in Jenkins County, Georgia, to provide an additional 230 MMcf per day of transportation capacity for a total of 1,175 MMcf per day to the Transco interconnections. Elba Express' proposed in-service dates for Phases A and B are coincident to those of Southern LNG's expansion. Elba Express estimates that the combined costs of both phases will be $509,225,070.

15. Elba Express has entered into precedent agreements for long-term firm transportation service for the entire Phase A and Phase B capacity, with Shell and BG, respectively. Elba Express proposes to provide open-access transportation service under Part 284 of the Commission's regulations and has provided a *pro forma* tariff for review. Shell and BG have elected to pay negotiated rates for service on Elba Express. Finally, Elba Express also requests a Part 157 blanket certificate authorizing it to construct, operate, and/or abandon certain eligible facilities and services.

Notice, Interventions, and Comments

16. Public notice of the applications filed by Southern LNG, Southern and Elba Express was published in the *Federal Register* on October 17, 2006.[7] Several parties filed timely, unopposed motions to intervene in all of the dockets.[8] In addition, four parties filed motions to intervene out-of-time. For good cause shown, we will grant these untimely motions to intervene, as we find that to do so will not delay, disrupt, or otherwise prejudice this proceeding or the parties to this proceeding.[9]

II. Discussion

17. Because Southern's and Elba Express' applications pertain to facilities used to transport natural gas in interstate commerce, the construction, operation, and abandonment of these facilities are subject to the jurisdiction of the Commission and to the requirements of NGA section 7.

Elba Express

Application of the Certificate Policy Statement

18. The Commission's September 15, 1999 Certificate Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction.[10] The

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[7] 71 Fed. Reg. 61,040 (2006).

[8] Timely unopposed motions to intervene are granted by operation of Rule 214 (c) of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214(c) (2006). The parties to this proceeding are listed in Appendix A to this order.

[9] In its motion to intervene, Marathon LNG Marketing, LLC (Marathon) protests Southern LNG's rate design of its new incremental Rate Schedule LNG-3 for the expansion service and raises, in a series of pleadings, various rate-related and procedural issues. Southern LNG filed responsive pleadings. We will not address the issues raised by these pleadings, which are all specific to Southern LNG's proposal. As previously stated, we are not making a preliminary determination on the non-environmental issues associated with Southern LNG's proposal to expand its LNG terminal at this time. We will consider all issues related to that proposal in a final order in this proceeding.

[10] *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).

Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

19. 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, 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.

20. Elba Express' proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Elba Express currently has no gas pipeline facilities or customers; thus, there will be no subsidization by existing customers.

21. Elba Express also meets the remaining criteria for certification of new facilities set forth in the Policy Statement. There will be no adverse effects on existing services because Elba Express has no existing customers. Further, Elba Express' proposal will not adversely impact existing pipelines and their captive customers because the project is designed to meet incremental demand with incremental supplies. In addition, Elba Express' acquisition of an ownership interest in Southern's Twin 30s pipelines will not adversely affect either the ability of Southern to meet its contractual obligations or the interest and capacity owned by Carolina Gas in the Twin 30s.

22. Further, no pipelines or their customers have protested Elba Express' proposal. Finally, Elba Express has made efforts to minimize impacts on landowners and communities affected by its project. Specifically, Elba Express proposes to acquire an undivided ownership interest in Southern's Twin 30s pipelines which will obviate the need to construct pipeline facilities in sensitive areas. Indeed, Elba Express proposes to

locate its facilities for a significant portion of its proposed route in, or adjacent to, existing utility right-of-ways.

23. As discussed above, we find that Elba Express' proposed project will not adversely affect other pipelines or their customers. Further, we find that Elba Express has made efforts to minimize impacts on landowners. Elba Express has identified a need for its project by the execution of long-term agreements for the entire capacity of both phases of the pipeline project. Elba Express' project will benefit existing pipelines and their customers by providing additional access to LNG supplies from Southern LNG's Elba Island terminal. In particular, the proposed interconnections between Elba Express and Transco will provide customers along the eastern seaboard access to Elba Island supplies. Therefore, based on the discussion above, and consistent with the Policy Statement and section 7 of the NGA, we preliminarily find that, pending completion of our environmental review, approval of Elba Express' pipeline is required by the public convenience and necessity.

Rates

24. Elba Express proposes a straight-line 2.5 percent depreciation rate with a 40-year overall depreciable life. Elba Express proposes a capital structure of 50 percent equity and 50 percent debt with an equity rate of return of 14 percent and a debt cost of 7.5 percent for an overall 10.75 percent after-tax rate of return.

25. For Phase A, the proposed Rate Schedule FTS maximum reservation recourse rate of $8.0776 per Dth/month is based on a projected cost of service of $93,523,440 and billing determinants of 11,578,140 Dth based on the design capacity of the project. For Phases A and B (i.e., the complete project), the proposed FTS maximum reservation recourse rate of $6.2079 per Dth/month is based on a projected cost of service of $89,369,359 and billing determinants of 14,396,100 Dth based on the design capacity of the project. Both of these rates utilize the Straight Fixed-Variable (SFV) rate design. The proposed Rate Schedule ITS maximum recourse rates of $0.2656 per Dth for Phase A and $0.2041 per Dth for Phases A and B are the 100 percent load factor equivalents of the respective FTS rates. Elba Express did not project interruptible throughput. However, if there is interruptible throughput, it proposes a 100 percent interruptible revenue credit. Elba Express proposes to recover fuel, lost and unaccounted for gas costs through a commodity charge which will be restated annually to reflect actual costs and revenues and revised projections.

26. Elba Express requests authorization to charge negotiated rates. As discussed more fully below, section 34 of its *pro forma* tariff sets out the procedures and policies that Elba Express will apply if it agrees to negotiate rates with a shipper. Elba Express also states that it has signed precedent agreements with all of its foundation shippers to charge negotiated rates.

27. Elba Express requests that the Commission not condition the certificate authorization to require the filing of a cost and revenue study. It contends that such a condition would not serve the purposes intended by the Commission. However, Elba Express requests that if a cost and revenue study is required, that the deadline be set following commencement of services on all phases. The Commission has reviewed the proposed cost of service, and generally finds it reasonable, subject to the conditions imposed below.

28. The Commission is not persuaded by Elba Express' argument to forego the cost and revenue study. Elba Express' estimated costs may change. While all firm forward haul capacity is booked by negotiated rate customers, interruptible and capacity release customers may be subject to a maximum recourse rate. The Commission utilizes a cost and revenue study to ensure that the recourse rates remain just and reasonable, given actual experience. Consistent with Commission precedent,[11] we will require Elba Express to file a cost and revenue study to justify its initial firm and interruptible recourse rates. However, given Elba Express' projection that the second phase of its project will go into service shortly after the first phase, we will not require that the cost and revenue filing be made until four years after the in-service date of Phase A facilities.[12]

29. In its filing, the projected units of service should be no lower than those upon which Elba Express' approved initial rates are based. The filing must include a cost and revenue study, in the form specified in section 154.313 of the regulations, to update cost of service data. After reviewing the data, we will determine whether to exercise our authority under NGA section 5 to establish just and reasonable rates. In the alternative, in lieu of that future filing, Elba Express may make an NGA section 4 filing to propose alternative rates to be effective no later than four years after the in-service date of its proposed Phase A facilities. Further, we approve Elba Express' request for negotiated rate authority. However, as discussed more fully below, we find that the applicable tariff provisions proposed by Elba Express must be modified.

Pro Forma Tariff

30. Elba Express filed a *pro forma* FERC Gas Tariff setting forth the terms, conditions and recourse rates under which it will provide open-access transportation services under Part 284 of the Commission's regulations. Elba Express will provide firm and

[11] *See, e.g., Trunkline LNG Co.*, 82 FERC ¶ 61,198 at 61,780 (1998), *aff'd sub nom. Trunkline LNG Co., v. FERC*, 194 F.3d 68 (D.C. Cir. 1999); *Vector Pipeline Co.,* 85 FERC ¶ 61,083 (1998).

[12] *See, e.g., Saltville Gas Storage, L.L.C.*, 109 FERC ¶ 61,200 at P 24 (2004).

interruptible services under Rate Schedules FTS and ITS, respectively. Elba Express also filed FTS and ITS *pro forma* service agreements. Elba Express proposes to offer discounting of all of its rates except fuel, and lost and unaccounted-for retainage, and requests negotiated rate authority for all of its services.

31. The Commission finds that while Elba Express' *pro forma* tariff generally conforms to the Commission's requirements under Parts 154 and 284, Elba Express will need to make the specific modifications to the tariff as discussed below. In addition, there are other minor typographical errors and tariff construction issues, identified in Appendix B, which Elba Express is required to correct in its compliance filing.

a. Park and Loan Service

32. Elba Express states that it did not propose a park and loan service because its shippers did not express an interest in the service, the nature of the project does not make park and loan service operationally practicable, and the proposed tariff provides a mechanism at General Terms and Conditions (GT&C) section 14.1(e)(i) for shippers to trade imbalances.

33. The Commission does not find Elba Express' argument against a park and loan service to be convincing. While the proposed shippers may not have expressed a current interest in park and loan service, the service may provide a benefit to shippers in the future. If Elba Express proves to be correct and no market for such service develops, then the service will simply not be used. Further, it is difficult to project what shippers' imbalances will be in the future, and how they may wish to respond to cure the imbalances. Elba Express claims that it is impractical for a pipeline in its situation to provide park and loan services. It is true that the park and loan capability of pipelines without storage is limited to line pack management, but Elba Express' facility arrangement is not dissimilar from other pipelines without storage that offer park and loan services.[13] Therefore, Elba Express has failed to establish that its facilities are operationally incapable of supporting such a service.

34. Further, the park and loan service would provide shippers additional means of managing transportation imbalances. Pursuant to 18 C.F.R. § 284.12(b)(2)(iii) (2006), pipelines with imbalance penalty tariff provisions are required to provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of shippers to manage transportation imbalances, as well as the opportunity to obtain

[13] *See, e.g., Carolina Gas Transmission Corp.*, 116 FERC ¶ 61,049 (2006); *Great Lakes Gas Transmission Limited P'ship,* 83 FERC ¶ 61,064 (1998); *Midwestern Gas Transmission Co.,* 97 FERC ¶ 61,386 (2001).

similar imbalance management services from other providers without undue discrimination or preference. Accordingly, Elba Express is directed to include park and loan service provisions in its tariff.

b. **Southern LNG Force Majeure**

35. Elba Express proposes a force majeure provision not normally included in Part 284 filings. Specifically, GT&C section 8.5 provides that if an “event of force” is declared at Southern LNG’s Elba Island terminal, pursuant to the terms of Southern LNG’s tariff, that makes Southern LNG unable to render at least 80 percent of shipper’s aggregate MSQ or MDQ, and if the Elba Express shipper contract is for at least 25 years, at maximum or negotiated rates, and other conditions precedent as defined in section 8.5 of Elba Express’ tariff prevail, then the shipper may buy out its contract with Elba Express.

36. The Commission is concerned that this provision appears to be a unique tariff provision specifically designed for one class of shippers without any explanation as to why it is not unduly discriminatory or preferential. Why only shippers holding capacity on Southern LNG’s facilities with contracts of a length of at least 25 years should receive the option of buying out their contracts is not clear. The provision also requires that either the Commission or others interpret another pipeline’s tariff to determine the applicability of Elba Express’ tariff provision.

37. Elba Express will be interconnected with several pipelines, including Southern and Transco. As Elba Express will be an open-access transportation company, there is the potential that unknown shippers may request service other than that which is currently known, including potential interruptible, backhaul, and capacity release customers. Open-access tariffs must take into account such potential future customers and services. The Commission finds that this provision is unduly discriminatory, because it is limited without support to a single classification of customers. Therefore, section 8.5 is rejected. This finding is without prejudice to Elba Express proposing and supporting a force majeure buyout provision that is not unduly discriminatory or preferential.

c. **Majority Imbalance**

38. Elba Express provides for resolution of monthly imbalances in proposed GT&C section 14.1 and uses therein the phrase “majority imbalance” to describe different situations. A data request sought explanation of the uses of this phrase in sections 14.1(b), (c), and (g). In response, Elba Express stated that “majority imbalance” in section 14.1(b) and (c) describes each shipper’s monthly imbalance relative to the entire

pipeline's monthly imbalance, whereas in section 14.1(g) the phrase describes each shipper's share of Elba Express' new cashout balance at the end of each annual period.[14]

39. Elba Express' clarification is not satisfactory, as the discrepancy in definitions can lead to disputes as to the imbalance calculations and the resulting commodity and financial consequences. The phrase is used in reference to the Elba Express system as a whole, in reference to shippers, and in reference to differing shipper imbalances, both positive and negative. Therefore, we will require Elba Express to clarify the usages of this phrase in the various sections, particularly with reference to system Majority Imbalance and shipper Majority Imbalance, and explain fully how the operations of these tariff sections will assure non-discriminatory service.

d. Priority of Scheduling Authorized Overrun Gas Service

40. Proposed GT&C Article 16, Allocation of Capacity, deals with daily scheduling of capacity. At section 16.2(d), Elba Express proposes to allocate transmission capacity remaining after firm services have been scheduled, first to Authorized Overrun Gas nominated by shippers under Rate Schedule FTS, and then, to the extent capacity remains available, to interruptible services. This priority position is not consistent with our policy since the Commission considers authorized overrun and interruptible service as identical, and has held that pipelines must revise their tariffs so that interruptible and overrun services are accorded the same scheduling priority.[15]

41. Although authorized FTS overrun service is associated with a firm service contract, it remains an interruptible service. Firm shippers do not pay a reservation charge for Authorized Overrun Gas. Authorized Overrun Gas is to be provided only for nominations in excess of the firm shipper's contract demand. Further, the Authorized Overrun Gas rate is a charge equal to the rate paid by Elba Express' interruptible transportation customers. Therefore, Elba Express is required to revise this provision of its tariff to provide the same priority to overrun service and interruptible service.

e. Interest on Penalty Revenues

42. At proposed GT&C section 17.3, Penalty Revenue Crediting, Elba Express proposes to credit all net revenues from penalties to the bills of all shippers pro rata,

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[14] *See* Elba Express' January 8, 2007 response to data request # 18.

[15] *See, e.g.*, *Central New York Oil and Gas Co., LLC*, 114 FERC ¶ 61,105 (2006); *CNG Transmission Corp.*, 81 FERC ¶ 62,587 at 62,592 (1997).

based on the annual revenues received by Elba Express during the preceding twelve month period. Further, in response to a staff data request, Elba Express stated that it does not intend to provide interest on penalty revenues.[16] The Commission finds that Elba Express' proposal not to credit interest on accumulated penalty revenue is inconsistent with the Commission's goal in Order No. 637 to eliminate the pipelines' financial incentive to retain penalty revenues. Consistent with Commission policy,[17] Elba Express must revise its tariff to provide that it will credit the penalty revenues including the interest that it has accrued to shippers in a manner consistent with 18 C.F.R. § 154.501 (2006).

f. Agency

43. At proposed GT&C section 24.1, Elba Express states that it is willing to be an agent on behalf of shippers. Section 24.1 provides the terms, conditions and the requirement for a fee that Elba Express requires if it acts as an agent. Elba Express may choose to operate as an agent on behalf of shippers, as long as third parties may also do so. Elba Express does permit third parties to act as agents on behalf of shippers at proposed section 24.2. However, agency is not an NGA jurisdictional service, and the Commission does not regulate the terms, conditions or fees of agents.[18] Consequently, the Commission directs Elba Express to remove from section 24.1 any mention of terms, conditions and fees.

g. Complaints

44. In proposed GT&C section 26, Complaints, Elba Express proposes to require shippers to follow specific procedures before they may exercise rights under the NGA to file a complaint with the Commission, including participation in a preliminary discussion stage, lasting a minimum of 30 days. Section 26 also provides specific requirements regarding the electronic service of copies of any complaint ultimately filed. Section 26 thus limits the options available to parties contemplating the filing of a complaint

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[16] *See* EEC's January 8, 2007 response to data request # 21.

[17] *See, e.g., Algonquin Gas Transmission Co.*, 98 FERC ¶ 61,211 (2002); *Natural Gas Pipeline Co. of America*, 101 FERC ¶ 61,200 (2002); *Texas Eastern Transmission, L.P.*, 98 FERC ¶ 61,215 (2002).

[18] *See, e.g., Mid Louisiana Gas Co.*, 76 FERC ¶ 61,212 at 62,068 (1996) (accepting a proposed tariff provision which provided that the pipeline would act as agent on behalf of its customers, and noting that the agency agreement would be non-jurisdictional and would not be reflected in the tariff).

pursuant to current Commission regulations. *See* 18 C.F.R. § 385.206. We will not approve tariff provisions limiting those rights. Therefore, the Commission directs Elba Express to remove section 26 from its tariff.

h. NAESB Standards

45. Section 284.12 of the Commission's regulations provides that all interstate pipelines transporting gas under subparts B or G of Part 284 must comply with the business practice and communication standards promulgated by the North American Energy Standards Board (NAESB). Elba Express maintains that its *pro forma* tariff is consistent with Version 1.7 of the NAESB standards. However, the Commission finds certain instances in which the *pro forma* tariff is not consistent with NAESB standards. The table attached as Appendix B provides changes that Elba Express must make to its tariff to assure conformance, either verbatim or by reference, with NAESB standards. Elba Express must also ensure that the tariff complies with the currently-effective version at the time of the compliance filing to this order. When making its tariff compliance filing, Elba Express must provide a table or chart that identifies each required NAESB standard and its location in the tariff.

i. Tariff Change Procedure

46. In proposed GT&C section 44, Tariff Change Procedure, Elba Express states it will engage in a consultative process before filing proposed changes to the General Terms and Conditions. At section 44.1(c), Elba Express proposes that if, during such process, a dispute arises, the dispute will be submitted to the Commission's alternative dispute resolution service for resolution within 15 days. Proposed section 44.1(d) provides that any information exchanged during this tariff change consultative process is privileged in accordance with the Commission's rules, unless otherwise waived by the parties or by order of the Commission.

47. At proposed section 44.2(a), Elba Express commits not to propose changes to certain General Terms and Conditions, or file an NGA section 4 or section 7 application that expands or increases capacity that would have a material adverse effect on the shippers, unless agreed to by shippers who have subscribed at least 75 percent of the total firm transportation capacity on its system. At proposed section 44.2(b), Elba Express proposes to preclude shippers from filing to change or support any other person's filing to change specified provisions of its tariff, including General Terms and Conditions, rates and discounts.

48. The Commission rejects section 44. Although Elba Express may choose to commit to a pre-rate filing consultative process, the Commission will not commit itself or its staff to resolve, within a time period specified by Elba Express' tariff, unknown business proposals not filed with the Commission in accordance with its regulations. The

Commission also rejects Elba Express' attempts to limit shippers' rights under the NGA to represent their own interests before the Commission. Further, proposed section 44.2(d) provides certain notice requirements regarding rate changes replicated from the Commission's regulations. Such requirements are inappropriate in a tariff because they may not remain consistent with applicable and current Commission regulations, issued pursuant to NGA section 4. Therefore, the Commission directs Elba Express to remove section 44 from its tariff.

j. Dispute Resolution

49. In proposed GT&C article 8.2 of the *pro forma* FTS service agreement, Dispute Resolution, Elba Express included provisions regarding limitation of liability, equitable remedies, attorneys' fees, and litigation expenses. At proposed section 8.2(b), Elba Express proposes that, except as provided in certain express remedies, neither party shall be liable to any other party for any special, exemplary, punitive, consequential, or incidental damages or any equitable remedies related to a breach of the agreement or any other claim. At proposed section 8.2(c), Elba Express proposes that, except as provided in certain express remedies, neither party shall be liable to or shall claim any court costs, litigation expenses, or any fees or expenses paid or owing to attorneys, experts, consultants, or witnesses retained for any dispute or claim.

50. The Commission has consistently held that a simple negligence standard is appropriate for the liability and indemnification provisions of open-access tariffs, on the ground that all parties, including pipelines, should be liable for their negligent acts.[19] The Commission, however, has allowed pipelines to limit their liability for negligence to direct damages, so that they are only liable for indirect, consequential, incidental or punitive damages where there is gross negligence, willful misconduct, or bad faith.[20] Section 8.2(b) would insulate Elba Express from all indirect or consequential damages for its own gross negligence or willful actions, contrary to Commission policy as discussed above. Therefore, Elba Express must modify this provision in accordance with Commission policy. Further, Section 8.2(c) would preclude recovery of certain expenses

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[19] *See, e.g.*, *Gulf South Pipeline Co.*, 98 FERC ¶ 61,278, at 62,182 & n.56 (2002); *Williams Pipe Line Co.*, 88 FERC ¶ 61,014, at p. 61,040 & n.31 (1999); *Natural Gas Pipeline Co.*, 39 FERC ¶ 61, 153, at p. 61,599 (1987).

[20] *ANR Pipeline Co.*, 100 FERC ¶ 61,132, at p. 61,505 (2002); *Gulf States Transmission Corp.*, 114 FERC ¶ 61,006, at P 5 *(2006); Entegra Gas Pipeline Inc.* , 114 FERC ¶ 61,326, at P 14, P 17, (2006)*; Empire State Pipeline*, 116 FERC ¶ 61,074, at P 171 (2006).

that may be construed to constitute direct damages, an issue appropriately resolved by state courts.[21] Therefore, this provision should be deleted.

k. Negotiated Rate Information

51. Elba Express' proposed GT&C section 34 provides for negotiated rates, including the stated rate and the rate methodology or formula for all its services. The Commission approves negotiated rate authority for Elba Express and finds that Elba Express' negotiated rate proposal, as modified here, will be consistent with the Alternative Rate Policy Statement[22] and the Commission's decision in *NorAm Gas Transmission Company (NorAm)*.[23] As noted above, the maximum firm transportation rate will serve as the recourse rate. Each time Elba Express enters into a negotiated rate contract, it must file either the contract or numbered tariff sheets. The filed tariff sheets must include the name of the shipper, the negotiated rate, the type of service, the receipt and delivery points applicable to the service, and the volume of gas to be transported. Where the price term of the negotiated rate agreement is a formula, the formula should be fully set forth in the tariff sheet. In order to file a tariff sheet summary, Elba Express must certify that the affected service agreement does not deviate in any material respect from the form of service agreement in its *pro forma* tariff. Elba Express is required to revise section 34 accordingly, and abide by the terms and reporting requirements of the Alternative Rate Policy Statement as it may be modified from time to time.

52. Elba Express must also disclose any other agreement, understanding, negotiation, or consideration associated with the negotiated agreements. Finally, Elba Express must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in

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[21] *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,164 at P 35 (2005); *Entegra Gas Pipeline, Inc.*, 114 FERC ¶ 61,326, at P 14 and P 17 (2006); *see also Stingray Pipeline Co., L.L.C.*, 116 FERC ¶ 61,195, at P 15 (2006).

[22] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines (Alternative Rate Policy Statement), 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996), a*ff'd sub nom., Burlington Resources Oil & Gas Co. v. FERC*, 172 F. 3d (D.C. Cir. 1998); and Modification of Negotiated Rate Policy, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006).

[23] 77 FERC ¶ 61,011 (1996).

sufficient detail so that they can be identified in Statements G, I and J in any future NGA section 4 or 5 rate case.[24]

53. Elba Express included at Exhibit F of its *pro forma* service agreement under Rate Schedule FTS, an "exemplar" of negotiated rate agreement information. In response to a staff data request, Elba Express stated that the exemplar includes the information to be used in its precedent agreements and that it is included in the *pro forma* service agreement to ensure that the executed service agreements do not deviate in any material aspect from the form of service agreement in the tariff.[25] The Commission finds that inclusion of this information is premature. The Commission is not making a decision here on Elba Express' negotiated rates.[26] Elba Express is directed to file its negotiated rate expansion contracts or numbered tariff sheets no later than 30 days and no sooner than 60 days prior to the commencement of service on the expansion facilities. The reference to the "exemplar" at proposed section 34.2 should be removed. Also, Elba Express is directed to file a *pro forma* service agreement at Exhibit F.

Accounting

54. Elba Express proposes to acquire, at net book value, an undivided ownership interest in Southern's Twin 30s pipelines up to a volume equal to 1,175 MMcf per day.[27] Elba Express' and Southern's proposed accounting for the acquisition and disposition of this ownership interest is in accordance with the provisions of Account 102, Gas Plant Purchased or Sold and Gas Instruction No. 5, Gas Plant Purchased or Sold, of the Commission's Uniform System of Accounts.[28] Elba Express and Southern must file their

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[24] Also, consistent with the Alternative Rate Policy Statement and *NorAm*, the Commission will not permit Elba Express to recover from existing shippers any revenue shortfall due to the charging of negotiated rates.

[25] *See* Elba Express' January 8, 2007 response to data request # 27.

[26] *See East Tennessee Natural Gas Co.*, 98 FERC ¶ 61,331 (2002); *Texas Eastern Transmission Corp.*, 95 FERC ¶ 61,057, *order on reh'g*, 95 FERC ¶ 61,367 (2001); *Independence Pipeline Co.*, 91 FERC ¶ 61,102; 92 FERC ¶ 61,022, *order on reh'g and clarification*, 92 FERC ¶ 61,367 (2000).

[27] The Purchase And Sale Agreement governing the transfer of the interest in the Twin 30s pipelines is attached as Exhibit R to Elba Express' application in Docket Nos. CP06-471-000, et. al., and as Exhibit U to Southern's application in Docket No. CP06-474-000.

[28] 18 C.F.R. Part 201 (2006).

proposed accounting to clear Account 102 within six months of the date the transfer of the above facilities is consummated in accordance with the Commission's requirements. The filing must provide a complete explanation of the proposed accounting and be of such detail as to show the complete transaction and all accounts affected, including related income tax accounts.

Part 157, Subpart F Blanket Construction Certificate

55. Elba Express has applied in Docket No. CP06-472-000 for a Part 157, Subpart F blanket construction certificate, which is generally applicable to all interstate pipelines. Part 157, Subpart F blanket certificates accord natural gas pipelines certain automatic NGA section 7 facility and service authorizations and allow them to make several types of simplified prior notice requests for certain section 7 facility and service authorizations. Because Elba Express will become an interstate pipeline with the issuance of a certificate to construct, acquire, and operate pipeline facilities, we will also preliminarily determine to issue Elba Express the requested Part 157, Subpart F, blanket certificate.

Part 284, Subpart G Blanket Transportation Certificate

56. Elba Express has also applied in Docket No. CP06-473-000 for a Part 284, Subpart G blanket transportation certificate, which is generally applicable to all interstate pipelines. Part 284, Subpart G blanket certificates provide natural gas pipelines certain automatic NGA section 7 natural gas transportation authorizations for individual customers under the terms of its contract and tariff. Because Elba Express will become an interstate pipeline with the issuance of a certificate to construct, acquire, and operate the proposed pipeline facilities, and because a Part 284, Subpart G blanket certificate is required for Elba Express to offer transportation services, the Commission will preliminarily determine to issue Elba Express the requested Part 284, Subpart G blanket certificate authority.

Southern

Abandonment of Interest in Twin 30s Pipelines

57. Southern proposes, pursuant to section 7(b) of the NGA, to transfer, at book value, an undivided ownership interest up to a volume equal to 1,175 MMcf per day in its Twin 30s pipelines to Elba Express pursuant to the Purchase and Sale Agreement attached as Exhibit U to Southern's application. Southern has demonstrated in the flow diagrams provided in Exhibit V to its application that Southern can transfer the ownership interest to Elba Express without impacting Southern's capacity commitments or the ownership interest and capacity of Carolina Gas in the Twin 30s pipelines. In addition, Elba Express' acquisition of an ownership interest in the Twin 30s pipelines obviates the need for Elba Express to construct duplicative facilities in an environmentally sensitive area.

For these reasons, we find that the proposed abandonment and transfer of the ownership interest in the Twin 30s pipelines by Southern to Elba Express will be in the public convenience and necessity. The Commission will preliminarily approve the abandonment of an undivided ownership interest of 1,175 MMcf per day in the Twin 30s pipelines by sale to Elba Express. Should the level of the undivided interest change, Southern and Elba Express will be required to amend their relevant applications.

58. As discussed above, Southern's and Elba Express' proposed accounting for the acquisition and disposition of this ownership interest is in accordance with Commission regulations and must be filed as directed within six months of the date the transfer of the above facilities.

Acquisition of an Ownership Interest in Elba Express

59. Assuming Southern proceeds with Phase III of its previously authorized Cypress Expansion Project, Southern proposes to acquire, at book value, an undivided ownership interest in Elba Express' proposed pipeline between Port Wentworth and Rincon, Georgia, up to a volume equal to 500 MMcf per day. Southern states that this would obviate the need to construct a 9.85 mile, 30-inch diameter pipeline loop on its own system extending downstream from Port Wentworth to support Phase III of the Cypress Expansion Project. However, Southern states that, in the event that it decides not to proceed with Phase III of the Cypress Expansion Project, it requests authority to acquire, at book value, an undivided ownership interest equal to 55 MMcf per day in the approximately 115 mile Port Wentworth to Wrens segment of Elba Express' proposed pipeline.[29]

60. In its January 8, 2007 response to Question 1 of staff's December 28, 2006 data request, Southern confirmed that it is requesting authorization for both of the scenarios identified above. Further, Southern explained that the precedent agreement with BG, the shipper on the Cypress Expansion Project, provides for fulfillment or termination of Phase III by June 30, 2009. To accord Southern the flexibility to proceed with either alternative, as dictated by business conditions, we will grant Southern's request, as discussed and conditioned, for both scenarios identified above, to acquire, at book value, an undivided ownership interest in Elba Express' proposed pipeline facilities at the maximum levels of either 500 or 55 MMcf per day. Should those levels change, Southern and Elba Express will be required to amend their relevant applications.

[29] The Purchase and Sale Agreement governing the transfer of ownership interest in the Elba Express pipeline to Southern is attached as Exhibit R to Southern's application.

61. The Commission has previously found that Phase III of Southern's Cypress Expansion Project is consistent with the Certificate Policy Statement and is in the public convenience and necessity.[30] Southern's proposed acquisition of 500 MMcf per day of Elba Express capacity will obviate the need for construction of substantial pipeline looping facilities and will thus preclude possible environmental impacts.

62. We will also conditionally determine to approve Southern's request to acquire, at book value, an undivided ownership interest equal to 55 MMcf per day in Elba Express' pipeline from Port Wentworth to Wrens. However, other than an isolated statement on page 7 of its application in Docket No. CP06-474-000 maintaining that this ownership interest will increase deliverability from Southern LNG's Elba Island terminal, Southern has failed to explain the purpose of this acquisition or to provide an analysis of the acquisition in the context of the Certificate Policy Statement. Therefore our preliminary determination is conditioned upon Southern filing, within 20 days of the issuance of this order, sufficient justification for this acquisition.[31] Southern must also examine the acquisition within the context of the Certificate Policy Statement and provide a narrative which applies the elements of the Certificate Policy Statement. We will then analyze the acquisition in our final order in this proceeding.

63. Further, we will construe Elba Express' application as a request for the necessary abandonment authority, which we find justified by the record. As to Elba Express, the result of the sale will be the efficient transfer of capacity, either at the 500 or 55 MMcf per day level, unnecessary to the planned operation of its system. Further, the proposed sale will not preclude Elba Express from fulfilling its service obligations. As noted above, certain pipeline construction projects will be rendered unnecessary. The evidence thus supports the preliminary finding that Elba Express' proposed abandonment is permitted by the public convenience and necessity at either level.

64. Further, the Commission found that the Cypress Expansion Project, absent a significant change in circumstances, qualified for rolled-in rate treatment. If Southern determines that it will proceed with Phase III of the Cypress Expansion Project, Southern must file an application seeking to amend its previous authorization. The proposed potential acquisition of an ownership interest in Elba Express, in lieu of constructing the loop required for Phase III of the Cypress Expansion Project, may constitute a change in

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[30] *See* cases cited above at n. 6.

[31] *See Southern Natural Gas Co.*, 99 FERC ¶ 61,345, *reh'g denied* 100 FERC ¶ 61,284 (2002) (requiring amendment of application to justify preliminary determination that abandonment was in the public convenience and necessity).

circumstances affecting our previous approval of a presumption for rolled-in rate treatment. Therefore, we will require Southern to include in its application an analysis demonstrating how the facility change would impact the rate determination in the Cypress Expansion Project and demonstrating why a roll-in presumption remains appropriate.

65. Southern's and Elba Express' proposed accounting for the acquisition and disposition of this ownership interest is in accordance with the provisions of Account 102, Gas Plant Purchased or Sold and Gas Instruction No. 5, Gas Plant Purchased or Sold, of the Commission's Uniform System of Accounts.[32] Elba Express and Southern must file their proposed accounting to clear Account 102 within six months of the date the transfer of the above facilities is consummated in accordance with the Commission's requirements. The filing must provide a complete explanation of the proposed accounting and be of such detail as to show the complete transaction and all accounts affected, including related income tax accounts.

Environmental

66. On March 24, 2006, the Commission issued a notice of intent to prepare an environmental impact statement (EIS) for Southern LNG's, Southern's and Elba Express' proposals.[33] The Commission staff's independent analysis of the issues will be in the EIS. The draft EIS will be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers and libraries in the project area, and the Commission's official service list for this proceeding. A comment period will be allotted for review after the draft EIS is published. All comments on the draft EIS will be considered before recommendations are made to the Commission.

Summary

67. For the reasons discussed above, we reach a preliminary determination, subject to completion of our environmental review and the fulfillment of all conditions specified in this order, that the benefits of Elba Express' and Southern's proposed projects will outweigh any potential adverse effects, consistent with our policy statement on new facilities, and that the proposed facilities, abandonments, and acquisitions are required and permitted by the public convenience and necessity, subject to the conditions identified below and in the body of this order.

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[32] 18 C.F.R. Part 201(2006).

[33] 71 Fed. Reg. 16,143 (March 30, 2006)

68. The Commission, on its own motion, received and made a part of the record, all evidence, including the applications, as supplemented, and exhibits thereto, submitted in this proceeding. Upon consideration of this record,

The Commission orders:

(A) A preliminary determination is made in Docket No. CP06-471-000, on the basis of all pertinent non-environmental issues, that Elba Express' application under NGA section 7(c) to construct, operate, and maintain natural gas facilities and to acquire an undivided ownership interest in Southern's Twin 30s pipeline facilities, as described and conditioned herein, and as more fully described in the applications, would be required by the public convenience and necessity.

(B) Any certificate and authority issued in a final order in this proceeding will be conditioned, as discussed in this order, on the following;

(1) Elba Express' constructing and making available for service the facilities described herein pursuant to paragraph (b) of section 157.20 of the Commission's regulations, on the following schedule: the Phase A facilities by June 1, 2010, and the Phase B facilities by December 31, 2012;

(2) Elba Express' compliance with all regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) Elba Express' executing contracts for the levels and terms of service represented in the precedent agreements for each phase of construction, prior to commencing construction for each phase of construction;

(C) A preliminary determination is made in Docket No. CP06-474-000 that permission and approval for Southern to transfer to Elba Express an undivided ownership interest in Southern's Twin 30s pipeline facilities, as described above and in the applications, is permitted by the future public convenience and necessity.

(D) A preliminary determination is made in Docket No. CP06-474-000 that, should Southern proceed with Phase III of its Cypress Expansion Project, Southern's acquisition of an undivided ownership interest in Elba Express' proposed pipeline facilities from Port Wentworth to Rincon, Georgia, equal to 500 MMcf per day, as described and conditioned herein, and as more fully described in the applications, would on the basis of all pertinent non-environmental issues, be required by the public convenience and necessity.

(E) The preliminary determination made in Ordering Paragraph (D) is conditioned upon Southern's amending its Cypress Expansion Project to reflect the facility modifications discussed above. In its amended application, Southern must provide substantial evidence showing how the proposed facility changes would impact the rate determination previously made in the order authorizing the Cypress Expansion Project.

(F) A preliminary determination is made in Docket No. CP06-474-000 that, should Southern not proceed with Phase III of its Cypress Expansion Project, Southern's acquisition of an undivided ownership interest in Elba Express' proposed pipeline facilities from Port Wentworth to Wrens, Georgia, equal to 55 MMcf per day, as described and conditioned herein, and as more fully described in the applications, would on the basis of all pertinent non-environmental issues, be required by the public convenience and necessity.

(G) The preliminary determination made in Ordering Paragraph (F) is conditioned upon Southern's filing, within 20 days of the issuance of this order, substantial evidence providing a detailed justification for this acquisition, including an analysis of the application of the Commission's Certificate Policy Statement to the facts presented.

(H) The preliminary determinations made in Ordering Paragraphs (A), (D), and (F) above contemplate issuance, after completion of pending review of all environmental matters raised by the applications and issues identified by this order, of a final order of the Commission determining that the proposals are required by the public convenience and necessity, in accordance with NEPA and NGA section 7(c).

(I) A preliminary determination is made in Docket No. CP06-472-000 to issue a blanket construction certificate to Elba Express under Subpart F of Part 157 of the Commission's regulations.

(J) A preliminary determination is made in Docket No. CP06-473-000 to issue a blanket transportation certificate to Elba Express under Subpart G of Part 284 of the Commission's regulations.

(K) Elba Express shall maintain separate book, accounts, and records for transportation provided under negotiated rates and for transportation provided under cost-based rates.

(L) Elba Express shall make a tariff filing no sooner than 60 days but no later than 30 days prior to commencement of service to place the rates approved into effect, including red-lined tariff sheets reflecting how its actual tariff filing differs from its *pro forma* tariff, including those changes discussed in the body of this order.

(M) Elba Express shall make a filing within four years after its in-service date for Phase A facilities, either justifying its existing recourse rates or proposing alternative rates, a discussed in the body of this order.

(N) Elba Express and Southern are directed to account for the acquisitions and disposition of the natural gas facilities discussed above in accordance with Gas Plant Instruction No. 5 and Account 102, Gas Plant Purchased or Sold, of the Uniform System of Accounts. Elba Express and Southern, shall file their proposed accounting with the Commission within six months of the date the transfers are consummated, and the accounting submissions shall provide all the accounting entries related to the transfers along with narrative explanations describing the basis for the entries.

(O) Southern shall notify the Commission within 10 days of the date of the abandonment of the ownership interests to Elba Express.

(P) The late motions to intervene are granted.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.

APPENDIX A

Interventions

Southern LNG, Inc.
Docket No. CP06-470-000

Elba Express Company, L.L.C.
Docket Nos. CP06-471-000, CP06-472-000, & CP06-473-000

Southern Natural Gas Company
CP06-474-000

Parties filing timely motions to intervene:

Alabama Gas Corporation
Alabama Municipal Distributors Group
Atlanta Gas Light Company and Chattanooga Gas Company
Atmos Energy Corporation
Austell Gas System
BP Energy Company
Blythe Energy, LLC
BP Energy Company
BG LNG Services, LLC
ConocoPhillips Company
Coral Energy Resources, L.P.
Board of Water, Light and Sinking Fund Commissioners of the City of Dalton, Georgia
ExxonMobil Gas & Power Marketing Company, A Division of Exxon Mobil Corporation
JEA
Marathon LNG Marketing LLC
Municipal Gas Authority of Georgia
Peoples Gas System, a Division of Tampa Electric Company
Progress Energy Carolinas, Inc. d/b/a Carolina Power and Light Company
Progress Energy Florida, Inc. d/b/a Florida Power Corporation
QTL Elba LLC
Shell NA LNG LLC
Statoil Natural Gas LLC
Southeast Alabama Gas District
Southern Cities
Southern Company Services, Inc.
Transcontinental Gas Pipe Line Corporation

Parties filing untimely motions to intervene:

Latha Anderson, Francis D. Barnett, Joseph W. Bennett, Jr., Lincoln H. Bounds, Mark and Dena Daniel, Adelle G. Dehil, Dennis G. Dehil, Bob and Belle Guin, Kay Johnston, Marion and Dorothy McHugh, Douglas M. Nelson, Carol Phillips, William W. Robinson, R. Almond Standard, Richard and Virginia Thomas, Melody M. Thornton, and Marcus O. Tucker (Jointly)
Carolina Gas Transmission Corporation
Patriot's Energy Group
SCANA Energy Marketing, Inc. and South Carolina Electric & Gas Company (Jointly)

Appendix B

Identification of Corrections and Rejected Language in Elba Express' FERC Gas Tariff, Pro Forma Volume No. 1			
Line	**Sheet No.**	**Reference**	**Commentary**
Typographical Errors			
1	7	3(c)(i)	Use consistent capitalization.
2	8	3(d)(ii)	Add a period to the last sentence.
3	26	3.3	Correct "Sections" to read "Section."
4	38	12.1(a)	Correct the spelling of "obligation" in the third paragraph, first line.
5	53	14.1(e)(i)	Correct "imbalances" to read "imbalance" in the third paragraph, first line.
6	66	22.5	Correct the spelling of "therefore" in the second paragraph, fifth line.
7	74	22.6(i)(b)	Replace the semi-colon with a period.
8	14	GT&C Table of Contents	Reconcile the titles of the sections with the titles listed throughout the *pro forma* tariff.
Miscellaneous Corrections			
9	7 & 12	3(c)(ii)	This section indicates that the gas required for operations and lost and unaccounted-for gas rate will be separately stated on the rate summary sheet. The rate summary sheet does not have these retainage components separately stated. Correct the rate sheets to separate the two components. */
10	16	1(l)-(n)	The definition of "Daily Entitlement" describes the total quantity of gas based on the sum of two components. The two components are provided in sections 1(m) and 1(n). Correct the sections to make the components subparts of section 1(l). */
11	18	1(hh)	The definition of "Authorized Overrun Gas" refers to section 2(c) of the Rate Schedule FTS. Authorized overrun gas is included in Rate Schedule FTS under section 3(c)(iv). Reconcile this cross-reference. */

Identification of Corrections and Rejected Language in Elba Express' FERC Gas Tariff, Pro Forma Volume No. 1			
Line	**Sheet No.**	**Reference**	**Commentary**
12	21	2.1(b)(ii)	Elba Express states that if two or more requests for service are received that produce *comparable* net present values, then, unless otherwise agreed by COMPANY, available capacity will be allocated to the *comparable* requests on a pro rata basis (emphasis added). Define the term "comparable."
13	48	14.1(a)	This section regarding the resolution of monthly imbalances cites section 14.1(f), which refers to the disposition of net cashout balance. Section 14.1(e) refers to monthly imbalances. Correct this cross-reference. */
14	79 & 80	32.1	In this section, the Application of Discounted Rates, Elba Express provides discounts of reservation charges and surcharges. The line that includes "32.2" appears to be included in the discounts of reservation charges and surcharges. Correct the formatting to make a separate subsection, 32.2, Discounts of Volumetric Charges or Surcharges. */
15	80	34.1(a)	The Negotiated Rate Provisions provide that the negotiated rates will be set forth on Exhibits D or F. The rates will only be included on Exhibit F. Remove the reference to Exhibit D. */
16	85	41.1(a)	The tariff citation for Notice Number 2 is 10.3 for the implementation of operational flow orders. Correct the reference to section 10.2. */ Verify and/or reconcile the remaining tariff citations provided in the provisions table.
17	101	Appendix B	The appendix is designated as reserved. Undefined sheets should not be included in the tariff. Remove Appendix B and references to Appendix B.
18	105	Appendix D	The appendix includes limited content; however, the table of contents on Sheet No. 1 states this appendix is reserved. Remove the appendix or content. */
20	1-167	*Pro Forma* Tariff	Filed tariff provisions must be consistent with the Commission's electronic tariff font, point size, format, character set, characters per line, and lines per sheet requirements. */
*/ Elba Express acknowledged the need for modifications to the referenced line items in its January 8, 2007 data request.			

Identification of Corrections and Rejected Language in Elba Express' FERC Gas Tariff, Pro Forma Volume No. 1			
Line	**Sheet No.**	**Reference**	**Commentary**
NAESB Corrections			
21	78 & 84	29.1 & 40	NAESB Standard 1.3.31 is stated twice in the pro forma tariff (verbatim on sheet 78 and once as referenced on sheet 84). Remove one of these references; NAESB Standards are to be stated once in a tariff.
22	84	40	Incorporate all of the NAESB Standards as required by 18 C.F.R. 284.12(a) either verbatim or by reference. Provide a table stating the standard and location of that standard in the tariff in the compliance filing. The following NAESB Standards have not been referenced, stated verbatim, or have been incompletely stated in the pro forma tariff: 0.3.2-0.3.10, 1.2.1-1.2.2, 1.2.6, 1.2.9-1.2.11, 1.3.1, 1.3.3, 1.3.5-1.3.6, 1.3.8-1.3.9, 1.3.11, 1.3.13, 1.3.17, 1.3.20-1.3.21, 1.3.23-1.3.26, 1.3.32, 1.3.34, 1.3.37, 1.3.40, 1.3.45, 2.1.6, 2.2.1, 2.2.4-2.2.5, 2.3.3-2.3.7, 2.3.9, 2.3.11, 2.3.14-2.3.16, 2.3.25-2.3.26, 2.3.28-2.3.30, 2.3.40-2.3.41, 2.3.44, 2.3.47, 2.3.49-2.3.64, 3.2.1, 3.3.1-3.3.3, 3.3.5, 3.3.7, 3.3.14-3.3.15, 3.3.17-3.3.19, 4.3.1, 4.3.3, 4.3.5, 4.3.7, 4.3.11-4.3.14, 4.3.89-4.3.92, 5.2.1, 5.2.3, 5.3.1, 5.3.3-5.3.5, 5.3.8-5.3.11, 5.3.13-5.3.17, 5.3.19-5.3.20, 5.3.26-2.3.28, 5.3.30, 5.3.34, 5.3.39, 5.3.44-5.3.45, 5.3.50, 5.3.51, 5.3.53-5.3.60.
23	84	40	Please delete the following references to the NAESB Standards, no longer in effect: 1.1.19, 1.3.78, 2.3.36-2.3.39, 4.1.25, 4.3.6, 4.3.19, 4.3.21, 4.3.63.
24	84	40	The following NAESB Standards are required to be written verbatim in the tariff: 1.3.2 and 5.3.2.
25	84	40	Correct the reference to the NAESB Standards from 18 C.F.R. Section 284.10(b) to 18 C.F.R. Section 284.12(a).
26	84	40	Verify and/or reconcile the version number of the NAESB Standards.