143 FERC ¶ 61,171
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark

Discovery Gas Transmission LLC Docket No. CP12-516-000

ORDER ISSUING CERTIFICATE

(Issued May 24, 2013)

1. On September 7, 2012, Discovery Gas Transmission LLC (Discovery) filed an application under section 7(c) of the Natural Gas Act (NGA)[1] and Part 157 and section 2.55[2] of the Commission's regulations[3] for a certificate of public convenience and necessity authorizing it to construct and operate a new junction platform in South Timbalier Block 283 offshore Louisiana in the Gulf of Mexico, new pipeline facilities that will extend Discovery's existing system to the new platform, an emergency outage lateral pipeline, and other appurtenant facilities. Discovery further requested approval of its proposed initial incremental recourse rate, including authority for levelization and related regulatory asset/liability accounting, and approval of its *pro forma* tariff changes proposed in Exhibit P of the application.

2. For the reasons discussed below, the Commission grants Discovery's requested authorizations subject to the conditions described below.

## I. Background

3. Discovery Gas Transmission LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Houston, Texas. In 1997, Discovery commenced jurisdictional natural gas transportation service for existing and proposed offshore energy development projects in the Gulf of

[1] 15 U.S.C. § 717f(c) (2006).

[2] 18 C.F.R. § 2.55 (2012).

[3] 18 C.F.R. Part 157, Subpart A (2012).

Mexico.[4] Discovery's primary mission is to aggregate shelf and deepwater natural gas offshore Louisiana in the Gulf of Mexico and redeliver the gas through several interconnects with the onshore natural gas pipeline grid.

4. As currently configured, Discovery's 30-inch system originates from an offshore producer-owned platform located in Ewing Bank Block 873 (Lobster Platform). Discovery's system comprises three primary parts:

1) a 30-inch, 105-mile mainline transportation facility originating at the Lobster Platform and extending onshore to a processing plant at Larose, Louisiana, owned and operated by an affiliate of Discovery, Discovery Producer Services, LLC, approximately 33 miles of onshore 30-inch pipeline located in St. Charles, Lafourche, and Terrebonne Parishes, Louisiana,[5] and certain onshore pipeline facilities providing interconnections with Gulf South Pipeline Company L.P., Bridgeline Holdings, LLC, and Texas Eastern Transmission, LP;[6]

2) other pipelines and leased capacity that connect the mainline facilities to interconnections with Columbia Gulf Transmission Company, Tennessee Gas Pipeline Company, L.L.C., and Transcontinental Gas Pipe Line Company, LLC;[7] and

3) four offshore gathering laterals extending from gas production platforms to the mainline facilities, and an 8-inch onshore gathering lateral in Lafourche Parish, Louisiana.

5. The Lobster Platform currently serves as the launching point for Discovery's offshore pigging operations, which are critical to system safety and reliability given that Discovery is a dual-phase pipeline.[8] Since Discovery's inception in 1997, the Lobster

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[4] *Discovery Gas Transmission LLC*, 78 FERC ¶ 61,194 (1997).

[5] Discovery purchased the onshore 30-inch mainline and 8-inch gathering line on May 1, 2012, under its subpart F blanket certificate.

[6] The mainline facilities also include leased capacity in a 20-inch gathering lateral owned and operated by Discovery Producer Services, LLC, which receives gas from Texas Eastern for delivery to Discovery's mainline. *See Discovery Producer Services LLC et al.*, 118 FERC ¶ 61,236 (2007).

[7] *See Discovery Gas Transmission LLC*, 128 FERC ¶ 61,209 (2009).

[8] Dual-phase pipelines transport a liquid in addition to natural gas.

Platform has been the sole location for pig launch operations to sweep liquids from the offshore portion to the onshore portion of its mainline facilities.

## II. **Proposal**

6. Discovery proposes to construct a new unmanned four-pile junction platform under section 2.55 of the Commission's regulations and, under section 7 of the NGA, it proposes to construct a 9.5-mile mainline extension pipeline, a 10-mile emergency outlet lateral, and related appurtenant facilities. All of the proposed facilities will be located offshore in federal waters of the Gulf of Mexico. Discovery states that it will construct the facilities in compliance with all applicable federal regulations, including those administered by the Bureau of Safety and Environmental Enforcement of the U. S. Department of the Interior (BSEE). On May 10, 2013, Discovery informed the Commission that it has obtained BSEE approval for the proposed construction and began construction upon receipt of the BSEE approvals, failing to wait for the Commission's approval. Also according to its letter, Discovery recognized its error quickly and took steps to promptly and safely halt construction activities.[9]

7. Discovery states that the project will accomplish two main objectives. First, the proposed facilities will enable Discovery to receive newly developed sources of deepwater natural gas from the Keathley Canyon Area in the central Gulf of Mexico for redelivery to the onshore national pipeline grid. This will give the capacity to provide approximately 405,000 dekatherms (Dth) per day of firm transportation service. Second, the facilities will allow Discovery to launch pigging operations critical for it to provide reliable service through its existing mainline system and the new facilities. Discovery states that over the last two to three years pigging its offshore mainline has been challenging due to the low level of production being received into Discovery's system at the Lobster Platform. The proposed facilities, particularly the new 9.5-mile mainline extension, will address this problem by providing the additional throughput necessary for Discovery to effectively operate its pigging facilities.

8. Discovery states that it has executed life-of-lease transportation service agreements with six shippers[10] under its FT-2 Rate Schedule. As required under the FT-2 Rate Schedule, each of the shippers committed quantities of natural gas for the life of

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[9] Contrary to the requirements of section 7(c) of the NGA, Discovery commenced construction prior to Commission approval. Discovery is reminded that it must comply with applicable Commission requirements or face possible enforcement sanctions.

[10] The shippers are Anadarko US Offshore Corp., Apache Deepwater LLC, Eni Petroleum US LLC, ExxonMobil Corp., Petrobras America Inc., and Plains Offshore Operations Inc.

their specified leases for transportation on Discovery's system. The total quantity of gas committed by these shippers is approximately 600 billion cubic feet. In addition to using the proposed pipeline facilities, the project shippers will subscribe to an initial 404,638 Dth per day of firm transportation service on Discovery's existing mainline facilities to transport the new gas supplies to market. During the first ten years of operation, Discovery expects that the average daily deliveries into its system from the Keathley Canyon area will be approximately 170,000 Dth per day.

9. Discovery states that the project will provide firm market access for new deepwater sources of natural gas discovered and developed in the southeast quadrant of the Keathley Canyon protraction area, a frontier area for oil and gas exploration and development. Discovery states that transportation infrastructure will need to be developed concurrently with the production infrastructure for this area to reach its full potential. Discovery notes that its proposal represents the first jurisdictional infrastructure development associated with this potentially important future source of energy.

### A. Proposed Facilities

10. The new four-pile junction platform will be located in South Timbalier Block 283, in approximately 350 feet of water, and approximately nine miles north-northwest of Discovery's current origin point at the Lobster Platform, a producer-owned platform located in Ewing Bank Block 873 in 800 feet of water. The platform will serve as the new upstream origin point of Discovery's system and receive gas from an upstream gathering system. It will also serve as the new launching point for Discovery to pig both its new mainline extension and existing offshore mainline facilities and as the origin point for the emergency outlet lateral.[11]

11. Discovery also proposes to construct a new 30-inch diameter, 9.5-mile long pipeline extending from the junction platform to a subsea interconnect with Discovery's existing 30-inch mainline in Ewing Bank Block 873 (Mainline Extension). Discovery proposes to use 30-inch pipe for the Mainline Extension to enable the junction platform to act as Discovery's new base for pigging operations.

12. Finally, Discovery proposes to construct a 12-inch diameter, 10-mile long emergency outlet lateral pipeline (Emergency Outlet Lateral) connecting subsea to

[11] Discovery states that it will construct all parts of the platform including the boat landing, hydraulic crane, power and communications systems, risers, pig receivers, pig launcher, other appurtenant equipment, and the junction platform itself, as auxiliary installations under section 2.55 of the Commission's regulations. (18 C.F.R. § 2.55 (2012)).

Sea Robin Pipeline Company's (Sea Robin) 16-inch gathering lateral pipeline in South Timbalier Block 280.[12] This lateral will provide an emergency outlet for transporting 150 MMcf/d natural gas and retrograde condensate should Discovery's mainline facilities be out of service or unable to transport due to a *force majeure* or other outage event. Absent such circumstances, Discovery states, the emergency outlet lateral would remain inactive.

13. Discovery states that the inclusion of the Emergency Outlet Lateral was an essential requirement of the project's shippers to ensure continued gas flow in the event of a mainline outage.[13] Discovery determined that of the two potential pipelines in the area, only the interconnection with Sea Robin was commercially and operationally feasible, and best met the shippers' needs for an emergency outlet. Discovery is in the process of finalizing an interconnect agreement with Sea Robin. Discovery and Sea Robin both understand that deliveries from Discovery to Sea Robin through the emergency interconnect will be restricted to emergency-only services.

### B. Rates

14. Discovery estimates that its proposed project will cost $126,223,796. Discovery proposes to recover the project costs through an incremental rate, using a levelized rate design (based on adjustments to depreciation and negative salvage) over a 40-year period corresponding to the expected useful life of the new junction platform. Discovery will assess the incremental rate on gas transportation transactions that use the project facilities, regardless of the underlying rate schedule. Discovery is not proposing any new rate schedules or changes to existing rates in connection with this proposal.

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[12] The Sea Robin 16-inch pipeline is functionalized as gathering. *See Trunkline Gas Co., LLC; Sea Robin Pipeline Co., LLC*, 139 FERC ¶ 61,239, at P 83 (2012). Use of the Sea Robin gathering line to provide interstate transportation of gas on an emergency-only basis is consistent with the Commission's regulations (Part 284, Subpart I) and precedent (*see, e.g.*, *High Island Offshore System, L.L.C.*, 128 FERC ¶ 61,292, at P 23 & n.26 (2009) (allowing deliveries "on an emergency basis" only from an offshore interstate pipeline into an offshore gathering facility)).

[13] This is particularly important for gas produced in association with oil production. Much of the gas supply supporting the project is associated gas from the Lucius oil play. This associated gas must be produced in order for the oil to be produced, thus any shut-in of gas production would also shut-in the oil production. Accordingly, to ensure the oil production is not affected by conditions on Discovery's mainline, the shippers required an emergency outlet for the gas.

15. Discovery proposes to achieve its proposed levelized cost-of-service by varying its depreciation expense for rate purposes to recover 100 percent of its investment over the 40-year useful life of the facilities. Discovery requests approval to account for the difference between its 2.5 percent straight-line depreciation rate amount and its variable depreciation amount as a regulatory asset in Account 182.3, Other Regulatory Assets.

## III. Notice, Interventions, and Comment

16. Notice of Discovery's application was published in the *Federal Register* on September 20, 2012 (77 Fed. Reg. 58,371). Chevron, U.S.A. Inc., Garden Banks Gas Pipeline, LLC, Marathon Oil Company, Sea Robin Pipeline Company, LLC, and Movants[14] each filed timely motions to intervene.[15] Movants filed a Statement of Support and Comments with their motion to intervene.

17. In their comments, Movants note that Discovery's proposed *pro forma* tariff changes in sections 5.6 and 5.9 of its General Terms and Conditions appear to afford Discovery the discretion, rather than the obligation, to make deliveries using the emergency outlet lateral in the event the mainline system is out of service. Movants propose modifications to rectify the language. In response to the comment by Movants, Discovery agreed to modify the tariff language as proposed by Movants, subject to a minor grammatical change.

## IV. Discussion

18. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities, except those constructed under section 2.55 of the Commission's regulations, are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.[16]

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[14] Movants are a consortium comprising Anadarko US Offshore Corp., Apache Deepwater LLC, and Exxon Gas & Power Marketing Co., a Division of Exxon Mobil Corp.

[15] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2012).

[16] 15 U.S.C. §§ 717f(c) and 717f (e) (2006).

### A. Application of the Certificate Policy Statement

19. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction[17] by establishing 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, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

20. Under this policy, the threshold requirement for an applicant proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from 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 construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

21. As discussed above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has determined that where a pipeline proposes to charge incremental rates for new construction, as Discovery does here, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers. Thus, we find that Discovery's proposal meets the threshold requirement and will not result in subsidization by existing customers.

22. We also find that the proposal will have no adverse impacts on Discovery's existing shippers. The project will provide system-wide benefits by providing Discovery and its existing customers a long-term solution for pigging of Discovery's offshore

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[17] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

mainline. The proposed facilities will enable the receipt of incremental gas supplies into the interstate market and will enhance service to Discovery's existing customers. By connecting the new 30-inch mainline extension to Discovery's existing 30-inch mainline in Ewing Bank Block 873, Discovery's new facilities will enhance overall system reliability.

23. Additionally, the project will not replace existing customers' service on other existing pipelines. Discovery's proposed facilities will transport new frontier gas sources and will not rely on supplies currently transported by other existing pipelines. Moreover, no existing pipelines or their customers have protested the proposal. Thus, we find that there will be no adverse impact on existing pipelines in the region or their captive customers.

24. There are no landowners or communities affected by the construction, as it is located some 70 miles offshore in approximately 350 feet of water, entirely in the federal waters of the Gulf of Mexico. Thus, the project requires permitting authorization by BSEE.

25. Based on the benefits the project will provide and the lack of adverse impacts on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the criteria discussed in the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of Discovery's proposed facilities, subject to the conditions discussed below.

### B. Engineering

26. Discovery has executed firm transportation service agreements with shippers for 404,638 Dth/d of firm transportation service under its existing FT-2 Rate Schedule, and has designed the project accordingly. Staff engineering analysis of the project concludes that the existing system as currently constructed, to which the new volumes will be delivered, is capable of accommodating the additional 405,000 Dth/d of firm transportation. These volumes will help fill Discovery's offshore mainline which is currently significantly underutilized. The project will not create any new capacity to deliver volumes to onshore delivery points. Thus the project will not present any capacity related issues.

### C. Rate, Tariff and Accounting

#### 1. Initial Recourse Rates

27. Discovery proposes to provide service on the proposed facilities under Rate Schedules FT-1, FT-2, and IT and to charge incremental firm and interruptible recourse rates for service on the Junction Facilities. For firm service under Rate Schedule FT-1,

Discovery is proposing a maximum reservation rate of $8.4720 per Dth.[18] For service under Rate Schedule FT-2[19] and Rate Schedule IT, the maximum usage rate will be $0.2785 per Dth. The incremental recourse rates are designed based on a volume of 170,000 Dth per day, based on the projected incremental volumes and projected production declines of these Keathley Canyon sources. Discovery based the rate on flowing 170,000 Dth per day, however, in contrast to a general Natural Gas Act section 4 rate case where rates are designed based on billing determinants reflective of projected usage of the pipeline, initial rates are generally designed based on the capacity of the pipeline.[20] This approach ensures that a pipeline constructing facilities is placed at risk for underutilization of the facilities if it does not contract with customers for the full capacity of the pipeline.[21] Therefore, Discovery is required to recalculate incremental recourse rates based on the engineered design capacity of the 9.5 mile mainline extension pipeline.[22]

### 2. ***Pro Forma*** **Tariff Changes**

28. Discovery filed *pro forma* tariff sheets that update its tariff to reflect the proposed incremental recourse rates and service for the project. Discovery also proposes conforming changes to its Statement of Rates and Fuel, Rate Schedules, Forms of Service Agreement, and General Terms and Conditions and provisions to accommodate scheduling on the emergency outlet lateral. Movants jointly filed comments in support of the project and requested modification to certain proposed tariff language. Movants state the proposed *pro forma* tariff changes in Sections 5.6 and 6.9 of the General Terms and Conditions appear to afford Discovery the discretion, rather than the obligation, to make deliveries utilizing the emergency outlet lateral in the event that the mainline is out of

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[18] Discovery does not propose to charge expansion shippers an incremental fuel charge for service on the expansion, since no compression is being added. Expansion shippers will pay the system fuel rate for transportation on the mainline.

[19] Rate Schedule FT-2 is a one-part volumetric rate service eligible to shippers that commit quantities of their gas to firm service on Discovery for the life of their specified leases.

[20] *Central New York Oil and Gas Co., LLC,* 134 FERC ¶ 61,035 (2011).

[21] *See Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 57 (2003).

[22] The pipeline proposed is a 30 inch pipeline to extend Discovery's existing 30 inch mainline system. Discovery's 30 inch mainline pipeline was certificated in 1997 to transport up to approximately 600,000 Mcf/d (CP96-711-000, 78 FERC ¶ 61,194, at 61,834).

service or such service is reduced.  Movants state this is potentially inconsistent with the purpose of the emergency outlet lateral, which Discovery will utilize if the mainline facilities are "out of service or unable to transport."  Movants propose to modify Sections 5.6 and 6.9 by removing language that allows Discovery the ability to determine when the emergency outlet lateral should be utilized.  Movants state such modifications are consistent with the contemplated purpose of the emergency outlet lateral.  Discovery states in its answer that it agrees to incorporate Movants' requested modifications, with minor additional edits for grammatical effect only.  We direct Discovery to revise its tariff accordingly.

### 3. **Reporting Incremental Rates**

29. To assure proper allocation of costs among Discovery's existing shippers and those utilizing the incremental services authorized in this proceeding, we require Discovery to keep separate books and accounting of costs attributable to the proposed incremental services.  Discovery should maintain the books with applicable cross-references, as required by section 154.309 of the Commission regulations.  This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710.  Such measures protect existing customers from cost overruns and from subsidization that might result from under-collection of the project's incremental cost of service, as well as help the Commission and parties to the rate proceedings determine the costs of the project.[23]

### 4. **Cost-of-Service/Regulatory Assets**

30. Discovery proposed a levelized cost-of-service over 40 years for recourse rates consistent with the physical life of the proposed platform facilities.  The rate levelization is achieved by varying its depreciation expense for rate purposes to recover 100 percent of its investment over the 40 years.  Discovery's proposed depreciation rates will vary from (.5335) percent in year one, increasing to 8.6861 percent in year 40.  Discovery requested approval to account for the difference between its 2.5 percent straight-line depreciation rate amount and its variable depreciation amount as a regulatory asset in Account 182.3, Other Regulatory Assets.  In addition, Discovery proposed to levelize its negative salvage expense by varying its negative salvage expense for rate purposes from (.1325) percent in year one, increasing to 2.1574 percent in year 40.  Discovery also requested approval to account for the difference between its 0.6209 percent straight-line negative salvage rate amount and its variable negative salvage amount as a regulatory asset in Account 182.3.

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[23] 18 C.F.R. § 154.309 (2012).

31. The instructions to Account 182.3 provide in part that this account shall include specific expenses that would be included in net income determinations in one period under the general requirements of the Uniform System of Accounts but for it being probable that such expenses will be included in a different period for purposes of developing rates. The term "probable" as used refers to that which can reasonably be expected or believed on the basis of available evidence or logic but is neither certain nor proved. It would be appropriate for Discovery to record a regulatory asset for the under-recovery of its levelized cost-of-service only if it is probable that Discovery will recover the costs in future rates.[24]

32. The Commission has concluded that for rate levelization proposals, it is only appropriate to record a regulatory asset for the difference between book depreciation and negative salvage expense and the amount of depreciation and negative salvage included in rates to the extent the pipeline's capacity is subscribed.[25] Therefore, Discovery should assess all available evidence bearing on the likelihood of rate recovery of these costs in periods other than the period that would traditionally be charged to expense. If, based on such assessment, Discovery determines that it is probable that these costs will be recovered in rates in future periods, it may record a regulatory asset for such amounts. Additionally, if Discovery determines that any portion of a regulatory asset previously recorded is not longer probable of recovery in future rates, it shall charge such amounts to Account 426.5, Other Deductions, in the year it is determined it was no longer probable of recovery in future rates.

## V. <u>Environmental Review</u>

33. Since the facilities will be constructed entirely in Federal offshore waters, and the approval by BSEE has been obtained, environmental review of this proposal under section 380.4(b) confirms that the proposed project qualifies for a categorical exclusion from the requirement to prepare an environmental assessment or environmental impact statement under section 380.4(a)(33).[26]

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[24] Discovery shall establish any regulatory asset on its books by debiting Account 182.3 with an offsetting entry to Account 407.3, Regulatory Debits, or Account 407.4, Regulatory Credits, as appropriate.

[25] *Millennium Pipeline Co., L.L.C.*, 124 FERC ¶ 61,139, at P 31 (2008).

[26] 18 C.F.R. § 380.4(a)(33) (2012).

## VI. Conclusion

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Discovery to construct and operate the project, as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Discovery's:

(1) completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) compliance with all applicable Commission regulations including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(C) Discovery is required to recalculate incremental recourse rates based on the engineered design capacity of the 9.5 mile mainline extension pipeline.

(D) Discovery shall file actual tariff records with the revised incremental rates and changes to its tariff no earlier than 60 days, and no later than 30 days, prior to the date the Junction Platform goes into service.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.