

129 FERC ¶ 61,199
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Port Dolphin Energy LLC

Docket Nos. CP07-191-000
CP07-191-001
CP07-192-000

ORDER ISSUING CERTIFICATES

(Issued December 3, 2009)

1. On April 25, 2007, pursuant to section 7(c) of the Natural Gas Act (NGA), Port Dolphin Energy LLC (Port Dolphin) filed in Docket Nos. CP07-191-000 and CP07-192-000 an application seeking authority to construct and operate in Manatee County, Florida, the onshore portion of a natural gas pipeline associated with Port Dolphin's proposed deepwater LNG port. Port Dolphin proposes to interconnect the onshore pipeline to an interstate and an intrastate pipeline. Port Dolphin also requests the necessary waivers of Commission regulations in order to operate the onshore pipeline on a sole-use basis. Finally, Port Dolphin requests a blanket construction certificate under Part 157, Subpart F of the Commission's regulations.¹

2. On January 18, 2008, Port Dolphin filed in Docket No. CP07-191-001 an amendment to its application, proposing to reroute the proposed onshore pipeline.² As a result of the amendment, the proposed pipeline would be 3.93 miles long rather than 5.83 miles long, as originally proposed. For the reasons discussed below, the Commission will issue the certificates requested by Port Dolphin and grant various waiver requests, subject to conditions.

¹ 18 C.F.R. Part 157, subpart F (2009).

² Port Dolphin filed a supplement in Docket No. CP07-191-001 on January 16, 2009 to update its application as a result of ongoing discussions with local governmental officials and ongoing environmental and engineering surveys.

I. Background and Proposal

3. Port Dolphin is a wholly-owned subsidiary of Port Dolphin Holding Company, LLC, which is an indirect subsidiary of Leif Höegh & Co. Ltd., an international shipping business with headquarters in Oslo, Norway. Port Dolphin states that it was formed by the holding company to construct, own, and operate a proprietary deepwater LNG port and related onshore facilities to supply natural gas to markets in the southeastern United States through its connections with the interstate pipeline grid and the Florida intrastate pipeline grid.

4. On March 29, 2007, in Docket No. USCG-2007-28532, Port Dolphin submitted an application to the U.S. Coast Guard (Coast Guard) and the Maritime Administration (MARAD) for a license to own, construct, and operate a deepwater port off the coast of Florida, as well as for all other required Federal authorizations, under the Deepwater Port Act of 1974.³ On August 10, 2007, the Coast Guard temporarily suspended the processing of Port Dolphin's application based on required route changes for both the onshore and offshore portions of the pipeline to avoid sensitive areas. On December 7, 2007, Port Dolphin submitted to the Coast Guard/MARAD an addendum to its deepwater port application, reflecting, among other things, the proposed re-routing of the offshore and onshore portions of the pipeline. In December 2008, Port Dolphin filed a second

³ Under the Deepwater Port Act of 1974, as amended, 33 U.S.C. §§ 1501-1524 (2006), the Secretary of Transportation has exclusive jurisdiction over the licensing, ownership, construction and operation of deepwater ports. A deepwater port is defined as "any fixed or floating manmade structure . . . or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any State," *id.* at §1502 (9)(A), and includes, "all components and equipment, including pipelines, pumping stations, service platforms, buoys, mooring lines, and similar facilities to the extent they are located seaward of the high water mark." *Id.* at §1502 (9)(B). The Secretary of Transportation delegated responsibility to license deepwater ports to the Maritime Administrator, with the Coast Guard and MARAD sharing responsibility for the processing of applications for such licenses. Currently, the Coast Guard performs the technical and environmental review and MARAD reviews the financial and accounting aspects of a project. The Coast Guard is the lead agency on this project and it issued the Final Environmental Impact Statement (FEIS). Nevertheless, as discussed below, the Commission staff also performed an environmental review of the onshore facilities, which was included in the Coast Guard FEIS, to comply with its responsibilities under the National Environmental Policy Act, and the Commission is imposing conditions on the construction and operation of the pipeline, which are set out in the Appendix to this order.

amendment to its deepwater port application, which did not relate to the onshore facilities.⁴

A. Port Dolphin Deepwater Port Project

5. Port Dolphin's proposed deepwater LNG port will be located in federal waters, approximately 28 miles offshore of Tampa Bay, Florida, in approximately 100 feet (30 meters) of water, within the St. Petersburg block of the Outer Continental Shelf. The Port Dolphin project will be capable of mooring two Shuttle and Re-gasification Vessels (vessels), by means of a submerged unloading buoy system, also known as submerged turret loading buoys located 3.1 miles apart. Each vessel will have eight mooring lines anchored to points in the seafloor. The unloading buoys will moor each vessel on location at the deepwater port during the unloading cycle, typically lasting for four to eight days depending on vessel size and send-out rate. The vessels are designed to carry LNG and have the capability to regasify the LNG prior to off-loading it for transport to shore. The vessels have a cargo capacity range of 145,000 to 217,000 cubic meters (m³) of natural gas in a liquid state, cooled to -260°F.

6. When not connected to a vessel, the buoys will be submerged approximately 60-70 feet (18-21 meters) below the sea surface, will be supported by mooring lines, and will rest on the buoy landing pad. When a vessel arrives at the deepwater port, the buoy will be retrieved from its submerged position and locked in position so that unloading of LNG can begin.⁵

7. Port Dolphin states that the initial output of the proposed deepwater port will be 400 million cubic feet per day (MMcf/d), but as markets develop and when the deepwater port is fully operational, Port Dolphin states that the facility will be capable of handling an average throughput capacity of 800 MMcf/d and a peak capacity of approximately 1,200 MMcf/d. Port Dolphin anticipates that the construction of the Port Dolphin Project will proceed in two phases, lasting a total of 22 months, with the deepwater port targeted to begin operations in the second quarter of 2011.

⁴ Port Dolphin filed a single amendment with the Commission relating to the onshore portion of the pipeline. That amendment is the subject of this proceeding.

⁵ The vessels will be equipped to transport, store, vaporize, and meter natural gas. A closed-loop, glycol/water-brine heat transfer system will be used to vaporize the LNG.

B. Onshore Port Dolphin Pipeline

1. Facilities

8. Under the Deepwater Port Act, the Commission's jurisdiction applies only to Port Dolphin's proposed onshore facilities. Those facilities include a 36-inch diameter pipeline that would extend 3.93 miles from the point where Port Dolphin's offshore pipeline reaches the high water mark at the pier bulk head in Manatee County, Florida, to Port Dolphin's proposed Interconnection Station in Manatee County, where gas would be delivered to Gulfstream Natural Gas System, L.L.C.'s (Gulfstream) interstate system and TECO Energy, Inc.'s intrastate system, operated by its subsidiary, People's Gas System, a Division of Tampa Electric Company (TECO/Peoples). No separate facilities delineate the point of interconnection between the offshore and onshore pipelines. The onshore pipeline facilities will be used for the sole purpose of transporting pipeline quality natural gas from the Port Dolphin project for delivery to Gulfstream and TECO/Peoples.

9. Port Dolphin states that, as required by the Commission's regulations, it certifies that it will design, install, inspect, test, construct, operate, replace, and maintain the facilities for which a certificate is requested in accordance with federal safety standards and plans for maintenance and inspection.⁶

10. Port Dolphin contends that its proposal is consistent with the criteria in the Commission's Certificate Policy Statement⁷ because, as a new pipeline, it has no existing shippers that could subsidize the project. In this regard, Port Dolphin notes that it will pay all of the costs and bear all of the risks associated with construction and operation of the pipeline. In addition, it points out that all of the pipeline's capacity would be subscribed by Port Dolphin. Port Dolphin asserts that its proposal will have no adverse effect on existing pipelines or their captive customers. Port Dolphin also maintains that its proposal will enhance reliability by providing an additional source of natural gas supplies. For example, Port Dolphin explains that its facilities will be capable of operating during tropical storms in the western Gulf of Mexico which could interrupt production. If temporarily interrupted, Port Dolphin states that it would be capable of resuming operations quickly after a hurricane has passed. Thus, Port Dolphin asserts that it will be able to continue delivering natural gas into the interstate and intrastate pipeline systems during conditions that typically result in diminished natural gas deliveries from offshore facilities.

⁶ See 18 C.F.R. § 157.14(a)(9)(vi) (2009).

⁷ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *order on clarification*, 90 FERC ¶61,128 (2000); *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

11. Port Dolphin maintains it has designed the Port Dolphin Pipeline specifically to minimize adverse impacts on landowners and the environment. The route of the onshore pipeline would begin at the pier bulkhead and run through property owned by Port Manatee,⁸ which includes a conveyance ditch under which Port Dolphin's pipeline would be installed using horizontal directional drilling (directional drilling). However, at pier bulkhead, i.e., the high water mark, there are no physical interconnecting facilities to mark where the offshore and onshore portion of the contiguous Port Dolphin pipeline begins. The route then parallels a railroad right-of-way and several roads in Manatee County. The pipeline would also traverse commercial or industrial properties or property surrounded by abandoned orange groves. Only 63.6 acres of land, including access roads, will be affected during construction and only 7.3 acres will be permanently affected. Port Dolphin states that it has had discussions with landowners and will continue to work with them.

12. Port Dolphin concludes that, to the extent there are any potential adverse effects on these groups associated with the project, such effects will be outweighed by the significant benefits the Port Dolphin project will bring to meet the growing energy requirements of the United States. Port Dolphin asserts that the project will promote competition among natural gas suppliers and natural gas pipelines serving Florida markets through both the Gulfstream interstate system and the TECO/Peoples intrastate system. Additionally, it avers that the project, including the onshore pipeline, will assist the development of the natural gas infrastructure necessary to support the growing demand for natural gas for all uses, especially for electric generation. Further, Port Dolphin maintains that the project will be capable of providing valuable peaking capacity.

13. Port Dolphin states that its project will allow re-gasified LNG supplies to be delivered not only directly to markets in Florida through the interstate and intrastate pipeline grids, but also potentially through backhauls on Gulfstream's pipeline to any one of a number of interstate pipeline interconnections located on Gulfstream's pipeline in Alabama and Mississippi.

14. Port Dolphin emphasizes that the Port Dolphin Pipeline will also advance clean air objectives, since the proposed facilities will be able to serve the increased demand associated with a number of new electric generation projects that have been proposed or are the subject of ongoing permit applications. Port Dolphin anticipates serving several gas-fired electric generating facilities directly or indirectly through electric utilities and local distribution companies receiving natural gas service from Gulfstream's interstate system and TECO/Peoples' intrastate system. Port Dolphin asserts that serving this

⁸ Port Manatee is a dependent special district created by the Florida Legislature in 1967 and is governed by the Manatee County Port Authority.

generation load is critical to the continued economic growth of the Gulf Coast and Southeast regions as well as to the region's goal of improving air quality and reducing carbon emissions. For all of the above reasons, Port Dolphin concludes that its pipeline project is required by the public convenience and necessity and that the Commission should issue it the requested authorizations.

2. Sole-Use and Waiver of Open-Access Requirements

15. As noted, Port Dolphin requests an exception to the Commission's general requirement that new pipelines operate on an open-access basis under blanket transportation certificates issued pursuant to Part 284 of the Commission's regulations. It seeks a case-specific certificate issued under Part 157 so that it may operate on a sole-use basis. Port Dolphin contends that allowing it to operate as a sole-use or proprietary pipeline would be consistent with the Commission's treatment of similarly situated pipelines⁹ and with Congress' intent for development of LNG projects. It maintains that the Deepwater Port Act provides that licensees of a deepwater port may use the entire capacity in the facility, including those portions of the deepwater port facility used to transport gas away from the port, on an exclusive basis. Port Dolphin asserts that although the scope of the Deepwater Port Act does not extend onshore, since the onshore pipeline will be operated exclusively to transport gas from the Port Dolphin project directly to a single Interconnection Station, the onshore portion should be treated like the offshore portion. This approach, according to Port Dolphin, also would relieve it from compliance with unnecessary open-access and other regulatory requirements.

16. Port Dolphin acknowledges, however, that in recent cases where the Commission permitted a pipeline to operate on a sole-use basis, the Commission conditioned the authority to operate the facilities on the pipeline's filing for a Part 284 certificate if another shipper requests service. Port Dolphin states that it is willing to accept such a condition if the Commission deems it is necessary to impose it.

17. In connection with its request to operate on a proprietary basis, Port Dolphin also requests waiver of all of the Commission's regulations under Part 284, including the reporting requirements and the obligation to maintain an electronic bulletin board, as well as other reporting and filing requirements not necessarily relating to Part 284 service. Port Dolphin requests that the Commission waive, pursuant to Section 157.6(b)(8) of the Commission's regulations, the requirement that Port Dolphin provide the Commission with cost-of-service data and revenues for each rate schedule. Port Dolphin also requests that the Commission waive its filing requirements as to Exhibits H, I, K, L, N, O and P,

⁹ Citing *Freeport-McMoRan Energy LLC*, 115 FERC ¶ 61,201 (2006) (*Freeport-McMoran*); *White Rock Pipeline, L.L.C.*, 98 FERC ¶ 61,220 (2002) (*White Rock*); and *Transcontinental Gas Pipe Line Corp.*, 91 FERC ¶ 61,180 (2000).

as required by sections 157.14 (a) (10), (11), (13), (14), (16), (17) and (18), respectively, since, Port Dolphin maintains, these exhibits are unnecessary for a single-use pipeline. On the same basis, Port Dolphin requests that the Commission grant waiver of the filing requirements of Parts 201 and 250, relating to the Uniform System of Accounts and Approved Forms, respectively, and of section 260.2 (Form No. 2-A).

II. Interventions

18. Notice of Port Dolphin's initial application in Docket Nos. CP07-191-000 and CP07-192-000 was published in the *Federal Register* on May 16, 2007 (72 FR 27552). Eleven parties filed timely motions to intervene.¹⁰ Motions to intervene out-of-time were filed by J.T. Reeder Partners, LLP, Graham Reeder, and the Snell Family Limited Partnership of Southwest Florida (collectively, Reeder Farms). Because Reeder Farms has demonstrated an interest in this proceeding and its late intervention will not delay or otherwise prejudice this proceeding, we will grant the motion to intervene out-of-time for good cause shown.

19. Notice of Port Dolphin's amended application in Docket No. CP07-191-001 was published in the *Federal Register* on February 4, 2008 (73 FR 6497). Florida Gas and Gulfstream filed timely, unopposed motions to intervene. Port Authority, Manatee County, and ManaSota-88, Inc.¹¹ filed motions to intervene after the deadline for such motions. However, the motions of these parties will be considered timely because the filings raised environmental issues and were made before June 2, 2008, which was the end of the comment period on the April 18, 2008 draft Environmental Impact Statement that was issued by MARAD/Coast Guard.¹²

¹⁰ Timely, motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2009). The timely intervenors are Federal Port Corp. (FPC); Florida Gas Transmission Co. (Florida Gas); Florida Cities; Florida Power & Light Co. (FPL); Florida Power Corp. d/b/a Progress Energy Florida (Florida Power); Gulfstream; Manatee County Chamber of Commerce; Manatee County Port Authority (Port Authority), Peoples Gas System, a Division of Tampa Electric Co.; Tampa Electric Co. and Seminole Electric Cooperative, Inc. (Seminole).

¹¹ ManaSota-88, Inc. is a Manatee and Sarasota Counties public interest, conservation and environmental protection organization.

¹² Under section 157.10(a)(2) and section 380.10(a) (1)(i) of the Commission's regulations, a person seeking to intervene after the initial intervention deadline who raises environmental issues will be considered to have filed a timely motion to intervene if the motion is filed before the deadline for comments on a draft environmental impact

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20. Several intervenors filing in response to the initial application and the amended one raise issues regarding land use, siting, constructability, safety and environmental impacts on the project as did various commentors. Port Dolphin states it proposed its January 2008 amendment in part to respond to concerns raised by certain potentially affected commentors and parties (including Reeder Farms, HRK, Taylor Woodrow, the Port Authority, FPL, and Manatee County). The amended pipeline route does not cross the Reeder Farms, HRK Holdings or Taylor Woodrow properties. Therefore, the site-specific issues raised by these entities are no longer present. Other environmental issues raised by either the parties or commentors will be addressed in the environmental section of the order. We note that Gulfstream and Seminole raise concerns about the quality of the gas that would be delivered by Port Dolphin. This issue is addressed below in the discussion section.

21. Gulfstream filed comments opposing Port Dolphin's initial application on May 30, 2007, to which Port Dolphin filed a response on June 14, 2007. Gulfstream filed a protest to Port Dolphin's amended application on February 19, 2008 and incorporated by reference its May 30, 2007 comments, to which Port Dolphin filed an answer on March 5, 2008. Additionally, various parties, including Port Dolphin, filed answers to another party's answer to comments filed in this proceeding. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers,¹³ the Commission may waive its procedural rules to accept such answers when doing so will not unduly delay the proceeding or prejudice any party, and the answer will clarify the issues and assist the Commission in its decision-making.¹⁴ We find that Port Dolphin's response to Gulfstream's protest provides information that will assist the Commission in its decision-making; therefore, we will accept the answer. Further, for the same reasons, we will accept the other pleadings that are in the nature of answers to answers.

statement. 18 C.F.R. § 157.10(a)(2) and § 380.10(a)(1)(i) 2009. The draft EIS was issued by MARAD/Coast Guard on April 18, 2008, with a comment period ending on June 2, 2008. We note that Port Authority filed a timely motion to intervene in response to Port Dolphin's initial application; thus, it is considered an intervenor in the amended application on that basis as well.

¹³ See Rule 213 (a)(2). 18 C.F.R. § 385.213(a)(2) (2009).

¹⁴ See, e.g., *Florida Gas Transmission Co.*, 125 FERC ¶ 61,032, at P 3 n.3 (2008).

III. Discussion

A. Application of Certificate Policy Statement

22. On September 15, 1999, the Commission issued a Policy Statement¹⁵ providing guidance as to how proposals for certificating new construction will be evaluated. Specifically, the Policy Statement explains that the Commission, in deciding whether to authorize the construction of new pipeline facilities, balances the public benefits against the potential adverse consequences of the project. 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.

23. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from the 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 a 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.

24. The threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Port Dolphin pipeline is a new pipeline and has no existing customers. Thus, there will be no subsidization. Therefore, we find that Port Dolphin Pipeline has satisfied the threshold requirement of the Certificate Policy Statement.

25. Port Dolphin also meets the remaining criteria for certification of new facilities set forth in the Policy Statement. There will be no adverse effect on existing services because Port Dolphin Pipeline has no current customers. With regard to adverse economic effects on competing pipelines and such pipelines' captive customers, the Commission finds that the Port Dolphin pipeline should serve to benefit other pipelines

¹⁵ Certificate Policy Statement, 88 FERC ¶ 61,227 (1999), *order clarifying policy*, 90 FERC ¶ 61,128 (2000), *order clarifying policy*, 92 FERC ¶ 61,094 (2000).

and their customers because it will provide a new source of competitively priced natural gas supplies and deliver them into the interstate grid to meet the growing demand for natural gas in major U.S. markets. The Commission will address below concerns about whether the quality of gas transported by Port Dolphin to interconnections with other pipelines will have any adverse effects on such pipelines.

26. With respect to the effect of this project on landowners and communities in proximity to the route, the Commission finds that Port Dolphin has made efforts to minimize any adverse impacts on landowners and nearby communities. The 3.93-mile onshore pipeline route will run through areas of abandoned orange groves, undeveloped land, and industrial sites. The route will also abut or be co-located in already disturbed areas such as under an existing conveyance ditch or along CSX railroad tracks. For these reasons, we find that any adverse impacts on existing pipelines, landowners, and communities will be minimal.

27. To the extent there are any residual adverse effects on the constituent groups named in the Certificate Policy Statement, we find that the benefits associated with this project, as delineated by the applicant and described above, will significantly outweigh any possible adverse effects. Specifically, the market for gas that Port Dolphin Pipeline will transport is supported by historical and projected trends in gas demand and supply. Various national and industry organizations that monitor energy consumption trends forecast growing demand for natural gas. The Port Dolphin Project is being developed to provide access to new, competitively priced LNG supplies to meet this growing public demand.

28. Accordingly, the Commission finds that the benefits of Port Dolphin Pipeline proposal will outweigh any potential adverse effects, and that Port Dolphin's proposal meets the criteria of the Certificate Policy Statement. Therefore, we find that the proposed project is required by the public convenience and necessity.

B. Technical Issues

1. Gas Quality

29. Expressing concern about the impact that regasified LNG from the Port Dolphin Project may have on their systems, Seminole and Gulfstream filed comments and a protest, respectively, to Port Dolphin's application. Specifically, Seminole, an electric cooperative and customer of Gulfstream, urges the Commission to be cautious with regard to gas quality issues to provide Seminole with protection against adverse operational impacts on existing generation equipment. Because gas delivered from the Port Dolphin pipeline must be accepted by and transported on other pipelines before it can be delivered to Seminole's generating facility, Seminole notes that the delivery of such gas to its system will be governed by the gas quality tariff provisions of those pipelines. To the extent that those tariff provisions are inadequate to afford protection

against operational impacts on existing generation equipment, Seminole has concerns in this proceeding relating to the interchangeability of gas.

30. Gulfstream's concern is that it may not have the ability to block the entry into its pipeline from Port Dolphin of gas that does not meet its specifications. One solution it proffers is for Port Dolphin to interconnect with Gulfstream offshore, thereby allowing any gas not meeting its standards to have a longer period of time to blend with gas in Gulfstream's pipeline that meets such specifications.

31. In its responses to Seminole's and Gulfstream's concerns regarding gas quality, Port Dolphin states that it will establish appropriate measures to ensure that applicable gas quality tariff requirements will be met. Port Dolphin asserts that any gas delivered to Gulfstream, TECO/Peoples, or other pipelines will meet those pipelines' tariff specifications and it notes that these pipelines' concerns are currently being considered in negotiations that Port Dolphin is having with potential LNG suppliers for the Port Dolphin deepwater port. Thus, Port Dolphin expects that the gas quality specifications in the tariffs will be agreed to by all interested parties (LNG suppliers and natural gas off-takers in Florida) as part of the corresponding supply agreement negotiations. Port Dolphin states that it is well aware of the gas quality and interchangeability issues raised by the introduction of regasified LNG into the pipeline grid. Port Dolphin states that it will require entities that ship LNG to its deepwater port to comply with the maximum Btu limitations and other gas quality and interchangeability standards that may be imposed by Commission order or relevant pipeline tariffs for delivery into Florida.

32. Regarding Gulfstream's concern in its protest that it may not be able to control the entry of gas not meeting its standards, Port Dolphin states that it will ensure that such gas does not enter the Gulfstream system. First, Port Dolphin states that it is requiring its gas suppliers to provide only gas that meets downstream pipelines' requirements. Second, Port Dolphin states that it will install gas analyzers, including gas chromatographs for automatic real time sampling, and other instrumentation on board the vessels and at the Interconnection Station which would be capable of detecting non-specification gas. If necessary, the instruments located at the Interconnection Station will automatically send a signal to the station Programmable Logic Controller, which will in turn automatically send a signal to the appropriate actuated valves and close them so that such gas that does not meet Gulfstream's quality requirements will not enter the Gulfstream system. Third, Port Dolphin states that all data collected at the Interconnection Station, such as pressures, flow-rates, temperatures and gas quality, will be available for Gulfstream to access so that Gulfstream's operators can have real-time data to monitor ongoing conditions.

33. The Commission finds that Port Dolphin has adequately addressed Seminole's and Gulfstream's concerns regarding gas quality. Port Dolphin has made it clear that the gas it transports will be subject to the downstream pipeline's gas specifications. We point out that Gulfstream has specific provisions in its tariff designed to protect its system from gas

supply that does not meet its standards and that may cause harm to its system or its customers. We also note that Gulfstream under its tariff has the right to refuse gas supplies from another pipeline when the interconnection would adversely affect its operations. Accordingly, we maintain that there is no reason to require Port Dolphin to develop gas quality or interchangeability specifications and we deny Gulfstream's protest on gas quality issues.

2. Point of Interconnection Between Gulfstream and Port Dolphin

34. Gulfstream states that while it is not opposed to an interconnection with Port Dolphin, it protests the proposed onshore interconnection between it and Port Dolphin. Gulfstream maintains that the appropriate interconnection point is to its offshore pipeline, in the Gulf of Mexico, because a subsea interconnection would obviate the need for an onshore pipeline. It asserts that an interconnection miles from shore is environmentally preferable to Port Dolphin's proposed interconnections on land.

35. Port Dolphin opposes an offshore interconnection because that approach would not allow it to interconnect directly to pipelines other than Gulfstream in order to provide a new source of gas supplies. If, instead, it interconnected offshore with Gulfstream, the gas would only flow to pipelines to which Gulfstream is connected. Port Dolphin also emphasizes that separate facilities will bring additional reliability for gas supplies coming into Florida. Port Dolphin also questions whether Gulfstream would have adequate capacity to transport Port Dolphin's gas on its offshore pipeline.

36. We agree with Port Dolphin that an offshore interconnection would not be an alternative to the project proposed by Port Dolphin from a commercial or operational point of view since the offshore interconnection would not accomplish the purpose behind Port Dolphin's project. For example, the onshore pipeline and its associated interconnects are critical to the Port Dolphin project. The onshore facilities will give Port Dolphin the ability to connect with Gulfstream, TECO/Peoples and possibly Florida Gas in the future. TECO/Peoples clarified in its May 2, 2008 filing that its new Bayside pipeline will be able to accommodate up to 480 MMcf/day of deliveries from Port Dolphin. Florida Gas' Phase VIII expansion contemplates a 24-inch lateral in Manatee County, which Port Dolphin believes is a potential interconnect. An offshore interconnection with Gulfstream would eliminate any possibility of interconnections between Port Dolphin and other pipeline systems and therefore would inhibit potential access to LNG by other markets.¹⁶

¹⁶ Even if the Commission concluded that an offshore interconnection was an appropriate alternative to Port Dolphin's proposed onshore pipeline, it would have no jurisdiction to require Port Dolphin to establish an interconnect in offshore waters or to

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37. Further, Gulfstream has not presented any evidence which would persuade us that the proposed point of interconnection onshore is unworkable or hazardous. Safety issues raised by Gulfstream about the directional drilling proposed by Port Dolphin onshore are addressed in the environmental section of this order. Accordingly, the Commission denies Gulfstream's protest on the issue of whether there should be an offshore interconnection between it and Port Dolphin. However, under the conditions of the certificates issued by the Commission, pipelines must adhere to certain construction techniques that are designed to assure compliance with Department of Transportation safety regulations, which also cover the operation of interstate pipelines.

38. Accordingly, the Commission denies Gulfstream's protest on the proposed onshore interconnection.

C. Request to Operate the Pipeline on a Proprietary Basis and for Waivers

39. As discussed, Port Dolphin requests authorization to operate the Port Dolphin pipeline on a proprietary or sole-use basis and waivers of various Commission regulations related to open-access service under Part 284 and other general reporting requirements. The Commission's open-access regulations require prospective project sponsors to plan for and accommodate the needs of other parties that may desire to contract for service on the new pipeline. Here, however, Port Dolphin asserts that there will only be one use of the facility. The Port Dolphin project is structured so that it will use the full capacity of the deep water port and the offshore and onshore pipelines will be utilized solely by the Port Dolphin.

40. We note that the Port Dolphin deepwater port facilities, including the 28-mile long offshore pipeline, are already treated as proprietary facilities under the Deepwater Port Act. Further, Port Dolphin's offshore and onshore pipelines will be contiguous pipeline facilities not delineated by interconnection facilities, which makes it unlikely that other shippers would request service over the onshore pipeline. We find that granting Port Dolphin's request for waiver of the Commission's open-access requirements will continue the proprietary operation for the relatively short distance between the high water mark, where the Commission's jurisdiction begins, and the new Interconnection Station in Manatee County, where the pipeline will deliver gas to Gulfstream and TECO/Peoples. The Commission has previously waived the requirement that a pipeline file a Part 284 tariff for a short pipeline where no other party would be likely to request transportation

approve such a proposal. Under the Deepwater Port Act only the Coast Guard/MARAD can consider and authorize an offshore facility related to LNG imports.

service in other proceedings involving gasified LNG take-away pipelines.¹⁷ Allowing the proposed proprietary use of the 3.93-mile pipeline under these circumstances will relieve Port Dolphin from the administrative and regulatory burdens associated with the requirement to file a Part 284 tariff and the operation of a single, unified pipeline under two different regulatory regimes. This approach will, to the extent practicable, result in regulatory and operational consistency over the complete chain of facilities.

41. Furthermore, although the Commission generally requires new pipelines to operate on an open-access basis,¹⁸ the Commission explained in *Hackberry LNG Terminal L.C.C.*,¹⁹ that a flexible regulatory approach is appropriate in assessing proposals for the introduction of supplies of LNG into the U.S. interstate pipeline system. The Commission's goal is to provide incentives for developing additional energy infrastructure while at the same time ensuring competitive commodity prices and an open-access interstate pipeline grid. Under the circumstances of this proceeding, we believe that allowing Port Dolphin to operate its proposed pipeline on a proprietary, single-use basis will not undermine the Commission's policy encouraging competition in the pipeline industry. To the contrary, we believe that this will actually encourage competition by facilitating the introduction of new sources of LNG into the pipeline grid.

42. In view of these considerations, we will not at this time require Port Dolphin to establish initial section 7 rates or file a Part 284 tariff at this time to comply with the Commission's open-access policies and regulations. However, consistent with our ruling in *Freeport-McMoRan*,²⁰ and to ensure that our action here does not result in the frustration of our pro-competitive policies, we will condition the Port Dolphin's certificate to require that Port Dolphin apply for a Part 284 open-access blanket transportation certificate within 30 days of receiving a *bona fide* request for firm transportation service on its pipeline, if there is capacity available to provide the requested service.²¹ We note that Port Dolphin has expressed its willingness to accept

¹⁷ See, e.g., *Gulf LNG Energy, LLC*, 118 FERC ¶ 61,128, at P 27 (2007); and *Freeport-McMoRan*, 115 FERC ¶ 61,201 at P 24.

¹⁸ See, e.g., *Trans-Union Interstate Pipeline, L.P.*, 92 FERC ¶ 61,066, at 61,219-21 (2000) (summarizing post-Order No. 636 policy on sole-use pipeline proposals), *order on clarification*, 93 FERC ¶ 61,115 (2000).

¹⁹ *Hackberry LNG Terminal L.L.C.*, 101 FERC ¶ 61,294, at P 23 (2002) (*Hackberry*).

²⁰ *Freeport-McMoRan*, 115 FERC ¶ 61,201 at P 24.

²¹ The Commission has imposed a similar condition in other cases. See, e.g., *White Rock*, 98 FERC ¶61,220 at P 24; *South Carolina Public Service Authority*,

(continued...)

such a condition. Further, we will require that Port Dolphin maintain records to identify separately the original cost and related future depreciation of its facilities consistent with the Uniform System of Accounts, since any future calculation of rates for open-access transportation service would require this cost-of-service accounting information.²²

43. As explained above, Port Dolphin also requests waiver of a number of the Commission's regulations in addition to those in Part 284, relating to the accounting and reporting requirements for natural gas pipelines under Part 201, Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the NGA; Part 250, Approved Forms; section 260.2, FERC Form No. 2-A, Annual Report for Non-major Natural Gas Companies; and section 157.6(b)(8) of the Commission's regulations (cost of service data and rate schedule revenue responsibility). Port Dolphin also seeks waiver of the requirement in section 157.14 to file certain exhibits with its application. We have previously granted waivers of certain of our accounting and reporting requirements for other limited-purpose pipelines, such as interstate pipelines constructed to serve affiliated industrial operations.²³

44. Since we grant Port Dolphin's request for waiver of the open-access requirements of Part 284, there is no ongoing regulatory need to require the filing of rate information or to have cost-based financial statements prepared in accordance with the Commission's Uniform System of Accounts. Accordingly, we will grant Port Dolphin's request to waive the requested filing requirements of Part 157, Part 250 (Forms), and the accounting requirements prescribed in Part 201 of the Commission's regulations. In addition, we will grant Port Dolphin's request to waive the reporting requirements prescribed in Section 260.2 and Section 260.300, FERC Form No. 3-Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies, but note that such waivers do not extend to the Commission's annual charge assessment (ACA). Therefore, Port Dolphin is required to file page 520 of Form 2-A, along with an officer certification of the filing, reporting gas volume information which is the basis for imposing an ACA charge.²⁴ In addition, Port Dolphin is required to follow any business practices (e.g., entering into Operational Balancing Agreements) and any applicable North American

91 FERC ¶ 61,180, at 61,650 (2000) (*South Carolina*); and *B-R Pipeline Co. and Portland General Electric Co.*, 89 FERC ¶ 61,312, at 61,954 (1999) (*B-R Pipeline*).

²² *White Rock*, 98 FERC ¶ 61,220 at P 23; *South Carolina*, 91 FERC ¶ 61,180 at 61,650; and *B-R Pipeline*, 89 FERC ¶ 61,180 at 61,956.

²³ *White Rock*, 98 FERC ¶ 61,220 at P 24; *South Carolina*, 91 FERC ¶ 61,180 at 61,650; and *B-R Pipeline*, 89 FERC ¶ 61,180 at 61,955-56.

²⁴ *Freeport-McMoRan*, 115 FERC ¶ 61,201 at P 26.

Energy Standards Board (NAESB) timelines that are required to enable interconnecting pipelines to comply with the NAESB standards.

45. Further, in the event that Port Dolphin is required to apply for a Part 284 open-access blanket transportation certificate, the waivers of the accounting and reporting requirements in Parts 157 and 201 and sections 260.2 and 260.300 shall be rescinded. We will also require that Port Dolphin Pipeline maintain records to identify separately the original cost and related depreciation on the section 7 facilities consistent with the Uniform system of Accounts, since any future calculation of rates for open-access transportation service pursuant to a request would require this cost-of-service accounting information.²⁵

IV. Environmental Review

46. The Port Dolphin Project is a part of the overall Port Dolphin Deepwater Port Project that has been reviewed and approved by MARAD and the Coast Guard on October 26, 2009.²⁶ Together, these two agencies are leading the environmental review in compliance with the Deepwater Port Act and the National Environmental Policy Act (NEPA). The MARAD/Coast Guard issued the *Final Environmental Impact Statement on the Port Dolphin LLC Deepwater Port License Application* on July 10, 2009, and mailed it to officials, agencies, organizations, and individuals who expressed an interest in receiving it. The final environmental impact statement (EIS) was made available in local public libraries, via the Federal Docket Management System website (www.Regulations.gov), and the Commission's public file for this project. The EIS considered the environmental and socioeconomic impacts of the proposed project as well as those impacts from a range of alternatives for both the onshore and offshore portions of the project.

47. Due to its jurisdiction over the onshore portion of the pipeline route, the Commission participated as a cooperating agency in the above-mentioned environmental review. The pipeline would come onshore via a directional drilling at Port Manatee, Florida. The four miles of 36-inch-diameter pipeline would then connect with the existing Gulfstream and TECO/Peoples pipeline systems. MARAD and the Coast Guard, as lead agencies, are responsible for complying with various environmental processes and regulations, such as the Endangered Species Act, the National Historic Preservation Act, the Magnusen-Stevens Fisheries Management Act, the Clean Water Act, the Coastal

²⁵ *Id.* P 24.

²⁶ We note that on October 26, 2009, MARAD and the Coast Guard issued a Notice of Decision; however, the actual license for the Port Dolphin Project will be issued at a later date.

Zone Management Act, among others, for both the onshore and offshore portions of the overall project. Commission staff assisted the lead agencies in this effort for the onshore portion of the project.

48. MARAD and the Coast Guard issued a Notice of Intent to prepare an EIS for the Port Dolphin Project on July 12, 2007. This notice identified the Commission as a cooperating agency in the NEPA process and opened an initial public scoping period for the project as first proposed to solicit comments for both the onshore and offshore portions of the project. As a result of the amended application Commission staff issued a *Notice of Limited Scoping for the Proposed Port Dolphin Project and Request for Comments on Environmental Issues* (dated February 4, 2008), which opened a 30-day scoping period to solicit comments on the revised onshore facilities.

49. MARAD and the Coast Guard issued the draft EIS for the Port Dolphin Deepwater Port License Application on April 18, 2008, with a 45-day public comment period. In addition, an informational open house and a public meeting were held at the Manatee County Convention Center on May 6, 2008, to provide a forum for the public and agencies to provide comments on the draft EIS. Commission staff participated in both the open house and public meeting.

50. Eight people provided comments on the draft EIS at the public comment meeting. Seven of these pertained solely to offshore impacts, especially how the project would affect sands currently being used for beach renourishment programs. One commentator raised issues concerning the onshore pipeline's potential impacts on wetlands, mangroves, and the federally listed scrub jay, wood stork, and eastern indigo snake.

51. In addition, 31 comment letters on the draft EIS were submitted to the Coast Guard. All but three pertained solely to the offshore facilities or environmental issues under the jurisdiction of the Coast Guard and MARAD. Two of the comment letters (from Manatee County and Gulfstream) were concurrently filed with the Commission, as these letters included issues related to the proposed onshore facilities. The third letter, from the U.S. Fish and Wildlife Service (FWS), was not filed with the Commission but contained comments regarding the wood stork and indigo snake.

52. While not specific to the draft EIS, on March 30, 2009, Manatee County staff also submitted several questions posed to Port Dolphin regarding proposed facility locations, pipeline design, the presence of other utilities in or near the proposed Port Dolphin easement, and the status of permits. Manatee County also asked one question pertaining to onshore environmental issues; specifically, how many trees would be removed by construction. On April 10, 2009, Port Dolphin filed answers to these questions. With regard to the trees, Port Dolphin stated that as a part of the county permitting process, Port Dolphin would meet all Manatee County Land Development Code regulations, including required tree replacements.

53. MARAD and the Coast Guard opened a public comment period on the final EIS, which originally ended on August 24, 2009, but was extended by the lead agencies to September 11, 2009. These agencies also held an informational open house and public meeting on July 28, 2009, to receive comments on the final EIS. Commission staff participated in this meeting. In response to the final EIS Commission staff received written comments on the onshore facilities from Gulfstream and Manatee County. In addition, 21 people spoke at the July 28 meeting (17 of whom expressed support for the project). A representative of Gulfstream also spoke, reiterating Gulfstream's filed written comments relating to safety and siting issues.

54. Issues raised during the environmental review process by Manatee County, the Port Authority, ManaSota-88, and FPL related to the siting of the proposed onshore pipeline through the industrialized Port Manatee area. Specific examples were: limited space from the location of existing and proposed pipelines (including oil, natural gas, potable water, and wastewater pipelines), possible conflicts with current and projected use of roads; as well as other land use, local permitting, and zoning issues. Other concerns raised by these parties focused on water quality (including potential contaminated groundwater in the project area); the presence of wetlands, mangroves, and wildlife habitat in the project area; potential impacts on the federally listed wood stork and eastern indigo snake; and the potential for conservation easements to be crossed.

55. As stated in the final EIS, the onshore pipeline would cross six planned transportation, communication, or utility rights-of-way. The pipeline would cross under roadways and the CSX railroad using boring techniques. In addition, an directional drilling would be used to cross an FPL tank farm at a depth of 40 feet. The final EIS acknowledges that Port Dolphin would be required to obtain any necessary road crossing or other local permits and as such concludes that there would be no significant impact on these existing and planned facilities. Specific land use issues would be addressed as a part of individual easement negotiation processes.

56. In its comments on the amended application, FPL acknowledged that Port Dolphin has been willing to work through various siting issues that have been raised and that Port Dolphin has agreed to add "appropriate language" to the proposed easement documents applicable to FPL's parcel that would be crossed by the onshore pipeline. FPL stated that it expects this cooperation to continue and is optimistic that the siting issues can be resolved. We note that environmental condition 5 provides a mechanism for companies to make post-certificate minor route or facility adjustments to address specific landowner concerns.

57. Sections 4.1.1 and 4.2.2 of the final EIS discuss the project's potential impacts on terrestrial biological resources, including wetlands, mangroves, and federally listed species. The only mangrove area crossed by the onshore route would be avoided by Port Dolphin's use of an directional drilling, thus avoiding direct impacts on this sensitive resource. Construction and operation of the onshore pipeline would disturb about

11.9 acres of wetlands. Of this, about 10.7 acres would be temporarily impacted and allowed to return to the previous state, while the remaining 1.2 acres would represent a permanent impact as a result of Port Dolphin's maintenance clearing within the 30-foot-wide operational right-of-way.

58. The final EIS concluded that Port Dolphin's use of our *Upland Erosion Control, Revegetation, and Maintenance Plan* and *Wetland and Waterbody Construction and Mitigation Procedures* would minimize impacts on terrestrial resources, including wetlands and wildlife habitat. In addition, prior to the start of construction, Port Dolphin would develop a site-specific wetland restoration plan in consultation with appropriate local agencies. Port Dolphin would file the wetland restoration plan as part of the Implementation Plan required by environmental condition 6 included in the Appendix to this order. No known conservation easements would be affected.

59. The final EIS evaluated the potential impacts on the federally listed wood stork and indigo snake and concluded that neither would be adversely affected by the project in the long term, although some short-term disturbance during construction could occur. Impacts on federally listed species were considered as a part of the required Endangered Species Act Section 7 consultation between the MARAD/Coast Guard and the FWS. In a letter from the FWS to the MARAD/Coast Guard dated September 30, 2009, the FWS concurred that the Port Dolphin Project is not likely to adversely affect federally listed species under its jurisdiction and that no further consultation was necessary.

60. The Coast Guard is the lead federal agency for purposes of compliance with Section 106 of the National Historic Preservation Act. The Section 106 process for the onshore facilities proposed to date is complete. *See* Florida State Historic Preservation Office correspondence of February 18, 2008 and February 17, 2009.

61. Gulfstream stated that Port Dolphin's proposed construction would be unsafe. Gulfstream's comments focused on the proximity of Port Dolphin's onshore pipeline to existing Gulfstream facilities, limited easement space, the presence of existing onshore infrastructure, including utilities and buildings, as well as the fact that the proposed site for the onshore directional drilling would be within 25 feet of Gulfstream's currently operational pipeline; Port Dolphin's proposed pipeline would cross Gulfstream's pipeline at an unsafe angle; and Port Dolphin's proposed block valve would be too close to the Gulfstream pipeline. Gulfstream contended that these concerns (and environmental issues related to wetland, aquatic, and marine ecosystem impacts) argue for Port Dolphin to interconnect with Gulfstream offshore. However, an offshore interconnection would not accomplish Port Dolphin's stated project objective.²⁷ Gulfstream suggested an

²⁷ *See also* Discussion in Section B-2 of this order at PP 36-41.

alternate directional drilling entry site, an alternate route for a portion of the onshore pipeline, as well as an alternate location for the block valve.

62. Port Dolphin filed responses to each of Gulfstream's comment letters in which Port Dolphin reiterated its position that the proposed facilities were safe and would be designed, constructed, and operated "in accordance with all relevant and prevailing federal, state and local safety standards." Both Gulfstream and Port Dolphin filed documentation from pipeline engineers and drilling contractors supporting their respective positions regarding the safety and constructability of the proposed directional drilling.

63. The final EIS considered Gulfstream's siting and safety concerns, as well as related information filed by Port Dolphin. As stated in section 5.7 of the final EIS, Port Dolphin would be required to construct and operate its facilities in accordance with all applicable DOT regulations and standards.²⁸ This includes pipeline crossing angles and depths as well as block valve locations. The final EIS (in section 2.1.4.6) also discussed Gulfstream's directional drilling siting and safety concerns. As stated in the final EIS, Port Dolphin committed to implement several safety measures at the directional drilling site (e.g., notifications, fencing, and shoring up the directional drilling pit as necessary). The final EIS concluded that the directional drilling originally proposed by Port Dolphin, along with Port Dolphin's proposed additional safety measures, would be consistent with accepted industry practices and as such would be acceptable. The final EIS further concluded that no alternative directional drilling locations or procedures warranted further analysis.

64. Gulfstream submitted comments on the final EIS but did not raise any new issues. Gulfstream again suggested that its concerns with the directional drilling could be addressed if Port Dolphin modified the directional drilling alignment to increase the distance between the directional drilling entry site and Gulfstream's pipeline. In response to Gulfstream's comments, Port Dolphin stated that it would work with Port Manatee and Gulfstream to evaluate realigning the directional drilling entry site within Port Manatee so as not to affect new landowners. Port Dolphin further states that if it identified an acceptable location, it would file a variance request in accordance with environmental condition 5, included in the Appendix to this order, which provides a mechanism for Port Dolphin to make minor adjustments. As a result of Port Dolphin's commitment to work with Gulfstream, environmental condition 12 has been added to require Port Dolphin to update the Commission on the status of its consultation with Gulfstream regarding its efforts to address Gulfstream's concerns with the directional drilling alignment. The Commission concurs with the findings in the final EIS regarding the feasibility of Port Dolphin's current drilling alignment within Port Manatee, but we encourage Port Dolphin

²⁸ See 40 C.F.R. Part 192 (2009).

to attempt to resolve siting issues raised by any landowner or other party, including Gulfstream. We agree that environmental condition 5 would allow for minor changes to accommodate a drilling site realignment.

65. We have reviewed the information and analysis in the final EIS for the onshore pipeline and related facilities regarding potential environmental effects of the project. Section 4.11.3 of the final EIS contains a list of Commission staff recommended mitigation and monitoring measures, two of which have already been addressed (i.e., the requirements to complete Section 7 and Section 106 consultations) and have thus been removed. The remaining are included as conditions in the Appendix to this order. Based on our consideration of this information, the Commission concludes that if constructed and operated in accordance with Port Dolphin's application, including its proposed mitigation, and the environmental conditions in the Appendix to this order, the onshore portion of the Port Dolphin Project would result in limited environmental impacts.

66. 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. Port Dolphin shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies the applicant. The applicant shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

V. Part 157, Subpart F, Blanket Certificate

67. In addition to authority to construct and operate the Port Dolphin onshore pipeline and operate it on a proprietary basis, Port Dolphin seeks a blanket certificate under Part 157, subpart F of the Commission's regulations. Pursuant to this blanket certificate, pipelines may construct and operate eligible facilities without filing a case-specific application for a certificate under NGA section 7(c). A pipeline holding a blanket construction certificate may construct and operate eligible facilities without notifying the Commission in advance or with prior notification, depending on the cost of the facilities. A pipeline must be an interstate pipeline and must state that it will comply with all of the terms, conditions and procedures in Part 157, subpart F. Port Dolphin Pipeline will become an interstate pipeline once it accepts the certificate to construct and operate the facilities issued in this order and it has stated in its application that it will comply with the provisions of Part 157, subpart F. Therefore, we will issue a blanket construction certificate to Port Dolphin.

VI. Conclusion

68. For all of the reasons discussed herein, the Commission concludes that the Port Dolphin onshore pipeline is required by the public convenience and necessity; therefore, we will issue a certificate authorizing the construction and operation of the Port Dolphin pipeline, subject to the conditions discussed above and in the Appendix attached hereto. Further, we will grant Port Dolphin's request for waivers of the Commission's Part 284 open-access regulations as well as other regulatory and accounting regulations discussed herein. Finally, the Commission will issue to Port Dolphin the requested Part 157, subpart F, blanket construction certificate.

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

The Commission orders:

(A) A certificate of public convenience and necessity pursuant to section 7(c) of the NGA is issued to Port Dolphin in Docket No. CP07-191-001, authorizing the construction and operation of facilities as described in the body of this order and as described more fully in the application, subject to environmental mitigation conditions set forth in the Appendix.

(B) The authorization granted in paragraph (A) above is conditioned upon Port Dolphin's compliance with all applicable Commission regulations that have not been waived herein, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations.

(C) The facilities authorized in paragraph (A) above shall be completed and placed into operation within two years of the date of issuance of this order in compliance with section 157.20(b) of the Commission's regulations.

(D) Port Dolphin, subject to the requirement in paragraph (E) below, is granted waivers of the applicable portions of Parts 154, 157, 201, 250, 260 and 284 of the Commission's regulations; however, the waiver does not extend to the FERC's annual charge and Port Dolphin is required to maintain records to separately identify the original cost and related future depreciation on its gas pipeline and to file page 520 of Form 2-A.

(E) In the event that Port Dolphin receives a *bona fide* request from a shipper for open-access services, it must file within 30 days with the Commission an application for a Part 284 blanket certificate authorizing it to transport natural gas under Part 284 of

the Commission's regulations. Any request by Port Dolphin for Part 284 authorization must be filed with a *pro forma* tariff containing the terms and conditions of service and proposed rates.

(F) The authorization in paragraph (A) above to construct and operate the Port Dolphin pipeline shall be contingent upon the issuance of a license by MARAD/Coast Guard to construct and operate the related offshore Port Dolphin facilities.

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

(H) Port Dolphin is issued a blanket construction certificate under Subpart F of Part 157 of the Commission's regulations in Docket No. CP07-192-000.

(I) The motions to intervene out-of-time and motions to file answers are granted and the protests filed herein are denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

Environmental Conditions for the Port Dolphin Project

1. Port Dolphin shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to data requests) and as identified in the EIS, unless modified by this Order. Port Dolphin must do the following:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow the following:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to ensure continued compliance with the intent of the environmental conditions, as well as the avoidance or mitigation of adverse environmental impacts resulting from project construction and operation.
3. **Prior to any construction**, Port Dolphin shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EIS and as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Port Dolphin 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 this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Port Dolphin's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Port Dolphin'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. Port Dolphin shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, 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, and aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the FERC's *Upland Erosion Control, Revegetation, and Maintenance Plan*, minor field realignments per landowner needs, and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this certificate and before onshore construction begins**, Port Dolphin shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Port Dolphin must file revisions to the plan as schedules change. The plan shall identify the following:
 - a. how Port Dolphin will implement the construction procedures and mitigation measures described in its application and supplements (including responses to data requests), those identified in the EIS, and those required

- by this Order;
 - b. how Port Dolphin will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the training and instructions Port Dolphin will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - f. the company personnel (if known) and specific portion of Port Dolphin's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Port Dolphin will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project-scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Port Dolphin shall employ at least one EI during construction of the onshore facilities. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this 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 this 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 this 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. Beginning with the filing of its Implementation Plan, Port Dolphin shall file updated status reports with the Secretary on a **biweekly** basis **until all onshore construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include the following:
 - a. an update on Port Dolphin's effort to obtain the necessary federal authorizations;
 - b. the construction status of the onshore facilities, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which might relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Port Dolphin from other federal, state, or local permitting agencies concerning instances of noncompliance, and Port Dolphin's response.
9. Port Dolphin must receive written authorization from the Director of OEP **before commencing service using the onshore facilities**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the onshore portion of the project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Port Dolphin shall file an affirmative statement, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying the Certificate conditions with which Port Dolphin has complied or will comply. The statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. **Prior to construction of each onshore horizontal directional drill**, Port Dolphin shall file the following with the Secretary, for review and written approval by the Director of OEP:
 - a. the estimated number of days of drilling required for each location;
 - b. clarification whether drilling would be done 24 hours per day; and
 - c. a description of any noise mitigation that would be implemented during drilling activity to reduce noise impacts at the nearby noise-sensitive areas to below a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA), or 10 dBA over background if ambient levels are above 55 dBA L_{dn} .

12. **Prior to construction of the onshore facilities**, Port Dolphin shall file with the Secretary documentation of its consultation with Gulfstream and Port Manatee regarding the directional drilling alignment and block valve siting in proximity to Gulfstream's existing pipeline within Port Manatee, Florida, including a description of the options considered.