

131 FERC ¶ 61,010
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

ETC Tiger Pipeline, LLC

Docket No. CP09-460-000

ORDER ISSUING CERTIFICATES

(Issued April 7, 2010)

1. On August 31, 2009, ETC Tiger Pipeline, LLC (ETC Tiger) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) to construct and operate an approximately 175-mile long, 42-inch diameter natural gas pipeline, compression facilities, and other associated facilities (Tiger Pipeline) with a firm design capacity of up to 2.0 billion cubic feet per day (Bcf/d). The pipeline would begin east Texas near Carthage and continue in an easterly direction to the terminus near Delhi, Louisiana. ETC Tiger also requests blanket certificates under Part 157, subpart F of the Commission's regulations and under Part 284, subpart G of the regulations, to transport gas on an open-access basis. The Commission will grant the requested authorizations, subject to conditions, as discussed herein.

I. Background and Proposal

2. ETC Tiger asserts that its Tiger Pipeline is a producer-driven project critical to the development of the Haynesville Shale production area in northwest Louisiana and east Texas. ETC Tiger submits that the Haynesville Shale is a low-cost production area compared to other potential supply sources, including other shale, conventional and offshore production areas. The Tiger Pipeline will transport gas to midwestern and eastern markets through seven interconnections with major interstate natural gas pipelines and one bi-directional interconnection with Houston Pipe Line Company (Houston Pipe Line), an existing intrastate pipeline in the Carthage Hub area in Panola County, Texas. ETC Tiger also asserts that Tiger Pipeline's interconnection with Houston Pipe Line will also serve to ease the transportation bottleneck for other production areas in Texas, including the Barnett Shale and the Bossier Sands. ETC Tiger proposes to commence interim service on certain segments of the Tiger Pipeline prior to completing and placing the entire system in service. ETC Tiger requests expedited approval of its application so

that it may place the system in service by November/December 2010. ETC Tiger estimates the project will cost \$1,195,590,343.

A. Facilities

3. The Tiger Pipeline facilities will include: (1) approximately 78 miles of 42-inch-diameter pipeline that will extend from Carthage, Texas, to the proposed Bienville Compressor Station in Bienville Parish, Louisiana, with a maximum allowable operating pressure (MAOP) of 1,160 pounds per square inch (psig); and (2) approximately 97 miles of 42-inch-diameter pipeline with an MAOP of 1,220 psig, extending from the Bienville Compressor Station to the end of the pipeline in Franklin Parish, Louisiana. In addition, ETC Tiger will install approximately 0.42 mile of 42-inch-diameter interconnecting station piping extending from the end of the 42-inch mainline to the delivery meters for Columbia Gulf Transmission Company (Columbia Gulf) and Southeast Supply Header, LLC (SESH).

4. ETC Tiger proposes to construct four new mainline compressor stations totaling approximately 119,680 horsepower (hp), which will use state-of-the-art reciprocating internal combustion compression technology to minimize both costs to shippers and air emissions.¹ The proposed compressor stations are:

- Carthage Compressor Station – approximately 18,940 hp at MP 0 in Panola County, Texas;
- Cannisnia Compressor Station – approximately 29,275 hp at MP 47.2 in Red River Parish, Louisiana;
- Bienville Compressor Station – approximately 42,190 hp at MP 77.9 in Bienville Parish, Louisiana; and
- Chatham Compressor Station – approximately 29,275 hp at MP 113.7 in Jackson Parish, Louisiana.

¹ ETC Tiger states that it considered Interstate Natural Gas Association of America's White Paper, *Waste Heat Recovery Opportunities: Pipelines Present Energy Efficient Proposal*, in its system evaluation process. ETC Tiger states that, consistent with the White Paper's finding that reciprocating internal combustion engines are not well suited for waste heat recovery, the proposed reciprocating internal combustion engines at the Carthage, Cannisnia, Bienville, and Chatham Compressor Stations are not viable candidates for waste heat recovery.

5. In addition, ETC Tiger will install one bi-directional meter at the interconnection with Houston Pipe Line, as well as eight receipt meters and seven delivery meters; fifteen mainline valves; and launchers and receivers designed to accommodate in-line inspection and the use of smart pigs for periodic internal inspections or cleaning of the pipeline during pipeline operations.

B. Market Demand

6. On January 22, 2009, ETC Tiger and Chesapeake Energy Marketing, Inc. (Chesapeake), a major producer in the Haynesville Shale, entered a precedent agreement for up to 1,000,000 dekatherms per day (Dth/d) for firm transportation service on the Tiger Pipeline, subject to ETC Tiger's receipt of sufficient additional commitments from other parties to justify continued development of the project. In accordance with the precedent agreement and Commission policy, ETC Tiger held an open season commencing on January 22, 2009, and ending on March 20, 2009. ETC Tiger stated that it would entertain bids from shippers in any of three named categories of shipper, Foundation Shipper, Anchor Shipper, and Standard Shipper, based on the maximum daily quantity (MDQ) and length of the primary term of service the shipper requested,² consistent with Commission precedent regarding open seasons for capacity on proposed pipeline projects.³ Based on MDQ and the primary term, Chesapeake was considered to be a pre-arranged Foundation Shipper in the open season.

7. Although ETC Tiger received only non-conforming bids at the close of its open season, it entered into further negotiations which resulted in precedent agreements for firm transportation service on the Tiger Pipeline with EnCana Marketing (USA) Inc. (EnCana) for up to 500,000 Dth/d, Questar for 100,000 Dth/d; Shell Energy North America (US), L.P. (SENA) for 300,000 Dth/d; and BG Energy Merchants, LLC (BGEM) for 100,000 Dth/d. Thus, ETC Tiger has secured long-term precedent agreements for all of the capacity on the Tiger Pipeline. ETC Tiger requests pursuant to

² The classes of shippers are defined as follows: a Foundation Shipper has contracted, prior to the in-service date of the Tiger Pipeline, for capacity commitments equal to 900,000 Dth/d or more for a primary term of at least 15 years; an Anchor Shipper has contracted, prior to the in-service date of the Tiger Pipeline, for capacity commitments equal to 300,000 Dth/d or more for a primary term of at least 10 years and; a Standard Shipper has contracted, prior to the in-service date of the Tiger Pipeline, for capacity commitments equal to 1,000 Dth/d or more for primary term of at least 10 years.

³ *Citing Rockies Express Pipeline LLC*, 116 FERC ¶ 62,272, at P 72-73 (2006); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 73 (2008), as amended, 126 FERC ¶ 61,271 (2009); *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, at P 8-9 (2008).

the Commission's Rules of Practice and Procedure at 18 C.F.R. § 388.112 (2009) that the precedent agreements be treated as privileged and confidential.

8. ETC Tiger submits that the precedent agreements provide contractual incentives necessary to obtain binding commitments from initial shippers for the Tiger Pipeline. It states that the provisions do not affect the nature of service under ETC Tiger's tariff, but rather define the applicable negotiated rates, set forth standard contractual rights and obligations of the parties under the precedent agreement itself, and spell out certain shipper requirements (e.g., termination rights and liquidated damages) that will be eliminated prior to the in-service date of the Tiger Pipeline, consistent with Commission policy and precedent. ETC Tiger also requests Commission approval of certain contractual provisions regarding fuel caps, rights to available in-service capacity and other expansion rights that will survive the in-service date.

C. Rates

9. As more fully described below, ETC Tiger proposes to offer cost-based firm (Rate Schedule FTS) and interruptible (Rate Schedules ITS and PALS) open-access transportation services on a non-discriminatory basis under Part 284 of the Commission's regulations. ETC Tiger has filed two separate sets of proposed rates: (1) interim period rates which would be applicable if and when certain portions of the Tiger system go into service prior to the in-service date of the entire project (no interim period rates are being established for PALS service)⁴; and (2) rates to be applicable when the entire Tiger Pipeline system goes into service. ETC Tiger states that it will offer negotiated rates as an option under its proposed tariff. ETC Tiger requests Commission approval of the *pro forma* tariff for Tiger Pipeline, including the authority to enter into negotiated rate agreements and approval of the proposed interim period rates and initial recourse rates for service. Shippers may pay either the recourse rate (including discounted rates) or negotiated rates. ETC Tiger states that the Foundation, Anchor and Standard Shippers that entered into precedent agreements elected to pay negotiated rates.⁵

10. ETC Tiger's proposed cost of service consists of \$9,443,025 of operation and maintenance expenses, \$35,733,585 of depreciation expenses, \$139,314,103 of return

⁴ The pipeline will be installed by multiple construction teams. Rate Schedules FTS and ITS provide for Interim Period Service and Perryville Interconnect Service. ETC Tiger anticipates that it will be able to offer these services during the third quarter of 2010.

⁵ ETC Tiger's negotiated rate provisions are set forth at section 30 of its General Terms and Conditions. ETC Tiger's FERC Gas Tariff, *Pro Forma* Original Volume No. 1, Original Sheet No. 236.

allowance (at a 15.0 percent rate of return on equity based on a capital structure of 50 percent equity and 50 percent debt, and an 8.75 cost of debt), \$54,427,624 of income taxes, \$31,050,086 of taxes other than income taxes, and a \$2,000,000 credit for interruptible services for a total cost of service of \$267,968,441. ETC Tiger reflects a proposed rate base that includes a gross plant investment of \$1,195,590,343 less average accumulated depreciation of \$17,866,793, resulting in a Net Plant in Service of \$1,177,723,551, less average deferred income taxes of \$4,552,161 for a total rate base of \$1,173,171,390.

II. Notice, Interventions, Comments, and Protests

11. Notice of ETC Tiger's application was published in the *Federal Register* on September 18, 2009 (74 FR 47934). Timely, unopposed motions to intervene were filed by Trunkline Gas Company, LLC, Chesapeake, SENA, and EnCana. These timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁶

12. BGEM filed a motion to intervene out-of-time. The Commission finds that granting BGEM's late-filed motion to intervene will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, we will grant the late-filed motion to intervene.⁷

13. Chesapeake, a Foundation Shipper, filed a statement supporting ETC Tiger's application and requesting expeditious approval. Chesapeake asserts that the provisions included in its precedent agreement and the tariff provisions are critical to the commercial needs of Chesapeake and other shippers, do not alter the service on the Tiger Pipeline or create different classes of service, and are consistent with Commission precedent. It further states that ETC Tiger's requested debt and equity costs should be approved because they reflect the risk of this project.

14. EnCana and SENA each filed comments on October 1, 2009. ETC Tiger responded on October 16, 2009, with a motion for leave to answer and an answer to the various issues raised in the comments. In its answer, ETC Tiger submitted revisions to the *pro forma* tariff intended to address certain concerns raised in the shippers' comments. EnCana and SENA filed further comments. On December 8, 2009, ETC Tiger responded with a motion to for leave to file its own supplemental answer and an answer. While the Commission's Rules of Practice and Procedure do not permit

⁶ 18 C.F.R. § 385.214(a)(3) (2009).

⁷ 18 C.F.R. § 385.214(c) (2009).

answers to answers or protests,⁸ the Commission will allow 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.⁹

III. Discussion

15. Because ETC Tiger seeks to construct facilities that will be used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Certificate Policy Statement

16. The Commission's Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.¹⁰ 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 explained that in deciding whether to authorize the construction of major new pipeline facilities, we balance 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.

17. 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 its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is

⁸ See Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2) (2009).

⁹ See, e.g., *Florida Gas Transmission Co.*, 125 FERC ¶ 61,032, at P 3, n.3 (2008).

¹⁰ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

18. Because ETC Tiger is a newly-formed entity that owns no existing facilities and has no current customers, there is no risk of subsidization by existing customers. In addition, the Tiger Pipeline should not have any adverse impact on existing pipelines or their current customer because the new project is meeting market demand and will not displace existing service of any other pipeline system. Further, no pipeline objected to ETC Tiger's project.

19. We find that impacts on landowners and communities affected by the project should be minimized because approximately 93 percent of the proposed route for the Tiger Pipeline will be co-located along the routes of existing interstate pipelines or utility lines. Additionally, to date, ETC Tiger has secured easements along 91 percent of the route.¹¹

20. As set forth in ETC Tiger's application, the Tiger Pipeline is being developed primarily to transport natural gas out of the Haynesville Shale production area in northwest Louisiana and east Texas. The project responds to market demand; it represents a major investment in energy infrastructure; serves to develop an unconventional gas resource that will serve to ensure future domestic energy supplies; and will enhance the pipeline grid in a region that connects sources of natural gas production with major areas of market demand in the Midwest and the Atlantic Seaboard. In weighing the benefits of the proposed Tiger Pipeline against the lack of any identified adverse impacts on existing customers or on other pipelines and their customers, and limited impacts on landowners and communities, we find, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of ETC Tiger's proposed project, subject to the conditions set forth herein.

B. Rates

21. ETC Tiger proposes to offer cost-based firm (Rate Schedule FTS) and interruptible (Rate Schedules ITS and PALS) open-access transportation services on a non-discriminatory basis under Part 284 of the Commission's regulations.¹² ETC Tiger states that it will offer negotiated rates as an option pursuant to Section 30 of the General

¹¹ETC Tiger's February 10, 2010 Comments on the Environmental Assessment at p. 4.

¹² See ETC Tiger's FERC Gas Tariff, *Pro Forma* Original Volume No. 1.

Terms and Conditions (GT&C) of its *pro forma* tariff. The *pro forma* tariff has been developed in consultation with the shippers that have entered into precedent agreements supporting the construction of the project.

22. The proposed recourse rates for the fully operational system are derived using a \$267,968,441 cost of service¹³ and annual FTS reservation billing determinants reflecting 2,000,000 Dth/d of capacity. The proposed maximum cost-based FTS reservation rate is \$11.00 per Dth. ETC Tiger estimates a Commodity Cost of Service of \$4,031,522 and Annual Commodity Volumes of 730,000,000 Dth, resulting in a proposed FTS commodity rate of \$0.0055 per Dth.

23. The proposed maximum ITS rate is \$0.3671 per Dth and the proposed minimum ITS rate is \$0.0055 per Dth. ETC Tiger proposes to recover its fuel gas, including lost and unaccounted-for gas, through a tracker mechanism defined in Section 36 of the *pro forma* tariff.

Rates for Interim Service

24. ETC Tiger intends to construct its pipeline using multiple construction teams, simultaneously laying pipe along different sections of the route. ETC Tiger states that it anticipates that it will be able to offer interim service on two segments of the pipeline prior to completing and placing in service the entire length of the system. Consequently, ETC Tiger has proposed Interim Period and Perryville Rates¹⁴ to be charged for such service if such service is available before the in-service date for the entire system. The

¹³ ETC Tiger's proposed cost of service consists of \$9,443,025 of operation and maintenance expenses, \$35,733,585 of depreciation expenses, \$139,314,103 of return allowance (at a 15.0 percent rate of return on equity based on a capital structure of 50 percent equity and 50 percent debt, and an 8.75 cost of debt), \$54,427,624 of income taxes, \$31,050,086 of taxes other than income taxes, and a \$2,000,000 credit for interruptible services for a total cost of service of \$267,968,441. ETC Tiger reflects a proposed rate base that includes a gross plant investment of \$1,195,590,343 less average accumulated depreciation of \$17,866,793, resulting in a Net Plant in Service of \$1,177,723,551, less average deferred income taxes of \$4,552,161 for a total rate base of \$1,173,171,390.

¹⁴ As defined in the tariff, Interim Period service is service from the Haynesville interconnects to the Carthage interconnect provided prior to the time ETC Tiger has placed into service firm capacity from the Haynesville interconnects to the SESH interconnect. Perryville interconnect service is service to any of the Perryville interconnect delivery points prior to the time that ETC Tiger has placed into service firm capacity from the Carthage interconnect to the SESH interconnect.

Interim Period and Perryville Rates are derived in the same manner as the system-wide recourse rates. However, PALS service will not be available under either of these services. We have reviewed the proposed Interim Period and Perryville Rates and the underlying cost of service and find them reasonable for such services.

Return on Equity and Capital Structure

25. ETC Tiger proposes a capital structure of 50 percent equity and 50 percent debt. ETC Tiger asserts that the recent downturn in U.S. credit markets has significantly driven up the expected cost of both debt financing and equity capital for pipeline companies.¹⁵ ETC Tiger maintains that these higher costs firmly support its proposed 8.75 percent cost of debt and 15.0 percent return on equity, which it acknowledges are “slightly higher” than what the Commission has approved in recent prior cases.

26. We find that ETC Tiger’s proposal to finance the instant project is generally consistent with other recent projects approved by the Commission for new pipeline companies,¹⁶ except for its proposed return on equity of 15.0 percent. In support of its request for a 15.0 percent return on equity, ETC Tiger asserts that lower projected overall economic growth in the United States, increased volatility in the equity markets, and lower commodity prices have led to lower unit prices – and hence, a higher cost of equity capital – for publicly traded companies. However, we see no need to provide for higher returns on equity in order to encourage new construction. Accordingly, we find that ETC Tiger has not provided sufficient justification to support a higher return on equity than the Commission has recently approved for new pipeline companies,¹⁷ and

¹⁵ Citing Foster Natural Gas Report, No. 2725, *Financial Crisis Casting ‘Broad Negative Shadow’ Over Midstream Sector, Says Credit Report*, at 8 (Dec. 19, 2008) (citing a research report by Fitch Research entitled *Pipeline/Midstream/MLP 2009 Outlook; Time for Companies to Play Defense* which observes that 2009 will continue to present challenges for all MLPs and predicts a weakening of credit metrics as capital becomes scarce and the increased cost of capital erodes returns on growth projects). See also The New York Times, Jack Healy, *Cost of Borrowing Zooms Up for Corporations*, at B1 (Jan. 19, 2009).

¹⁶ See, e.g., *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224 (2009) (*Ruby Pipeline*); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008); *Gulf Crossing Pipeline Co. LLC*, 123 FERC ¶ 61,100 (2008); *Creole Trail LNG, L.P. (Creole Trail)*, 115 FERC ¶ 61,311 (2006).

¹⁷ See, e.g., *Fayetteville Express Pipeline L.L.C.*, 129 FERC ¶ 61,235 (2009) (approving initial rates reflecting 14 percent rate of return on equity and 8.75 percent cost of debt); *Ruby Pipeline*, 128 FERC ¶ 61,224 (approving initial rates reflecting 14 percent return on equity); *T.W. Phillips Pipeline Corp.*, 126 FERC ¶ 62,132 (2009) (approving
(continued...))

ETC Tiger is directed to revise its proposed cost of service to incorporate a rate of return on equity of 14.0 percent.

Interruptible Services Revenue Crediting

27. ETC Tiger proposes a \$2,000,000 credit to the cost of service for interruptible services. Our policy regarding new interruptible services requires the pipeline to either credit 100 percent of the interruptible revenues, net of variable costs, to firm and interruptible customers or to allocate costs and volumes to these services.¹⁸ ETC Tiger's crediting of \$2,000,000 to the cost of service in the design of initial rates has the same effect as allocating costs to interruptible services and, therefore, is in compliance with our policy. Accordingly, ETC Tiger will not be required to credit any interruptible revenues to its shippers.

Rate Changes and Three-Year Filing Requirements

28. If ETC Tiger desires to make any rate changes not specifically authorized by this order prior to placing its facilities into service, it must file an amendment to its application under NGA section 7(c). In that filing, ETC Tiger shall provide cost data and the required exhibits supporting any revised rates. In addition, any such filing should be made sufficiently in advance of the proposed in-service date to allow the Commission adequate time to analyze and act on the filing. After the facilities are constructed and placed in service, ETC Tiger may only change its rates, as necessary to reflect any revised construction and operating costs, through a NGA section 4 filing.

29. Consistent with Commission precedent, we will require ETC Tiger to file a cost and revenue study at the end of its first three years of actual operation to justify its existing cost-based firm and interruptible recourse rates.¹⁹ In its filing, the projected units of service should be no lower than those upon which ETC Tiger's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost-of-service data.²⁰ After

initial rates reflecting 14 percent rate of return on equity); *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165 (2008) (approving initial rates reflecting 14 percent rate of return on equity).

¹⁸ See, e.g., *Creole Trail*, 115 FERC ¶ 61,311, at P 27 (2006); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 51 (2005).

¹⁹ See, e.g., *Empire State Pipeline*, 116 FERC ¶ 61,074, at P 133 (2006); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 52 (2005).

²⁰ 18 C.F.R. § 154.313 (2009).

reviewing the data, the Commission will determine whether to exercise its authority under NGA section 5 to establish just and reasonable rates. In the alternative, in lieu of this filing, ETC Tiger may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

C. Pro Forma Tariff Issues

30. In response to various tariff issues raised by EnCana and SENA in their October 1, 2009 comments to ETC Tiger's application, ETC Tiger filed an answer on October 16, 2009, that included proposed revisions to its *pro forma* tariff, which ETC Tiger stated were meant to clarify the *pro forma* tariff in a manner that would balance all parties' interests while conforming to Commission policy and precedent. After EnCana and SENA filed further comments in response to ETC Tiger's answer, ETC Tiger filed on December 8, 2009, its supplemental answer in which it requests the Commission to accept the proposed revisions to the *pro forma* tariff that ETC Tiger included as Exhibit A to its October 16, 2009 answer, agrees to accept further revisions proposed by the parties, and addresses the tariff provisions that remain in dispute which we discuss below.

GT&C Section 1.45: Unauthorized Overrun Service

GT&C Section 9.2: Unauthorized Overrun Service Charge

GT&C Section 10.8: Balancing Service Charge

31. In its October 16 answer, ETC Tiger proposed to revise its *pro forma* tariff to establish a tolerance of five percent for Unauthorized Overrun Service in GT&C Section 1.45. ETC Tiger did not propose to revise GT&C Section 9.2, which provides for a maximum Unauthorized Overrun Service charge of two times the maximum Rate Schedule ITS commodity rate. In GT&C Section 10.8 ETC Tiger proposes balancing charges where an Operational Balancing Agreement (OBA) is not in place.

32. SENA takes issues with these three provisions. SENA supports a broader tolerance range for exemption from Unauthorized Overrun penalties, up to the shipper's entire Maximum Daily Quantity (MDQ), when the pipeline has not issued an Operational Flow Order (OFO), declared a Critical Time, or determined that other operational problems are specifically caused by a shipper's Unauthorized Overrun quantities. As to the Unauthorized Overrun Service Charge, SENA contends that Commission precedent requires the rate at non-critical times to equal only the maximum interruptible rate.²¹ Finally, SENA argues that, even when no OBA is in place, ETC Tiger should not assess balancing charges on delivery point variances where neither an OFO has been issued nor a Critical Time declared.

²¹ Citing *Columbia Gas Transmission Corp.*, 124 FERC ¶ 61,122 (2008).

33. SENA states that ETC Tiger's proposed cashout prices and balancing penalties could apply to a shipper whose actual receipts and actual deliveries on a contract basis are in balance, but who nevertheless could be subject to higher cashout prices and balancing charges due to ETC Tiger's proposal to use Operational Impact Areas (OIAs). SENA asserts that, at a minimum, no balancing charges should be assessed against a shipper whose actual overall contract receipts and deliveries are within a five percent tolerance range without regard to OIAs.

34. ETC Tiger submits that the Commission should deny SENA's proposal to deviate from its scheduled quantities during the gas day, even in non-critical periods. ETC Tiger states that the Commission has long recognized that the desire of shippers to maximize their commercial flexibility in the nomination and scheduling process must be balanced against the need for pipeline companies to have adequate tools to prudently operate their systems and to encourage shippers to use the nominations and scheduling procedures appropriately.²²

35. ETC Tiger maintains that its proposed rate for Unauthorized Overrun Service of two times its interruptible rate should be approved because it appropriately incentivizes shippers to nominate and schedule their overrun volumes and fully complies with Commission precedent.²³ ETC Tiger submits that the proposed five percent tolerance, coupled with its proposed rate for Unauthorized Overrun Service outside that tolerance level, offers a reasonable balancing of the competing factors on the Tiger Pipeline.²⁴ Finally, ETC Tiger contends that SENA's assertion that balancing charges should not be assessed on delivery point variances when neither an OFO has been issued nor a Critical Time declared where an OBA is not in place is unsupported by Commission precedent and should be rejected.²⁵

²² ETC Tiger notes that the unavailability of storage on or connected to the Tiger Pipeline makes it imperative that it be able to control the management of, and predictability in, the nominations and scheduling process.

²³ *Citing Colorado Interstate Gas Co.*, 122 FERC ¶ 61,256, at P 86 (2008).

²⁴ *Citing Columbia Gas Transmission Corp.*, 124 FERC ¶ 61,122, at P 28 (2008) (accepting proposed tolerance level as just and reasonable even though other higher tolerance levels might also be just and reasonable).

²⁵ *Citing Natural Gas Pipeline Co. of America*, 101 FERC ¶ 61,200, at P 75-77 (2002).

Commission Response

36. We find that ETC Tiger's proposed five percent tolerance coupled with its proposed rate for Unauthorized Overrun Service outside that tolerance level of two times its maximum interruptible rate is appropriate. Long-standing Commission precedent permits pipeline companies to propose a "nominal penalty for non-critical periods, not to exceed twice its maximum interruptible rate" as the rate for Unauthorized Overrun Service, to incentivize shippers to nominate their overrun volumes, instead of relying on unauthorized overrun service.²⁶ Such a penalty rate appropriately takes into account the lessened impact such unauthorized overruns will have on the system during non-critical times.²⁷ Consistent with Commission precedent we deny SENA's argument that no balancing charge should apply during ordinary times.²⁸ Likewise, we are not persuaded by SENA's arguments against ETC Tiger's proposal to assess balancing charges where an OBA is not in place. The Commission has recognized that shippers share in the responsibility for minimizing imbalances, regardless of whether an OBA is in place.²⁹

GT&C Section 2.2(d): Reductions in Firm Service – Reservation Charge Credit

37. In Section 2.2(d) ETC Tiger proposes to provide a reservation charge credit to a firm shipper only if ETC Tiger fails to provide service equal to at least 98 percent of the shipper's confirmed nomination. SENA maintains that the Commission has rejected such proposals numerous times.³⁰ SENA states that, consistent with Commission policy in non-force majeure situations, ETC Tiger must be required to revise its tariff to provide a full reservation charge credit when it does not provide 100 percent of a shipper's

²⁶ See *CIG*, 122 FERC ¶ 61,256 at P 86.

²⁷ *Id.*

²⁸ *Natural*, 101 FERC ¶ 61,200 at P 75-77.

²⁹ *EI Paso Natural Gas Co.*, 128 FERC ¶ 61,283, at P 17-18 (2009) ("The shipper is obligated to actively manage and communicate with its supplier, including receipt point operator regardless of whether it is a primary or an alternative receipt point. Further, EI Paso's proposal is consistent with North American Energy Standards Board Wholesale Gas Quadrant's Flowing Gas Related Standards 2.3.16-2.3.18, Version 1.8., which recognizes the need of all affected parties to participate in allocation determinations at both delivery points, as well as receipt points.").

³⁰ *Petal Gas Storage*, 126 FERC ¶ 61,199, at P 26 (2009); *SG Resources Mississippi, LLC*, 122 FERC ¶ 61,180, at P 6 (2008); *Rockies Express Pipeline*, 116 FERC ¶ 61,272, at P 63 (2006).

nominated service up to its MDQ level and revise its proposed GT&C Section 2.2(d) to conform to Commission policy.

38. ETC Tiger responds that GT&C Section 2.2(d) is appropriate. Citing *Tennessee Gas Pipeline Co. (Tennessee)*,³¹ it asserts that the Commission has held that the 98 percent threshold to be entirely reasonable and appropriate. Accordingly, ETC Tiger requests that the Commission approve the terms of GT&C Section 2.2(d) as originally proposed.

Commission Response

39. We agree with SENA that ETC Tiger's proposal does not adequately comply with Commission policy regarding reservation charge credits. Under that policy, where scheduled gas is not delivered due to a non-*force majeure* or planned maintenance event, there must be a full reservation charge adjustment as to the undelivered amount. This is because the failure was due to the pipeline's conduct and was within its control. ETC Tiger's reliance on *Tennessee* is misplaced. Although we accepted a proposal similar to ETC Tiger's in *Tennessee*, in that case the Commission did not specifically address the merits of that provision as it did in the cases cited by SENA. Upon consideration here, we find that ETC Tiger's proposal is unreasonable because it requires its customers to bear the risk associated with interruption of service within the pipeline's control. ETC Tiger is directed to revise its tariff to provide reservation charge credits when it does not provide 100 percent of its scheduled service.

GT&C Section 14: Capacity Release by Firm Shippers – Lump Sum Exit Fee

40. Proposed GT&C Section 14.1 states that, for a permanent capacity release, ETC Tiger "is not required to but may choose to accept a bid at less than the rate provided for in Releasing Shipper's Service Agreement provided that (i) Releasing Shipper remits an exit fee [which will consist of] a lump sum payment for the positive difference between the rate provided for in the Releasing Shipper's Service Agreement and the bid rate for the full term of the capacity release...." In GT&C Section 14.8(F) (Shipper Liability), ETC Tiger proposes to relieve a Releasing Shipper from its obligations in a release at a rate less than the rate provided for in the Releasing Shipper's Service Agreement if "the Releasing Shipper remits as an exit fee, a lump sum payment for the positive difference between the rate provided for in the Releasing Shipper's Service Agreement and the bid rate for the full term of the capacity release."³²

³¹ 76 FERC ¶ 61,022 at 61,086 (1996).

³² ETC Tiger's FERC Gas Tariff, *Pro Forma* Original Volume No. 1, Original Sheet No. 201.

41. EnCana argues that Section 14.1 gives ETC Tiger too much discretion because ETC Tiger “is not required to but may choose to” accept a bid at a rate less than the rate provided for in the Releasing Shipper’s Service Agreement if certain conditions are met. EnCana also asserts that the Commission should require ETC Tiger to incorporate a net present value factor to calculate any lump sum exit fee to insure consistency within its *pro forma* tariff since ETC Tiger proposes to use the net present value method in GT&C Section 2, to allocate capacity on its system and evaluate the bids received in an open season, and in GT&C Section 12, as part of its creditworthiness evaluation.

42. Citing *Northwest Pipeline Corporation (Northwest)*,³³ ETC Tiger states that the Commission has rejected the idea that a pipeline should be forced into accepting a lump-sum buyout from a releasing shipper that desires to permanently release its capacity below its contract rate. ETC Tiger requests that the Commission decline to take action consistent with EnCana’s comments because the Commission’s capacity release policies both answer EnCana’s concerns and satisfy its commercial desires.

43. EnCana responds that the Commission’s decision in *Northwest* is distinguishable because, unlike *Northwest*, ETC Tiger has proposed to offer an exit fee option in its *pro forma* tariff.

44. Based on EnCana’s continued opposition to Section 14, and its desire to require ETC Tiger to backstop all capacity release transactions where a lump-sum buyout might be desired by the releasing shipper, ETC Tiger requests Commission approval of its *pro forma* tariff subject to ETC Tiger filing its final tariff prior to the in-service date of the Tiger Project to remove the option for shippers to release their capacity on the Tiger Pipeline below their contract rates by paying a lump-sum buyout to ETC Tiger.³⁴

Commission Response

45. As ETC Tiger points out, the Commission does not require pipelines to include in their tariffs a lump sum exit fee provision for capacity releases. Since ETC Tiger is not required to include an exit fee provision, we will accept ETC Tiger’s proposal to remove the exit fee provisions from Section 14. Tiger is directed to modify its *pro forma* tariff accordingly.

³³ 111 FERC ¶ 61,231, at P 21-22 (2005).

³⁴ Tiger states that with or without this change, any shipper on the Tiger Pipeline will still be free to structure capacity release transactions on whatever terms it can negotiate in the marketplace, including reverse-auction type arrangements that include lump-sum or periodic payments to the replacement shipper.

GT&C Section 24: Liability

46. In its October 16 answer ETC Tiger proposed a revision to Section 24(b) by adding the word “negligence” in response to EnCana’s comments on third party liability under the *pro forma* tariff.³⁵ ETC Tiger asserted that the proposed revision addressed EnCana’s concerns since it clarified that ETC Tiger shall not be indemnified by shippers for its own negligence in the operation of its pipeline system. ETC Tiger also proposed to replace Section 24(a) with language it modeled after liability provisions that the Commission previously accepted for MarkWest Pioneer after directly ordering it to conform its liability provisions to Commission policy.³⁶

47. In its November 2 answer, EnCana states that ETC Tiger’s proposal to insert the word “negligence” in GT&C Section 24(b) leaves the third party indemnification tariff language that EnCana finds objectionable otherwise unchanged. EnCana continues to believe that ETC Tiger’s proposed GT&C Section 24(b) is unjust and unreasonable and should be categorically rejected since it would subject ETC Tiger’s shippers to seemingly unlimited liability for damages arising out of ETC Tiger’s operation of the Tiger Pipeline. EnCana argues that ETC Tiger is the only party in the position to prevent harm from the operation of its system to third parties and should be responsible for these risks. Similarly, SENA objects to the revised Section 24(b) because it includes a shipper indemnification provision which, SENA states, appears to be an inappropriate attempt to limit ETC Tiger’s liability for damages which arise “out of or in connection with the performance of the duties of TIGER, its officers, employees or agents hereunder in transporting Gas for any Shipper.”

48. SENA also objects to the following portions of ETC Tiger’s proposed revisions to GT&C Section 24(a):

- (i) “and foreseeable” on line 6 because this phrase could potentially limit a pipeline’s exposure to direct damages;
- (ii) “any loss of profit or anticipated profit, business interruption, loss of revenue, loss of use, loss of contract, loss of goodwill, increased costs of

³⁵ As revised in ETC Tiger’s October 16 answer, Section 24(b) states: “Except in the case of **negligence**, gross negligence, recklessness or willful misconduct on the part of TIGER, its officers, employees or agents, each Shipper shall indemnify and save harmless TIGER, its officers, employees or agents from any claim, demand or expense for loss, damage or injury to property or to persons who are not Shippers of Gas in the System which arises out of or is connected with the performance of the duties of TIGER, its officers, employees or agents hereunder in transporting Gas for any Shipper.”

³⁶ See *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, at P 53-54 (2008).

working or loss of business opportunity, nor for” because this phrase could potentially limit what constitutes “direct damages”. For example, “loss of revenue, loss of contract, and increased costs” all appear to be direct damages. There is no reason for ETC Tiger to attempt to define “direct damages” in its tariff since the applicable state contract law will determine what constitutes “direct damages”; and,

- (iii) “For the purpose of this Section 24, ‘direct costs, losses, or damages’ shall not include any costs, expense, loss, award or damage suffered or incurred by a party in respect to any action, proceeding, claims, or demands made against that party in respect of any actions, proceedings, claims, or demands made against that party by any of its customers or any other person.” This entire sentence is objectionable because it seeks to limit a shipper’s ability to recover against ETC Tiger any litigation or adversarial award against the shipper by a third party. Such litigation or adversarial awards against a shipper are direct damages incurred by that shipper and thus ETC Tiger should not be allowed to so limit its liability for such direct damages.

Commission Response

49. In its December 8 answer, ETC Tiger states it is willing: (1) to reflect the three revisions that SENA proposes for revised GT&C Section 24(a); and, (2) not to reflect GT&C Section 24(b), as revised in ETC Tiger’s October 16 answer, in its final tariff.³⁷ ETC Tiger is directed to modify its *pro forma* tariff accordingly.

GT&C Section 30 – Negotiated Rates

50. ETC Tiger's *pro forma* tariff includes a provision in GT&C Section 30 that would allow ETC Tiger to enter into negotiated rate agreements consistent with Commission policy. Section 30 states that ETC Tiger will file with the Commission all negotiated rate service agreements and an affirmation that the negotiated rate agreement does not deviate in any material aspect from the applicable form of service agreement in ETC Tiger's tariff.

Commission Response

51. We will approve negotiated rate authority for ETC Tiger and accept the proposed tariff language in Section 30 concerning negotiated rate provisions. In certificate proceedings, we establish initial recourse rates, but do not make determinations regarding

³⁷ We interpret ETC Tiger’s statement in the December 8 answer to mean that it intends to remove GT&C Section 24(b) in its entirety when it files to implement its tariff.

specific negotiated rates for proposed services.³⁸ In order to comply with the Alternative Rate Policy Statement,³⁹ and our decision in *NorAm Gas Transmission Co.*,⁴⁰ we direct ETC Tiger to file any negotiated rate contracts not less than 60 days, or more than 90 days, prior to the commencement of service stating for each shipper the negotiated rate, the applicable gas volume to be transported, and an affirmation that the affected service agreements do not deviate in any material respect from the form of service agreement in ETC Tiger's *pro forma* tariff. ETC Tiger must also disclose all consideration received that is associated with the agreement. In addition, ETC Tiger must 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 section 4 or 5 rate case.

GT&C Section 36: Periodic Rate Adjustments For Fuel Gas, Lost And Unaccounted For Gas And Booster Compression Fuel

52. ETC Tiger proposes to clarify certain aspects of its periodic adjustments to Fuel Gas, Lost and Unaccounted for Gas, and Booster Compression Fuel.⁴¹ ETC Tiger also proposes to revise Section 36.5(c)(4) and to add a new Section 36.5(d) to provide its

³⁸ *Gulf Crossing Pipeline Co. LLC*, 123 FERC ¶ 61,100, at P 97 (2008); *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).

³⁹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076; *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

⁴⁰ 77 FERC ¶ 61,011 (1996).

⁴¹ Specifically, ETC Tiger proposes a set of revisions in GT&C Sections 36.1(b), 36.2(d), 36.4(c), 36.5(a), and 36.5(b) which are intended to clarify that receipt quantities used under the applicable calculations are without regard to any terms or conditions regarding Fuel Gas (e.g., fuel caps or fixed-fuel arrangements) in any negotiated rate agreement that Tiger may elect to enter. ETC Tiger also proposes to clarify, in Section 36.4(b), the calculation of the Fuel Gas Reimbursement Percentage with regard to the Fuel Gas that is used in the calculation of the respective percentages for receipts east and west of Highway 789.

shippers with an additional level of assurance regarding the practices and standards by which ETC Tiger will revise its fuel percentages.⁴²

53. SENA finds ETC Tiger's proposed tracker and true-up procedures in GT&C Section 36 to be ambiguous and requests the Commission to require modifications and clarifications. Specifically, with regard to ETC Tiger's proposed inclusion of carrying charges on deferral subaccounts, SENA asserts that the procedures for determining the value of deferred subaccounts and for collecting the carrying charges are ambiguous and need further clarification. Second, SENA requests further clarification of ETC Tiger's proposed revisions in GT&C Sections 36.5(c)(3)(i) and 36.5(c)(3)(ii) as follows:

- (i) TIGER shall debit the relevant deferral account in the event that the fuel volumes under item (1) are exceed the recovered volumes under item (2) actual amounts for the current Month exceed the amounts that TIGER recovered hereunder for that Month.
- (ii) TIGER shall credit the relevant deferral account in the event that the fuel volumes under item (1) are less than the recovered volumes under item (2) actual amounts for the current Month are less than the total amount TIGER recovered hereunder for that Month.

Finally, SENA objects to GT&C Section 36.5(b)(4) which permits ETC Tiger to seek recovery of "other charges related to Fuel Gas, Lost and Unaccounted For Gas, and Booster Compression Fuel operations."⁴³ SENA asserts this provision is not specific enough and potentially would allow ETC Tiger to include in its fuel and lost and unaccounted for rates, other charges which are not appropriately included. For this reason, SENA requests GT&C Section 36.5(b)(4) be deleted from ETC Tiger's tariff.

54. ETC Tiger agrees to accept SENA's proposed clarifications to GT&C Sections 36.5(c)(3)(i) and 36.5(c)(3)(ii). However, ETC Tiger requests the Commission reject the other of SENA's proposed revisions to Section 36.

⁴² ETC Tiger states that, most importantly for its shippers, it proposes to include language in Section 36.5(d) to specify that it shall be obligated to provide support in its semi-annual fuel filings for the reasonableness of the pricing projections used in its calculations, thereby enabling shippers to undertake their own evaluation of such pricing projections and raise any concerns about the reasonableness of those projections to the Commission's attention at the time.

⁴³ See *pro forma* Original Sheet No. 258.

55. As to SENA's objection to the inclusion of carrying charges on deferral subaccounts, ETC Tiger submits that inclusion of carrying charges is a common feature of a pipeline company's fuel tracker and true-up mechanism and ensures that ETC Tiger and its shippers are kept whole during six-month tracker periods. ETC Tiger states that when it submits its periodic tracker filings, SENA and all other interested parties will have the opportunity to protest or otherwise comment upon ETC Tiger's actual calculations of carrying charges, as well as the subaccount values therein, pursuant to the terms of GT&C Section 36. Therefore, ETC Tiger requests that the Commission approve the inclusion of carrying charges in GT&C Section 36 as originally filed in the *pro forma* tariff, without prejudice the rights of any interested party to protest or otherwise oppose ETC Tiger's actual computation of carrying charges in its periodic fuel filings pursuant to GT&C Section 36.

56. Addressing SENA's objections to Section 36.5(b)(4), ETC Tiger states that the Commission and all interested parties will have ample opportunity to review ETC Tiger's periodic fuel filings and any charges that it seeks to recover under Section 36.5(b)(4). ETC Tiger states that that section specifies that ETC Tiger will only be able to recover those charges that are "related to" fuel gas, lost and unaccounted for gas, or booster compression fuel operations that the Commission finds appropriate to include. ETC Tiger asserts that if any party objects to a particular charge that ETC Tiger includes in a periodic fuel filing, ETC Tiger will be responsible for demonstrating that the charges satisfy the "related to" standard and for justifying the recovery. Therefore, ETC Tiger requests the Commission approve Section 36.5(b)(4) as originally proposed, without prejudice to the rights of parties to protest or otherwise oppose any particular charges ETC Tiger includes for recovery in its periodic fuel filings under that section.

Commission Response

57. We will approve the inclusion of carrying charges in GT&C Section 36 as originally filed in the *pro forma* tariff, without prejudice to SENA's rights (and the rights of any other interested party) to protest or otherwise oppose ETC Tiger's actual computation of carrying charges in its periodic fuel filings pursuant to GT&C Section 36. Contrary to SENA's assertion that the procedures for determining the value of deferred subaccounts and for collecting the carrying charges are ambiguous, we find that the procedures for determining the value of carrying charges are clearly defined in GT&C Sections 36.5(c)(5)(i) and 36.5(c)(5)(ii).

58. With respect to GT&C Section 36.5(b)(4), Other charges related to Fuel Gas, Lost and Unaccounted For Gas, and Booster Compression Fuel operations, we agree with SENA that this provision is not specific enough and could potentially allow ETC Tiger to

include in its fuel and lost and unaccounted for gas rates, “other charges” which are not appropriately included. Therefore, we direct ETC Tiger to delete GT&C Section 36.5(b)(4) from its *pro forma* tariff.

59. We will accept ETC Tiger’s proposed revisions to GT&C Sections 36.1(b), 36.2(d), 36.4(c), 36.5(a), 36.5(b), 36.5(c)(4) and proposed Section 36.5(d) to provide its shippers with an additional level of assurance regarding the practices and standards by which ETC Tiger will revise its fuel percentages.

Pro Forma FTS/ITS Service Agreement Section 7

60. In response to the revisions to Section 7 of the *pro forma* service agreement for Rate Schedules FTS and ITS that ETC Tiger proposed in its October 16 answer, SENA requests further clarification with respect to Section 7(d) and states that ETC Tiger had agreed to further revise Section 7(h).

61. First, SENA asserts that Section 7(d), which addresses refunds under negotiated rate agreements, fails to account for differences between negotiated rates for transportation service and other rates (e.g. fuel) contained in the same Negotiated Rate Agreement. SENA’s concern is that Section 7(d) might prevent the pass-through of refunds for over-collections of fuel because the fuel rate is also contained in the Negotiated Rate Agreement. SENA requests that either Section 7(d) be revised to specifically exclude refunds for over-collections of fuel, or add tariff language that clarifies ETC Tiger shall refund to a Negotiated Rate Shipper any amounts/volumes received by the pipeline from the Shipper for fuel and lost and unaccounted for gas that exceed the just and reasonable fuel and lost and unaccounted for rates approved by the Commission after otherwise accounting for any fuel caps in the Negotiated Rate Agreement.

62. ETC Tiger acknowledges SENA's concern regarding the potential for Section 7(d) to be construed inappropriately to limit fuel recovery adjustments under a negotiated rate agreement, even though that is not the intended effect. Therefore, ETC Tiger states it is amenable to adding the following sentence to the end of Section 7(d):

Except as otherwise expressly set forth in a negotiated rate agreement, the immediately preceding sentence is not intended to limit, nor shall it be deemed to limit, the applicability under Shipper's Agreement of periodic adjustments pursuant to Section 36 of ETC Tiger's General Terms and Conditions.

63. Second, in its December 8 answer, ETC Tiger states that it agrees to further clarify Section 7(h) of the form of service agreement for Rate Schedules FTS and ITS in

accordance with SENA's request. Specifically, ETC Tiger is willing to incorporate the following bolded wording into Section 7(h):

Except as provided for in Section 25 of the General Terms and Conditions, no other assignment of the Agreement nor of any of the individual rights and obligations hereunder by Shipper shall be effective as to Tiger without the prior express written consent of

64. ETC Tiger notes, as highlighted by SENA in conjunction with the other revisions to Section 7(h) in the ETC Tiger's October 16 answer, this language appropriately clarifies the terms of Section 7(h) of the form of service agreement for Rate Schedules FTS and ITS by ensuring consistency with the generic rights of all shippers under the general terms and conditions of ETC Tiger's tariff.

65. We will accept these revisions as reasonable and direct ETC Tiger to revise its *pro forma* tariff accordingly.

Miscellaneous Tariff Changes

66. ETC Tiger also submitted the following proposed *pro forma* tariff revisions in its October 16 answer, as supplemented in its December 8 answer. SENA states that it generally agrees with the proposed *pro forma* tariff revisions as discussed below. We will accept these revisions as reasonable.

67. Rate Schedule FTS – ETC Tiger proposes to revise Section 5.2 to clarify the applicability of Booster Compression Fuel to provide that ETC Tiger shall individually identify the points, if any, to which Booster Compression Fuel applies and that any such Booster Compression Fuel would only be implemented by ETC Tiger pursuant to the appropriate filings under the NGA for authorization to implement such Booster Compression Fuel.⁴⁴ SENA reserves all rights to protest any future filings by ETC Tiger for authorization to charge specific Booster Compression charges at specific points.

68. Rate Schedule PALS – ETC Tiger proposes to revise Section 7 to clarify that return of gas parked or loaned shall be at the same point where it was delivered, unless ETC Tiger and the PALS shipper agree on a different point for the return of such gas, in which case the PALS shipper must contract separately for any associated transportation on the ETC Tiger Pipeline to the point where such gas is to be returned.⁴⁵

⁴⁴ See revised *pro forma* Original Sheet No. 26.

⁴⁵ See revised *pro forma* Original Sheet No. 52. ETC Tiger also proposes conforming clarifications on revised *pro forma* Original Sheet No. 41, Rate Schedule PALS, Section 2.2(a)(1)-(2); *pro forma* Original Sheet No. 47, Rate Schedule PALS,

69. General Terms & Conditions (GT&C)

- GT&C Sections 1.14 (Delivery Point) and 1.38 (Receipt Point) – ETC Tiger is proposing to revise the definition of "Delivery Point" and the definition of "Receipt Point" to clarify that pooling points qualify under each definition, subject to the limitations applicable to pooling points under the tariff, as reflected on revised *pro forma* Sheet Nos. 104 and 109, respectively.⁴⁶
- GT&C Section 1.20 (Fuel Gas) - ETC Tiger proposes to revise the definition of "Fuel Gas" to state that such term "means the thermal equivalent of that quantity of Gas actually used by ETC Tiger to effect the transportation of Gas hereunder from the Receipt Points to the Delivery Points."⁴⁷
- GT&C Section 1.44 (Lost and Unaccounted for Gas) – On *pro forma* Original Sheet No. 124, ETC Tiger proposes to revise the definition of "Lost and Unaccounted for Gas" to delete the reference to *force majeure*. ETC Tiger states this proposed revision is meant to clarify that gas lost as a result of *force majeure* may not in all cases be recoverable as Lost and Unaccounted for Gas under the Commission's rules and regulations in effect at any given time during operation of the Tiger Pipeline.⁴⁸ SENA agrees with ETC Tiger's proposed tariff revision to delete the reference to "Gas Lost as a result of an event of *Force Majeure*" but

Section 3.3(c); *pro forma* Original Sheet No. 306, form of service agreement for Rate Schedule PALS, Section 9(i); *pro forma* Original Sheet No. 307, form of service agreement for Rate Schedule PALS, Section 9(ii).

⁴⁶See revised *pro forma* Original Sheet Nos. 104 and 109. ETC Tiger also proposes conforming clarifications on revised *pro forma* Original Sheet No. 146, GT&C Section 6.12(g); *pro forma* Original Sheet No. 306, form of service agreement for Rate Schedule PALS, Section 9(i); *pro forma* Original Sheet No. 307, form of service agreement for Rate Schedule PALS, Section 9(ii), including clarification on revised *pro forma* Original Sheet No. 146 of the location of the pooling point at the compressor station in Bienville Parish, Louisiana, for purposes of segmentation (i.e., at the suction side of the compressor station), as set forth in GT &C Section 6.12(g).

⁴⁷ See revised *pro forma* Original Sheet No. 106.

⁴⁸ ETC Tiger states it reserves the right to file for the inclusion of gas lost as a result of *force majeure* in Lost and Unaccounted for Gas, based on the Commission's rules and regulations at the time of such filing and the facts and circumstances regarding such gas loss.

notes that this deletion does not prevent the pipeline from filing in the future to seek recovery of such *force majeure* gas and, therefore, retains its right to protest any such filing

- GT&C Section 2.3 (Scheduling of Service) - On revised *pro forma* Sheet No. 125, Tiger proposes to revise GT&C Section 2.3(a)(4) to clarify the scheduling priority for payback volumes in excess of a shipper's contract MDQ pursuant to GT&C Section 10.3, by expressly designating the priority for such payback volumes.

D. Precedent Agreements

70. The precedent agreements set forth ETC Tiger's agreements with the three categories of shippers supporting the project, i.e., Foundation Shippers, Anchor Shippers, and Standard Shippers. According to ETC Tiger, the precedent agreements are the result of extensive negotiations with major natural gas producers in a highly competitive and financially volatile environment. ETC Tiger notes that, as with any pipeline project that is linked directly to natural gas supply, but particularly in the case of a newly emerging production area, producers in the Haynesville Shale have sought the transportation service options that best match their expected production curves and economic forecasts and, at the same time, balance their long-term commercial interests against today's significant near-term economic demands. ETC Tiger states that, despite facing one of the most challenging financial markets in recent history, it and its shippers were able to overcome major hurdles, as reflected by the fact that 100 percent of the capacity in the Tiger Project is committed under long-term agreements.

71. Tiger states the precedent agreements: (1) contain provisions that address the particular circumstances and requirements of the shippers, and provide the contractual incentives that were necessary for each shipper to enter a binding commitment to the Tiger Project; (2) the provisions do not define or affect the nature of service under Tiger's tariff; and, (3) for the most part, the provisions of each precedent agreement define the applicable negotiated rates, set forth standard contractual rights and obligations of the parties under the precedent agreement itself, and spell out certain shipper requirements (e.g., termination rights and liquidated damages) that will be eliminated prior to the in-service date of the Tiger Pipeline,⁴⁹ consistent with Commission policy and

⁴⁹ For example, certain shippers required limited MDQ reduction or expansion rights prior to the in-service date of the Tiger Pipeline to ensure that they could execute binding precedent agreements at a time when their production profiles were not yet fully identified.

precedent.⁵⁰ Tiger states that none of the provisions in the precedent agreements affects the actual terms or quality of service on the Tiger Pipeline and, accordingly, no provision of any precedent agreement is unduly discriminatory.⁵¹ Tiger identifies certain provisions from the precedent agreements that, subject to Commission approval, will be reflected in the initial shippers' FTS Agreements to be effective for various periods after the in-service date of the Tiger Pipeline.⁵²

72. Fuel Caps. The Foundation Shipper's and Anchor Shippers' precedent agreements establish a cap on the fuel and lost and unaccounted for gas that may be recovered from those initial shippers. Tiger states the cap represents a negotiated fuel arrangement, which is permissible under Commission policy.⁵³ Tiger also states that it will calculate fuel and lost and unaccounted for gas percentages on the assumption that fuel and lost and unaccounted for gas recovery is achieved from all shippers; and, therefore, no other shipper will be subsidizing these negotiated rate arrangements.

73. Rights to Available In-Service Capacity. For a period of three years after the initial in-service date of the Tiger Pipeline, the Foundation Shipper has the right to acquire available unsubscribed firm capacity on Tiger's system, except for capacity created through any expansion of Tiger's initial system, for a minimum term coincident with the then-remaining primary term of its existing firm transportation service agreement at the negotiated rates provided for in such agreement. To exercise this right,

⁵⁰ *Citing Natural Gas Pipeline Co. of America*, Docket No. RP99-176-125, Unpublished Letter Orders dated March 30, 2006 & March 23, 2007 (accepting that provisions that no longer have effect after the in-service date are not material deviations from the tariff).

⁵¹ *Citing, e.g., CenterPoint Energy Gas Transmission Co.*, 104 FERC ¶ 61,280, at P 7 (2003) (permitting non-conforming material deviation reflecting unique status of shipper) (*citing Tennessee Gas Pipeline Co.*, 97 FERC ¶ 61,225, at 62,028 (2001)); *ANR Pipeline Co.*, 97 FERC ¶ 61,223, at P 8-9 (2001) (permitting pipelines to negotiate non-conforming rates so long as the shipper has the option of choosing recourse service from the pipeline). *See also Gulfstream Natural Gas System L.L.C.*, 100 FERC ¶ 61,036, at P 15 (2002) (finding that there are permissible material deviations that do not entail a risk of undue discrimination).

⁵² In accordance with Commission policy, Tiger will file its FTS Agreements with the initial shippers along with all non-conforming provisions related thereto, and the initial shippers' negotiated rate agreements, prior to commencement of service.

⁵³ *See, e.g., Florida Gas Transmission Co.*, 93 FERC ¶ 61,203 (2000), *citing Noram Gas Transmission*, 77 FERC ¶ 61,011, at 61,035 (1996).

the Foundation Shipper must submit a request for the desired capacity in accordance with the provisions of Tiger's tariff, which remains subject to any higher value request that is received by Tiger. If two or more bids of equal value are pending for such available firm capacity, and one of such bids is submitted by the Foundation Shipper and meets the applicable requirements set forth in the Foundation Shipper's precedent agreement, Tiger will award the subject capacity on a pro rata basis. This was an integral part of the arrangement under which the Foundation Shipper agreed to provide contractual support for construction of the Tiger Project, and it preserves the rights of any other parties who seek to obtain available unsubscribed capacity. Accordingly, such provision is a reasonable accommodation to address the future capacity needs of Foundation Shippers.

74. Expansion Rights – Future Capacity Provision. The Foundation Shipper has a one-time right, exercisable during the first thirty-six months after ETC Tiger's acceptance of a certificate from the Commission for the Tiger Pipeline, to cause ETC Tiger, subject to certain terms and conditions, to increase the design capacity of the Tiger Pipeline by 400,000 Dth/d, up to a total system capacity of 2,400,000 Dth/d. Because the Foundation Shipper provided the initial contractual support for construction of the ETC Tiger Pipeline, ETC Tiger submits that it is reasonable for the Foundation Shipper to also have this relatively limited provision to address its future capacity needs by acquiring expansion capacity. This provision is an integral part of the arrangement under which the Foundation Shipper agreed to provide contractual support for construction of the Tiger Pipeline.

75. One Anchor Shipper also negotiated for a similar right, for the limited period between June 1, 2010 to March 20, 2011, to subscribe for supplemental expansion capacity up to Tiger Pipeline's initial design capacity, should the initial design capacity be less than 2,000,000 Dth/d. Because ETC Tiger's application in this docket proposes an initial design capacity of 2,000,000 Dth/d this particular right currently has no effect. ETC Tiger states that this provision was an integral part of the arrangements under which the Anchor Shipper agreed to execute a precedent agreement during the earliest stages of the Tiger Pipeline project's development, at a time when the Foundation Shipper was the only other shipper to have committed to the project.

76. ETC Tiger submits that these expansion rights should be accepted as non-conforming provisions, and that the Commission has accepted similar provisions for shippers that offered critical contractual support in the development of the underlying pipeline project.⁵⁴

⁵⁴ See, e.g., *Midcontinent Express Pipeline, LLC*, 124 FERC ¶ 61,089, at P 75-82, *order amending certificate*, 126 FERC ¶ 61,271 (2009).

Commission Response

77. We will approve the non-conforming provisions contained in ETC Tiger's precedent agreements. We have accepted deviations from a pipeline's form of service agreements that reflect unique circumstances involved with the construction of new infrastructure because they provide the needed security to ensure that the project may be built.⁵⁵ Here ETC Tiger has adequately supported the need for each provision to secure the necessary financial commitments for construction of the project or has clearly stated how the provision will not affect the terms of service once the pipeline goes into service. One of these rights has no effect since the initial design capacity is not less than 2,000,000 Dth/d. Moreover, consistent with Commission policy, prior to giving effect to the other right (i.e., increasing its system capacity by up to 400,000 Dth/d at the request of the Foundation Shipper), ETC Tiger will need to provide other shippers with the ability to bid for and obtain additional capacity in a non-discriminatory manner through open season process. For these reasons, we find that the proposed non-conforming provisions are permissible in that they do not present a risk of undue discrimination and will not affect the operational conditions of providing service nor result in any customer receiving a different quality of service from that available to ETC Tiger's other customers.⁵⁶

78. When a contract deviates materially from the form of service agreement, the contract must be filed and made public.⁵⁷ We require disclosure of contracts with material deviations because the public disclosure of these agreements prevents undue discrimination through secret rates or terms. Accordingly, ETC Tiger must file not less than 60 days, or more than 90 days before the in-service date of the proposed facilities an executed copy of each non-conforming agreement reflecting the non-conforming language and a tariff sheet identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations. In addition, the Commission emphasizes that the above determination relates only to those items as described by ETC Tiger in its application and not to the entirety of the precedent agreements or the language contained in the precedent agreements.

⁵⁵ See, e.g., *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 78 (2006).

⁵⁶ See, e.g., *Gulf South Pipeline Co., L.P.*, 115 FERC ¶ 61,123 (2006); and *Gulf South Pipeline Co.*, 98 FERC ¶ 61,318, at 62,345 (2002).

⁵⁷ 18 C.F.R. § 154.1(d) (2009).

E. Allowance for Funds Used During Construction (AFUDC) Rate

79. ETC Tiger's proposal includes the capitalization of \$62.1 of allowance for funds used during construction (AFUDC), commencing when it filed its application. AFUDC is a component part of the cost of constructing a pipeline project. On December 15, 2009, the Commission convened a technical conference seeking input and comments on its then-current AFUDC policy. As a result of the technical conference proceeding, the Commission revised its AFUDC policy as described in *Southern Natural Gas Co. (Southern)* and *Florida Gas Transmission LLC (Florida Gas)*.⁵⁸ The Commission found it was unnecessary to establish a bright line for when a pipeline may begin to accrue AFUDC, but under the Commission's revised AFUDC policy, the Commission will require applicants seeking a certificate of public convenience and necessity for authorization to construct pipeline facilities to make a representation in their filing that AFUDC accruals included in the cost of the facilities are calculated in accordance with the Commission's rules and regulations pursuant to and consistent with the following conditions: (1) capital expenditures for the project have been incurred, and (2) activities that are necessary to get the construction project ready for its intended use are in progress.⁵⁹

80. ETC Tiger, a newly created company, proposes to calculate its AFUDC based on its proposed debt and equity capital structure. This approach is consistent with the accounting guidance we have given other newly created companies.⁶⁰ Consistent with Commission precedent, we will require ETC Tiger to capitalize the actual costs of borrowed and other funds for construction purposes not to exceed the amount of debt and equity AFUDC that would be capitalized based on the overall rate of return approved. This will ensure that the amounts of AFUDC are properly capitalized in this project consistent with the Commission's requirements for newly created companies approved in other cases.

81. We will allow ETC Tiger to include its proposed AFUDC, recalculated consistent with the requirements above, subject to ETC Tiger's filing a representation that the proposed AFUDC accruals comply with the requirements of our revised AFUDC

⁵⁸ 130 FERC ¶ 61,193 (2010) and 130 FERC ¶ 61,194 (2010), respectively.

⁵⁹ 130 FERC ¶ 61,193 at P 36.

⁶⁰ See, e.g., *Cheniere Creole Trail Pipeline, L.P.*, 115 FERC ¶ 61,331 (2006); *Port Arthur Pipeline, L.P.*, 115 FERC ¶ 61,344 (2006); *Golden Pass Pipeline, L.P.*, 112 FERC ¶ 61,041 (2005); *Southeast Supply Header, LLC* and *Southern Natural Gas Co.*, 119 FERC ¶ 61,153 (2007); *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224 (2009).

policy.⁶¹ Furthermore, if ETC Tiger determines that its proposed AFUDC accruals should be revised in light of our revised AFUDC policy conditions, it must revise all cost-of-service items dependant on Gas Plant in Service such as Income Taxes, Depreciation Expense, Return, and Interest Expense. ETC Tiger must then file its revised rates and work papers in sufficient time for the Commission to act on the revised rates prior to filing its tariff sheet to implement those rates.

IV. Environmental Analysis

82. Our staff began its review of the ETC Tiger Pipeline project on March 27, 2009, when the Director of the Office of Energy Projects issued a letter approving ETC Tiger's request to use the Commission's pre-filing procedures in Docket No. PF09-9-000. On May 15, 2009, the Commission issued a Notice of Intent to Prepare an Environmental Assessment (EA) for the Proposed ETC Tiger Pipeline Project and Request for Comments on Environmental Issues (NOI). The NOI was published in the *Federal Register*⁶² and mailed to 1,018 interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. Subsequent to the issuance of the NOI, our staff conducted three public scoping meetings in communities along the proposed pipeline route.⁶³

83. We received 19 comments in response to the NOI and 5 people offered comments at the scoping meetings. The majority of the comments expressed concerns about the construction impacts on property, the width of the right-of-way, and impacts on sensitive resources. All of the issues raised during the scoping period are addressed in the EA.

84. ETC Tiger proposes to overlap its temporary and permanent rights-of-way along portions of the route with the existing right-of-way of CenterPoint Gas Transmission Company's (CenterPoint) Line CP. CenterPoint requested that the Commission reduce ETC Tiger's proposed right-of-way width or require the construction right-of-way to be set back at least 25 feet from the centerline of Line CP so as not interfere with the operation of its pipeline. As discussed in section 1.8 of the EA, the collocation of facilities minimizes land use and other environmental impacts, and is encouraged. Such

⁶¹ See *Florida Gas*, 130 FERC ¶ 61,194 at P 24-29; *Southern*, 130 FERC ¶ 61,193 at P 36-40.

⁶² 74 FR 24839 (May 26, 2009).

⁶³ The public scoping meetings were held in Delhi and Jonesboro, Louisiana, and Carthage, Texas on June 8, 9, and 11, 2009, respectively.

collocation of facilities is not unusual and staff believes the construction and operation of adjacent projects can occur without impinging on existing property rights.

85. The Louisiana Department of Wildlife (LDWF) expressed concern about ETC Tiger's crossing of Saline Bayou, a state-listed Natural and Scenic River, and requested the opportunity to review and approve any crossing methods other than the proposed 5,100-foot-long horizontal directional drill. Section 2.2 of the EA discusses ETC Tiger's proposed crossing of Saline Bayou and concludes that it is appropriate for LDFW to be consulted regarding any alternative crossing method. Consequently, environmental condition 20 requires ETC Tiger to consult with the LDFW in the event the proposed horizontal directional drill is infeasible or fails.

86. The LDWF also requested that the pipeline be routed along the northern perimeter of a wetland reserve program (WRP) tract near MP 138 to avoid mature forested wetlands. As described in the EA, the National Resources Conservation Service (NRCS) manages WPR lands, and it has agreed to grant ETC Tiger an easement to cross the subject property. After evaluating the suggested alternative route, the EA concluded that the original route is environmentally preferable.

87. The LDWF and the Fish and Wildlife Service (FWS) expressed an interest in minimizing the long-term and cumulative impacts on forested wetlands, particularly in instances where multiple rights-of-way may occur. The EA analyzed ETC Tiger's proposed right-of-way widths in detail and concluded that the proposed right-of-way widths are justified for non-forested wetlands. However, because the impact on forested wetlands is long-term or permanent the EA concluded that ETC Tiger should limit the amount of new clearing in forested wetlands. Therefore, Environmental Condition No. 12 requires that ETC Tiger limit its construction right-of-way in forested wetlands to no more than 75 feet plus any overlap of existing permanent right-of-way.

88. The FWS and other commenters requested that the EA address direct and indirect impacts on five federally-listed species (earth fruit, pallid sturgeon, red-cockaded woodpecker, Louisiana black bear, and interior least tern) and one candidate species (Louisiana pine snake). As stated in section 2.3 of the EA, the staff determined that the project will result in either no effect, or is not likely to adversely affect, the federally listed species identified in the project area.

89. Potential impacts on migratory birds were also analyzed in the EA. The EA describes the benefits to migratory birds of minimizing forest fragmentation due to the amount of tree clearing associated with the project in hardwood, pine, and other upland natural communities. To address this issue, the EA recommended that ETC Tiger develop a Migratory Bird Conservation Plan in consultation with the FWS and limit its construction right-of-way width to 100 feet in non-harvested upland forests. These recommendations are included in this order as Environmental Condition Nos. 11 and 23.

90. The Commission staff issued the EA for public comment on January 26, 2009 for a 30-day comment period. We received comments on the EA from ETC Tiger, the Texas Park and Wildlife Department (TPWD), the FWS, and the LDWF.

91. In its comments, ETC Tiger stated that the EA incorrectly identified the location of the EnCana Meter and Regulator (M&R) Station, which resulted in an inaccurate description of the aesthetic conditions of the M&R site. As a result, ETC Tiger requested that staff delete the requirement for the development of a visual screening plan for the EnCana M&R. The EA discussed the site identified for the EnCana M&R Station in ETC Tiger's application; however, ETC Tiger subsequently moved the M&R station. Based on our analysis of the new location, we agree that the site identified by ETC Tiger in its comments does not affect any sensitive resources, and therefore Environmental Condition No. 24 to this order requires a visual screening plan for only the Trunkline M&R station located at MP 151.3.

92. ETC Tiger also requested modification of environmental recommendation 11 of the EA, which would limit the width of right-of-way in upland forest other than pine plantations to 100 feet. ETC Tiger asks that the Commission consider expanding the type of forest lands exempt from the limited width and exclude overlapped rights-of-way from the same limit. We agree to clarify Environmental Condition No. 11 of this order to include upland forest lands where timber is actively cultivated/harvested as a crop, to the lands excluded from the 100 foot limit. We believe our change to ETC Tiger's suggested modification is necessary to distinguish upland forest lands that are actively cultivated/harvested as a commercial business, versus forest lands where individual landowners may have agreed with ETC Tiger to have their trees cut. Environmental Condition No. 11 now reflects this change.

93. However, we do not agree with ETC Tiger's request to use construction rights-of-way greater than 100 feet wide in non-harvested upland forests by excluding overlap of existing easements from the calculation. As stated in the EA, the restriction of right-of-way width minimizes the amount of tree clearing associated with this project in hardwood, pine and other upland natural communities. In these areas, we believe the restriction of the right-of-way width is necessary to minimize the cumulative impact of multiple rights-of-way, particularly as this pipeline will be the third pipeline in the corridor.

94. ETC Tiger's comments on the EA included several requests for site-specific variances for those locations where it believes larger rights-of-way and additional workspaces are necessary to complete construction activities in forested wetlands. We will not address those requests here since it is common practice for site-specific variances to be evaluated and considered during the post-authorization review of ETC Tiger's Implementation Plan (*see* Environmental Condition No. 6).

95. In its comments on the EA, the TPWD noted that the EA should be updated to reflect the placement of 15 freshwater mussel species onto the state threatened species list, 4 of which may occur within the project area. The TPWD commented that potentially impacted waterways within the range of state-threatened mussels should be assessed for rare mussel habitat, and if rare mussels or their habitat are found, impacts including direct disturbance of habitat and degradation of water quality should be avoided to the extent feasible. In section 2.3 of the EA the project's impacts on all four recently state-listed mussels in the area were evaluated and staff determined that construction and operation of the project will not significantly impact these species and their habitats. We believe no additional mitigation is warranted.

96. The TPWD also recommended the use of best management practices in riparian areas to minimize impacts on fish and mussel species. The EA discusses ETC Tiger's proposal to implement its Plan and Procedures, which are a set of best management practices.

97. Finally, the TPWD noted that under the Texas Parks and Wildlife Code, Chapter 86, a permit is required from TPWD for "disturbance or taking" of streambed materials in state-owned streams if the stream is perennial, or is more than 30 feet wide between the banks. As stated in the EA, ETC Tiger is required to obtain applicable authorizations required under federal law prior to construction of its project in each state.

98. The FWS recommended that visual markers be installed on overhead ground wires associated with a non-jurisdictional electric power line described in section 1.7 of the EA. The EA discussed the four-factor procedure for determining whether non-jurisdictional facilities related to a jurisdictional project to warrant environmental analysis by the Commission. Because the EA found that the electric power line is not subject to the Commission's jurisdiction, we have no authority to require construction techniques or mitigation.

99. The FWS noted a discrepancy in the EA regarding right-of-way widths through wetlands, and recommended that ETC Tiger be limited to a construction right-of-way width of 75 feet in all wetlands and 100 feet in all uplands. We note that the conclusion statement in Section 2.2.4.4 of the EA is incorrect; however, the staff's position is correctly stated elsewhere in the EA and in Environmental Condition No. 12 in this order. We are requiring that ETC Tiger limit the width of the construction right-of-way in forested wetlands to no more than 75 feet, plus any overlap of existing permanent right-of-way. We believe ETC Tiger's authorized right-of-way widths, as modified by the conditions of this order, have been adequately justified and are sufficient to install the ETC Tiger pipeline.

100. The FWS asked for clarification of ETC Tiger's approved permanent right-of-way width in wetlands. As described in the EA and included as Environmental Condition No. 13 of this order, we will limit ETC Tiger's use of eminent domain authority such that

it can only acquire a 50-foot-wide permanent right-of-way. During post-construction maintenance, and in accordance with its Procedures, ETC Tiger will not conduct vegetation maintenance over the full permanent right-of-way in wetlands. Such maintenance is limited to a corridor centered on the pipeline of up to 10-feet wide that may be maintained in an herbaceous state. In addition, trees within 15 feet of the pipeline that are greater than 15 feet in height may be selectively cut and removed from the permanent right-of-way.

101. In its comments, the FWS stated that the project will result in unavoidable migratory bird habitat losses even after all measures to prevent and minimize impacts are implemented. FWS recommends unavoidable impacts should be compensated via habitat compensation. Environmental Condition No. 23 requires ETC Tiger to develop a migratory bird conservation plan in consultation with FWS. This plan will address impacts on migratory birds of special concern and include measures to prevent, minimize or mitigate such impacts. We do not believe that the level of anticipated impact on migratory birds requires us to direct the content or specific measures of the conservation plan. Also, Environmental Condition No. 23 requires that the conservation plan be reviewed by the FWS so the agency can assist in the development of appropriate conservation measures.

102. The FWS reiterated its previous concurrence with threatened and endangered species determinations in the EA. Because consultation under section 7 of the Endangered Species Act has been completed, environmental recommendation 23 of the EA has been omitted from the environmental conditions included in this order.

103. The LDWF stated that it has worked closely with the applicant to see that impacts on fish and wildlife resources are avoided or minimized to the greatest extent practicable. The LDWF also has determined that the applicant should develop a mitigation plan designed to offset impacts on fish and wildlife resources and that the mitigation plan should be approved by the resource and regulatory agencies and incorporated in the Commission's authorization. We believe the EA adequately described potential impacts on fish and wildlife resources and evaluated ETC Tiger's construction, mitigation, and restoration measures. The EA found that impacts on fish and wildlife resources will be minimized if the project is constructed as described. We concur and believe that additional conditions regarding these resources are not warranted at this time.

104. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with ETC Tiger's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

105. 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.⁶⁴

V. Blanket Certificates

106. ETC Tiger requests issuance of a Part 284, subpart G, blanket certificate to provide open-access transportation services. We will issue a Part 284 blanket certificate to ETC Tiger subject to the conditions imposed in this order.

107. ETC Tiger also requests issuance of a Part 157, subpart F, blanket certificate to construct and operate certain facilities without filing a case-specific application for certificate under section 7(c) of the NGA. We will issue a blanket construction certificate to ETC Tiger.

VI. Conclusion

108. For the reasons set forth herein, and subject to the conditions set forth below, the Commission finds that ETC Tiger's Tiger Pipeline project is required by the public convenience and necessity under section 7(c) of the NGA. Thus, we will grant the requested authorizations to ETC Tiger.

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued in Docket No. CP09-460-000, authorizing ETC Tiger to construct and operate the Tiger Pipeline facilities, as described and conditioned herein, and as more fully described in the applications.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on the following:

⁶⁴ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

- (1) ETC Tiger completing the authorized construction of the proposed facilities and making them available for service within twelve months of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations;
 - (2) ETC Tiger's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
 - (3) ETC Tiger's adherence to the accounting requirements discussed in the body of this order;
 - (4) ETC Tiger's compliance with the environmental conditions listed in the appendix to this order.
- (C) A blanket construction certificate is issued to ETC Tiger under subpart F of Part 157.
- (D) A blanket transportation certificate is issued to ETC Tiger under subpart G of Part 284.
- (E) ETC Tiger is directed to execute firm contracts equal to the level of service in accordance to the terms of service represented in its precedent agreements prior to the commencement of construction.
- (F) ETC Tiger's initial rates and tariff are approved, as conditioned and modified in the body of this order.
- (G) ETC Tiger must file actual tariff sheets that comply with the requirements contained in the body of this order no less than 60 days and no more than 90 days prior to the commencement of interstate service.
- (H) ETC Tiger is directed to file its negotiated rate agreements or a tariff sheet describing the essential elements of the agreement no less than 60 days or no more than 90 days prior to the commencement of interstate service.
- (I) ETC Tiger is directed to file an executed copy of each non-conforming agreement reflecting the non-conforming language and a tariff sheet identifying these agreements as non-conforming agreements at least 60 days and no more than 90 days prior to the commencement of interstate service.
- (J) Within three years after its in-service date, as discussed herein, ETC Tiger must make a filing to justify its existing cost-based firm and interruptible recourse rates.

In the alternative, in lieu of such filing, Tiger may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

(K) ETC Tiger shall file a representation that its proposed AFUDC accruals for the project comply with the revised policy conditions. In the alternative, if ETC Tiger determines that its proposed AFUDC accruals should be revised in light of the revised policy conditions, it shall revise all cost-of-service items dependent on upon Gas Plant in Service, such as Income Tax, Depreciation Expense, Return, and Interest Expenses, and file its revised rates and workpapers in sufficient time for the Commission to act on the revised rates prior to filing its tariff sheets to implement those rates.

(L) ETC Tiger and its representations made with respect to AFUDC accruals are subject to an audit to determine whether they are in compliance with the revised policy and related Commission rules and regulations.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions for ETC Tiger's Tiger Pipeline Project

1. ETC Tiger shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff information requests) and as identified in the EA, unless modified by this Order. ETC Tiger 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 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:
 - 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 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**, ETC Tiger shall file an affirmative statement 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 EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, ETC Tiger shall file 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.

ETC Tiger'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. ETC Tiger'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. ETC Tiger shall file 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, 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, 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 **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by ETC Tiger's Upland Erosion Control, Revegetation, and Maintenance Plan and/or 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:

- 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 the Certificate and before construction** begins, ETC Tiger shall file an Implementation Plan for review and written approval by the Director of OEP. ETC Tiger must file revisions to the plan as schedules change. The plan shall identify:
 - a. how ETC Tiger will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by this Order;
 - b. how ETC Tiger 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 location and dates of the environmental compliance training and instructions ETC Tiger 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 ETC Tiger's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) ETC Tiger will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - ii. the start of construction; and
 - iv. the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, ETC Tiger shall file updated status reports on a **weekly** basis **until all 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:
- a. an update on ETC Tiger's efforts to obtain the necessary federal authorizations;
 - b. the 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;
 - 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 may 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 ETC Tiger from other federal, state, or local permitting agencies concerning instances of noncompliance, and ETC Tiger's response.
8. ETC Tiger must receive written authorization from the Director of OEP **before placing the Project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the Project are proceeding satisfactorily.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of project facilities in each state**, ETC Tiger shall file documentation that it has received all authorizations required under federal law (or evidence of waiver thereof) in each respective state.
10. **Within 30 days of placing the authorized facilities in service**, ETC Tiger 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 which of the Certificate conditions ETC Tiger 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 noncompliance.
11. ETC Tiger shall limit the construction right-of-way to no more than 100 feet in width in upland forest other than where trees are actively cultivated/harvested as a crop, unless it provides site-specific justification. Requests for additional workspace shall be filed for the review and written approval from the Director of OEP before use.
12. In forested wetlands, ETC Tiger shall limit the width of the construction right-of-way to no more than 75 feet, plus any overlap of existing permanent right-of-way, unless it provides site-specific justification. Requests for additional right-of-way in wetlands should be filed for the review and written approval from the Director of OEP before use. This does not supersede ETC Tiger's proposal for a 75-foot-wide construction right-of-way in cypress/tupelo wetlands.
13. ETC Tiger shall not exercise the eminent domain authority granted under section 7(h) of the NGA to acquire a permanent pipeline right-of-way exceeding 50 feet in width.

14. ETC Tiger shall develop a hazardous and contaminated materials management plan that identifies the procedures that would be implemented during construction to identify, test, treat, and dispose of such materials in accordance with the appropriate state and federal regulations. This plan shall be filed **prior to construction**.
15. ETC Tiger shall consult with the COE to determine whether it needs to develop a grazing deferment plan to minimize grazing disturbance of revegetation efforts.
16. ETC Tiger shall file a report **within 30 days of placing its pipeline facilities in service**, identifying all private or domestic water wells/systems damaged by construction and how they were repaired. The report shall include a discussion of any complaints concerning the well yield or quality and how each problem was resolved
17. ETC Tiger shall not use soil to construct or stabilize equipment bridges to maintain unrestricted flow and to prevent soil from entering waterbodies
18. Except for blasting and other rock breaking measures, ETC Tiger shall complete instream construction activities (including trenching, pipe installation, backfill, and restoration of the streambed contours) within 24 hours for open cut crossings of minor waterbodies. Streambanks and unconsolidated streambeds may require additional restoration after this period.
19. ETC Tiger shall **not begin an open-cut crossing** of any of the waterbodies listed in Appendix G to be crossed using HDD **until** it files an alternate crossing plan for review and written approval by the Director of OEP. The alternate crossing plan shall include site-specific drawings identifying all areas that would be disturbed by construction using the alternate crossing method. ETC Tiger shall file the alternate crossing plan concurrent with submission of the appropriate state and federal applications required to construct using this plan.
20. If preliminary testing indicates that a successful HDD crossing of the Saline Bayou is unlikely or if the initial drill attempt fails, ETC Tiger shall consult with the LDWF prior to implementing the Saline Bayou HDD Contingency Plan. ETC Tiger shall file the results of these consultations **prior to construction of the crossing of the Saline Bayou**.
21. **Prior to construction**, ETC Tiger shall file its final wetland mitigation plan developed in consultation with the COE, FWS, LDWF, TPWD, and other applicable agencies.

22. **Prior to construction**, ETC Tiger shall consult with the TPWD and the NRCS in Texas to develop a revised seed mix that meets the approval of both agencies. ETC Tiger shall file the revised seed mix for review and written approval by the Director of OEP.
23. **Prior to construction**, ETC Tiger shall file a Migratory Bird Conservation Plan developed in consultation with the FWS and provide for their review. The plan shall consider the impacts of forest fragmentation on migratory birds of special concern and include measures to prevent, minimize, or mitigate such impacts.
24. ETC Tiger shall develop a plan for crossing the property at MP 17.3 in consultation with the landowner that minimizes impacts on existing ginseng crops. ETC Tiger shall file this plan for review and approval by the Director of OEP **prior to construction**.
25. **Prior to construction on any property where the construction work area is within 10 feet of the residence**, ETC Tiger shall file evidence that the landowner is in concurrence with a site-specific construction plan that includes:
 - a. a description of construction techniques to be used on the property;
 - b. a dimensioned site plan that shows:
 - i. the location of the residence in relation to the new pipeline and, where appropriate, the existing pipelines;
 - ii. the edge of the construction work area;
 - iii. the edge of the new permanent right-of-way;
 - iv. mature trees and landscaping within the edge of the construction work area; and
 - v. other nearby residences, structures, and roads; and
 - c. a description of how ETC Tiger will ensure the trench is not excavated until the pipe is ready for installation and the trench is backfilled immediately after pipe installation.
26. ETC Tiger shall develop a visual screening plan for the Trunkline M/R Station at MP 151.3 that addresses shape, color, lighting, motion sensors, or ground cover at these locations, for review and written approval by the Director of OEP **prior to construction**.
27. ETC Tiger shall file noise surveys **no later than 60 days** after placing each new compressor station (Carthage, Cannisnia, Bienville, and Chatham) in service. If the noise attributable to the operation of all of the equipment at any compressor station at full load exceeds an Ldn of 55 dBA at any nearby NSAs, ETC Tiger shall install additional noise controls to meet the level **within 1 year of the in-service date**. ETC Tiger shall confirm compliance with the above requirement by

filing a second noise survey **no later than 60 days** after it installs the additional noise controls.