

120 FERC ¶ 61,291
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulf South Pipeline Company, LP

Docket Nos. CP07-32-000
CP07-32-001
CP07-105-000

Destin Pipeline Company, L.L.C.

CP07-110-000

ORDER ISSUING CERTIFICATES AND GRANTING ABANDONMENT

(Issued September 28, 2007)

1. On December 11, 2006, Gulf South Pipeline Company, L.P. (Gulf South) filed, in Docket No. CP07-32-000, an application under section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate its proposed Southeast Expansion Project. The proposed project consists of approximately 111 miles of pipeline and 45,080 horsepower (hp) of compression in Mississippi and Louisiana. On March 5, 2007, Gulf South filed an amendment to the December 11, 2006 application, proposing to coat the involved pipe internally along the entire length of the project to reduce the pipe's roughness and increase its capacity.
2. On March 16, 2007, Gulf South filed, in Docket No. CP07-105-000, an application under NGA section 7(c) for authorization to lease 260,000 Mcf per day of capacity from Destin Pipeline Company, L.L.C. (Destin). In a companion application also filed March 16, 2007, in Docket No. CP07-110-000, Destin requested authorization under NGA section 7(b) to abandon by lease 260,000 Mcf per day of capacity to Gulf South.
3. For the reasons stated below, we are granting the requested authorizations, subject to conditions.

Background and Proposal

A. Gulf South's Southeast Expansion Facilities

4. Gulf South is a natural gas company which owns and operates approximately 7,500 miles of pipeline facilities extending from southern and eastern Texas through Louisiana, Mississippi, southern Alabama and western Florida. The Commission recently approved Gulf South's East Texas to Mississippi Expansion Project, a 239-mile pipeline with a capacity of up to 1.7 Bcf per day extending from East Texas to Harrisville, Mississippi.¹

5. Gulf South states that gas supplies being produced in Texas, Oklahoma, Arkansas, and Louisiana and moving to the Perryville-Harrisville hub currently exceed the capacity of existing pipelines to deliver those supplies further east. Gulf South explains that this gas production is forecast to grow for at least the next decade, and as increasing amounts of gas are delivered to the Perryville-Harrisville area, constraints on pipelines are beginning to develop. Without additional pipeline infrastructure from the Perryville-Harrisville area, avers Gulf South, the effects of existing and developing pipeline capacity constraints will worsen as additional gas production comes on line. Gulf South states that the Southeast Expansion Project will provide new and efficient take-away capacity for these new gas supplies for delivery to major pipelines serving the Northeast, Florida, and other parts of the Southeast, and enhance its ability to deliver gas to the east side of its own system, as well. Moreover, avers Gulf South, the Southeast Expansion Project will also allow markets that have historically relied on offshore production to access competitive onshore supplies to meet their gas needs.

6. In this application, Gulf South requests authorization to construct approximately 111 miles of 42-inch outside diameter pipeline extending from the end point of its new East Texas to Mississippi Expansion Project at Harrisville, in Simpson County, Mississippi to a new interconnect with Transcontinental Gas Pipe Line Corporation (Transco) in Choctaw County, Alabama (Transco Station 85). At various points along the pipeline route, Gulf South proposes to construct interconnects with Destin Pipeline Company, Tennessee Gas Pipeline Company, and Southern Natural Gas Company.

7. In addition to the pipeline facilities, Gulf South proposes to install a total of 45,080 hp of compression at three new compressor stations in Richland Parish, Louisiana (Delhi Compressor Station), Simpson County, Mississippi (Harrisville Compressor Station), and Clarke County, Mississippi (Destin Compressor Station). At the Delhi

¹ See *Gulf South Pipeline Company, L.P.*, 119 FERC ¶ 61,281 (2007).

Compressor Station, Gulf South would install 18,940 hp of compression comprising four reciprocating units to provide pressure maintenance for gas entering the Southeast Expansion Project from other pipelines. Gulf South would install 18,940 hp of compression, likewise consisting of four reciprocating units at the Harrisville Compressor Station, which would be a mainline station. At the Destin Compressor Station, Gulf South would install 7,100 hp of compression, comprising two reciprocating units, to provide pressure maintenance to facilitate deliveries into the Destin pipeline system.

8. The expansion facilities, including the pipeline and compression, would provide Gulf South the ability to increase its system capacity by 1.268 Bcf a day at a normal operating pressure of 1,249 psig. Gulf South has entered into precedent agreements with customers to transport 660,000 Mcf a day at negotiated rates with terms ranging from five to ten years, and expects to lease additional capacity to Gulf Crossing Pipeline Company (Gulf Crossing), at a future date.² Gulf South estimates the cost of these facilities at \$406,276,900.

1. Proposed Rates

9. Gulf South proposes to charge an incremental recourse rate for transportation service on the Southeast Expansion Project. The proposed FTS maximum reservation rate of \$5.6524 per Dth is based on a proposed cost of service of \$86,013,236³ and design determinants of 1,268,100 Dth per day, reflecting the design capacity of the project. In developing the cost of service, Gulf South has used a rate of return of 10.41 percent, based on its rate case settlement in Docket No. RP97-373, and a depreciation rate of 4.0 percent. The proposed ITS maximum rate of \$0.1858 per Dth is the 100 percent load

² Gulf Crossing is a new entity which has filed an application with the Commission in Docket No. CP07-398-000 requesting authorization to construct a 353.2-mile long pipeline from Sherman, Texas to an interconnect with Gulf South at Gulf South's Tallulah Compressor Station (part of the East Texas to Mississippi Expansion Project), and to lease up to 1.4 Bcf a day of natural gas capacity on Gulf South from Tallulah to the Transco interconnect at the terminus of the Southeast Expansion Project. In Docket Nos. CP07-401-000 and CP07-402-000, Gulf South has requested authorization to construct pipeline looping between its Tallulah Compressor Station and the Harrisville Compressor Station, and to lease up to 1.4 Bcf on its system to Gulf Crossing.

³ Gulf South's year one cost of service reflects O&M expenses of \$3,932,214, depreciation expenses of \$16,251,074, income tax expenses of \$16,956,646, other tax expenses of \$7,500,000 and a return allowance of \$41,373,302.

factor equivalent of the FTS rate. Gulf South proposes an incremental fuel rate of 0.34 percent for all transportation utilizing the Southeast Expansion Project, maintaining that the fuel associated with the Southeast Expansion Project will be incremental to the compression used on Gulf South's existing system.

2. Amendment to the Application

10. On March 5, 2007, Gulf South filed an amendment to its original application. Gulf South states that since it filed its application, several new interstate pipeline projects to be located in northeastern Louisiana and central Mississippi have been announced by their sponsors. Gulf South anticipates that a market for increased gas deliveries into its system will develop in the future and that there may be a need to increase the capacity of the Southeast Expansion Project facilities beyond the original proposal to the Commission. To accommodate greater volumes of gas that could be introduced into its system, Gulf South proposes to coat its pipe internally along the entire length of the project to reduce its roughness, which, it explains, will increase the capacity of the expansion facilities in a cost-effective manner to take advantage of future market needs and opportunities without the need to construct new facilities.⁴

11. Gulf South estimates that these modifications will increase the cost of the original proposal by \$5 million. Because it is uncertain when the increased volumes that it anticipates would flow into its system, Gulf South does not at this time propose to modify the requested certificated system capacity or to recalculate the rates it proposed in the December 11, 2006 application. Instead, Gulf South proposes to absorb the costs associated with the internal coating.⁵

B. The Destin Lease

12. Destin owns and operates an open-access pipeline system that transports natural gas from the Outer Continental Shelf to onshore connections with six interstate pipelines in Mississippi. Gulf South and Destin have entered into a lease agreement under which Gulf South will initially lease from Destin 260,000 Mcf per day of capacity on Destin's existing system. The lease agreement, however, provides Gulf South with an option to

⁴ Gulf South estimates that it would have to construct approximately 10.5 miles of additional pipeline looping to be able to reach the same level of capacity possible with the proposed modification.

⁵ Gulf South would, however, begin to depreciate these costs upon the project's in-service date.

increase the leased capacity from 260,000 Mcf per day up to 700,000 per day. Gulf South states that, in conjunction with the proposed Southeast Expansion Project facilities, the leased capacity will enable Gulf South to provide access to Florida markets.

13. The lease agreement provides that Gulf South has the right to use the leased capacity on a firm basis, and Gulf South explains that it will use the leased capacity to provide open access service to its customers under its FERC Gas Tariff. Gulf South states that it has designed incremental rates to recover the lease payments only from those shippers that will use the capacity. Under the lease agreement, the primary receipt points for gas from Gulf South into Destin will be Gulf South/Destin interconnections at Gulf South's new Destin Compressor Station in Clarke County, Mississippi, and at Gulf South's Index 300 line, near Pascagoula, Mississippi. The primary delivery points will be at Destin interconnections with the systems of Florida Gas Transmission Company and Gulfstream Natural Gas. The primary term of the lease is ten years. Upon termination of the lease, the lease capacity will revert to Destin. Destin will retain operational control of the facilities.

Notice and Interventions

14. Notices of the Gulf South Southeast Expansion application and the proposed amendment to the application were published in the *Federal Register* on December 29, 2006 (71 Fed. Reg. 78417) and March 16, 2007 (72 Fed. Reg. 12602), respectively. Southern Company Services, Inc., the City of Vicksburg, Mississippi, Wilmut Gas Company, Mobile Gas Service Corporation, CenterPoint Energy Entex, Atmos Energy Corporation, Florida Power Corporation dba Progress Energy Florida, Inc., Carolina Power & Light Company dba Progress Energy Carolinas, Inc., Florida Power & Light Company, Southern Natural Gas Company, and the United Municipal Distributors Group filed timely, unopposed motions to intervene in the application proceeding. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁶ Destin filed a motion to intervene out-of-time. Destin has shown an interest in this proceeding, and its participation will not delay the proceeding or prejudice the rights of any other party. Accordingly, for good cause shown, we will permit Destin's late intervention.⁷ The Commission received no additional intervention requests in response to the notice of the proposed amendment.

⁶ 18 C.F.R. § 385.214 (2007).

⁷ 18 C.F.R. § 385.214(d) (2007).

15. Notice of the Gulf South application in Docket No. CP07-105-000 and the Destin application in Docket No. CP07-110-000 regarding the lease of capacity on Destin's system were published in the *Federal Register* on April 2, 2007 (72 Fed. Reg. 15677 and 72 Fed. Reg. 15674, respectively). Mobile Gas Service Corporation, the City of Vicksburg, Mississippi, Florida Power Corporation dba Progress Energy Florida, Inc., Wilmut Gas Company, Destin, and SG Resources Mississippi, L.L.C. (SGRM) filed timely, unopposed motions to intervene in the Gulf South proceeding. SGRM also filed an unopposed motion to intervene in the Destin proceeding. SGRM and Destin included comments with their motions.

Discussion

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

A. The Southeast Expansion Facilities

1. Certificate Policy Statement

17. On September 15, 1999, the Commission issued its Certificate Policy Statement to provide guidance as to how it will evaluate proposals for certificating new construction.⁸ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

⁸*Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000).

18. 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.

19. The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

20. As discussed below, there will be no presumption of rolled-in rate treatment for this project's costs in future rate cases. Therefore, approval of Gulf South's proposed Southeast Expansion Project will meet the threshold test that its existing customers not subsidize the project. Furthermore, the project will not degrade any present services to existing customers. The project will likewise have no adverse impact on existing pipelines or their captive customers as the new facilities will be transporting new domestic sources of gas so that the project will not replace existing customers' service on existing pipelines.

21. We are also satisfied that Gulf South has taken appropriate steps to minimize adverse impacts on landowners. Gulf South states that it has designed the pipeline route so that the majority of the right-of-way for the Southeast Expansion Project (approximately 73 miles) will follow existing pipeline rights-of-way, and that it has attempted to locate its Delhi, Harrisville, and Destin compressor stations in remote areas to minimize potential impacts on landowners. Gulf South states also that it has worked with landowners to understand and accommodate their concerns, and that it is committed to securing any needed rights-of-way through negotiation wherever possible.

22. The Southeast Expansion Project, as amended and conditioned, will benefit the public because it will provide an important new outlet to the interstate market for natural gas from capacity constrained production areas that are expected to serve as rich supply sources. The project will likewise help create market alternatives, and enhance gas supplies available to customers on other connected pipelines. Therefore, consistent with the criteria discussed in the Certificate Policy Statement and section 7(c) of the NGA, we find that the benefits of the project will outweigh any potential adverse effects, and that the proposed project is required by the public convenience and necessity.

23. Consistent with our standard practice, we will condition our certificate authorization so that construction cannot commence until after Gulf South executes contracts that reflect the levels and terms of service represented in its precedent agreements.⁹

2. Gulf South's Rates

24. The Commission has reviewed the proposed cost of service and proposed initial incremental recourse rates for these facilities and the associated pro forma tariff sheets reflecting stated rates for Rate Schedules FTS, ITS and NNS. Gulf South proposes to charge customers who use both the expansion and the existing facilities an incremental rate for service on the expansion facilities plus the generally applicable system rates for service provided on the existing system.

25. Although Gulf South's Southeast Expansion Project will deliver supplies to markets in the Northeast and Southeast through new interconnects with Transco in Alabama and Destin in Mississippi, several factors lead us to a finding that the proposed expansion, like Gulf South's recently-certificated East Texas to Mississippi Expansion Project, will be integrated and operated as part of Gulf South's existing pipeline system. The Southeast Expansion Project will begin at the intersection of Gulf South's existing Index 130 line and the East Texas to Mississippi Expansion Project at Harrisville, Mississippi. The primary receipt point for 500,000 Dth per day of the 660,000 Dth per day of capacity under contract is also located at Harrisville. Expansion shippers will be able to use Gulf South's existing facilities on a secondary basis, and existing shippers will be permitted to use the expansion facilities on a secondary basis. In addition, as part of the Southeast Expansion Project, Gulf South is proposing to install 18,940 horsepower of compression at its Delhi Compressor Station, located upstream of the Southeast Expansion Project, in order to provide pressure maintenance for gas coming into the project from other pipelines in the Perryville area. Three Southeast Expansion Project shippers have primary receipt points on Gulf South's existing system or the East Texas to Mississippi Expansion and will have to use those facilities to transport their gas supplies to the Southeast Expansion Project. As we explained in the East Texas to Mississippi proceeding, the Commission has not permitted incremental plus pricing under similar circumstances,¹⁰ and we will therefore require Gulf South to modify its proposal as discussed below.

⁹ See, e.g., *Tennessee Gas Pipeline Company*, 101 FERC ¶ 61,360, P 21 (2002).

¹⁰ See *Gulf South Pipeline Company, L.P.*, 119 FERC ¶ 61,281, P 32 (2007).

26. For integrated mainline expansion facilities, such as those proposed by Gulf South here, the Commission has permitted pipelines to charge an incremental rate for service utilizing such facilities if such rate is higher than the generally applicable firm transportation rate.¹¹ However, pipelines have been required to charge their generally applicable transportation rate if that rate is higher than the cost-based incremental rate for service utilizing the expansion.¹² Here, the bulk of the contracted-for capacity is to be received at receipt points in Zone 3 and delivered to new delivery points in Zone 3.¹³ The generally applicable FTS firm transportation rate for transportation within Zone 3 is \$4.9383 per Dth/m (\$0.162 per Dth/d) compared to the proposed incremental rate of \$5.6524 per Dth/m (\$0.186 per Dth/d).

27. However, in calculating its proposed incremental rate, Gulf South used a 4.0 percent depreciation rate for the Southeast Expansion Project, whereas the system-wide depreciation rate agreed to in Gulf South's last rate case settlement is 2.3 percent.¹⁴ The Commission's policy is to require that a pipeline depreciate proposed new facilities at its approved system-wide depreciation rate where, as here, the new facilities will be integrated into and operated as part of the pipeline's existing system facilities.¹⁵

28. Further, Gulf South's revised Exhibit N, filed on May 25, 2007, indicates that Gulf South proposed to allocate \$8,000,000 of the expansion project's cost of service to interruptible transportation.¹⁶ However, in calculating its proposed incremental recourse

¹¹ See *East Tennessee Natural Gas Company*, 98 FERC ¶ 61,331 (2002).

¹² See *Trunkline Gas Company*, 119 FERC ¶ 61,078 (2007).

¹³ The Commission notes that because the proposed interconnects with Transco and Destin do not currently exist, they are not currently within a rate zone; however, it appears that they too will be located within Zone 3.

¹⁴ See *Koch Gateway Pipeline Company*, 84 FERC ¶61,143 (1998); Koch Gateway Pipeline Company, "Offer of Settlement and Stipulation and Agreement", RP97-373-012, Appendix C, March 30, 1998.

¹⁵ *Texas Eastern Transmission, LP*, 101 FERC ¶ 61,120 (2002).

¹⁶ See also Gulf South's April 19, 2007 response to data request. Commission policy requires that a pipeline credit 100 percent credit of interruptible revenues, net of variable costs, to firm and interruptible customers or establish projected interruptible volumes and allocate costs to the projected interruptible volumes. See, e.g., *Creole Trail LNG, L.P. and Cheniere Creole Trail Pipeline, L.P.*, 115 FERC ¶ 61,331, at P 27 (2006); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 51 (2005).

rates, Gulf South failed to use the full actual expansion capacity, as required by Commission policy.¹⁷

29. Taking the above considerations into account, we have calculated a revised firm incremental rate of \$4.6728 per Dth/m (\$0.154 per Dth/d), which is lower than Gulf South's existing, generally applicable rate for Zone 3 service. Therefore, we will reject Gulf South's proposal to charge incremental rates as initial rates for services using the expansion capacity and require Gulf South to use its generally applicable firm and interruptible system rates as initial recourse rates for service on the expansion facilities.

30. One would normally expect that if the cost-based incremental rate associated with an expansion is lower than the existing system rate, rolling in the costs and revenues associated with the expansion would result in lower system rates for all customers. Here, however, less than 55 percent of Gulf State's expansion capacity is subscribed on a firm basis under precedent agreement. If the 660,000 Dth/d of service currently subscribed under precedent agreement were provided at the maximum approved recourse rate, annual revenues would equal \$39,477,487, which is considerably less than Gulf South's projected cost of service of approximately \$86,013,236 in year 1, \$82,752,820 in year 2 and \$78,486,130 in year 3. Affording rolled-in rate treatment under these circumstances could result in existing customers subsidizing the costs of the expansion. Therefore, we will not make a predetermination regarding future rate treatment at this time. When Gulf South files a future section 4 proceeding to recover the costs associated with the expansion project, it will have to demonstrate that its proposed rate treatment will not result in the subsidization of this expansion by existing shippers. In addition, because Gulf State's precedent agreements provide for service to be provided at negotiated rates, Gulf South bears the risk for any revenue shortfall in its next rate case. Project costs will be compared to the revenues that would be generated if Gulf South were charging the maximum recourse rate for all service being provided at negotiated rates.¹⁸

31. We direct Gulf South to file actual tariff sheets reflecting the revision as directed by this order at least 30 days but no more than 60 days prior to the in-service date of the new facilities.

¹⁷ See, e.g., *Portland Natural Gas Transmission System*, 76 FERC ¶ 61,123 (1996); *Pacific Gas Transmission Co.*, 70 FERC ¶ 61,016, at p. 61,045, *reh'g denied*, 71 FERC ¶ 61,268 (1995).

¹⁸ See *Natural Gas Pipeline Company of America*, 120 FERC ¶ 61,004, at P 18 (2007).

3. Fuel

32. Gulf South proposes an incremental fuel rate of 0.34 percent for services using the proposed expansion capacity. However, as discussed above, we have found the Southeast Expansion Project will be an integrated part of the Gulf South system and are rejecting Gulf South's proposal to charge incremental rates for its services using the expansion capacity because properly calculated incremental rates would be lower than Gulf South's generally applicable rates. Therefore, Gulf South must use its currently-effective system fuel rate for services utilizing either the Southeast Expansion Project facilities alone or both the expansion facilities and existing facilities. We direct Gulf South to file actual tariff sheets reflecting this revision at least 30 days but no more than 60 days prior to the in-service date of the new facilities.

4. Negotiated Rates

33. Gulf South indicates that, prior to the in-service date of the Southeast Expansion Project, expansion shippers will execute firm transportation agreements at negotiated rates with terms ranging from 5 to 10 years, and that Gulf South will file these agreements with the Commission in accordance with Section 23 of Gulf South's tariff. In certificate proceedings we establish initial recourse rates, but do not make determinations regarding specific negotiated rates for proposed services.¹⁹ Rather, the Commission authorizes the applicable initial recourse rates in the certificate proceeding (which, in this case, will be Gulf South's generally applicable system-wide transportation rates), and addresses issues regarding the allocation of costs and revenues between recourse rate and negotiated rate shippers in the context of a general NGA Section 4 rate proceeding.

34. All service agreements containing a negotiated rate must comply with the Commission's Alternative Rate Policy Statement²⁰ and the Commission's decision in

¹⁹ *CenterPoint Energy – Mississippi River Transmission Corp.*, 109 FERC ¶ 61,007, at P 19 (2004); *ANR Pipeline Co.*, 108 FERC ¶ 61,028, at P 21 (2004); *Gulfstream Natural Gas System, LLC*, 105 FERC ¶ 61,052, at P 37 (2003); *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,360, at n. 19 (2002).

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

NorAm Gas Transmission Company (NorAm).²¹ Gulf South must file either its negotiated rate contracts or numbered tariff sheets at least 30 but not more than 60 days prior to the commencement of service on the new pipeline, stating for each shipper paying a negotiated rate, the exact legal name of the shipper, the negotiated rate, the applicable receipt and delivery points, the volume to be transported, the beginning and ending dates of the contract term, and a statement that the agreements conform in all material respects with the pro forma service agreements in Gulf South's FERC Gas Tariff. Gulf South must also disclose all consideration linked to the agreements, and maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case.

B. The Destin Lease

35. Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.²² To enter into a lease agreement, the lessee generally needs to be a natural gas company under the NGA and needs section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.²³

36. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits for using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease on a net present value basis; and (3) the lease arrangement does not adversely affect existing customers.²⁴ The lease agreement between Gulf South and Destin satisfies these requirements.

²¹*NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011 (1996).

²²*Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at p. 61,530 (2001).

²³*Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005).

²⁴*Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005); *Islander East Pipeline Company, L.L.C.*, 100 FERC ¶ 61,276, at P 69 (2002).

37. First, the Commission has found that capacity leases in general have several potential public benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, and minimize environmental impacts.²⁵ In addition, leases can result in administrative efficiencies for shippers.²⁶ Here, the lease arrangement will enable Gulf South's Southeast Expansion Project shippers to have seamless access to Florida markets by utilizing available unsubscribed capacity on Destin without the need for additional pipeline construction and environmental or landowner impacts.

38. Second, the payments Gulf South will make to Destin under the lease are less than Destin's generally applicable maximum firm transportation rates. Each month Gulf South will pay lease charges consisting of a demand charge of \$0.065 per Dth, which is less than Destin's maximum tariff rate of \$0.237 per Dth for service over the same path.

39. Third, the lease arrangement will not adversely affect Gulf South or Destin's existing customers. The proposed lease of capacity will use available unsubscribed capacity on Destin's system. Therefore, the lease arrangement will not result in adverse operational impacts on existing Gulf South or Destin customers or on any other pipelines or its customers. Gulf South has designed incremental firm and interruptible rates, based on the lease charges Gulf South will pay Destin under the lease to recover the costs of the leased capacity from only those shippers that will use the lease capacity. In addition, each shipper using the leased capacity will pay the applicable fuel retention rate on Destin²⁷ in addition to Gulf South's fuel rate. Only shippers using the lease capacity will be subject to the proposed incremental rates and Gulf South will not be allowed to shift any costs associated with the leased capacity, including fuel costs, to its existing customers.

40. The lease will have no negative impacts on Destin's existing customers since it uses available unsubscribed capacity and there will be no capital expenditures required by Destin, other than the construction of certain facilities at Destin's interconnect with Florida Gas Transmission, for which Gulf South will reimburse Destin. Gulf South will be responsible for fuel gas, including lost and unaccounted-for gas associated with the

²⁵ See, e.g., *Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003); *Islander East Pipeline Company*, 100 FERC ¶ 61,276, at P 70 (2002).

²⁶ *Wyoming Interstate Company, Ltd.*, 84 FERC ¶ 61,007, at p. 61,027 (1998), *order denying reh'g*, 87 FERC ¶ 61,011 (1999).

²⁷ Destin's fuel rate will be capped at 0.3 percent during the Primary Term of the lease.

leased capacity. Destin's existing customers, therefore, will not subsidize the incremental fuel costs associated with the project.

41. Based on the benefits the proposed lease will provide to the market and the lack of adverse effect on existing customers and other pipelines, we find that the public convenience and necessity requires approval of the proposed lease agreement. We approve Gulf South's proposed incremental recourse rates for the leased capacity.²⁸ As we explained with reference to Gulf South's rate proposal, all service agreements containing a negotiated rate must comply with the Commission's Alternative Rate Policy Statement and the Commission's decision in the *Noram* proceeding. Gulf South's application states that it has an option to increase the leased capacity to an amount in excess of 260,000 Dth per day, but not to exceed 700,000 Dth per day. This order authorizes Gulf South to lease 260,000 Dth per day. If Gulf South elects to exercise its option and increase its lease capacity, it must file an amendment and receive Commission approval.

42. Destin shall treat the capacity lease as an operating lease for accounting purposes. Destin is directed to record the monthly receipts in Account 489.2, *Revenues from Transportation of Gas of Others Through Transmission Facilities*. We have authorized similar accounting treatment for transportation capacity lease arrangements in other cases.²⁹ Further, during the term of the lease with Gulf South, Destin will not be allowed to reflect in its system rates any of the costs (*i.e.*, the fully-allocated cost of service, including actual fuel costs) associated with the leased capacity.

C. SGRM's Comments

43. SGRM is constructing the Commission-authorized Southern Pines Energy Center natural gas storage facility in Greene County, Mississippi. Upon completion of the project, a 24-inch diameter lateral pipeline will connect the Southern Pines facility with the Destin system within the path defined by the capacity lease. SGRM believes that implementation of the lease could enhance the transportation alternatives available to its Southern Pines storage customers, in that it will provide direct access to the Gulf South system.

²⁸ See, e.g., *Gulf South Pipeline Company, L.P.*, 119 FERC ¶ 61,281 (2007), and *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185 (2005).

²⁹ See *Millennium Pipeline Company, L.P.*, 97 FERC ¶ 61,292 (2001) and *Trunkline Gas Company*, 80 FERC ¶ 61,356 (1997).

44. Although SGRM generally supports the lease, it expresses concern that the lease does not include any provision for firm deliveries to, or firm receipts from, the lateral connecting Southern Pines with Destin. The lateral is not named as a primary point in the lease, and service to points other than the primary points would be available only “on a preferential interruptible basis consistent with firm shippers’ use of such Secondary Delivery Points pursuant to section 6.2 of Destin’s Tariff GT&C.”³⁰ SGRM is apprehensive that, depending on the amount of capacity ultimately established in the lease, the lease could largely preclude firm service to and from the Destin/Southern Pines interconnect, thereby relegating Southern Pines’ customers to interruptible service that would almost certainly not meet their service quality needs.

45. Also of concern to SGRM is whether the language of the lease arrangement would limit third party access to the leased capacity when it is not being used by the Gulf South shipper that has subscribed to it. If the lease agreement would limit access, avers SGRM, the arrangement would be inconsistent with Commission policy requiring that unused leased capacity be made available on an open access basis to the lessee’s customers. SGRM suggests as well that section 2.1 of the lease improperly provides that use of the leased capacity on anything other than a primary firm basis would be subject, not to lessee Gulf South’s tariff, but rather to lessor Destin’s tariff, specifically to section 6.2 of Destin’s GT&C. This, SGRM asserts, is inconsistent with well-established Commission policy that interstate pipeline capacity leased to a third party interstate pipeline must be governed by the lessee pipeline’s tariff.

46. In sum, SGRM asserts that the lease should be amended to identify the Destin/Southern Pines interconnect as both a primary receipt and a primary delivery point, and to provide explicitly that the tariff provisions governing use of the leased capacity are Gulf South’s Rate Schedules FTS for firm and secondary services and ITS for interruptible service.

47. The Commission will not require the parties to the lease to include the Destin/Southern Pines interconnect as both a primary receipt and a primary delivery point. The specific points in the lease were negotiated by the parties and the rate for the lease reflects the economic value the parties placed on that discrete segment of capacity. SGRM and its customers are free to seek firm service arrangements with Destin for the use of such capacity, but have apparently not yet done so. Under the circumstances, the Commission does not see any reason to require the parties to alter the agreement. In addition, the Commission does not read section 2.1 of the lease as providing that the leased capacity will be governed by Destin’s tariff when Gulf South’s firm shippers are

³⁰ Lease, Section 2.1.

not utilizing it. As SGRM notes, it is well-established Commission policy that interstate pipeline capacity leased to a third-party interstate pipeline must be governed by the lessee pipeline's tariff.³¹ The reference to section 6.2 of Destin's tariff in section 2.1 of the lease is to identify the delivery points Gulf South's leased capacity will be entitled to utilize on a secondary basis, not how capacity at those points will be allocated.³² Clearly, when Gulf South is providing service on the leased capacity, Gulf South's tariff will govern that process, and consistent with the Commission's open-access policy, Gulf South will be required to make that capacity available to others when it is not being used. Finally, the Commission stresses that this order is approving only the lease of 260,000 Dth per day. Gulf South will be required to file an amendment if it intends to increase the capacity of the lease. Any additional concerns SGRM may have about access to interstate pipeline capacity may be addressed at that time.

Environment

48. On June 20, 2006, Gulf South filed a request with the FERC to implement the Commission's Pre-filing Review Process for the Southeast Expansion Project. The Commission approved using its Pre-filing Review Process, and issued a *Notice of Intent to Prepare an Environmental Impact Statement, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI) on September 5, 2006. The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries and newspapers; and other interested parties.

49. During the pre-filing review, several public meetings were held along the proposed pipeline route. In addition, in response to our NOI, we received numerous written comments from landowners, concerned citizens, and government agencies regarding the proposed projects. These comments expressed concerns with the location of the proposed pipeline and the affects of the proposed project on numerous resources and land uses including soils, waterbodies, wetlands, wildlife, vegetation, threatened and endangered species, safety and reliability and timber production.

50. As required by the National Environmental Policy Act (NEPA) and the Commission's implementing regulations, a draft Environmental Impact Statement (draft EIS) was issued on April 13, 2007. Following a 45-day public comment period, a final EIS was issued on August 3, 2007. The final EIS was prepared in cooperation with the

³¹ See, e.g., *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005).

³² According to section 6.2 of Destin's tariff, Gulf South will have the right to utilize all active delivery points on Destin's system.

U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service (FWS). The Final EIS was issued on August 3, 2007. The EPA published a *Notice of Availability of the Final Environmental Impact Statement for the Proposed East Texas Expansion Project* in the *Federal Register* on August 10, 2007. Several hundred electronic and paper copies of the EIS were mailed to affected property owners, federal and state resource agencies, interested individuals and organizations, and other parties as indicated on the environmental mailing list.

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

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

A. Land Use and Special Interest Areas

53. Construction of the proposed project would affect approximately 1,726 acres of land, including 1,240 acres for the pipeline construction right-of-way, 146 acres for the aboveground facilities, and 340 acres for extra work areas (additional temporary work spaces, pipe storage and contractor yards, and access roads). Following construction, all affected areas outside the permanent pipeline right-of-way and aboveground facility sites would be restored and allowed to revert to preconstruction conditions and uses.

54. The Commission received numerous comments expressing an interest in minimizing impacts associated with the construction and operation of the proposed pipeline, particularly in the instances where multiple utility rights-of-way may occur within a common corridor. In order to reduce the amount of land required for construction and operation of the proposed project, Environmental Condition Number 13 requires that Gulf South make use of up to 10 feet of existing pipeline rights-of-way for use of spoil storage as part of its 100-foot-wide nominal construction right-of-way.

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

56. The proposed project would cross Conservation Reserve Program areas administered by the Farm Service Agency (FSA). To minimize impacts to these resources, we are requiring in Environmental Condition Number 27 that Gulf South complete consultation with the FSA regarding vegetation restoration methods.

57. Visual resources along the proposed Project route would be affected by the installation of some aboveground facilities and alteration of existing vegetative patterns associated with clearing and maintenance of the construction and permanent pipeline rights-of-way. The installation of the proposed aboveground facilities would not result in significant visual effects on residences; however, Environmental Condition Number 28 requires that prior to construction, Gulf South file with the Commission a visual screening plan to reduce the long-term adverse effects for residences in the area of the proposed Delhi Compressor Station.

B. Water Resources, Wetlands, and Vegetation

58. The proposed Project would cross 103 perennial streams, 196 intermittent streams, and 9 ponds. Most minor and intermediate waterbodies and 7 ponds would be crossed using open-cut methods. Potential effects to major and sensitive waterbodies would be largely avoided through implementation of horizontal directional drill (HDD) installation techniques, which would be used to accomplish pipeline installation across 29 waterbodies. Waterbodies that would be crossed using HDDs include each of the navigable rivers (including the Leaf and Chickasawhay Rivers, and Bucatunna and Okatuppa Creeks), two Nationwide Rivers Inventory (NRI)-listed streams (the Chickasawhay and Strong Rivers), the rivers most likely to contain habitat for federally-listed species (including Dabbs Creek, Leaf River, West Tallahala River, Chickasawhay River, Bucatunna Creek, and Strong River), and all three of the impaired waterbodies (Tallahala, Campbell, and Dabbs Creeks) that occur along the proposed project route. To ensure that impacts related to the crossing of the NRI-listed streams would be sufficiently minimized, we are requiring in Environmental Condition Number 16 that Gulf South consult further with the National Park Service (NPS) and file a report summarizing these consultations and identifying any mitigation measures Gulf South would implement. Several ponds are located in the immediate vicinity of the proposed pipeline, including some that are fed by waterbodies proposed to be crossed and could be adversely affected

by construction activities. We are requiring that Gulf South prevent sediment and heavily silt-laden water from entering these specifically identified ponds.

59. Construction of the proposed Project pipeline would affect 145 wetland areas, resulting in a total of approximately 68.9 acres of wetland disturbance, including approximately 38.6 acres of forested wetlands, 2.2 acres of mixed-type wetlands that include a forested wetland component, and an additional 28.07 acres of shrub-scrub, emergent, and open water wetlands. No wetlands would be affected by the construction or operation of the aboveground facilities. During operations, approximately 16.4 acres of forested wetlands and 0.9 acre of mixed-type wetlands containing a forested component would be contained within the maintained portion of the proposed permanent pipeline right-of-way. Potential impacts to wetlands will be avoided, minimized and mitigated through Gulf South's incorporation of numerous route variations, implementation of agency recommendations and requirements, and development of site-specific crossing plans.

60. Construction and operation of the proposed project would affect agricultural, pasture, loblolly pine-hardwood forest, hardwood slope forest, pine plantation, and open lands vegetative communities. Some vegetative communities of special concern, extensive forested tracts, and areas containing exotic and/or invasive plant species would also be affected by construction of the proposed project. Gulf South would minimize impacts to vegetation by adhering to measures described in its Upland Erosion Control, Revegetation, and Maintenance Plan. Additionally, Environmental Condition Number 21 requires Gulf South to finalize its Exotic and Invasive Species Control Plan.

C. Federally-listed Species

61. The final EIS explained that construction and operations-related activities would result in no effect to the red-cockaded woodpecker and the inflated heelsplitter; is not likely to adversely affect the Louisiana black bear, eastern indigo snake, yellow-blotched map turtle, ringed map turtle, Gulf sturgeon (including its critical habitat), bald eagle, and the wood stork; and may affect the gopher tortoise.

1. The Gopher Tortoise

62. FERC staff requested the initiation of formal consultation concerning potential impacts to the gopher tortoise with the FWS as required by section 7 of the Endangered Species Act. In its Biological Opinion (BO) issued on July 6, 2007, the FWS: concurred with our determinations of "not likely to adversely affect"; determined that the proposed project is not likely to jeopardize the continued existence of the gopher tortoise, and is not likely to adversely modify designated critical habitat; and issued an incidental take statement. The FWS also identified several non-discretionary terms and conditions

applicable to the gopher tortoise which must be adhered to for an exemption from prohibitions of section 9 of the Endangered Species Act.

63. Specifically, Gulf South must relocate gopher tortoises via mechanical excavation from their burrows within the FWS-required window of April 1 through October 15, 2007. If Gulf South is not able to complete gopher tortoise relocation activities within this window, it must stop the relocation activities until after April 1, 2008, unless granted an extension of time by the Commission in consultation with the FWS. Construction in the identified gopher tortoise habitat areas cannot commence until relocation activities have been completed. In order to provide Gulf South with the maximum amount of time to relocate gopher tortoises and allow project construction to proceed, we specify that upon acceptance of its certificate, Gulf South can begin the gopher tortoise activities approved by the FWS in its BO in those areas where right-of-way acquisition is complete and access roads identified in the FEIS can be used.

2. Other Species

64. Subsequent to FWS's BO, Gulf South made several modifications to the proposed project which have not yet been reviewed by the FWS. To ensure consultations are completed before construction is authorized, Environmental Condition Number 23 requires that Gulf South not begin construction on modified work areas not previously identified until all necessary consultations with the FWS are complete.

D. Noise Quality

65. Impacts to noise quality associated with construction of the proposed project will generally be temporary, minor, and limited to daylight hours, except at HDD sites, where drilling and related construction equipment will likely operate on a continuous basis for up to several days. However, with Gulf South's proposed noise reduction measures at the HDD sites, HDD activity impacts would be minor and temporary at all nearby noise sensitive areas (NSAs).

66. The proposed three new compressor stations will generate noise on a continuous basis during operations. However, the predicted noise levels attributable to operations of the new compressor stations should not result in significant effects on the NSAs nearest to those facilities. To ensure that noise levels are within acceptable limits, Environmental Condition Number 30 requires Gulf South to file noise survey reports within 60 days after placing the compressor stations in service to confirm that noise levels are below 55dBA.

E. Conclusion

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

68. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.³³ Gulf South shall notify the Commission's environmental staff by telephone, email, or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Gulf South. Gulf South shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

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

The Commission orders:

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

³³ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

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

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

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

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

(E) Gulf South must file actual tariff sheets in accordance with section 154.207 of the Commission's regulations 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.

(F) Gulf South is directed to file either its negotiated rate agreements or a tariff sheet describing the transaction not less than 30 days and not more than 60 days before service commences.

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

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

(I) Gulf South's incremental recourse rates for the capacity lease are approved as initial section 7 rates as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.

Appendix – Environmental Conditions

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

1. Gulf South shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff information requests), and as identified in the EIS, unless modified by the Order. Gulf South must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of OEP **before using that modification.**
2. The Director of OEP has delegated authority to take all steps necessary to ensure the protection of life, health, property, and the environment during construction and operation of the Project. This authority shall include:
 - a. the modification of conditions of the Commission's Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from Project construction and operation.
3. **Prior to any construction**, Gulf South shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EIs), and contractor personnel will be informed of the EIs authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility location(s) shall be as shown in the final EIS, as supplemented by filed alignment sheets, and shall include all of the staff's recommended facility locations. **As soon as they are available, and prior to the start of construction**, Gulf South shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities

approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Gulf South's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Gulf South's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Gulf South shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally-sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **prior to construction** in or near that area.

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

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

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

the mitigation measures required by the Order. Gulf South must file revisions to the plan as schedules change. The plan shall identify:

- a. how Gulf South will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to on-site construction and inspection personnel;
 - b. the number of EIs assigned per spread and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions Gulf South will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel changes), with the opportunity for OEP staff to participate in the training session;
 - e. the company personnel (if known) and specific portion of Gulf South's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Gulf South will follow if non-compliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the mitigation training of on-site personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Gulf South shall employ one or more EIs per construction spread. The environmental inspectors shall be:
- a. responsible for monitoring and ensuring compliance with all mitigative measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract and any other authorizing document;

- c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Gulf South shall file updated status reports with the Secretary on a **weekly basis until all construction-related activities, including restoration, are complete for each phase of the Project**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - b. a listing of all problems encountered and each instance of non-compliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. a description of corrective actions implemented in response to all instances of non-compliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints that may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Gulf South from other federal, state, or local permitting agencies concerning instances of non-compliance, and Gulf South's response.
9. Gulf South must receive written authorization from the Director of OEP **before commencing service from** the Project. Such authorization will only be granted following a determination that rehabilitation and restoration of areas affected by the Project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Gulf South shall file an affirmative statement with the Secretary, certified by a senior company official:

- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; and
 - b. identifying which of the certificate conditions Gulf South has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for non-compliance.
11. Gulf South shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the Project and restoration of the right-of-way. **Prior to construction**, Gulf South shall mail the complaint procedures to each landowner whose property would be crossed by the Project.
- a. In its letter to affected landowners, Gulf South shall:
 - (1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 - (2) instruct the landowners that if they are not satisfied with the response, they should call Gulf South's Hotline; the letter should indicate how soon to expect a response; and
 - (3) instruct the landowners that if they are still not satisfied with the response from Gulf South's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030, or at hotline@ferc.gov.
 - b. In addition, Gulf South shall include in its weekly status a table that contains the following information for each problem/concern:
 - (1) the date of the call;
 - (2) the identification number from the certificated alignment sheets of the affected property and approximate location by MP;
 - (3) the description of the problem/concern; and
 - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
12. Gulf South shall not exercise eminent domain authority granted under section 7(h) of the NGA to acquire a permanent right-of-way greater than 50 feet in width. (*Section 2.2.1*)

13. **Prior to construction**, Gulf South shall file with the Secretary for review and written approval by the Director of OEP:
 - a. revised alignment sheets and cross-section diagrams showing the use of at least 10 feet of Transcontinental Pipe Line Company's (Transco's) and Crosstex Mississippi's (Crosstex's) maintained permanent right-of-way for at least spoil storage, as part of its 100-foot-wide construction right-of-way; and
 - b. site-specific justification by milepost for areas where Gulf South believes use of the existing maintained permanent right-of-way to be infeasible for spoil storage. (*Section 2.2.1*)
14. Gulf South shall conduct, with the well-owner's permission, pre- and post-construction well monitoring of well yield and water quality for wells identified in Table 3.3.1.1-1. **Prior to construction**, Gulf South shall file with the Secretary, for review and written approval by the Director of OEP, a well monitoring and mitigation plan that describes standard testing procedures, and the measures that would be taken should a well be impacted such that it is no longer operable or that it becomes impaired. Gulf South shall offer this plan to the landowners before construction. Gulf South shall also file a report with the Secretary, **within 30 days of placing its pipeline facilities in service**, identifying all private or domestic water wells or systems damaged by construction and describing how they were repaired. The report shall include a discussion of any complaints concerning well yield or quality and how each problem was resolved. (*Section 3.3.1.2*)
15. **Prior to construction**, Gulf South shall file along with its site-specific construction plans for the Delhi, Harrisville, and Destin Compressor Stations a description of the measures that it would take to avoid impacts to waterbodies affected by these facilities. (*Section 3.3.2.1*)
16. **Prior to construction**, Gulf South shall complete consultation with the NPS regarding its proposed HDD crossings of, and hydrostatic test water withdrawals from, the NRI-listed Strong and Chickasawhay Rivers, and file copies of those consultations with the Secretary. If applicable, Gulf South shall also file plans to address any additional mitigation measures recommended by the NPS. (*Section 3.3.2.1*)
17. **Prior to construction**, Gulf South shall file with the Secretary copies of approvals or concurrences from the ADCNR indicating that in-stream construction between December 1 and May 31 is acceptable. (*Section 3.3.2.2*)

18. Gulf South shall prevent sediment and heavily silt-laden water from entering ponds adjacent to areas disturbed by construction activities. Gulf South shall conduct the open-cut crossing of the waterbodies feeding these ponds (at the following mileposts: 6.8, 12.5, 15.0, 25.0, 40.9, 41.6, 51.2, 53.4, 59.5, 60.0, 63.5, 65.1, 75.1, 77.1, 86.9, 87.1, 98.6, and 110.0) in a manner that prevents sediment and heavily silt-laden water from entering the ponds. (*Section 3.3.2.2*)
19. Gulf South shall not begin an open-cut crossing of any of the waterbodies proposed to be crossed using HDD until it files an amended crossing plan with the Secretary for review and written approval by the Director of OEP. The amended crossing plan shall include site-specific drawings identifying all areas that would be disturbed using the proposed alternate crossing method. Gulf South shall file the amended crossing plan concurrent with the appropriate state and federal applications required for implementation of the plan. (*Section 3.3.2.3*)
20. **Prior to construction**, Gulf South shall consult further with the Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP), the Louisiana Department of Wildlife and Fisheries (LDWF), the Alabama Department of Conservation and Natural Resources (ADCNR), the Natural Resource Conservation Service (NRCS), and other appropriate agencies, regarding seeding and vegetation restoration practices for the proposed Project. Gulf South shall file a report with the Secretary for review and written approval by the Director of OEP that describes the outcome of these consultations and identifies the agency-recommended seeding and vegetation restoration practices that Gulf South plans to implement. (*Section 3.5.2*)
21. **Prior to construction**, Gulf South shall file with the Secretary, for review and written approval by the Director of OEP, an Exotic and Invasive Species Control Plan developed in consultation with the FWS, the LDWF, the MDWFP, the ADCNR, and the NRCS. This plan shall identify the specific measures that Gulf South would implement during construction and operation to control exotic and invasive plant species. (*Section 3.5.4*)
22. **Prior to construction**, Gulf South shall file a revised Conservation Strategy for the Gopher Tortoise and Eastern Indigo Snake that incorporates all non-discretionary terms and conditions of the FWS's BO for this Project, as well as conservation recommendations 1 and 2. (*Section 3.7.1*)
23. Gulf South shall not begin construction activities on modified work areas **until**:
 - a. the staff completes Section 7 consultations with the FWS; and

- b. Gulf South has received written notification from the Director of OEP that construction or use of mitigation may begin. (*Section 3.7.1*)
24. Gulf South shall continue to consult with the LDWF, the MDWFP, and the ADCNR to determine the need for surveys or mitigation that would substantially minimize or avoid potential impacts to state-listed species. Gulf South shall file copies of the results of these consultations, as well as any associated survey reports and mitigation plans with the Secretary, **prior to construction**. (*Section 3.7.2*)
 25. **Prior to construction**, Gulf South shall consult with the Delhi Municipal Airport officials and the FAA regarding impacts of the proposed Project, specifically the proposed Delhi Compressor Station, on airport operations, and file a site-specific construction plan that addresses any concerns identified by those authorities with the Secretary. (*Section 3.8.4*)
 26. **Prior to construction**, Gulf South shall consult with the Thigpen Field Airport officials and the FAA regarding impacts of the proposed Project on airport operations, and file a site-specific construction plan that addresses any concerns identified by those authorities with the Secretary. (*Section 3.8.4*)
 27. Gulf South shall consult with the FSA to determine appropriate seed mixes and/or revegetation efforts that should be implemented on CRP lands to minimize and mitigate construction and operations impacts. Gulf South shall also retain and have available for inspection any records of consultation(s) with the FSA indicating specific measures agreed upon by Gulf South and the FSA that would be implemented on CRP lands. (*Section 3.8.4*)
 28. **Prior to construction**, Gulf South shall file with the Secretary for review and written approval by the Director of OEP a visual screening plan to reduce the long-term adverse effects on the visual quality of residences located along Highway 17 that would result from installation of the Delhi Compressor Station. (*Section 3.8.6.1*)
 29. Gulf South shall **defer** implementation of any treatment plans/measures (including archaeological data recovery), construction of facilities, and use of all staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
 - a. Gulf South files with the Secretary cultural resources survey and evaluation reports, any necessary treatment plans, and the Mississippi and Alabama SHPO comments on the reports and plans; and
 - b. The Director of OEP reviews and approves all cultural resources survey reports and plans and notifies Gulf South in writing that treatment plans/procedures may be implemented and/or construction may proceed.

All material filed with the Secretary containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "**CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.**" (*Section 3.10.4*)

30. Gulf South shall file noise surveys with the Secretary **no later than 60 days** after placing each of the Delhi, Harrisville, and Destin Compressor Stations in service. If the noise attributable to operation of all of the equipment at any compressor station at full load exceeds a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any nearby NSA, Gulf South shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within one year of the in-service date**. Gulf South shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls. (*Section 3.11.3*)