

143 FERC ¶ 61,196
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.

Tennessee Gas Pipeline Company, L.L.C.

Docket Nos. CP12-490-000
and RP12-887-000

Kinetica Energy Express, LLC

Docket No. CP12-489-000

ORDER APPROVING ABANDONMENT,
DETERMINING JURISDICTIONAL STATUS OF FACILITIES,
ISSUING CERTIFICATES AND APPROVING OFFER OF SETTLEMENT

(Issued May 31, 2013)

1. On July 26, 2012, in Docket No. CP12-490-000, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) filed an application under section 7(b) of the Natural Gas Act (NGA)¹ for authorization to abandon over 1,300 miles of pipeline, compression facilities, offshore platforms, and appurtenant facilities located onshore and offshore in the Gulf of Mexico and Louisiana, referred to as Supply Area Facilities. Approval of Tennessee's proposal would permit the Supply Area Facilities found to be jurisdictional transmission facilities to be acquired by Kinetica Energy Express, LLC (Kinetica Energy) and the facilities found to be non-jurisdictional gathering facilities to be acquired by Kinetica Midstream LLC (Kinetica Midstream). On the same date, in Docket No. RP12-887-000, Tennessee requests approval of an offer of settlement regarding the proposed rate treatment and rate relief for the proposed sale of the facilities.

2. Also on July 26, 2012, in Docket No. CP12-489-000, Kinetica Energy filed an application under section 7(c) of the NGA² and Parts 157 and 284 of the Commission's

¹ 15 U.S.C. § 717f(b) (2006).

² 15 U.S.C. § 717f(c) (2006).

regulations³ to acquire and operate the Supply Area Facilities found to be jurisdictional transmission facilities.

3. As discussed and conditioned in this order, the Commission approves Tennessee's request to abandon the Supply Area Facilities and grants certificate authority for Kinetica Energy to acquire and operate the Supply Area Facilities found to be jurisdictional transmission facilities. This order also approves Tennessee's settlement agreement.

I. Background And Proposal

4. Tennessee, a corporation organized and existing under the laws of Delaware, is a natural gas company under section 2(6) of the NGA⁴ engaged in the business of transporting and storing natural gas in interstate commerce. Tennessee's mainline transmission system extends northeasterly from primary sources of supply in Texas, Louisiana, and the Gulf of Mexico.

5. Kinetica Energy, a newly-formed limited liability company organized and existing under the laws of Texas, is a wholly-owned subsidiary of Kinetica Partners, LLC (Kinetica Partners), which is a non-jurisdictional company. Kinetica Energy does not yet own any pipeline facilities and is not currently subject to the jurisdiction of the Commission. Upon completion of the purchase of the subject facilities, it intends to operate as a natural-gas company under section 2(6) of the NGA subject to the Commission's jurisdiction.⁵

A. November 3, 2011 Order

6. On November 3, 2011, the Commission issued an order⁶ approving Tennessee's abandonment by sale to Kinetica Partners of certain onshore and offshore facilities in the Gulf of Mexico and Louisiana that were found to perform gathering functions exempt from the Commission's jurisdiction under NGA section 1(b). In the same order, the Commission denied Tennessee's request to abandon those facilities found to perform

³ 18 C.F.R. Parts 157 and 284 (2012).

⁴ 15 U.S.C. § 717a(6) (2006).

⁵ *Id.*

⁶ *Tennessee Gas Pipeline Co.*, 137 FERC ¶ 61,105 (2011) (November 2011 Order), *order on clarification*, 138 FERC ¶ 61,082 (2012), *order on reh'g*, 138 FERC ¶ 61,179 (2012).

jurisdictional transmission functions because Kinetica Partners had not filed for a section 7(c) certificate to acquire and operate those facilities on a jurisdictional basis.⁷ The denial of authorization for Tennessee to abandon the transmission facilities was made without prejudice to Kinetica Partners or another company seeking to acquire and operate the facilities as fully jurisdictional, open-access facilities under the NGA.⁸ The November 2011 Order dismissed as moot a settlement agreement regarding the rate and accounting treatment for the sale of the facilities.⁹

7. After Tennessee and Kinetica Energy filed their new applications in this proceeding, Tennessee filed a request for an extension of time to complete the abandonment of gathering facilities authorized by the November 2011 Order, and Kinetica Energy and Kinetica Partners filed a letter stating that the parties anticipated all jurisdictional and non-jurisdictional facilities would be transferred at a single closing as soon as possible after the Commission's approval of the applicants' new applications. On October 23, 2012, the Commission granted Tennessee an extension of time until November 3, 2014, to complete the abandonment of gathering facilities authorized by the November 2011 Order. Thus, Tennessee has not yet completed the sale of the gathering facilities approved by the November 2011 Order.

B. Purchase and Sale Agreement

8. Tennessee and Kinetica Partners have entered into an Amended and Restated Purchase and Sale Agreement (PSA) covering the transfer of all the facilities addressed by the November 2011 Order and additional facilities located in the same area, which were not included in the original applications or reviewed in the November 2011 Order. At closing, Kinetica Partners will assign facilities found to be jurisdictional transmission facilities to its affiliate Kinetica Energy and facilities found to be non-jurisdictional

⁷ November 2011 Order, 137 FERC ¶ 61,105 at P 28.

⁸ *Id.*

⁹ *Id.* P 102. The signatory parties' agreement to the settlement agreement's provisions was contingent on Tennessee receiving a final non-appealable order approving its proposed abandonment in its entirety. As the November 2011 Order denied Tennessee's request for authorization to abandon the facilities found to be jurisdictional transmission facilities, the Commission dismissed the settlement as moot and therefore did not address parties' comments regarding the settlement.

gathering facilities to its affiliate Kinetica Midstream, which will be a separate, non-jurisdictional corporate entity.¹⁰

C. Proposed Abandonment

9. In Tennessee's new application, it requests authority to abandon approximately 1,325 miles of pipeline consisting of the approximately 425 miles of pipeline that the November 2011 Order found to be jurisdictional transmission facilities¹¹ and 900 miles of additional pipeline facilities, 34,250 horsepower (hp) of compression facilities, twelve offshore platforms, and various appurtenant and auxiliary facilities that were not addressed by the November 2011 Order.

10. The additional Supply Area Facilities presented for the first time in Tennessee's current application include the following five groups of facilities:

(1) The Kinder System located onshore extending southward from Tennessee's Compressor Station 823 connecting to the Cameron System, and consisting of approximately 130 miles of 6-inch to 20-inch-diameter pipeline.

(2) The Blue Water System which commences at an interconnection on its western end with Tennessee's mainline and connects with the South Marsh Island System, from which it extends offshore in Vermilion Block 245, then extends easterly to Ship Shoal Block 198, then northerly to a connection with the Cocodrie System, and consisting of approximately 528 miles of 4-inch to 36-inch pipeline, five platforms, and 12,000 hp of compression.

(3) The Cocodrie System located in onshore Louisiana and in state waters offshore, extending from a connection with the Blue Water System to a connection with the West Delta 68 System, and consisting of approximately 63 miles of 6-inch to 24-inch pipeline and 12,050 hp of compression.

¹⁰ Kinetica Energy's October 19, 2012 filing in Docket Nos. CP12-490-000 and CP12-489-000.

¹¹ The November 2011 Order analyzed six groups of systems and found that each group consisted entirely of jurisdictional transmission facilities or contained some jurisdictional transmission facilities. The six groupings were (1) Sabine Pass System; (2) Second Bayou System; (3) Cameron System; (4) South Marsh Island System; (5) South Timbalier/Grand Isle/Bay Marchand System; and (6) South Pass System. The November 2011 Order's jurisdictional findings regarding the various facilities included in these systems are summarized herein.

(4) The West Delta 68 System located onshore in Lafourche and Plaquemines Parishes, Louisiana with extensions running offshore northeasterly into the Main Pass Area and southward into the West Delta and Grand Isle Areas,¹² and consisting of approximately 179 miles of 8-inch to 30-inch diameter pipeline.

(5) The Offsystem Main Pass Laterals, two small, off-system pipelines located in Main Pass Block 311, consisting of 2.7 miles of 4-inch and 6-inch diameter pipeline facilities, jointly owned by Tennessee and High Point Gas Transmission, LLC (High Point), which the Commission has found to be gathering facilities.¹³

11. Following the proposed sale of the Supply Area Facilities, Tennessee's retained system will include no offshore facilities. Tennessee states that it will isolate the abandoned facilities from its remaining system at several locations and will perform that work pursuant to section 2.55(a) of the Commission's regulations.¹⁴ In addition, Tennessee plans to use its blanket certificate authority to revise metering facilities at the Grand Chenier Processing Plant inlet to create two separate meter runs—one for Kinetica Energy's flow into the plant and one for Tennessee's. Tennessee will also use its Part 157 blanket certificate authority to install a new meter at its Port Sulphur Compressor Station to measure gas received by Tennessee from Kinetica Energy. Tennessee and Kinetica Energy will rely on existing measuring facilities at the other two points of interconnection between their facilities at the Egan Meter Station and the Johnsons Bayou Separation and Dehydration Plant.

12. Tennessee states that the proposed abandonment and sale of the Supply Area Facilities are contingent on approval of its offer of settlement, which provides rate reduction benefits to Tennessee's shippers as described and discussed below.

13. Tennessee argues that Kinetica Energy's operation of the jurisdictional Supply Area Facilities will benefit shippers and producers because Kinetica Energy proposes to

¹² The Cocodrie and West Delta 68 Systems are referenced separately by Kinetica Energy in its application, but they together make up the Independence Hub System referenced in the Amended PSA and in Tennessee's application.

¹³ *Southern Natural Gas Co., L.L.C.*, 139 FERC ¶ 61,237, at n.92 (2012) (finding the Offsystem Main Pass Laterals, there referred to as Line Nos. 1156 and 1162, perform gathering functions and authorizing Southern Natural to abandon its interest in these facilities by sale to High Point, which is the operator of these co-owned facilities).

¹⁴ Exhibit Z-1 of Tennessee's application provides a detailed list of appurtenances, station piping changes, and metering changes.

offer operational flexibility, attract new supplies, and increase throughput. Further, Tennessee states Kinetica Energy will maintain connections with Tennessee and Tennessee's shippers will continue to have access to the supplies connected to the Supply Area Facilities, which are aggregated at Tennessee's pooling points where 99 percent of transportation nominations for offshore production are currently initiated.

14. Tennessee states that it is not proposing to discontinue firm service for any shipper as their transportation service agreements will be amended to relocate any primary points on the Supply Area Facilities to either the new demarcation points established between Tennessee and Kinetica Energy, as specified in Exhibit J to the Amended PSA, or to other meters, including appropriate pooling points. In addition, Tennessee states Kinetica Energy will continue to provide service to the few end users now served through the Supply Area Facilities.¹⁵

D. Kinetica Energy's Certificate Request

15. Kinetica Energy seeks, pursuant to section 7(c) of the NGA and the Commission's regulations: (1) a certificate to acquire and operate the Supply Area Facilities found to be jurisdictional transmission facilities in the November 2011 Order and in this order; (2) a blanket certificate under Part 157, subpart F of the Commission's regulations authorizing the construction, operation, and abandonment of eligible facilities; (3) a blanket certificate under Part 284, subpart G of the Commission's regulations authorizing Kinetica Energy to provide open-access transportation services;¹⁶ and (4) approval of proposed NGA section 7 initial rates, tariff, and accounting provisions.

16. Kinetica Energy proposes to offer the following transportation services: (1) long-term firm transportation under Rate Schedule LFT-1; (2) short-term firm transportation under Rate Schedule SFT-2; (3) Flexible Firm Transportation under Rate Schedule FFT-3; and (4) interruptible transportation under Rate Schedule IT.

17. Kinetica Energy states that its *pro forma* tariff is modeled on other pipelines' gas tariffs that have been approved by the Commission, and that the terms and conditions of its *pro forma* tariff are structured to comply with the requirements of the Commission's Order Nos. 636 and 637. Kinetica Energy states that its *pro forma* tariff has gas quality specifications similar to Tennessee's.

¹⁵ Tennessee has one firm service agreement to a city gate delivery point and an interruptible agreement to serve three farm taps through Cokinos Natural Gas Company. Tennessee's application at 14.

¹⁶ 18 C.F.R. §§ 284.221-227 (2012)

18. Kinetica Energy's *pro forma* tariff includes a provision that would establish an Infrastructure Investment surcharge to recover costs related to hurricanes, other natural events, and infrastructure required investments. Kinetica Energy states the surcharge would initially be set at zero.

19. Because Kinetica Energy does not propose to utilize any compression on the facilities, Kinetica Energy will not charge for system fuel. Kinetica Energy also does not propose to charge initially for lost and unaccounted for gas, but the *pro forma* tariff provides a mechanism through which Kinetica Energy may recover future costs through the mechanisms of a monthly cash-out and an annual true-up. Further, Kinetica Energy proposes to implement a Natural Gas Liquids bank (NGL Bank) as part of its tariff.

E. Tennessee's Offer of Settlement in Docket No. RP12-887-000

20. Filed with its abandonment application, Tennessee submitted for approval a settlement agreement it negotiated with certain of its shippers regarding the proposed rate treatment and rate relief for the proposed sale of the Supply Area Facilities. Under the rate adjustment mechanism proposed in the settlement, Tennessee would establish a regulatory asset account for an amount equal to: (1) the difference between the net book value of the Supply Area Facilities that were addressed by the November 2011 Order and \$10 million and (2) fifty percent of the difference between the net book value of the additional Supply Area Facilities that were not addressed by the November 2011 Order and the sum of \$32 million. As part of the settlement, Tennessee agrees to absorb fifty percent of the loss of the unrecovered net book value of the additional Supply Area Facilities (approximately \$62 million). The settlement provides for Tennessee to reduce its Part 284 transportation rates by the cost of service effect of: (1) the removal of depreciation, return, and related income taxes associated with the Supply Area Facilities and (2) five million dollars of operating and maintenance cost savings. The settlement is contingent on Tennessee receiving a final non-appealable order approving its proposed abandonment in this proceeding. Tennessee states that the settlement will resolve all matters relating to Tennessee's jurisdictional rates for its Part 284 transportation services after the sale of the Supply Area Facilities.

II. Procedural Issues

A. Notices, Interventions, Comments, and Answers

21. Notice of Tennessee's abandonment application filed in Docket No. CP12-490-000, Tennessee's offer of settlement filed in Docket No. RP12-887-000, and Kinetica

Energy's petition for a certificate of public convenience and necessity filed in Docket No. CP12-489-000 were published in the *Federal Register* on August 14, 2012.¹⁷

22. Thirty-five parties filed timely, unopposed motions to intervene.¹⁸ These parties are identified in the Appendix to this order. The interventions submitted by New Jersey Natural Gas Company and NJR Energy Services Company, PSEG Energy Resources & Trade, LLC, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., and National Grid Gas Delivery Companies included comments in support of Tennessee's proposals in Docket Nos. CP12-490-000 and RP12-887-000 and in support of Kinetica Energy's application in Docket No. CP12-489-000.

23. The interventions submitted by National Fuel Gas Distribution Corporation, NiSource Distribution Co., and Tennessee Customer Group included comments in support of Tennessee's application in Docket No. CP12-490-000 and Kinetica Energy's application in Docket No. CP12-489-000.

24. The interventions submitted by Louisville Gas and Electric Company (Louisville Gas) in Tennessee's Docket Nos. CP12-490-000 and RP12-887-000 included a comment that it does not oppose Tennessee's proposals. However, Louisville Gas states that its lack of protest is predicated upon a net reduction to jurisdictional rates after approval of the abandonment and settlement.

25. Motions to intervene out-of-time were filed in Docket Nos. CP12-489-000 and CP12-490-000 by Deep Gulf Energy LP and the Producer Coalition, which includes Century Exploration New Orleans, LLC; Dynamic Offshore Resources, LLC; Energy XXI (Bermuda) Ltd.; Hilcorp Energy Company, Inc; McMoRan Oil & Gas LLC; Pisces Energy LLC; and W&T Offshore, Inc. The Tennessee Valley Authority filed a motion to intervene out-of-time in Docket Nos. CP12-490-000 and RP12-887-000. Pivotal Utility Holdings, Inc., Northern Illinois Gas Company, and Chattanooga Gas Company filed a motion to intervene out-of-time in Docket No. RP12-887-000.

26. Protests were filed in all three dockets by Stingray Pipeline Company, L.L.C (Stingray), ConocoPhillips Company (ConocoPhillips), and Indicated Shippers, which includes ConocoPhillips; Anadarko Energy Services Company; Anadarko Petroleum Corporation; Anadarko U.S. Offshore Corp.; Apache Corporation; BP Energy Company and BP America Production Inc.; Chevron U.S.A. Inc.; ExxonMobil Gas & Power

¹⁷ 77 Fed. Reg. 48,508-01 (Aug. 14, 2012).

¹⁸ 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).

Marketing Company, a division of Exxon Mobil Corporation; and Shell Offshore Inc.¹⁹ Walter Oil & Gas Corporation (Walter), LLOG Exploration Company, L.L.C. (LLOG), SPSC Yscloskey, LLC (SPSC), Arena Energy, LP (Arena), and Producer Coalition filed protests in Kinetica Energy's Docket No. CP12-489-000 and Tennessee's Docket No. CP12-490-000.

27. Tennessee and Kinetica Energy filed motions for leave to file answers to the protests. Tennessee filed a single answer to the protests filed in Docket Nos. RP12-887-000 and CP12-490-000. Kinetica Energy filed an answer in response to the protests filed in its docket. Tennessee Customer Group filed an answer in response to the protests in CP12-490-000.

28. Tennessee and Kinetica Energy filed separate motions for leave to file and answer and answers to ConocoPhillips' protest.

29. Stingray and Indicated Shippers filed motions for leave to file a reply and a reply to Tennessee's answer in Docket Nos. RP12-887-000 and CP12-490-000 and Kinetica Energy's answer in Docket No. CP12-489-000. SPSC, Walter, LLOG, Arena, and Producer Coalition filed motions for leave to file a reply and a reply to Tennessee's answer in Docket No. CP12-490-000 and Kinetica Energy's answer in Docket No. CP12-489-000.

30. In addition, SPSC filed another answer in support of Indicated Shipper's request for the Commission to hold a technical conference in Docket Nos. CP12-490-000 and CP12-489-000. Tennessee filed a motion for leave to file an answer to the intervention, protest, and request for a technical conference submitted by SPSC in Docket Nos. CP12-489-000 and CP12-490-000.

31. LLOG and Walter supplemented their protests in Docket Nos. CP12-490-000 and CP12-489-000, reasserting their desire for the Commission to hold a technical conference, and Kinetica Energy filed another motion for leave to file answer to the protest supplements submitted by LLOG and Walter in Docket No. CP12-489-000.

32. Indicated Shippers filed a second motion for leave to file a reply and a reply in all three dockets to the data responses filed by Tennessee and Kinetica Energy. Tennessee

¹⁹ On August 29, 2012, Discovery Gas Transmission LLC (Discovery) filed limited protests in all three dockets; however, Discovery withdrew its protests on February 14, 2013. Also on August 29, 2012, Louisiana Municipal Gas Authority (Louisiana Municipal) filed protests in all three dockets; however, Louisiana Municipal withdrew its protests on December 11, 2012.

and Kinetica Energy filed separate motions for leave to file an answer to Indicated Shipper's second reply. LLOG filed a second motion for leave to file a reply and a reply in Docket Nos. CP12-489-000 and CP12-490-000.

33. Rule 213(a)(2) of the Commission's regulations prohibits answers to protests and answers to answers unless otherwise ordered by the decisional authority.²⁰ We will allow the filings because doing so will not cause undue delay and they may assist us in our decision-making process.

34. Tennessee requests the Commission deny the motions to intervene and protests submitted by Stingray, Producer Coalition, and Discovery in Docket Nos. RP12-887-000 and CP12-490-000. Tennessee also requests the Commission deny the motions to intervene and protests submitted by Arena, Plains Gas Solutions, LLC (Plains Gas),²¹ LLOG, Walter, and SPSC. Tennessee essentially argues that these parties—as upstream natural gas pipelines, natural gas producers, and processing plant owners—should not be permitted to intervene in these proceedings because their interests are only indirectly related and because any potential harm these parties might incur is speculative and independent of any Commission decision here.

35. We disagree. Our decision whether to approve Tennessee's proposed abandonment of its remaining offshore facilities and whether we approve Tennessee's Offer of Settlement, which purports to resolve the rate issues involved in this sale, might affect the direct interests of these parties,²² except for SPSC, which we discuss further below.

²⁰ 18 C.F.R. § 385.213(a)(2) (2012).

²¹ The motion to intervene submitted by Plains Gas did not include a protest, but did include a request that the Commission condition the proposed sale, which is discussed further below.

²² *See, e.g., Natural Gas Pipeline Co. of America*, 62 FERC ¶ 61,224, at 62,537-41 (1993) (granting intervention to an upstream, interconnected pipeline whose interests might have been affected by the rate issues involved in the downstream pipeline's NGA section 4 rate case); *Great Lakes Gas Transmission Co.*, 42 FERC ¶ 61,029 (1988) (denying rehearing of Commission decision to grant intervention of natural gas producers in a certificate proceeding); *Natural Gas Pipeline Co. of America*, 38 FERC ¶ 61,266, at 61,905 (1987) (granting late intervention of local distribution company whose only interest in the proceeding was that it purchased gas from a customer of a natural gas pipeline company who proposed in the application to transport gas on an interruptible basis for another local distribution company).

36. We find that Producer Coalition, Deep Gulf Energy LP, Tennessee Valley Authority, and Pivotal Utility Holdings, Inc., Northern Illinois Gas Company, and Chattanooga Gas Company have demonstrated an interest in this proceeding in their late motions to intervene, and their untimely motions to intervene will not delay, disrupt, or unfairly prejudice any parties to this proceeding. Thus, we will grant these late motions to intervene pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.²³

37. SPSC is one of the owners of Yscloskey Processing Plant which straddles facilities that Tennessee proposes to abandon by sale to Kinetica Energy. SPSC is a party to a processing agreement with Tennessee, and it is involved in a contractual dispute arising from SPSC's belief that gas is being diverted away from the processing plant. SPSC also raises concerns that Tennessee's sale of the facilities to Kinetica Energy will result in more gas being diverted from the processing plant. In Tennessee's second answer filed November 8, 2012, in Docket No. CP12-490-000, Tennessee asserts, without contradiction, that SPSC does not have a direct interest that may be affected by the outcome of these proceedings as since Hurricane Isaac the owners of the processing plant have elected not to restart operations, and the plant operator has announced the permanent shutdown of the processing plant. We agree that due to the closing of the Yscloskey Processing Plant, which together with the straddle agreement formed the basis of SPSC's interest in these proceedings, SPSC does not have a direct interest in these proceedings, and its intervention request is denied accordingly.²⁴

38. The other arguments made in the protests and responses are all addressed below.

B. Requests for a Technical Conference

39. Several parties request that the Commission convene a technical conference to enable the parties to discuss: (1) Kinetica Energy's proposed mechanism to balance economic imbalances that occur as the result of the comingling of its shippers' gas supplies, which contain different compositions of natural gas liquids (NGL Bank); (2) issues related to natural gas processing as they currently exist on Tennessee's system; and (3) the gathering rates to be charged by Kinetica Midstream. These parties assert a

²³ 18 C.F.R. § 214(d) (2012).

²⁴ We note that, even if the processing had not been shut down, the Commission has no jurisdiction over the processing plant or processing service, and the processing agreement in dispute is not a contract for jurisdictional service. Thus, the Commission is not the appropriate forum to hear or resolve this contractual dispute. *See Tennessee Gas Pipeline Company, L.L.C.*, 123 FERC ¶ 61,153, at P 37 (2008).

technical conference also is needed to allow the parties to obtain information necessary to present their positions on the details of Kinetica Energy's certificate application, including the terms and conditions of Kinetica Energy's proposed services set forth in its *pro forma* tariff, as well as the settlement agreement. They argue that convening a technical conference would be consistent with Commission precedent.²⁵

40. Tennessee responds and states that a technical conference is not needed because the concerns alleged by the parties are capable of resolution on the basis of the written record alone. It also identifies that similar requests for a technical conference were made during its previous abandonment proceeding for the original Supply Area Facilities involved in the November 2011 Order, but the Commission ultimately denied those requests.²⁶ Kinetica Energy also states that a technical conference is not necessary, and that it can respond to any data request of the Commission.

41. The Commission will deny the requests for a technical conference. Unlike the case cited by parties arguing for a technical conference, all issues of material fact relating to Tennessee's proposed abandonment are capable of being resolved on the basis of the existing record. Further, as discussed below, we are not approving Kinetica Energy's proposed NGL Bank for lack of jurisdiction. Therefore, the protestors' concerns regarding that proposal are moot. Consequently, we find no cause to convene a technical conference.

III. Discussion

A. Proposed Abandonment

42. Because the facilities Tennessee proposes to abandon by sale are certificated for use in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposed abandonment is subject to the requirements of section 7(b) of the NGA. Section 7(b) provides:

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that

²⁵ These parties cite *High Island Offshore System, L.L.C.*, 105 FERC ¶ 61,364, at P 19 (2003).

²⁶ November 2011 Order, 137 FERC ¶ 61,105 at P 17.

the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.²⁷

43. The courts have explained that, in considering the criteria for abandonment under section 7(b), two important principles apply: (1) a pipeline which has obtained a certificate of public convenience and necessity to serve a particular market has an obligation, deeply embedded in the law, to continue to serve; and (2) the burden of proof is on the applicant to show that the public convenience or necessity permits abandonment, that is, that the public interest will in no way be disserved by abandonment.²⁸

44. The Commission examines abandonment applications on a case-by-case basis. In deciding whether a proposed abandonment is warranted, the Commission considers all relevant factors, but the criteria vary as the circumstances of the abandonment proposal vary. Among the factors that the Commission has considered in reviewing a request by an interstate pipeline company to abandon certificated facilities by sale to another pipeline company are: (1) the needs of the two natural gas systems and the customers they serve; (2) the economic effect on the pipelines and their current customers; and (3) the presumption in favor of continued service.²⁹ The requirement that the public interest not be disserved by an abandonment does not mean that abandonment is prohibited if there is harm to any narrow interest. Rather, the Commission takes a broad view in abandonment proceedings and evaluates abandonment proposals against the benefits to the market as a whole.³⁰

²⁷ 15 U.S.C. § 717f(b) (2006).

²⁸ See *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204, 214 (D.C. Cir. 1960); *Transcontinental Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1328 (D.C. Cir. 1973).

²⁹ *Southern Natural Gas Co.*, 126 FERC ¶ 61,246, at P 27 (2009) (*Southern*).

³⁰ See *Southern Natural Gas Co.*, 50 FERC ¶ 61,081, at 61,222 (1990). See also *Consol. Edison Co. v. FERC*, 823 F.2d 630, 643-44 (D.C. Cir. 1987) (“We agree with FERC that the ‘public convenience or necessity’ language of the NGA’s abandonment provision envisions agency policy-making to fit the regulatory climate.”) (citation omitted).

45. In support of its abandonment application, Tennessee states that it has determined it can best meet the needs of its customers by moving away from its historic role as an aggregator of offshore supplies and focusing its efforts primarily on its onshore mainline system. Tennessee states that the development of new onshore production has coincided with a decline in production from the Gulf of Mexico relative to onshore supplies. Tennessee further points out that its existing mainline system is located in close proximity to a number of unconventional production regions that are forecast to be the most prolific. Tennessee states that the proposed abandonment of its offshore facilities will enable Tennessee to better focus its resources on its remaining facilities. Tennessee emphasizes, however, that its customers will continue to have access to supplies from Louisiana and the Gulf of Mexico through interconnects with Kinetica Energy.

46. As a preliminary matter, Indicated Shippers state that in the November 2011 Order, the Commission stated that its denial of abandonment authority in that order was “without prejudice to Kinetica or another company seeking to acquire and operate the facilities as fully jurisdictional, open-access facilities under the NGA.”³¹ Indicated Shippers assert that Tennessee’s current abandonment proposal runs afoul of the November 2011 Order because Kinetica Energy does not intend to operate all of the Supply Area Facilities on a jurisdictional basis, as the gathering facilities would be assigned to a gathering affiliate, Kinetica Midstream.³²

47. The November 2011 Order stated in full that “[o]ur denial of authority for Tennessee to abandon the *jurisdictional* facilities is without prejudice to Kinetica or another company seeking to acquire and operate the facilities as fully jurisdictional, open-access facilities under the NGA.”³³ As facilities that primarily perform gathering functions are exempt from our jurisdiction under NGA section 1(b), the November 2011 Order did not limit any future abandonment proposal by Tennessee to one that would result in the gathering facilities continuing to be owned and operated by a jurisdictional interstate pipeline company. Indeed, the November 2011 Order granted Tennessee to proceed with abandonment of the certificated facilities found to be gathering facilities by sale to a non-jurisdictional company, Kinetica Partners. The Commission rejects Indicated Shippers’ contention that the November 2010 Order required Tennessee to abandon its gathering and transmission assets to a single party.

³¹ Indicated Shippers’ Protest at 15.

³² *Id.*

³³ November 2011 Order, 137 FERC ¶ 61,105, at P 28 (2011) (italics added for emphasis).

1. The Needs of the Two Natural Gas Systems

48. Protestors assert that Tennessee's abandonment proposal lacks evidence of benefits because the minor rate adjustment provided to Tennessee's shippers under the settlement is outweighed by the short-term and long-term external costs, including disruption to offshore production and discouragement of exploration and development of new offshore supplies that the protestors assert may result from the abandonment. Rather than provide benefits for shippers and consumers, protestors state that the abandonment will only further the business interests of Tennessee and Kinetica Energy.

49. Indicated Shippers assert the fact that these facilities no longer produce as much revenue for Tennessee as in the past is not grounds for Tennessee's abandonment of the facilities.³⁴ They also state that Tennessee's claimed benefits from the proposed abandonment are unsupported because Tennessee has failed to show how Kinetica Energy's acquisition will improve Tennessee's economic efficiencies, failed to include data about how much shale gas Tennessee anticipates attracting to its system or the amount of offshore production that may be stranded after the abandonment, and failed to explain why Tennessee cannot transport both Gulf of Mexico production and onshore shale gas production.

50. Tennessee Customer Group responds that our decision in *Southern Natural Gas Company, L.L.C.* supports approval of Tennessee's proposal.³⁵ Specifically, Tennessee Customer Group argues that, similar to *Southern Natural*, Tennessee's ongoing efforts to construct new facilities to deliver shale supplies, the reduction of use and lessening of need for the offshore Supply Area Facilities, risks of substantial future expenses associated with hurricane damage and repairs of the Supply Area Facilities, and the

³⁴ Indicated Shippers cite *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204, 214 (D.C. Cir. 1960):

When Panhandle sought and obtained a certificate of public convenience and necessity to serve the Detroit market, it became the exclusive supplier for that market. If it wants to abandon service because it must now share that market, or because it prefers to use that gas for more profitable unregulated sales, or because it wants to be rid of what it considers a vexatious servitude, these are not reasons for granting its request.

³⁵ 139 FERC ¶ 61,237 (2012) (*Southern Natural*).

reduction of decommissioning expenses and other components of negative salvage for these facilities support Tennessee's proposal.

51. Tennessee Customer Group argues that the cost consequences of Tennessee's retention of the Supply Area Facilities fall on Tennessee's captive firm customers, and that these customers support Tennessee's proposed abandonment. It states that non-captive customers are able to negotiate discounted rates to avoid cost increases associated with these facilities, but that these discounts are then passed on in the form of discount adjustments, increasing tariff rates to captive customers. Tennessee Customer Group also states that a substantial bulk of the shippers with firm contract demands on Tennessee's system support Tennessee's proposal, as evidenced by their agreement to the settlement.

52. As noted above, Tennessee states that it intends to move away from its historic role as an aggregator of offshore supplies to focus its efforts on its onshore mainline system, and that the Supply Area Facilities no longer fit into its business strategy, as gas production is shifting away from conventional offshore supplies to developing onshore non-conventional natural gas supplies. Thus, Tennessee believes the long-term needs of its existing and future customers can be better served through its sale of the Supply Area Facilities. National Fuel Gas Distribution Corporation agrees that Tennessee's abandonment proposal appropriately recognizes both the changing gas flows in the geographic regions in which Tennessee operates and Tennessee's need to modify its system as sources of natural gas supplies move from offshore to onshore.

53. Tennessee claims the proposed abandonment will lower its future abandonment liability, lower its current and future operating and maintenance expenses, and reduce its future need to repair or replace the Supply Area Facilities. In support, Tennessee states it has spent more than \$500 million due to damages caused by four major hurricanes in recent years. Because of the low utilization of the Supply Area Facilities, Tennessee argues that expenses associated with these facilities are disproportionate to the amount of gas they move for Tennessee's shippers. PSEG Energy Resources & Trade, LLC supports Tennessee's abandonment proposal and states that the abandonment will mitigate Tennessee's future risk of costs associated with the Supply Area Facilities, which have limited value to the majority of shippers on Tennessee's system.

54. Following the abandonment, Tennessee claims that shippers and producers on the Supply Area Facilities will benefit because Kinetica Energy proposes to develop a system that will provide operational flexibility, attract new supplies, and increase throughput on the facilities. Tennessee argues that shippers and producers using the Supply Area Facilities will benefit from the abandonment because Kinetica Energy will be an owner that views the production area function of the Supply Area Facilities as its core business.

55. Pursuant to the provisions of the associated settlement, approval of Tennessee's proposed abandonment would result in a reduction to Tennessee's recourse rates to

recognize \$5 million of operation and maintenance savings plus a removal of depreciation, return and related income taxes associated with the transferred assets, for an interim reduction in its net cost of service of approximately \$9 million. In addition, because the settlement agreement includes Tennessee's absorption of part of the loss on the sale of the Supply Area Facilities (a write-off of approximately \$62 million), Tennessee estimates a reduction of approximately \$18 million to its cost of service in its next general rate case.

56. Tennessee further claims that the overall natural gas market will benefit from its abandonment. It states that shippers representing 97 percent of its annual revenues, its largest distribution customers, and coalitions have filed comments in support of, or do not oppose, its abandonment and settlement agreement. Tennessee lastly argues that the Commission's recent approval of the abandonment proposals in *Southern Natural*,³⁶ *Trunkline Gas Company, L.L.C.*,³⁷ and *ANR Pipeline Co.*³⁸ support approval of its proposal here.

57. Indicated Shippers respond and cite *Tejas Power Corp. v. FERC (Tejas)*,³⁹ for the proposition that the Commission cannot rely on the demonstrated support, or lack of protest, of Tennessee's customers to its rate settlement agreement as an indication of the benefits of Tennessee's abandonment proposal. *Tejas* involved the Commission's imposition of a contested settlement on all parties to permit Texas Eastern Transmission Corp. (Texas Eastern) to collect a gas inventory charge. Indicated Shippers is correct that the *Tejas* court found that the Commission was required to examine the impact of the settlement and collect evidence that the contesting parties interest would be served by the agreement, that the parties had adequate bargaining power to produce an equitable agreement, and that the agreement's terms were acceptable under the Commission's requirements. However, when contesting parties can be severed from a settlement, it is unnecessary for the Commission to make the findings required in *Tejas*.⁴⁰ As discussed below, contesting parties are being severed from the settlement.

³⁶ *Id.*

³⁷ 139 FERC ¶ 61,239 (2012) (*Trunkline*).

³⁸ 139 FERC ¶ 61,238 (2012) (*ANR*).

³⁹ 908 F.2d 998, 1004 (D.C. Cir. 1990).

⁴⁰ *Panhandle Eastern Pipe Line Co.*, 77 FERC ¶ 61,284, at 62,261 (1996).

58. In any event, we are not relying on the demonstrated support of many of Tennessee's customers for the *settlement agreement* as evidence that Tennessee's proposed abandonment of the Supply Area Facilities will have benefits. Nor do we need to, as Tennessee's burden of proof under NGA section 7(b) is limited to "making a factual showing that the public interest will not be disserved by the abandonment and [Tennessee] need not show actual benefit."⁴¹ Nevertheless, the lack of opposition by Tennessee's firm customers to either the abandonment proposal or the settlement agreement's proposed rate treatment and rate relief associated with Tennessee's sale of the Supply Area Facilities is a strong indication that these customers are not concerned that Tennessee's system will no longer include facilities directly accessing Gulf of Mexico supplies and do not believe they will be harmed otherwise by the abandonment of Tennessee's Supply Area Facilities.⁴² Moreover, while the record does not need to show that the proposed abandonment will have affirmative benefits, as indicated above, certain of Tennessee's customers have filed comments reflecting their belief that they will affirmatively benefit from Tennessee's proposal.⁴³ Although we recognize that protestors do not believe they will receive any affirmative benefit as a result of the proposal, it is within the Commission's discretion to take a broad view in abandonment proceedings

⁴¹ See *Pennsylvania Pub. Util. Comm'n v. FERC*, 881 F.2d 1123, 1127 (D.C. Cir. 1989) (observing that "affirmative proof of benefit to the public interest is not necessary to justify an abandonment . . ."). In *Transcontinental Gas Pipe Line Corp. v. FPC*, the court summarized the following principles:

(1) a pipeline which has obtained a certificate of public convenience and necessity to serve a particular market has 'an obligation, deeply embedded in the law, to continue service,' and (2) the burden of proof is on the applicant for abandonment to show that the 'public convenience [or] necessity' permits abandonment, that is, that the public interest 'will in no way be disserved' by abandonment.

488 F.2d 1325, 1328 (D.C. Cir. 1973).

⁴² See *Panhandle Eastern Pipe Line Co., LP*, 141 FERC ¶ 61,119, at P 23 (2012) ("Based [on] the absence of protests from any shippers bearing the costs of operating and maintaining the facilities proposed to be abandoned, it appears that downstream shippers do not place a high value on the service being provided by those facilities (that is, assuring ready access to the production upstream of the facilities).").

⁴³ See Tennessee Customer Group's September 9, 2012 Answer.

that evaluates the benefits that abandonment proposals may have for the market as a whole.⁴⁴

59. We find that Tennessee has adequately supported its position that shedding its offshore facilities will put it in a better position to respond to changes in the interstate pipeline industry and natural gas supply market and thus address its customers' evolving needs by focusing more efficiently on operations to access the new and growing onshore shale formations. We find it unnecessary for Tennessee to specifically quantify the shift in emphasis on exploration and production of natural gas supply from conventional offshore ventures to development of onshore non-conventional shale plays located in various regions of the country. Further, the Commission finds plausible Tennessee's argument that having the onshore and offshore facilities in separate entities may present substantial benefits by allocating the costs of operating and maintaining Supply Area Facilities to those that rely on supplies accessed by those facilities.

2. Economic Effects on Producers that Rely on the Facilities

60. Kinetica Energy proposes an interruptible transportation recourse rate of \$0.5064 per Dth on a postage-stamp basis for transportation to the interconnection with Tennessee.⁴⁵ Protestors state that our decision whether a pipeline's proposed abandonment of jurisdictional facilities is in the public convenience or necessity includes considering the potential that shippers will be charged higher rates for the same services they currently receive.⁴⁶ Protestors argue that adding Kinetica Energy's rate to Tennessee's rate for downstream transportation constitutes rate stacking and, more importantly, will result in higher overall transportation costs for shippers that purchase protestors' gas.

⁴⁴ See *Southern Natural Gas Co.*, 50 FERC ¶ 61,081, at 61,222 (1990). See also *Consolidated Edison Co. v. FERC*, 823 F.2d 630, 635 (D.C. Cir. 1987) (explaining the Commission's shift in identification of the public interest under section 7(b) from the interest of only specific customers to the interests of the market as a whole).

⁴⁵ Kinetica Energy, in its January 31, 2013 Data Response 27, revised Exhibit P of its application to derive a transportation rate of \$0.5064 per Dth rather than its originally estimated \$0.4507 per Dth.

⁴⁶ Protestors' cite November 2011 Order, 137 FERC ¶ 61,105, at P 27 (2011); *Southern*, 126 FERC ¶ 61,246, at P 45 (2009) (citations omitted); *DCP Midstream, LP*, 123 FERC ¶ 61,237, at P 30 (2008) (citations omitted); *Cimarron River Pipeline, LLC*, 124 FERC ¶ 61,069, at P33 (2008) (citations omitted).

61. Protestors emphasize that the rate currently paid by a shipper for downstream service on Tennessee's system includes transportation of the gas on the Supply Area Facilities to Tennessee's pooling points. The protestors are concerned that approval of the abandonment proposal will result in shippers that rely on the Supply Area Facilities to access supplies having to pay Tennessee's rate for downstream service, Kinetica Energy's interruptible service rate of up to \$0.5064 per Dth for transportation from its receipt points on the Supply Area Facilities to the interconnection with Tennessee's system, and, in some cases, Kinetica Midstream's gathering rate as well. Protestors argue this will make gas accessed by the facilities proposed to be abandoned less competitive and adversely affect the overall gas market by resulting in permanent shut-in of offshore reserves and discouraging future offshore development and exploration, thereby decreasing diversity of supply sources for Tennessee's downstream shippers and causing pool prices to rise.

62. Furthermore, ConocoPhillips states in its protest that abandonment would result in the loss of the discounted firm contract rate it currently receives from Tennessee. ConocoPhillips asserts that abandonment would force it to negotiate with Kinetica Energy for the continuation of the currently provided service, but such negotiation may result in ConocoPhillips receiving less favorable terms for service than it currently receives from Tennessee.

63. Stingray limits its protest to the rate impacts associated with Tennessee's proposed abandonment of the Second Bayou Line and Line 507A-100. After the abandonment, Stingray argues its shippers may have to pay over \$0.45 Dth more than they currently pay to access Tennessee's system. Stingray argues this would constitute rate stacking for its shippers, would make its shippers' gas uneconomic to potential purchasers on the Tennessee system, and would make it more difficult for Stingray's shippers to have their additional gas supplies delivered to Tennessee.

64. Protestors also assert that it is unclear what incremental gathering rates and other charges they will be required to pay Kinetica Midstream for services on the Supply Area Facilities that perform gathering functions. These protestors state that the Commission should require Kinetica Midstream to submit its proposed rates and terms and conditions of service prior to acting on Tennessee's and Kinetica Energy's applications.

65. Tennessee Customer Group, which supports Tennessee's and Kinetica Energy's applications, acknowledges that the Commission has an obligation to determine that the rates Kinetica Energy will charge for service on the jurisdictional Supply Area Facilities are just and reasonable. However, as the facilities performing gathering functions are not subject to the Commission's jurisdiction, Tennessee Customer Group disagrees with the protestors' position that the Commission should require Kinetica Midstream to submit its rates and terms and conditions for gathering service.

66. Kinetica Energy responds by pointing out that recent Commission orders have denied similar arguments made by protestors about rate stacking.⁴⁷ In particular, Kinetica Energy states that protestors' argument regarding the loss of "free pooling" has been routinely rejected by the Commission.⁴⁸ In regard to Stingray's protest, Kinetica Energy states that Stingray is free to address the increased cost issues Stingray's shippers will face by reducing or discounting Stingray's own rates. Kinetica Energy also states that Kinetica Midstream's proposed gathering charges are non-jurisdictional and do not need to be submitted for approval by the Commission in these proceedings. Tennessee adds that even if it were to keep the Supply Area Facilities, nothing precludes it from proposing new and different rate structures for its offshore facilities as its tariff anticipates changes in rates⁴⁹ and protestors have no basis for relying on Tennessee's free pooling.⁵⁰

67. We agree with protestors that in determining whether a pipeline's proposed abandonment of jurisdictional facilities is in the public convenience or necessity the Commission will consider the potential that shippers will be charged higher rates for the same services they are currently receiving.⁵¹ We also recognize, as emphasized by protestors, that most of the shippers of offshore production currently do not have to pay a separate rate for transportation upstream of Tennessee's pooling points. The protestors

⁴⁷ Kinetica Energy cites *Southern Natural*, 139 FERC ¶ 61,237, at PP 54-58 (2012); *ANR Pipeline Co.*, 139 FERC ¶ 61,238, at PP 49-51 (2012) (*ANR*); and *Trunkline Gas Co.*, 139 FERC ¶ 61,239, at PP 41-46 (2012) (*Trunkline*).

⁴⁸ *Id.*

⁴⁹ Tennessee cites to its FERC NGA Gas Tariff, TGP Tariffs, Supply Aggregation Service Agreement, Sheet No. 790, Section 2.2 ("Aggregator agrees that Transporter shall have the unilateral right to file with the appropriate regulatory authority and make effective changes in (a) the charges applicable to service pursuant to Transporter's Rate Schedule SA, (b) the rates schedule(s) pursuant to which service hereunder is rendered, or (c) any provision of the General Terms and Conditions applicable to those rate schedules or this Agreement.").

⁵⁰ *Tennessee Gas Pipeline Co.*, 134 FERC ¶ 61,120, at P 19 (2011) (stating that Tennessee's contract for Supply Aggregation Service "provides substantial rights to Tennessee to alter the terms of such service.").

⁵¹ *See, e.g., Transcontinental Gas Pipe Line Corp.*, 110 FERC ¶ 61,337, at P 44 (2005).

assert that the additional rate that shippers will be required to pay for offshore transportation if the proposals are approved will constitute impermissible rate stacking.

68. However, the fact that producers have not been paying for transportation service on the Supply Area Facilities under their pooling service agreements and Tennessee's shippers have not had to pay a separate charge for their gas to be transported over these offshore facilities does not mean that Tennessee has been providing such service for free. As the Commission's pooling policy allows pipelines to charge only once for the transportation of gas through a pool,⁵² Tennessee's rates charged to shippers for service downstream of pooling points include its costs associated with the upstream transportation service. Thus, while the protestors are correct that they do not currently pay for offshore transportation services, Tennessee has been billing the shippers downstream of the pool for that upstream service. We do not view a change in revenue responsibility as impermissible rate stacking.

69. Further, Tennessee has reached a settlement agreement with many of its customers that will provide for interim rate relief reflecting Tennessee's sale of the facilities. Thus, the rates charged by Tennessee to the consenting parties will be immediately reduced. As a result, the potential for double recovery of the Supply Area Facilities' costs is significantly reduced.

70. In view of the above considerations, we find the fact that our approval of Tennessee's abandonment proposal will result in shippers that still rely on the Supply Area Facilities having to pay Kinetic Energy for transportation service upstream of Tennessee's pooling points is not impermissible rate stacking. For the same reason, the cases cited by protestors therefore are not an obstacle to our approval of Tennessee's abandonment proposal.

71. We recognize that ConocoPhillips, unlike some other producers, has been paying Tennessee's firm rate for service with both primary receipt and delivery points on the Supply Area Facilities. However, Tennessee's downstream shippers still currently bear some of the revenue responsibility for that transportation. The fact that, under Tennessee's proposal, ConocoPhillips might be required to bear the entire revenue responsibility for the production area service it receives does not negate our fundamental

⁵² *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-F, FERC Stats. & Regs., Proposed Regulations 1988-1998 ¶ 32,527, at 33,351 (1996) (Order No. 587-F) (“[W]hen a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool.”).

finding that a change in revenue responsibility does not constitute impermissible rate stacking. As stated by the Tennessee Customer Group, the revenue contribution of those protesting the proposed abandonment to Tennessee's overall cost of service is very small; there are no protests from shippers accounting for 97 percent of Tennessee's annual revenue. In view of this, and the fact that protesting shippers will continue to have access to jurisdictional transportation services from a jurisdictional company at Commission-approved rates, we will not grant the protesting producers or shippers that still rely on the Supply Area Facilities but do not provide revenues commensurate with maintaining the service they receive on these facilities, veto power over the proposal.

72. Regarding the argument that this proposal could negatively impact the competitiveness of gas supplies accessed by the Supply Area Facilities, we note that the extent to which the price of transportation affects the price of natural gas at either the wellhead or the end-use market in a competitive natural gas environment cannot be gauged precisely. Further, while the proposal before us involves the abandonment of Tennessee's offshore facilities by selling the jurisdictional facilities to Kinetica Energy and the gathering facilities to Kinetica Midstream, we note that the same reallocation of responsibility for the risks and costs associated with these facilities from all of Tennessee's shippers to only those shippers whose supplies actually utilize the facilities could have been accomplished absent an abandonment by Tennessee. Tennessee could have retained the subject facilities and instead proposed to create a new, distinct offshore rate zone in an NGA section 4 general rate proceeding. Further, Tennessee could have sought a declaratory order addressing the jurisdictional status of the various Supply Area Facilities as a preparatory step to seeking approval of separately-stated transmission rates and gathering rates. Under such a scenario, although Tennessee would still be the provider of service over all of these offshore facilities, the rate effects on offshore shippers would be very similar to the result here (i.e., they would be subject to a rate designed to recover all the costs associated with providing service on the Supply Area Facilities). Under either scenario—Tennessee's sale of the facilities or Tennessee's filing a rate case to change its rate design—gas markets and individual gas contracts will ultimately determine how costs related to the transportation of gas over the Supply Area Facilities will be reflected in the prices customers are willing to pay for the production accessed by these offshore facilities and, in turn, the prices that producers receive at the well head. These markets and contracts are not subject to the Commission's jurisdiction.

73. In regard to protestors' claim that we cannot find that Tennessee's abandonment proposal is permitted by the public convenience or necessity unless we first determine what gathering rates and service conditions Kinetica Midstream will impose, we note that protestors have not cited any source of authority that would give the Commission jurisdiction to require this information from such a non-jurisdictional company. Further,

because we have no discretion to deny Tennessee abandonment authority over those facilities performing gathering functions,⁵³ we find that such information is not needed for us to weigh those considerations that are necessary to find that Tennessee's proposal to abandon the facilities performing jurisdictional transmissions functions is permitted by the public convenience or necessity.

3. Continuity of Service

74. Indicated Shippers state that the Commission has held it will not approve the abandonment of jurisdictional facilities by transfer unless the pipeline company seeking to acquire the facilities provides some assurance that existing customers will continue to have access to comparable services.⁵⁴ Indicated Shippers argue that approving Tennessee's abandonment proposal would bifurcate Tennessee's current continuous and integrated system, which they allege would erect obstacles to Gulf of Mexico producers attempting to access Tennessee's system. Indicated Shippers also emphasize that Tennessee provides firm service to ConocoPhillips on the Supply Area Facilities, and assert that authorizing Tennessee's abandonment of these facilities would prevent Tennessee from honoring its long-term, firm agreement with ConocoPhillips, contrary to Commission precedent.⁵⁵ Citing *Sunoco, Inc. (R&M) v. Transcontinental Gas Pipe Line Corporation*,⁵⁶ Indicated Shippers and ConocoPhillips argue that the Commission should require Tennessee to reimburse shippers for any increase in costs related to services on the facilities being abandoned or to acquire capacity from the new owner of the facilities

⁵³ *Southern*, 126 FERC ¶ 61,246, at P 38 (2009).

⁵⁴ Indicated Shippers cite *Columbia Gas Transmission Corp.*, 100 FERC ¶ 62,005, at 64,003 (2002) (citations omitted).

⁵⁵ Indicated Shippers cite *Southern Natural*, 126 FERC ¶ 61,246, at PP 57-60 (2009) (*Southern*) and *Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,118, at P 16 (2003). Indicated Shippers also state that because Kinetica Energy's proposed 100 percent load factor firm maximum rate would amount to a rate increase of approximately 270 percent for ConocoPhillips, the result of approving Tennessee's abandonment proposal would be contrary to the public interest and therefore requires that the Commission reject Tennessee's and Kinetica Energy's applications. In its protest, ConocoPhillips expresses these same concerns. We discuss arguments regarding increased rates below.

⁵⁶ 114 FERC ¶ 61,180 (2006) (*Sunoco v. Transco*), *aff'd sub nom. Transcontinental Gas Pipe Line Corp. v. FERC*, 485 F.3d 1172 (D.C. Cir. 2007).

in order to continue the services it had been providing over the facilities under existing contractual terms.⁵⁷

75. Arena, Walter, LLOG, and Producer Coalition argue that Tennessee's system historically has been a firm-to-the-wellhead pipeline on which firm shippers are allocated capacity from their primary receipt points to their primary delivery points. These parties further argue that while over 99 percent of transportation nominations from Tennessee's offshore system may be initiated from pooling points, during critical periods (e.g., when there is curtailment due to weather or pipeline repair) all of Tennessee's firm transportation shippers revert to their primary receipt points; the parties assert that upon abandonment of the Supply Area Facilities to Kinetica Energy, this firm-to-the-wellhead service would be lost. These parties cite Commission orders in various *Transco* proceedings for the proposition that the Commission rejects abandonment proposals that would have detrimental effects for entities that rely on the services provided by the facilities to be abandoned.⁵⁸

76. Tennessee Customer Group argues that protestors' concerns regarding continuation of service are not a basis for rejecting Tennessee's abandonment proposal because all of the jurisdictional Supply Area Facilities will remain subject to the Commission's jurisdiction,⁵⁹ and the Commission has no authority to require continuity of service over the Supply Area Facilities that are actually performing gathering functions and thus are exempted by NGA section 1(b) from the Commission's section 7 jurisdiction.⁶⁰

77. Tennessee states that it is not proposing to discontinue firm service to any customer, and that it will work with affected customers to amend their transportation service agreements to relocate primary receipt points on the Supply Area Facilities to either new interconnection points or other meters with available capacity, including

⁵⁷ See *Sunoco, Inc. (R&M) v. Transcontinental Gas Pipe Line Corp.*, 111 FERC ¶ 61,400, at P 6 (2005).

⁵⁸ *Transcontinental Gas Pipe Line Corp.*, 129 FERC ¶ 61,255 (2009) and 103 FERC ¶ 61,118 (2003).

⁵⁹ Citing *Southern Natural*, 139 FERC ¶ 61,237, at P 36.

⁶⁰ Citing November 2011 Order, 137 FERC ¶ 61,105, at P 24 (“[T]he Commission has acknowledged that when it finds that the facilities at issue are currently performing a gathering function — thus are excluded by NGA section 1(b) from the Commission's jurisdiction — it has no choice but to grant the abandonment.”).

appropriate pooling points. It states that such relocation is consistent with Commission precedent⁶¹ and Tennessee's tariff, which states that "an open season for a change of primary points . . . shall not be required when the change is necessitated by the proposed abandonment of facilities associated with a [s]hipper's primary point or points" ⁶² Tennessee emphasizes that over 99 percent of nominations for transportation of gas supplies coming from offshore system are initiated from pooling points, and that all of its shippers will continue to have access to supplies aggregated at these points following Tennessee's abandonment of the Supply Area Facilities.

78. Protestors' reliance on the cases cited is unavailing. The *Southern* proceeding involved the proposed abandonment of facilities currently functioning as jurisdictional transmission facilities. Southern Natural proposed to sell the facilities to a non-jurisdictional entity that would transfer some of the facilities to an intrastate pipeline affiliate that could use the facilities to provide interstate services under section 311 of the Natural Gas Policy Act (NGPA) of 1978⁶³ and some of the facilities to an affiliate that planned to construct a processing plant, lower the facilities' operating pressure, and make other changes so that the facilities could qualify as gathering facilities.⁶⁴ We denied the proposed abandonment finding that Southern had failed to support its contention that the facilities were underutilized to the extent that they were no longer essential to the provision of its open-access interstate transportation service.⁶⁵ The abandonment proposal also was protested by a large number of shippers holding firm capacity on the facilities to be abandoned, evidencing the existence of significant continuity of service issues.⁶⁶

79. Similarly, in one of the cited *Transco* proceedings, the Commission denied the abandonment request to sell jurisdictional facilities to an intrastate pipeline company

⁶¹ Tennessee cites *Southern Natural*, 139 FERC ¶ 61,237, at P 32 (2012); *Trunkline*, 139 FERC ¶ 61,239 at P 131, *reh'g denied*, 142 FERC ¶ 61,133 (2013); *ANR*, 139 FERC ¶ 61,238 at P 34.

⁶² Tennessee's FERC NGA Gas Tariff, TGP Tariffs, GT&C, Art. XXVI, Section 5.7(i), Sheet No. 384.

⁶³ 15 U.S.C. §§ 3301-3432 (2006).

⁶⁴ *Southern*, 126 FERC ¶ 61,246 at PP 14, 44.

⁶⁵ *Id.* P 45.

⁶⁶ *Id.* P 57.

because the facilities were not so underused by Transco as to support a finding that they were not essential to its provision of open-access interstate service. While the intrastate pipeline planned to offer interstate service on the facilities under NGPA section 311, the Commission held that would not afford shippers the same level of protection as the Commission's open-access policies and NGA jurisdiction.⁶⁷

80. In the other cited *Transco* proceeding, the Commission denied Transco's proposed abandonment of a lateral by sale to a company that planned to operate the lateral as a non-jurisdictional gathering facility after disconnecting it from Transco's system to use it for the receipt of local production and transportation to a processing plant, from which gas could then reach Transco's system. The Commission found that the lateral was not so underutilized that it was not no longer essential to Transco's jurisdictional open-access transmission service.⁶⁸

81. Here, conversely, Tennessee's proposed abandonment will have no impact on the ability of shippers to obtain fully-regulated service on the jurisdictional Supply Area Facilities. Upon acquisition of those facilities, Kinetica Energy will be fully subject to the Commission's NGA jurisdiction. All of the Commission's open-access policies and regulations will continue to apply to the services provided by Kinetica Energy, and its services will be provided at Commission-approved rates. No Supply Area Facilities currently functioning as jurisdictional transmission facilities are proposed to be transferred to the gathering affiliate, Kinetica Midstream. Thus, the concerns underlying the Commission's decisions in the cited *Southern* and *Transco* proceedings do not apply.

82. In regard to the *Sunoco v. Transco* proceeding cited for the proposition that ConocoPhillips is due compensation if Tennessee is authorized to proceed with the proposed abandonment, Tennessee asserts that those cases involved facilities proposed for sale that were underutilized and were not essential to open-access interstate transportation service. Tennessee asserts that here, it proposes to sell jurisdictional facilities to a company that will operate as an interstate natural gas company subject to the Commission's regulation, and thus the concerns regarding continuation of service are misplaced.

83. *Sunoco v. Transco* did not purport to establish a policy that the provisions of any existing firm service agreements must be honored if an abandonment is to be

⁶⁷ *Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,118, at P 16.

⁶⁸ *Transcontinental Gas Pipe Line Corp.*, 129 FERC ¶ 61,255, at PP 41-42.

authorized.⁶⁹ The Commission's decision in *Sunoco v. Transco* was premised upon a very specific set of circumstances, few of which are present here. Beyond pointing to the fact that, like Sunoco, ConocoPhillips has an agreement for firm service utilizing facilities proposed to be abandoned, neither Indicated Shippers nor ConocoPhillips have demonstrated that the circumstances here are sufficiently similar to compel the same result as in *Sunoco v. Transco*. The fact that Sunoco had a contract for firm service was not the only, nor necessarily the decisive, factor in the Commission's decision to require that Transco reimburse Sunoco for additional transportation costs it would incur as a result of Transco's abandonment of facilities. *Sunoco v. Transco* involved a Commission-approved rate settlement that Transco had negotiated with Sunoco, as well as a proposal to abandon facilities found to be non-jurisdictional gathering facilities.⁷⁰

84. We recognize that Tennessee's abandonment will make it necessary for ConocoPhillips and other firm shippers whose service agreements with Tennessee designate receipt and/or deliver points on the Supply Area Facilities⁷¹ to enter into service agreements with Kinetica Energy and, in some cases, Kinetica Midstream as well, if they want to maintain these receipt and delivery points. To the extent that these shippers have receipt and delivery points on the jurisdictional Supply Area Facilities that Kinetica Energy will acquire, continuity of service to and from these points will be assured under the Commission's open-access policies and at Commission-approved rates. To the extent any of these shippers receipt or delivery points on the Supply Area Facilities are found to be gathering facilities and transferred to Kinetica Midstream, we have explained that we do not believe the statutory exemption for gathering facilities could be reconciled with a policy of refusing to authorize an interstate pipeline company's abandonment of certificated gathering facilities to a purchaser that will operate them as non-jurisdictional gathering facilities. The Commission does not believe that the statutory exemption for gathering facilities can be reconciled with a policy, as

⁶⁹ We note, however, that Kinetica Energy states it has offered ConocoPhillips a very substantial discount off of its filed rights, which Kinetica Energy claims "would essentially preserve [ConocoPhillips'] financial arrangements for its firm service of 10,000 Dth/day" Kinetica Energy's May 22, 2013 Answer.

⁷⁰ *Sunoco v. Transco*, 114 FERC ¶ 61,180, at PP 8-20 (2006), *aff'd sub nom. Transcontinental Gas Pipe Line Corp. v. FERC*, 485 F.3d 1172 (D.C. Cir. 2007).

⁷¹ The members of the protesting Indicated Shippers that are listed in Exhibit W of Tennessee's application as shippers with firm service agreements include, in addition to ConocoPhillips, Anadarko Petroleum Corporation, and Anadarko US Offshore Corporation.

urged by Indicated Shippers, of refusing to authorize an interstate pipeline company's abandonment of certificated gathering facilities to a purchaser that will operate them as non-jurisdictional gathering facilities.

4. Alleged Anti-Competitive Effects of Proposed Abandonment

85. Indicated Shippers and Stingray allege that Tennessee's abandonment of the Supply Area Facilities would bifurcate Tennessee's offshore facilities and would vest market power in Kinetica Energy and Kinetica Midstream as the new owners of the jurisdictional facilities and gathering facilities, respectively. Stingray, whose jurisdictional system is upstream of some of the Supply Area Facilities and the downstream Tennessee's pooling points fed by the offshore facilities, states that it would sustain a serious adverse effect from the abandonment because it could no longer offer firm or economic access to Tennessee's system to producers attaching new gas supplies to Stingray's system. Following Tennessee's abandonment of the Supply Area Facilities, Stingray emphasizes that producers would have to attach to Kinetica Energy's or Kinetica Midstream's facilities or other pipelines that have direct access to Tennessee.

86. Stingray also argues that its remaining shippers would be adversely impacted because they would bear the increased cost burden that would result from declining throughput that Stingray believes would occur on its system if Tennessee's abandonment proposal is approved. Stingray thus asserts the Commission should reject Tennessee's abandonment proposal in its entirety, or at least deny Tennessee authority to abandon the Second Bayou Line and Line 507A-100. Stingray states that, if Kinetica Energy acquires these particular facilities, Stingray's shippers will either have to deliver their gas for processing at the capacity-constrained Targa Barracuda Plant, which delivers residue gas at its tailgate into Tennessee, or face higher rates to use Kinetica Energy's system. Stingray also states that if its shippers desire access to Tennessee other than at the Targa Barracuda Plant tailgate, such shippers will have to deliver gas into Kinetica Energy's Second Bayou System for transportation to Tennessee's system.

87. Stingray asserts that approval of Tennessee's abandonment proposal would run counter to the Commission's policy of creating more, not less, competition in natural gas markets. Lastly, Stingray claims the Commission's recent decisions approving the abandonment of other pipelines' offshore systems may be distinguished because those decisions did not involve the interests of another offshore interstate pipeline like Stingray that has no options that allow it to bypass the downstream facilities proposed to be abandoned.

88. Tennessee responds that its proposal should not be rejected as anti-competitive as all of the jurisdictional Supply Area Facilities will be acquired by Kinetica Energy and operated subject to the Commission's jurisdiction on an open-access basis and at

Commission-approved rates. Further, citing *ANR Pipeline Co.*,⁷² Tennessee claims that adding a new entrant into the market will increase competition, rather than limit it.⁷³

89. Kinetica Energy asserts it will not have market power because it will be a relatively small company operating in a region where many other major pipeline companies also operate. Kinetica Energy further asserts that Stingray's concerns over possible anti-competitive effect are overstated because Kinetica Energy, a new company that will need to optimize use of the offshore jurisdictional facilities it seeks to acquire, will focus on creating access to more pipeline interconnections for shippers, additional market outlets for producers, and increasing the amount of offshore production available to the natural gas market. Indicated Shippers respond that Kinetica Energy's assertions are undermined by its failure to provide any specifics regarding future interconnects. Indicated Shippers also assert that supplies connected to the Supply Area Facilities will be captive to Kinetica Energy.

90. We disagree with protestors' unsupported assertions that Tennessee's abandonment will have anti-competitive effects or give Kinetica Energy market power. Regarding the concerns that Kinetica Midstream may be able to exercise market power, in a 2007 order,⁷⁴ the Commission discounted the weight to be attached to market power considerations when determining whether to approve proposals under section 1(b) to reclassify facilities from jurisdictional to gathering. Specifically, in responding to requests that the Commission carefully consider and require mitigation of any potential abuse of market power when it reviews a proposed reclassification of facilities to gathering, the Commission held that:

⁷² 80 FERC ¶ 61,202, at 61,812 (1997).

⁷³ Tennessee also cites two other cases that include general principles on competition. *See Mobile Pipe Line Co. v. FERC*, 676 F.3d 1098, 1103 (D.C. Cir. 2012) ("Basic economic logic dictates that the introduction of a new alternative into a highly competitive market further increases competition; it does not suddenly render a previously competitive market uncompetitive."); *Town of Norwood v. New England Power Co.*, 202 F.3d 408, 413 (2000) ("Ordinarily, the transfer of generating assets to a new entrant could hardly reduce competition: it lessens the market power of the seller and adds a new competitor.").

⁷⁴ *Criteria for Reassertion of Jurisdiction Over Gathering Services of Natural Gas Company Affiliates*, 112 FERC ¶ 61,292 (2005), *order terminating proceeding and clarifying policy*, 118 FERC ¶ 61,114 (2007).

[T]hose who suggest that the Commission should first determine, based on market power issues and other public interest concerns, whether it is consistent with the public convenience or necessity to permit a pipeline to reclassify or transfer facilities or services before the Commission actually determines their proper function are putting the proverbial cart before the horse.

When a jurisdictional natural gas company comes before the Commission to request that the function of certificated facilities it owns and operates be deemed non-jurisdictional gathering or production, the starting point for determining whether the subject facilities are performing primarily a gathering or production function under NGA section 1(b) is to consider the physical characteristics of the subject facilities. While the courts have sanctioned giving some weight to non-physical factors when applying the primary function test, non-physical factors are secondary and generally only come into play if application of the physical factors results in a close call. The market power, economic, and historical considerations that some commenters advocate are not physical tests, and therefore cannot be given substantial weight.⁷⁵

91. As discussed above, the Commission cannot require that Tennessee continue to own and operate facilities that have been found to be non-jurisdictional gathering facilities. While Congress found that interstate pipelines do have monopoly power and provided the Commission with tools to regulate that power, such is not the case for gathering companies. Accordingly, gathering customers must seek recourse under state and federal antitrust laws should there be instances where anti-competitive behavior on the part of the gatherer arises.⁷⁶

⁷⁵ *Id.* PP 88-89.

⁷⁶ *Arkla Gathering Service Company*, 67 FERC ¶ 61,257, at 61,871 (1994); *order on reh'g*, 69 FERC ¶ 61,280, at 62,088 (1994); *reh'g denied*, 70 FERC ¶ 61,079 (1995); *reconsideration denied*, 71 FERC ¶ 61,297 (1995), *aff'd in part and rev'd in part*, *Conoco Inc. v. FERC*, 90 F.3d 536 (D.C. Cir. 1996).

92. Even assuming that protestors have realistically assessed the potential economic impacts on them as shippers and producers or, in Stingray's case, an upstream pipeline system, such economic impacts on them do not equate to anti-competitive effects. As discussed above and in other orders, the fact that producers are not paying for transportation service over Tennessee's offshore facilities does not mean that the transportation service is free. The costs of providing the offshore service are included in the rates being paid by Tennessee's shippers that have delivery points downstream of the pipeline system's pooling points.⁷⁷ We have also explained above that Tennessee could have decided to keep its Supply Area Facilities and achieved the same shift in the allocation of cost responsibility through a filing under section 4 of the NGA. Instead of limiting competition, Tennessee's sale of the Supply Area Facilities will level the playing field on which offshore producers and shippers that rely on these facilities compete for the downstream market by eliminating the unfair advantage they have had until now over producers and shippers whose gas is transported on the pipeline systems of other companies with rate designs that already allocate the cost responsibility for production area facilities to those that use the facilities.⁷⁸

5. Spin Off of Gathering Facilities

93. If the Commission approves Tennessee's abandonment of the Supply Area Facilities, Indicated Shippers oppose the plan for the facilities that perform a gathering function to be spun off separately to Kinetica Midstream. Indicated Shippers emphasize that allowing the spin off of the gathering facilities will, unlike the abandonment proposal approved in *ANR*,⁷⁹ cause the Commission to lose its jurisdiction under section 4 of the NGA to regulate the rates, terms and conditions for gathering services provided by an interstate pipeline company "in connection with" jurisdictional interstate transportation

⁷⁷ See, e.g., *Trunkline Gas Company, LLC*, 142 FERC ¶ 61,133, at P 27 (2013).

⁷⁸ The following are examples of Commission jurisdictional pipelines in the Gulf of Mexico charging a rate solely to transport gas from the wellhead to onshore processing plants: Black Marlin Pipeline Co. (\$0.9000 per Dth interruptible rate); Discovery Gas Transmission, LLC (\$0.2845 per Dth mainline, plus expansion interruptible rate); High Island Offshore System, L.L.C. (\$0.3950 per Dth interruptible rate); Stingray Pipeline Co., L.L.C. (\$0.595 per Dth interruptible rate); Venice Gathering System, L.L.C. (\$0.3500 per Dth interruptible rate). Shippers transporting gas on each of these pipelines incur further transportation expense following delivery onshore.

⁷⁹ *ANR Pipeline Co.*, 139 FERC ¶ 61,238, at P 57 (2012).

services.⁸⁰ Indicated Shippers argue that such jurisdiction is necessary to protect against unjust and unreasonable gathering rates that could be charged by Kinetica Midstream.

94. As we discussed above and in the November 2011 Order that addressed the Supply Area Facilities included in Tennessee's original application, the Commission does not have the discretion to withhold approval for an interstate pipeline to abandon facilities that were certificated in the past but are subsequently found to performing non-jurisdictional gathering functions. Thus, we cannot reject or condition approval of Tennessee's or Kinetica Energy's applications to prevent a spin off of the gathering facilities to Kinetica Midstream.

95. In regard to the cited *ANR* proceeding, Indicated Shippers is correct that the abandonment proposal approved by the Commission there was for the sale of all of ANR's offshore assets, which included both jurisdictional transmission facilities and gathering facilities, to TC Offshore LLC (TC Offshore). In the order, the Commission explained that it would retain its jurisdiction over the rates charged for service on the gathering facilities, because they would continue to be operated by a jurisdictional interstate pipeline company, TC Offshore, which would be providing its gathering services in connection with its interstate transportation services that are subject to the Commission's jurisdiction under both section 7 and section 4 of the NGA.⁸¹

96. However, contrary to Indicated Shippers' assertion, our approval of the abandonment in *ANR* was not dependent on the jurisdictional transmission facilities and the non-jurisdictional gathering facilities all being acquired and operated by the same entity. While all of the facilities had been certificated in the past and ANR therefore needed section 7(b) abandonment authority to dispose of the gathering facilities, we granted TC Offshore certificate authority only for the facilities performing jurisdictional transmission functions.⁸² Thus, TC Offshore will not need to seek abandonment authority from the Commission to sell or transfer the facilities to another entity.

⁸⁰ *See* 15 U.S.C. 717c(a) (2006).

⁸¹ *ANR*, 139 FERC ¶ 61,238 at n.48.

⁸² *Id.* at Ordering Paragraph (D).

6. Alleged Processing Plant Issues

97. Plains Gas, owner and operator of the Grand Chenier Processing Plant, requests the Commission include two conditions on any order approving Tennessee's abandonment proposal. First, Plains Gas states the Commission should condition approval on Kinetica Energy's assumption of all obligations of the Grand Chenier Gas Processing Plant Straddle and Processing Agreement (Straddle Agreement) that Plains Gas has in force with Tennessee. Second, to ensure that the Grand Chenier Processing Plant is not adversely affected by the abandonment, the Commission should direct Kinetica Energy to submit information explaining its plans to reverse the flow of gas on Line 507C-100.

98. In response, Kinetica Energy and Tennessee emphasize that neither gas processing nor straddle agreements are under the Commission's jurisdiction.⁸³ Kinetica Energy states that the Straddle Agreement is a private commercial contract between Tennessee and Plains Gas. Kinetica Energy further states that Plains Gas's concerns about gas flow on Line 507C-100 are misplaced, as Kinetica Energy does not intend to reverse the current direction of flow on this line.

99. As Kinetica Energy does not intend to change the current direction of flow of gas on Line 507C-100, Plains Gas's concerns in that respect are unwarranted.⁸⁴ Further, Kinetica Energy and Tennessee are correct that neither the processing plant nor its related services, including service under Plains Gas's and Tennessee's Straddle Agreement, are subject to the Commission's jurisdiction. Thus, the Commission is not the appropriate forum to hear and resolve a contractual dispute as to whether the terms of the Straddle Agreement are such that Kinetica Energy must assume all of Tennessee's obligations under that agreement.⁸⁵

7. Missing Information Allegations

100. Indicated Shippers argue that prior to approving Tennessee's abandonment proposal, the Commission must require Tennessee to address the actual impacts its

⁸³ Among other cases, Kinetica Energy cites *ANR*, 139 FERC ¶ 61,238 at P 67.

⁸⁴ Additionally, as discussed below, we find herein that Line 507C-100 performs a jurisdictional transmission function and will consequently remain subject to the Commission's jurisdiction.

⁸⁵ See *Chipeta Processing LLC*, 140 FERC ¶ 61,041, at P 13 (2012) (citations omitted); *Columbia Gulf Transmission Co.*, 123 FERC ¶ 61,153, at PP 24, 37 (2008).

abandonment would have on shippers whose services would be terminated.⁸⁶ Specifically, Indicated Shippers argues the Commission should require Tennessee to provide: (1) the firm points on the Supply Area Facilities; (2) the firm capacity at each point; (3) the expiration dates of all firm capacity agreements; and (4) information about associated evergreen or rollover rights of all firm capacity agreements. In addition, Indicated Shippers argue the Commission must require Tennessee to file a complete set of tariff sheets showing all modifications that will be necessary to implement its sale of facilities and rate settlement with certain shippers.⁸⁷

101. Tennessee states that it has complied with the Commission's regulations and that its settlement's description and filing requirements satisfies its requirement to file tariff records.⁸⁸ We agree with Tennessee that it has filed adequate information to identify and assess impacts of the abandonment on affected shippers and its tariff. Tennessee discusses those effects in the body of its application and in Exhibit W to the application. Tennessee also provided additional information in response to data requests indicating that: (1) the Town of Grand Isle, which has a primary delivery point on the facilities to be sold, does not oppose the sale; (2) the three farm taps currently receiving service through an interruptible transportation agreement with Cokinos Natural Gas Company will continue to receive the same level of service from Kinetica Energy; and (3) in the event that a mutually satisfactory accommodation is not reached with any of Tennessee's firm shippers that oppose the abandonment, those shippers nevertheless will be able to continue receive service from Tennessee and Kinetica Energy under their Part 284 blanket certificates for open-access transportation service at Commission-approved rates.⁸⁹ Further, in response to a data request, Tennessee filed *pro forma* tariff sheets showing the effects of the proposed settlement.⁹⁰

⁸⁶ (Citing 18 C.F.R. § 157.18(d) (2012)).

⁸⁷ (Citing 18 C.F.R. §§ 157.18(e), 386.602(c)(2) (2012)).

⁸⁸ Tennessee cites *Dominion Transmission Inc.*, 111 FERC ¶ 61,285, at P 32 (2005) ("If the Commission approves the agreement, it will direct that the pipeline file, pursuant to NGA section 4(d) and section 154.203 of the Commission's regulations, actual tariff sheets implementing the agreement consistent with the terms of the agreement as approved by the Commission.").

⁸⁹ Tennessee's January 4, 2013 Data Response 14 and January 23, 2013 Data Response 15.

⁹⁰ Tennessee's January 7, 2013 Data Response 26(B).

8. Conclusion

102. For the reasons discussed above, we find that there will be no unreasonable adverse impacts to existing firm or interruptible services as a result of Tennessee's abandonment of the jurisdictional Supply Area Facilities by sale to Kinetica Energy.⁹¹ Because we are authorizing Kinetica Energy to acquire and operate the transmission facilities on an open-access basis as a jurisdictional natural gas company, there will be no issues regarding continuity of service on the jurisdictional Supply Area Facilities. The jurisdictional facilities will remain in service and will be available to any shipper who wishes to transport gas at Commission-approved rates and under terms and conditions subject to Commission regulation. Further, Kinetica Energy will be acquiring all of the facilities that perform jurisdictional transmission functions. We cannot refuse to permit Tennessee's abandonment of those facilities that were certificated in the past but nevertheless currently perform non-jurisdictional gathering functions. Accordingly, we find that the public convenience or necessity permit Tennessee's abandonment of all of the certificated Supply Area Facilities so that the facilities performing jurisdictional functions can be acquired by Kinetica Energy and the facilities performing gathering functions can be acquired by Kinetica Midstream.

B. Kinetica Energy's Certificate Application in CP12-489-000

103. Kinetica Energy proposes to acquire and operate the Supply Area Facilities providing transmission service that Tennessee proposes to abandon. Since Kinetica Energy proposes to acquire these facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposed abandonment is subject to subsections (c) and (e) of section 7 of the NGA. Kinetica Energy does not propose any new construction or removal of any facilities, but does propose some operational changes. Kinetica Energy's request for certificate authorization is granted, as discussed below, subject to the conditions established in this order.

104. Kinetica Energy does not request a determination of the jurisdictional status of any of the Supply Area Facilities. However, Kinetica Energy anticipates that all of the Supply Area Facilities will remain functionalized as they are on Tennessee's books,

⁹¹ Tennessee's January 23, 2013 Attachment C to Data Response 16 lists 16 pipeline segments for which abandonment is already complete or will be completed pursuant to other authorization. The facilities that will be abandoned by Tennessee pursuant to other authority are not included in the sale to Kinetica Energy and, consequently, the Commission does not herein grant Tennessee permission to abandon those lines.

which is as transmission facilities, with the exception of the very minor Offsystem Main Pass Laterals.

105. Because some of the currently certificated Supply Area Facilities have never been reviewed to determine their functions, it is possible that some of the un-reviewed additional Supply Area Facilities actually perform non-jurisdictional gathering functions. Therefore, the Commission finds it appropriate to take this opportunity to analyze the jurisdictional status of the subject facilities to ensure that the certificate of public convenience and necessity issued to Kinetica Energy in this proceeding only encompasses facilities and services over which the Commission actually has jurisdiction under the NGA.⁹²

106. As described below, we find that all of the additional Supply Area Facilities, except for the Offsystem Main Pass Laterals, perform a jurisdictional transportation function. The facilities found to be unutilized are not reviewed here to determine their jurisdictional status as they will perform no function under Kinetica Energy's operation. Thus, the unutilized facilities, which make up only a small portion of the Supply Area Facilities, are not encompassed in the certificate authority granted to Kinetica Energy.⁹³ However, while the Commission is not granting certificate authority for the unutilized facilities at this time and Kinetica Energy may not include any costs associated with the unutilized facilities in its initial section 7 rates, if Kinetica Energy finds a use for any of these facilities in the future, it may apply for case-specific certificate authority or, to the extent the facilities are eligible, rely on its Part 157 blanket certificate authority to place the facilities in service.

1. The Primary Function Test

107. Under section 1(b) of the NGA, the Commission's jurisdiction does not extend to facilities used for "the production or gathering of natural gas." The NGA, however, does not define the term "gathering." As a result, the Commission has developed a legal test,

⁹² *CNG Transmission Corp.*, 67 FERC ¶ 61,330, at 62,177 (1994) ("[U]ntil the Commission actually scrutinizes the facilities under the primary function test, the actual jurisdictional status of the facilities cannot be definitively determined."). *See, e.g., Trunkline*, 139 FERC ¶ 61,239 at P 56 (finding it appropriate to determine the jurisdictional status of facilities to be acquired by Sea Robin).

⁹³ *Id.* PP 59-60 (finding that the unutilized facilities are not required by Sea Robin to provide transportation service and are not included in its certificate authorization).

known as the “primary function test,”⁹⁴ to determine which facilities are non-jurisdictional gathering facilities and which facilities are jurisdictional transmission facilities.

108. The “primary function test” includes consideration of several physical and geographic factors, including: (1) the lengths and diameters of the pipelines at issue; (2) the extension of the subject facilities beyond the central point in the field; (3) the facilities’ geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facilities; and (6) the operating pressure of the lines. The Commission also considers the purpose, location, and operation of the facilities; the general business activity of the owner of the facilities; and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978.⁹⁵ The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.⁹⁶

109. In *Sea Robin Pipeline Company*,⁹⁷ the Commission adopted an additional factor—a central aggregation point criterion—to assist in the analysis of where gathering ends and transportation begins with respect to offshore facilities. In applying its central aggregation point criterion, the Commission looks at whether there is a given point on an offshore system where gas is received from multiple upstream areas and at which there is a marked change in physical attributes, e.g., significantly larger diameter pipe downstream of that point, the presence of a production platform, or high horsepower compression facilities.

110. If there is such a central point of aggregation, the Commission still reviews the traditional factors of the primary function test—i.e., the overall geographic configuration of the system, the physical dimensions of the facilities, and the locations of compression facilities and connections with supply laterals, wells, and productions platforms—in deciding whether the identified central point of aggregation is where non-jurisdictional gathering ends and jurisdictional transmission begins.⁹⁸ While the courts have sanctioned

⁹⁴ See *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990) and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

⁹⁵ 15 U.S.C. §§ 3301-3432 (2006).

⁹⁶ *Columbia Gas Transmission Corp.*, 93 FERC ¶ 61,278, at 61,913 (2000).

⁹⁷ 87 FERC ¶ 61,384 (1999) (*Sea Robin*).

⁹⁸ *Id.* at 62,430-31.

giving some weight to non-physical factors, e.g., the original purpose of the subject facilities or the general business activities of the owner, and have agreed that they may be relevant considerations in determining the demarcation point between transmission and gathering facilities, such non-physical factors must be secondary to the physical factors. Thus, non-physical factors “generally only come into play if application of the physical factors results in a close call.”⁹⁹

111. As an initial matter, Arena, Walter, LLOG, and Producer Coalition state the Commission should not address the jurisdictional status of these facilities. Citing two *Tennessee Gas Pipeline Company* proceedings, protesters assert the Commission has a policy of only addressing the jurisdictional status of facilities upon the request of an applicant to do so.¹⁰⁰ Nevertheless, these parties argue that if the Commission does examine the jurisdictional status of the facilities, then the Commission must find that all of the additional Supply Area Facilities presented in Tennessee’s most recent application are, and will continue to remain, jurisdictional transmission facilities.

⁹⁹ *Transcontinental Gas Pipe Line Corp.*, 121 FERC ¶ 61,157, at P 11 (2007) (*Jupiter*). In *Jupiter*, the Commission found on remand that its previous orders had placed too much significance on the identification of a central point of aggregation as the basis for finding that offshore facilities owned and operated by Jupiter Energy Corporation were jurisdictional. The Commission’s order on remand acknowledged that in the *Sea Robin* proceeding announcing the central aggregation point as an additional criterion when addressing offshore facilities, the Commission indicated that the weight given to any identified central aggregation point would depend, in part, on the extent to which there was a “*marked change* in the physical attributes and geographic configuration” at that point. After analyzing Jupiter’s facilities in light of the court’s discussion that other physical and non-physical factors should be given appropriate weight, the Commission found that Jupiter’s pipeline facilities would be non-jurisdictional gathering facilities upon transfer to Jupiter’s parent, Unocal, which sought to integrate the facilities into its own gathering and production system. *Id.* PP 12-17 (citing *Sea Robin*, 87 FERC at 62,430).

¹⁰⁰ These parties cite *Tennessee Gas Pipeline Co.*, 131 FERC ¶ 61,127, at n.5 (2010) (“Neither Tennessee nor Tauber seeks a declaration from the Commission that the laterals will perform a non-jurisdictional function (such as gathering) following abandonment. Tauber assumes any risks associated with any future allegation that these facilities might be jurisdictional to the Commission.”); and *Tennessee Gas Pipeline Co.*, 134 FERC ¶ 62,274, at n.2 (2011) (“[N]either Tennessee nor Tauber seek a declaration from the Commission that the facilities will perform a non-jurisdictional function upon abandonment.”).

112. Protestors' reliance on the cited *Tennessee* orders is misplaced. It is true that the Commission has not always made a primary function determination on its own motion where facilities are proposed for abandonment by sale to another company. However, unlike the cases cited by protestors, in situations like this, where the Commission has before it an abandonment application for hundreds of miles of offshore pipeline to which the Commission has not had the opportunity to apply the primary function test to, regardless of a request to review the jurisdictional status of facilities, the Commission has an obligation to examine the status of the facilities because under NGA section 1(b) the Commission cannot certificate facilities that are not performing a jurisdictional function.¹⁰¹

113. Our November 2011 Order reviewed the primary functions of the Supply Area Facilities presented in Tennessee's previous application—Sabine Pass, Second Bayou, Cameron, South Marsh Island, South Timbalier/Grand Isle/Bay Marchand, and South Pass Systems. Therefore, while we will summarize the November 2011 Order's jurisdictional findings regarding the facilities addressed in that order,¹⁰² we will not re-examine them in the instant proceeding. Further, the Offsystem Main Pass Laterals, in which Tennessee proposes to abandon its interest as a co-owner, were found to be non-jurisdictional gathering facilities in *Southern Natural Gas Co., L.L.C.*¹⁰³ Thus, our jurisdictional review and application of the primary function test in this order is limited to the additional Supply Area Facilities presented for the first time—the Kinder, Blue Water, Cocodrie, and West Delta 68 Systems. The descriptions of the facilities included in these systems provided below are based on the maps and other information provided by Tennessee and Kinetica Energy in their applications and in their responses to data requests.¹⁰⁴ Some of the descriptive information provided by the applicants is

¹⁰¹ See *Trunkline Gas Co., LLC*, 142 FERC ¶ 61,133, at P 54 (2013).

¹⁰² We note that there is no indication that the functions of those facilities have changed since their review in the November 2011 Order.

¹⁰³ 139 FERC ¶ 61,237, at n.92 (2012) (*Southern Natural*). The Offsystem Main Pass laterals are two small pipelines located in Main Pass Block 311, consisting of 2.7 miles of 4-inch and 6-inch-diameter pipeline facilities. In *Southern Natural*, we found that these facilities perform gathering functions and authorized Southern to abandon them by sale to High Point Gas Transmission, LLC, along with other facilities.

¹⁰⁴ For example, the Amended PSA and Exhibit T of Tennessee's application for abandonment authority both mistakenly include a 7-mile long onshore lateral Line 523F-100 at the western end of the Cocodrie System as part of the Blue Water System, whereas

(continued...)

inconsistent regarding certain facilities. However, the information provided by the applicants is sufficient for us to analyze the additional facilities under the primary function test and to determine, as discussed below, that all of these facilities have a primary function of jurisdictional transmission.

114. Because this order approves Kinetica Energy's proposal to charge postage stamp rates, the allocation of a particular facility's costs to a particular system is not an issue. However, it is incumbent upon Tennessee, Kinetica Energy and Kinetica Midstream to ensure that only gathering or unused facilities are transferred to Kinetica Midstream, and that any gathering facilities acquired by Kinetica Energy are properly functionalized as gathering facilities and that no costs associated with gathering facilities are included in Kinetica Energy's rates for its jurisdictional transmission services. In this regard, some disparities between the Commission's findings in the November 2011 Order and the information filed in this proceeding indicate that Tennessee and the Kinetica affiliates need to make at least some adjustments.

115. For instance, a study submitted by Kinetica Energy¹⁰⁵ concerning the derivation of its proposed rates indicates that the South Pass System's 17.5-mile, 36-inch Line 527A-600 performs a gathering function, and therefore will be transferred to Kinetica Midstream. This functionalization is at odds with the November 2011 Order's finding that Line 527A-600's primary function is jurisdictional transmission.¹⁰⁶ Further, Exhibit T of Tennessee's application does not list Line 527A-600 as one of the jurisdictional transmission facilities to be transferred to Kinetica Energy.

116. Another inconsistency with the November 2011 Order's findings is Tennessee's inclusion of the Sabine Pass System's South Pass Block 18 platform and the Cameron System's West Cameron 68 platform in the description of jurisdictional transmission facilities to be transferred to Kinetica Energy.¹⁰⁷ The November 2011 Order found these platforms to be non-jurisdictional gathering facilities,¹⁰⁸ and the platforms are not

Kinetica Energy's application for certificate authority correctly reflects this lateral as part of the Cocodrie System.

¹⁰⁵ Inch-Mile study, for the purpose of allocating costs to jurisdictional facilities, attached to Kinetica Energy's January 31, 2013 response to Data Request 27.

¹⁰⁶ November 2011 Order, 137 FERC ¶ 61,105, at P 92.

¹⁰⁷ Tennessee's application at p. 9.

¹⁰⁸ November 2011 Order, 137 FERC ¶ 61,105 at PP 39, 51.

included in Kinetica Energy's description of the Sabine Pass System and the Cameron System facilities that it intends to acquire.¹⁰⁹

2. November 2011 Order's Findings Regarding Facilities' Jurisdictional Status

a. Sabine Pass System

117. The Sabine Pass System facilities addressed by the November 2011 Order included approximately 49.9 miles of 10-inch to 30-inch-diameter pipeline. Roughly 40 miles of the pipeline are located in federal waters offshore of Texas and Louisiana in the High Island Area, Sabine Pass Area, and West Cameron Area. The system, which comes onshore in Cameron Parish, Louisiana, has the configuration of an inverted "Y" with a platform located at the intersection of the arms of the Y in Sabine Pass Block 18 (SX 18). In the November 2011 Order, we found that the SX 18 platform, which does not contain compression facilities and is owned by Tennessee, and all upstream facilities primarily perform a gathering function, while jurisdictional transmission is the primary function of the facilities downstream from the platform.¹¹⁰

b. Second Bayou System

118. Tennessee's Second Bayou System is located entirely onshore paralleling the coastline in Cameron Parish, Louisiana. The Second Bayou System does not have the physical characteristics necessary to find it functions as gathering, and all or nearly all of the gas transported on the Second Bayou System is gas that has already been processed, is pipeline quality, and is received from another company's upstream system. Therefore, we found in the November 2011 Order that all of the Second Bayou System's facilities currently have a primary function of transmission.¹¹¹

c. Cameron System

119. For the purpose of applying the primary function test, the November 2011 Order divided the Cameron System's 306 miles of pipeline into three subsets of facilities located primarily offshore and one subset of onshore facilities:

¹⁰⁹ Kinetica Energy's application at Exhibit F.

¹¹⁰ November 2011 Order, 137 FERC ¶ 61,105 at PP 34-40.

¹¹¹ *Id.* PP 41-45.

i. WC 68 Associated Facilities

120. In the offshore western portion of the Cameron System, facilities referred to in the November 2011 Order as the WC 68 Associated Facilities, we found that the WC 68 platform serves as a central aggregation point and the demarcation point indicating a gathering function for facilities located upstream and a transmission function for those downstream. Hence, we found in the November 2011 Order that the WC 68 platform and associated upstream facilities primarily perform a gathering function, while the facilities downstream from the platform primarily perform a transmission function.

ii. EC 49; WC 192; HIOS Lateral Associated Facilities

121. Another subset of the Cameron System reviewed in the November 2011 Order consists of extensive offshore facilities referred to as EC 49; WC 192; HIOS Lateral Associated Facilities. We found in the November 2011 Order that jurisdictional transmission is the primary function of the East Cameron Area Block 49 and West Cameron Area Block 192 platforms, the no longer utilized compression facilities on those platforms, and all facilities downstream of the platforms, including Tennessee's HIOS Lateral. The order also found that gathering is the primary function of the of the jumper line between the platforms and facilities upstream of the platforms, including the 33-mile-long upstream line that protesters asserted should remain jurisdictional because its upstream end is less than a mile from other jurisdictional facilities owned by Tennessee.¹¹²

iii. EC 33 Associated Facilities

122. The November 2011 Order found that the third-party owned EC 33 platform in Tennessee's Cameron System's facilities, described as EC 33 Associated Facilities, serves as a central point of aggregation, that the primary function of the 22.2-mile-long trunkline from the platform to shore is jurisdictional transmission function, and that gathering is the primary function of all of the upstream pipeline facilities that interconnect with the trunkline at the platform.¹¹³

iv. Onshore Associated Facilities

123. The subset of Cameron System facilities referred to in the November 2011 Order as Onshore Associated Facilities are located entirely onshore in Cameron and Vermilion

¹¹² *Id.* PP 52-60.

¹¹³ *Id.* PP 61-64.

Parishes, Louisiana. In the November 2011 Order, we found that all of the Onshore Associated Facilities primarily perform a jurisdictional transmission function to the extent they are still in use.¹¹⁴

d. South Marsh Island System

124. The South Marsh Island System has a total of 84.7 miles of pipe, with 59 miles located in federal offshore waters of Louisiana in the South Marsh Island and Vermilion Areas. In the November 2011 Order, we found that jurisdictional transmission is the primary function of Line 823X-1300, a 32.6-mile-long line, and Line 823X-300, a 34-mile-long line, that extend from third-party owned platforms in South Marsh Island Blocks 243 and 249, respectively, to onshore at the Tennessee's Pecan Island dehydration and separation plant in Vermilion Parish, Louisiana. It also found that gathering is the primary function of a jumper line between Line 823X-300 and Line 823X-1300 and all of the facilities upstream of those trunklines.¹¹⁵

e. South Timbalier/Grand Isle/Bay Marchand System

125. Tennessee's South Timbalier/Grand Isle/Bay Marchand System has approximately 172 miles of pipeline, with approximately 32 miles located in federal waters and the rest of the facilities located in Louisiana state waters, marshland or onshore in Louisiana. The overall configuration of the system roughly resembles an "H" shape, if viewed with the approximately 5-mile long horizontal crossbar formed by the sections of Tennessee's parallel mainlines designated as Lines 500-1 and 500-2.¹¹⁶

126. Along the 30 miles of pipe extending northward on the onshore arm of Line 524A-100, forming the eastern side of the crossbar of the H configuration, multiple smaller diameter lines interconnect. In the November 2011 Order, we found that this 30-mile-long section of pipe and interconnections along its length constitute a spine-and-lateral configuration, and therefore found that Line 524A-100 and its upstream associated facilities primarily perform a gathering function. The other northward extending onshore

¹¹⁴ *Id.* PP 65-72.

¹¹⁵ *Id.* PP 73-78.

¹¹⁶ The facilities included by Tennessee in its previous abandonment application addressed by the November 2011 Order did not include either Line 500-1 or Line 500-2 facilities. However, Tennessee's current application does propose the abandonment of certain Line 500-1 facilities, including the line constituting the crossbar of the H-shaped system, as part of the Cocodrie System, discussed below.

arm of the H configuration, composed mainly of 20-mile-long Line 523D-100, currently has few active receipt points and no interconnecting supply laterals along its final 18 miles before interconnecting with Tennessee's mainline. We found in the November 2011 Order that Line 523D-100 and that line's associated upstream facilities primarily perform a jurisdictional transmission function. Similarly, because the two stand-alone Lines 523G-100 and 523H-100 off of the mainline to the west of the H do not have interconnecting supply laterals and only have single receipt points, we found that they also have primarily transmission functions.

127. The part of the H-shaped system extending southward and in a more westerly direction from the H's crossbar reaches as far as 30 miles offshore and includes the southward extending 10.1-mile-long Line 523D-400 that begins on the western side of the H's crossbar and its associated facilities, and the eastern 21.3-mile-long Line 524J-100 and its associated facilities. The 10.1-mile-long Line 523D-400 collects gas from active receipt points at its upstream origin and from the upstream 5.2-mile-long lateral Line 523D-500, which in turn collects gas from only one receipt point at its upstream origin. Because the few production receipts along Lines 523D-400 and 523D-500 are located at points furthest from shore, we found in the November 2011 Order that Lines 523D-400 and 523D-500 primarily perform jurisdictional transmission functions. As for the 21.3-mile-long southward and westerly extending Line 524J-100, which has its upstream origin at a third-party owned platform in South Timbalier Block 37, we found that most of the gas transported by that line is collected near or at its upstream end at a third-party owned platform in South Timbalier Block 37. Therefore, we found that jurisdictional transmission is the primary function of Line 524J-100 and facilities downstream of that line, and that all upstream facilities which collect the gas received by Line 524J-100 primarily perform a gathering function.

128. The 28-mile-long southeastward extending offshore arm of the H configuration originates in Grand Isle 47 and includes a 7.4-mile-long segment, Line 524C-500, which connects to the 8.1-mile-long Line 524C-400, which in turn interconnects at a platform in Bay Marchand Block 5, with the 11.6-mile-long Line 524C-100, which extends onshore to the site of the abandoned Leeville Compressor Station. Extending from the Bay Marchand Block 5 platform and roughly parallel with the Line 524C-100 is the 11.4-mile-long Line 524G-100, which receives gas coming to the platform from other areas. In the November 2011 Order, we found that the 28-mile-long southeastward extending arm of the H and all associated facilities, including Lines 524C-500, 524C-700, 524C-400, 524C-100, 524C-1500, and 524G-100, primarily perform a jurisdictional transmission function.¹¹⁷

¹¹⁷ November 2011 Order, 137 FERC ¶ 61,105 at PP 79-88.

f. South Pass System

129. The South Pass System consists of approximately 164.6 miles of pipeline, which includes 33 miles of pipe located in federal waters offshore of Louisiana. All of the facilities are upstream of the Scofield Bay Platform located in Louisiana marshland.

130. After finding that the Scofield Bay Platform has none of the characteristics associated with an offshore central point of aggregation, we found in the November 2011 Order that the South Pass System nevertheless has a central point of aggregation located at Tennessee's platform in Sabine Pass Area (SP) 55 where two upstream lines, Lines 527A-900 and 527A-700, meet at the platform with a larger downstream trunkline, Line 527A-600, and together resemble an inverted "Y." Therefore, we found in the November 2011 Order that Tennessee's SP 55 platform and all upstream facilities, including Lines 527A-900 and 527A-700, primarily perform a gathering function, while the downstream Line 527A-600 primarily performs a jurisdictional transmission function. We also found that jurisdictional transmission is the primary function of the 20-mile-long Line 526A-100 and the mostly parallel 20-mile-long Line 527A-100 that transport gas from interconnections with other pipeline segments located mostly at or near their upstream termini to the downstream Scofield Bay Platform. We further found that jurisdictional transmission is the primary function of the very short 0.01-mile-long Line 526A-400 that interconnects with Line 526A-100 in marshland.

131. The 10-inch diameter, 18-mile long Line 526A-600 extends northeast from the eastern end of the 20-inch diameter Line 526A-100 that begins at the Scofield Bay platform. While only five laterals of four to eight inches in diameter connect with the Line 526A-600 spine, they are arrayed mostly along the length of the spine. Due to the small diameters of the pipeline segments, the spine-and-lateral type configuration, and the location of the facilities at the eastern end of the Line 526A-100 mainline, we found that, on balance, Line 526A-600 and all upstream facilities primarily perform a gathering function.

132. The November 2011 Order found that gathering is the primary function of the South Pass System's 16.6-mile-long pipeline (including 3-mile-long Line 526A-2000 and the interconnecting 13.6-mile-long Line 526A-700), which extends to the southwest, along a narrow land extension into the surrounding Gulf of Mexico, from the eastern end of Line 526A-100, and associated upstream facilities, including the three interconnecting lateral Lines 526A-1100, 526A-2400, and Line 526A-1900.

133. The November 2011 Order found that jurisdictional transmission is the primary function of the 5.4-mile-long Line 527A-300, as the line has no active production receipt points, transports gas collected from a mainline trunk already found to be jurisdictional, and is located downstream from central aggregation points. Finally, the November 2011

Order found that jurisdictional transmission is the primary function of the 11.2-mile-long Line 526A-300 and the interconnected upstream 7.7-mile-long Line 526A-1200.¹¹⁸

3. Application of Primary Function Test to Additional Facilities Presented

a. Kinder System

134. The Kinder System totals approximately 130 miles of 6-inch to 20-inch diameter pipeline located entirely onshore and has no compression facilities. The system consists primarily of two lines, 66-mile-long, 12 and 16-inch diameter Line 507A-100 and 61-mile-long, 20-inch diameter Line 507C-100, extending southward from Tennessee's Kinder Compressor Station in Jefferson Davis Parish, Louisiana to interconnections with facilities in the previously reviewed Cameron System for delivery to the Grand Chenier processing plant in Cameron Parish. Lines 507A-100 and 507C-100, which were not addressed by the November 2011 Order and thus are being reviewed here, are extensions of segments of Lines 507C-100 and 507A-100, which were included in the subset of Cameron System facilities designated as the Offshore Associated Facilities. As discussed above, the November 2011 Order found that all of the Offshore Associated Facilities, including segments of Lines 507C-100 and 507A-100, are performing a primary function of jurisdictional transmission to the extent they are still in service.¹¹⁹ In this regard, the November 2011 Order noted that, while the 21.3-mile-long Line 507C-100 has been idle for 12 years, when it was still in service it transported gas received from the main east-west line which the November 2011 Order found to have a primary function of jurisdictional transmission. Thus, November 2011 Order stated that Line 507C-100 would again be providing a jurisdictional transmission service if it starts receiving gas from the east-west line in the future.¹²⁰

135. Large design capacities are indicative of a transmission function, particularly if a pipeline with significant capacity receives gas from several smaller-capacity upstream pipelines and serves as a trunkline to transport all the collected offshore production to shore.¹²¹ Further, while declining utilization of facilities due to declining production is a change in circumstances, it does not, by itself, demonstrate a change in facilities' primary

¹¹⁸ *Id.* PP 89-98.

¹¹⁹ *Id.* P 72.

¹²⁰ *Id.*

¹²¹ *Id.* P 39.

function.¹²² Consequently, the Commission concluded during the process of unbundling that “[e]xisting interstate pipelines and gathering facilities would retain their status barring some change in circumstances”¹²³ Thus, the Commission’s staff submitted a data request seeking information regarding the design capacities of the additional Supply Area Facilities presented in Tennessee’s most recent application for abandonment authority. While Tennessee responded with the information that the Kinder System’s average daily production receipt volumes for the year 2012 was 9,761 Dth per day,¹²⁴ neither Tennessee nor Kinetica Energy provided capacities for any of the four systems reviewed here. Tennessee explained that the capacities are indeterminate due to the interconnectedness and complexity of the configurations and operational possibilities of the facilities, which were not constructed as stand-alone systems.¹²⁵

136. The Kinder System’s 66-mile-long Line 507A-100 includes segments of 12-inch and 16-inch diameter pipe. The 61-mile-long Line 507C-100 is 20-inch diameter pipe. A short approximately 2-mile long, 6-inch diameter lateral line interconnects with Line 507A-100. The lengths and diameters of these lines are consistent with a transmission function.¹²⁶

137. The two main lines, Line 507A-100 and Line 507C-100, originally transported gas to the Kinder Compressor Station. Since early 2011, flow on the lines has been

¹²² *Id.* n.42.

¹²³ *Transcontinental Gas Pipe Line Corp.*, 76 FERC ¶ 61,317, at 62,543 (1996), quoting the Commission’s policy statement on *Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission’s Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act*, 74 FERC ¶ 61,222, at 61,757-59 (1996).

¹²⁴ Tennessee’s February 11, 2013 Data Response 2, Attachment A provides production receipt volumes by month and average day for the four systems of the additional Supply Area Facilities reviewed here.

¹²⁵ Tennessee’s January 23, 2013 Data Response 3. The Commission has explained that in considering offshore facilities, “[w]e discount the behind-the-plant factor of the Farmland test, finding the fact that ... almost all other offshore facilities, are upstream of gas processing plants provides little insight into the facilities’ primary function.” *Trunkline Gas Co.*, 95 FERC ¶ 61,337, at 62,237 (2001).

¹²⁶ November 2011 Order, 137 FERC ¶ 61,105 at PP 65-72 (finding that facilities including a 42-mile, 12-inch diameter line perform a jurisdictional function).

southward from the Kinder Compressor Station to interconnections with the jurisdictional facilities of the Cameron System, which was designed to transport gas to the Grand Chenier Plant for processing.¹²⁷ Kinetica Energy states that it will sever the connections with the Kinder Compressor Station and continue the southward flow on the lines. Kinetica Energy intends to allow producers to inject condensate into the system for transport to either the Grand Chenier Plant¹²⁸ or to other processing plants located off either the Second Bayou System or the Cameron System, which also are included in the facilities that Tennessee proposes to abandon.

138. While the fact the Kinder System is located upstream of processing could be consistent with a gathering function, since these facilities are onshore, it is not determinative here. In this case, the Kinder System is not a discrete system as it consists of only two lines which, while relatively long and located onshore, are nevertheless a small subsection of an overall system that includes mostly offshore facilities and was designed to transport primarily offshore production to onshore processing plants.¹²⁹ Thus, the Kinder System's location upstream of processing does not carry the weight it would if the Kinder System were a discrete system, rather than a small part of an overall system consisting mostly of offshore facilities. Finally, the Kinder System's normal operating pressure of 700 psig to 850 psig are determined by the jurisdictional transmission facilities into which the system flows and are, therefore, consistent with a transmission function for the Kinder System.¹³⁰

139. In sum, the Kinder System's long, moderately large diameter lines with relatively few receipt points, along with smaller laterals, primarily function as jurisdictional transmission facilities.

¹²⁷ Tennessee's January 23, 2013 Data Response 13.

¹²⁸ Tennessee will retain two 26-inch-diameter pipelines that will transport processed gas from the Grand Chenier Plant to the Kinder Compressor Station.

¹²⁹ See November 2011 Order, 137 FERC ¶ 61,105 at P 68 ("While these facilities are, in fact, upstream of a processing plant, this factor is not determinative here as these Onshore Associated Facilities are but a subsection of the larger Cameron System, which includes both offshore and onshore facilities.").

¹³⁰ *Trunkline Gas Co.*, 95 FERC ¶ 61,337 at 62,237 (2001).

b. Blue Water System

140. The Blue Water System has a “U” shape and includes 528 miles of 4-inch to 36-inch diameter pipeline and five offshore platforms. It connects on its western end with Tennessee’s Egan Meter Station in Acadia Parish, Louisiana. It then extends southward past a connection at the Pecan Island separation and dehydration facility where it receives gas from jurisdictional South Marsh System facilities. It continues for approximately 115 miles offshore to Tennessee’s offshore platform in Vermilion Block 245, then turns eastward and continues approximately 77 miles to Tennessee’s platform in Ship Shoal Block 198. From there, the system trends northeastward approximately 61 miles to an interconnection onshore with Tennessee’s Cocodrie System in Terrebonne Parish. The Blue Water System’s average daily receipt volumes for the year 2012 were 172,102 Dth per day.

141. The entire “U” shaped mainline consists of mostly 30-inch and 36-inch-diameter pipeline segments that sometimes loop each other. Approximately 17 laterals, the longest of which consists of approximately 20 miles of 12-inch-diameter line, connect along the approximately 250-mile length of the mainline.

142. Since 2010, Tennessee has operated the Blue Water System in a manner that caused gas to flow from its Egan Meter Station on its western end to the Cocodrie dehydration and separation facility on its eastern end. Upon acquisition, Kinetica Energy intends to reverse the flow on the western leg to flow from Vermilion Block 245 northward toward the Egan Meter Station interconnect with Tennessee’s downstream system. The portion of the Blue Water System to the east of Vermilion Block 245 will continue to flow eastward toward the Cocodrie System. Only the 41-mile-long section between Egan Meter Station and Pecan Island would receive jurisdictional volumes from the South Marsh System. Because of the lack of gas flow upstream of Vermilion Block 245 and the change in operation of the system, Kinetica Energy does not need the compressors located at the Vermilion Block 245 platform. Thus, there will be no compression on the system.¹³¹ The system normally operates at 700 psig to 850 psig. Such pressures are not inconsistent with a transmission function.

¹³¹ Kinetica Energy’s application at 14. However, Kinetica Energy in its December 31, 2012 Data Response 8 indicates that compressor units now unutilized at Cameron Block 49 may be moved to the Pecan Island facility due to anticipated increased flows from the South Marsh System. As discussed below, the Cameron System compression is unutilized and will not be certificated; however, adding compression to the jurisdictional flow of gas from the South Marsh System would not alter our

(continued...)

143. The Blue Water System includes five offshore platforms owned by Tennessee: three in Vermilion Block 245 (two of which are for compression and personnel); one at Ship Shoal Block 198; and one at Eugene Island 250. At Vermilion Block 245, the platform has one connection to an upstream 20-inch-diameter line that delivers gas into the downstream 36-inch diameter line running northward to Egan Meter Station on the western end of the system. Kinetica Energy has stated that there will be no compression utilized there at Vermilion Block 245. The receipts from the upstream line have averaged only 300 Dth per day for the last year.

144. The platform in Ship Shoal Block 198 is at the bend in the “U”-shaped mainline where the system turns northeastward to the Cocodrie System. Other than the flow through the mainline, only about 1,925 Dth per day is received through one short lateral into this platform.

145. The platform in Eugene Island Block 250 may have acted as a central aggregation point at one time, but now only an inactive 16-inch diameter line and an active 18-mile-long, 26-inch-diameter line remain attached upstream. The 18-inch-diameter active line received an average of only 43 Dth per day for the year 2012. A 3.5-mile-long, 20-inch-diameter line connects the production gathered at the platform to the mainline.

146. On balance, none of these platform locations has the characteristics of a central aggregation point such as would be the case on a system constructed to access offshore gas upstream of a point by gathering gas with an array of smaller diameter lines to that point for transport to shore in markedly larger diameter pipeline.

147. The Blue Water System has a total of about 50 active production receipt points and is operated as a dual phase system (gas and liquid condensate). Depending on the operating configuration and location of the connection, Kinetica Energy states the gas may be processed at one of four processing plants: (1) the Targa-operated Yscloskey Processing Plant (now shutdown)¹³² located on Tennessee’s downstream system about 25 miles north of Tennessee’s Port Sulfur Compressor Station and far past the eastern

determinations that the Blue Water System and the South Marsh System both are jurisdictional transmission facilities.

¹³² We include the Yscloskey Processing Plant in the discussion for geographic reference because until very recently the plant was utilized to process gas on Tennessee’s system. As discussed above, Tennessee, in its answer filed on November 8, 2012, provides information showing that the operator of the Yscloskey Processing Plant, shutdown since Hurricane Isaac, has announced that the plant will be permanently shutdown.

terminus of the Blue Water System; (2) the Crosstex-operated Blue Water Processing Plant located just upstream of the Egan Meter Station, which will become a delivery point into Tennessee's retained downstream system; (3) the Targa-operated Venice Gas Plant located on the South Pass System; or (4) the Discovery/Williams-operated LaRose Gas Plant. Kinetica Energy could also add a small connection to provide access to the PSI-operated Kaplan Processing Plant located between Pecan Island and Egan Meter Station. As nearly all the gas transported by the Blue Water System is sourced offshore for transportation to gas processing facilities located onshore, the location of the facilities behind the processing plant is not determinative of a gathering function.¹³³

148. The configuration and pipeline diameters are consistent with a mainline and supply lateral system that performs a transmission function. Further, there is no central point of aggregation beyond which facilities would perform a gathering function. Thus, we find that jurisdictional transmission is the primary function of the entire Blue Water System as currently operated by Tennessee and will continue to be jurisdictional transmission when Kinetica Energy reverses the flow on the eastern leg of the system to flow from Vermilion Block 245 northward toward the Egan Meter Station to interconnect with Tennessee's retained downstream system.

c. Cocodrie System

149. The Cocodrie System totals approximately 63 miles of 6-inch to 24-inch-diameter pipeline located onshore and in state waters without any compression facilities. Gas flows through the system on the 58-mile-long, 24-inch-diameter Line 500-1 mainline that extends from Main Line Valve 523 (MLV-523), at the interconnect in Terrebonne Parish with the above-discussed jurisdictional Blue Water System, to MLV 526 at the interconnect with the West Delta 68 System (discussed below) in Plaquemines Parish. Most of the gas transported on Line 500-1 is sourced from the Blue Water System. In addition, the Cocodrie System receives gas from a portion of the South Timbalier/Grand Isle/Bay Marchand System that the November 2011 Order found to perform a jurisdictional transmission function.¹³⁴ Also, several small laterals along Line 500-1's length deliver production into the line. The production receipts into the Cocodrie System averaged 54,228 Dth per day for the year 2012. Most of the receipts (about 45,800 Dth per day) were sourced from one small lateral.

¹³³ *Sea Robin*, 87 FERC ¶ 61,384, at 62,428 (1999), *reh'g denied*, 92 FERC ¶ 61,072 (2000) (stating "the 'behind-the-plant' factor is not necessarily determinative when the primary function test is applied to offshore facilities . . .").

¹³⁴ November 2011 Order, 137 FERC ¶ 61,105 at P 88.

150. The Cocodrie System's separation and dehydration facility at MLV-523 has a single, large 12,050 hp Solar Mars turbine drive compressor unit that has not been operated for eight or nine years because the volumes coming through the Blue Water System have been reduced to the point that the large compressor cannot be operated. Kinetica Energy states that it does not intend to operate the large Solar Mars compressor unit at Cocodrie. However, Kinetica Energy plans to relocate smaller compressor units, that are now unutilized at the platform in Cameron Block 49, to the Cocodrie System's separation and dehydration facility at MLV-523 and to the Pecan Island separation and dehydration facility at the interconnect between the Blue Water System and the South Marsh System when supply increases on that part of the Blue Water System.¹³⁵

151. As discussed further below, the compression at both the Cocodrie System's separation and dehydration facility and at the platform in Cameron Block 49 are unutilized and will not be certificated.¹³⁶ Thus, such compression is not considered in our analyses of any of the Supply Area Facilities. The possibility of adding compression at both or either of the Cocodrie System or Pecan Island facilities is not considered in our determinations of the functions of either the Blue Water System or the Cocodrie System, although such added compression would tend to further indicate a transmission function for the systems. The Cocodrie System typically operates at 650 psig to 850 psig without compression. Such pressures are not inconsistent with a transmission function.

152. Volumes flowing on the Cocodrie System have been dehydrated, but require further processing to meet downstream pipeline quality standards. Historically, this gas was processed at the recently shutdown Targa-operated Yscloskey Processing Plant straddling the Tennessee system in Bernard Parish approximately 30 miles downstream of the interconnect between the West Delta 68 System and Tennessee's retained downstream system. Upon acquisition, Kinetica Energy intends to offer delivery of the

¹³⁵ Kinetica Energy's application at 17 and its December 31, 2012 Data Response 8.

¹³⁶ Kinetica Energy's January 23, 2013 spreadsheet attachment to Data Response 4 indicates that the 12,050 hp Solar Mars turbine drive compressor unit at the Cocodrie System's separation and dehydration facility at MLV-523 was restarted by Tennessee in November 2012, due to rehab on a pipeline after many years of being unutilized. We consider this compression unutilized for the purposes of Kinetica Energy's operation of the facilities consistent with Kinetica Energy's representation in its application that it does not intend to utilize the large Cocodrie compressor unit and the lack of any indication to the contrary in any of Kinetica Energy's subsequent filings.

gas to the Venice Gas Processing Plant, which is connected to the South Pass System, as an alternative.

153. The configuration, length and diameter of the system mainline, and the very few production receipt points along its length are indicative of a transmission function. In addition, and most importantly, the volumes flowing on the Cocodrie System are mostly received into the system from upstream facilities we have already found to perform a jurisdictional transmission function. Thus, we find the entire Cocodrie System performs a jurisdictional transmission function.

d. West Delta 68 System

154. The West Delta 68 System totals approximately 179 miles of 8-inch to 30-inch-diameter pipeline, approximately 137 miles of which are located onshore or in state waters. This system has no compression facilities. The West Delta 68 System is an arrangement primarily of large diameter pipelines connecting to and receiving gas from the west from the Cocodrie System, found above to perform a jurisdictional transmission function in its entirety, and from the east from facilities in the South Pass System, that were found in the November 2011 Order to perform a jurisdictional transmission function.¹³⁷ The West Delta 68 System delivers that gas, along with other volumes obtained at production receipt points on the system, to an interconnect with Tennessee's downstream system at its Port Sulfur Compressor Station in Plaquemines Parish. There are also some lines that extend offshore to obtain gas supplies. The production receipts into the West Delta 68 System averaged 410,728 Dth per day for the year 2012. Most of the receipts (about 326,700 Dth per day) were sourced from an offshore connection with the non-jurisdictional Independence Hub (I-Hub) gathering line owned and operated by Enterprise Independence Trail Pipeline (Enterprise).

¹³⁷ As presented in Tennessee's current application, the West Delta 68 System facilities includes certain facilities that were reviewed as part of the South Pass System in the November 2011 Order and found to perform a jurisdictional transmission function. These facilities include segments of the 20-inch-diameter Line 526A-100 and the 26-inch-diameter Line 527-100, located within the South Pass System extending eastward of the Scofield Bay platform. *See* Kinetica Energy's December 31, 2012 Data Response 10. Each of these previously reviewed segments is approximately 20 miles in length. Neither Line 526A-100 nor Line 527-100 is included in this order's primary function analysis as the November 2011 Order has already determined that they perform a jurisdictional transmission function.

155. There are no offshore points on the West Delta 68 System that have the characteristics of central aggregation points.¹³⁸ Further, this system's offshore lines do not have many laterals, and the whole system has only seven production receipt points. Enterprise's upstream I-Hub gathering line connects with the West Delta 68 System's 23-mile-long, 20-inch-diameter offshore Line 526C-100 in West Delta Block 68. Roughly paralleling Line 526C-100 is the system's 22-mile-long, 24-inch-diameter Line 526D-100, which connects to supplies in Grand Isle Block 43. The two lines are interconnected at their offshore termini. There are no active production receipt points along these lines from their termini to their interconnection with the onshore portion of the system at MLV-526. These two lines are representative of the other supply lines feeding the larger mainlines of the West Delta 68 System. While these particular lines do not receive gas from the facilities in the upstream Cocodrie and South Pass Systems that have found to be jurisdictional transmission facilities, they nevertheless have the configuration of transportation facilities.

156. West Delta 68 System operating pressures typically vary from 800 psig to 850 psig with no compression. Such pressures are not inconsistent with a transmission function.

157. The West Delta 68 System's mainlines have large diameters indicating a transmission function. Further, the gas transported by the onshore mainlines includes volumes that have been transported on facilities in the upstream Cocodrie and South Pass Systems that have been found to perform jurisdictional transmission. The West Delta 68 system's mainlines also receive volumes from supply laterals.

158. The characteristics of the above-described facilities indicate they perform jurisdictional transmission. The configuration of the facilities, the onshore mainlines' transportation of volumes received from upstream systems found to perform a jurisdictional transmission function, the lack of any offshore central point of aggregation, and the lack of other gathering characteristics are also indicative of a jurisdictional transmission function. Thus, we find that the entire West Delta 68 System performs jurisdictional transmission.

¹³⁸ Kinetica Energy's suggestion, at page 18 of its application, that Main Line Valve 526, which is near shore if not onshore, satisfies the primary function test's central-point-of-aggregation criterion is misplaced. The concept of a central point of aggregation denotes a location generally a significant distance offshore in or close to a production area where multiple smaller diameter lines "aggregate" and deliver gas supplies to a larger diameter trunkline for transportation to shore.

e. **Offsystem Main Pass Laterals**

159. The Offsystem Main Pass Laterals consist of two short line segments: an approximately 1-mile-long, 4-inch-diameter pipe and a 1.7-mile-long, 6-inch-diameter pipe. They are both located entirely offshore in Main Pass Block 311, and there are no compression facilities. Tennessee and High Point each own a partial interest in these active lines, which feed into downstream lines operated by High Point. These lines were determined to perform a gathering function in *Southern Natural*, in which Southern Natural was granted authority to abandon these lines along with its other South of Toca Facilities by sale to High Point.¹³⁹

160. A finding by the Commission determining the primary function and thus the jurisdictional status of a particular facility, i.e., non-jurisdictional gathering versus jurisdictional transmission, applies to the entire facility, and interstate pipelines that are co-owners of the facility must functionalize the facility for their rate and accounting purposes accordingly.¹⁴⁰ The record in this proceeding includes no information to suggest that changed circumstances require a finding different from that in the *Southern Natural* proceeding. In any event, the two laterals' short length (one mile and 1.7 miles, respectively), small diameters (4 inches 6 inches, respectively), and lack of compression are indicative that their primary function is non-jurisdictional gathering. Thus, the Commission affirms the finding in *Southern Natural* that the Offsystem Main Pass Laterals remain gathering facilities.

4. **Unutilized Facilities**

161. Kinetica Energy states that it has reviewed the facilities to identify facilities that are no longer being used and which it has no plans to use. While there may be some lines and some inactive meters that have not been flowing gas under Tennessee, Kinetica

¹³⁹ *Southern Natural*, 139 FERC ¶ 61,237 at n.92. In the *Southern Natural* order, the Offsystem Main Pass Laterals were referred to as Line Nos. 1156 and 1162. High Point transferred these laterals along with the other facilities found to be gathering facilities to a new gathering affiliate.

¹⁴⁰ *See, e.g., Southern Natural Gas Co.*, 79 FERC ¶ 61,076, at 61,380 (1997) (finding that gathering was the primary function of offshore facilities in which Southern Natural owned certificated interests that it sought to abandon and placing interstate pipeline co-owners on notice that this jurisdictional status finding would apply to their interests in the facilities in their future rate proceedings, but that if their interests in the subject facilities also had been certificated they nevertheless would need to seek abandonment authority in order to transfer their interests in the facilities).

Energy states that there are no costs associated with these facilities, and that it plans to put them to use in the future. Kinetica Energy intends to account for these facilities in FERC Account 105, *Gas Plant Held for Future Use*. Kinetica Energy requests we include the unutilized facilities in its certificate.

162. In responses to data requests, Tennessee and Kinetica Energy identified facilities that have been inactive for one year or more.¹⁴¹ These facilities include 23 pipeline segments that total approximately 88 miles in length, ranging from less than 0.1 mile to almost 20 miles in length and from 3 inches to 24 inches in diameter. Tennessee notes that another line—the approximately 3-mile-long, 8-inch-diameter Line 523M-8200—has been inactive for more than one year, but that Tennessee is in the process of tying the supply lateral over to mainline Line 523Q-100 so that it will be returned to service. Kinetica Energy asserts it has a reasonable expectation that the unutilized facilities will be used in the future. In support, Kinetica Energy has presented maps showing well statuses in blocks with applications for permits to drill, or active drilling and blocks with leases in their primary term, where the block includes or is adjacent to the originating point of a line that is not currently utilized, stating that blocks with leases in their primary term are likely sites of future well drilling.¹⁴²

163. Tennessee and Kinetica Energy identify three compressor units located in East Cameron Block 49 and one unit located in Vermilion Block 245 as inactive for at least a year. However, in addition to the East Cameron Block 49 units, the proposal calls for the transfer of three units at Vermilion Block 245 and one at Cocodrie Station 523 to Kinetica Energy.¹⁴³ Kinetica Energy states that it believes Tennessee currently uses the

¹⁴¹ See Tennessee's January 23, 2013 Data Response 1(B) (also listing inactive meters in an attached spreadsheet); *id.* at Data Response 4 (showing inactive compressors). See also Kinetica Energy's January 31, 2013 Data Response 4 (listing updated spreadsheet with inactive pipelines and compressors). The inactive facilities at issue here do not include any pipeline segments Tennessee intends to abandon pursuant to its blanket certificate authority.

¹⁴² Kinetica Energy's January 22, 2013 map attached to Data Response 2 contains blocks listing well statuses under the Department of Interior's, Bureau of Ocean Energy Management of either having an "Application for Permit to Drill" or "Active Drilling" status. Kinetica Energy's Data Response 4 provides maps that indicate, in addition to the blocks shown in Data Response 2, blocks containing leases that are in their primary term of issuance.

¹⁴³ The Amended PSA indicates the transfer of four units at Vermilion Block 245, but note 5 on page 8 of Tennessee's application states that one of the four units was abandoned in 2009 in Docket No. CP08-44.

compressors at Vermilion Block 245 only to pig the system. Kinetica Energy states it will not require the compression at Vermilion Block 245 because it intends, as discussed above, to reverse the flow on the Blue Water System northward on the western leg from Vermilion Block 245 and because there is insufficient gas flow received at that point to justify utilization of the compression.¹⁴⁴

164. While Kinetica Energy notes that the large 12,050 hp Solar Mars turbine drive compressor unit located at Cocodrie Station 523 on the Cocodrie System was restarted in November 2012 due to rehab on a pipeline in western Louisiana after many years of being unutilized,¹⁴⁵ Kinetica Energy's operational plans do not include utilization of the Cocodrie Station 523 compression as it is too large for the anticipated throughput.¹⁴⁶ Kinetica Energy does, however, state that it intends to utilize the smaller compressor units located at Cameron Block 49 by moving them to the Cocodrie and Pecan Island facilities when supply increases on the Blue Water System. Kinetica Energy states that Tennessee has executed an interconnect agreement with a producer to connect production from wells currently being drilled in the area to the South Marsh System feeding into the Blue Water System on the western leg at Pecan Island.¹⁴⁷

165. Indicated Shippers, in comments on Tennessee's and Kinetica Energy's data responses, questions whether the Eugene Island Block 250 platform and related pipeline facilities located on the Blue Water System are unutilized.¹⁴⁸ As discussed above in the process of applying the primary function test, these facilities are utilized, although minimally.

166. With regard to the inactive pipeline and metering facilities, we find Kinetica Energy's statement that it has a reasonable expectation that the facilities will be used is speculative. Kinetica Energy has not sufficiently tied any expectation of timely, new production being connected to specific, currently unutilized facilities. Even Kinetica Energy states that it is unaware of any current drilling activity in locations that are currently connected to its facilities and that, on average, there is approximately an

¹⁴⁴ Kinetica Energy's application at 14.

¹⁴⁵ Kinetica Energy's January 31, 2013 spreadsheet attachment to Data Response 4.

¹⁴⁶ Kinetica Energy's application at 17.

¹⁴⁷ Kinetica Energy's December 31, 2012 Data Response 8.

¹⁴⁸ Indicated Shippers' March 29, 2013 Comments at 11.

18-month interval between the start of “successful” drilling and the connection of production to a pipeline.¹⁴⁹ With the exception of Line 523M-8200 that Tennessee is placing back into service, none of the inactive pipeline and metering will be included in Kinetica Energy’s certificate granted by this order.

167. Kinetica Energy does not propose any use for the compression located at Vermilion Block 245 or Cocodrie. However, Kinetica Energy states it has a reasonable expectation of future use for the three inactive compressor units located at Cameron Block 49 that it intends to move to new locations. These locations include Pecan Island at the terminus of the South Marsh System, which Kinetica Energy expects to be connected to new production, and Cocodrie at the eastern terminus of the Blue Water System. We find that Kinetica Energy’s support for a reasonable expectation of a timely, future use for the Cameron Block 49 units to be speculative and lacking specificity (e.g., how many compressor units might be moved to Pecan Island). Further, the proposed future use is not the use for which the compressors were originally certificated (i.e., their use is to compress gas at Cameron Block 49). Therefore, this order does not grant certificate authority for any of the compression facilities included in the transfer, whether they have been used at some point in the last year or not.

168. Our denial here of certificate authority for any of the compression facilities or for any of the inactive pipeline and metering facilities, except for Line 523M-8200, should not impose a great burden on Kinetica Energy if it decides nevertheless to acquire such facilities on an uncertificated basis. It will not need certificate authority to operate these facilities unless and until it desires to place the facilities into jurisdictional use at some future time. Kinetica Energy may well be able to rely on its Part 157 blanket certificate authority granted by this order to place the facilities into service at such time, if the facilities qualify as eligible facilities for purposes of the Part 157 blanket certificate regulations and project costs are below the applicable limits set forth in section 157.208 of those regulations. Alternatively, Kinetica Energy may file an application requesting case-specific certificate authority. Further, Kinetica Energy has indicated the currently unused facilities will be included at no additional cost in its purchase and sale agreement with Tennessee and that its rates therefore would not be affected whether the facilities are certificated here or not.

169. As Kinetica Energy is not planning to provide any gathering service and the facilities identified above are not required by Kinetica Energy to provide transmission service, if it decides to acquire the facilities, the gross plant associated with the facilities may not be included in Kinetica Energy’s rate base underlying its recoverable cost of service until such time that the facilities are again placed in useful service. Further, since

¹⁴⁹ Kinetica Energy’s January 31, 2013 Data Response 30.

these facilities are not currently being used to provide gathering or transmission service and Kinetica Energy does not have definite plans for using these facilities, we will require Kinetica Energy to classify these facilities for accounting purposes in Account 121, *Nonutility Property*.

C. Certificate Policy Statement

170. The Commission's Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction by establishing criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest.¹⁵⁰ While Kinetica Energy does not contemplate any construction of new facilities, the Commission has found it appropriate to apply its Certificate Policy Statement in cases where a company seeks to acquire significant existing facilities.¹⁵¹

171. As explained in the Certificate Policy Statement, in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. A proposal to acquire facilities with no related construction of facilities, such as in this proceeding, does not invoke the Certificate Policy Statement's concerns with overbuilding, disruptions of the environment, and the exercise of eminent domain.¹⁵²

172. The threshold requirement under the Certificate Policy Statement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers is equally applicable to the proposed acquisition of facilities. Similarly, whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers and existing pipelines in the market and their captive customers is also relevant to our evaluation.

173. As a new natural gas company, Kinetica Energy has no current customers that might be affected by the proposal. Thus, there is no subsidization possible, and the threshold requirement of the Certificate Policy Statement is satisfied.

¹⁵⁰ *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).

¹⁵¹ *See, e.g., Trunkline Gas Co., LLC*, 132 FERC ¶ 61,069 (2010); *BGS Kimball Gas Storage, LLC*, 117 FERC ¶ 61,122, at PP 19-23 (2006).

¹⁵² *See, e.g., Cimarron River Pipeline, LLC*, 124 FERC ¶ 61,069, at P 40 (2008).

174. Kinetica Energy states that its acquisition of the facilities will not have any adverse effect on other pipelines as its proposal does not involve the expansion or construction of new facilities. Kinetica Energy asserts its acquisition of facilities will only result in a change in ownership and operation of existing facilities, which will not produce any adverse effects on competing pipelines.

175. Kinetica Energy states that, as the operator of the jurisdictional Supply Area Facilities, its interests will be more closely aligned with producers, and that its services will be designed to meet the unique needs and objectives of offshore producers and shippers. Kinetica Energy states that it will have the incentive to repair damage quickly and to invest in offshore facilities to maintain flow and attract new supplies, which will benefit the availability and diversity of supplies to the market. Kinetica Energy states that its efforts to maximize the flow of gas supplies will have the ancillary benefit of also promoting the production of oil from wells which would not be developed or which would have to be shut in if there were no pipeline facilities or insufficient pipeline capacity to transport associated gas production. Kinetica Energy states that it will provide additional services to producers such as gas for oil lift, blending, and carbon dioxide removal. In addition, it states it will offer additional gas processing plant options.¹⁵³ Kinetica Energy states it also plans to make system modifications to offer producers enhanced market reach through interconnections with multiple pipeline systems other than Tennessee's system.¹⁵⁴

176. If the Commission approves Tennessee's proposal to abandon the Supply Area Facilities, Stingray expresses concern that if Kinetica Energy or Kinetica Midstream acquires the Second Bayou System and Line 507A-100, Stingray's shippers only access

¹⁵³ Kinetica Energy's application at 24. In addition to the currently provided access to plants at Sabine Pass, Grand Chenier, and Yscloskey (now shutdown), Kinetica Energy plans to provide producers and shippers with access to the Blue Water Gas Plant, the Venice Plant, the TOCA Gas Plants, the Cameron Meadows Plants, and the Barracuda Gas Plants.

¹⁵⁴ Kinetica Energy's application at 23. In addition to Tennessee's system, Kinetica Energy states that the Supply Area Facilities will interconnect with the systems operated by Transcontinental Gas Pipe Line Company, LLC, Florida Gas Transmission Company, LLC, Southern Natural Gas Company, L.L.C., Natural Gas Pipeline Company of America LLC, Gulf South Pipeline Company, LP, Texas Gas Transmission, LLC, Columbia Gulf Transmission, LLC, ANR, and Texas Eastern Transmission, LP. With minor construction, the facilities would also interconnect with the systems operated by Trunkline Gas Company, LLC and intrastate pipelines such as Bridgeline and Louisiana Intrastate Gas.

to Tennessee's downstream system without having to pay pancaked rates will be at the capacity-constrained Targa Barracuda Plant, which delivers residue gas at its tailgate into downstream facilities that Tennessee retain.¹⁵⁵ Stingray believes that the combination of its limited capacity to deliver gas to Tennessee through the Targa Barracuda Plant and the additive impact of pancaked rates through the Kinetica Midstream and/or Kinetica Energy systems would put Stingray at a competitive disadvantage in acquiring new shippers, which would increase the rate of decline of throughput on its system. Stingray states that some producers might even connect to other pipelines, leaving Stingray's captive shippers to bear larger shares of its cost of service. If the Commission nevertheless approves Tennessee's abandonment of the Second Bayou System and Line 507A-100, Stingray urges the Commission to find that these particular facilities are jurisdictional transmission facilities so that the rates that shippers have to pay for service on these facilities remain subject to the Commission's jurisdiction.¹⁵⁶

177. Kinetica Energy answers that the Targa Barracuda Plant has enough capacity to handle the volumes coming off Stingray.¹⁵⁷ However, Kinetica Energy also states that if any capacity constraint exists at the Targa Barracuda Plant, that processing plant is non-jurisdictional and is not part of Tennessee's system and will not be part of Kinetica Energy's system. Therefore, Kinetica Energy asserts Stingray's arguments regarding possible capacity constraints at the processing plant should not affect the Commission's decision.

178. Tennessee answers that the quantity of gas delivered to Tennessee's system by Stingray has already been declining, and that Stingray's throughput depends on the nominations of third parties which are driven by market signals and are affected by

¹⁵⁵ Stingray's protest includes a schematic as Exhibit I showing connections for delivery into three pipeline systems other than Tennessee. Delivery into those three alternative pipeline systems would not require transportation on the facilities to be transferred to Kinetica Energy.

¹⁵⁶ We find above that Second Bayou System and Line 507A-100 serve a jurisdictional transmission.

¹⁵⁷ Kinetica Energy's September 13, 2012 Answer at 16. Kinetica Energy states that Stingray's shippers flowed about 49,000 Dth per day into the Targa Barracuda Plant and about 55,000 Dth per day into an interconnect with Tennessee on the Second Bayou System, out of a total flow of about 183,000 Dth per day, with the remainder going to other outlets. Kinetica Energy notes that the Targa Barracuda Plant has a capacity of 180,000 Dth per day, according to the LPG Almanac.

numerous variables. As such, Tennessee argues that any prediction of changes in the behavior of Stingray's shippers is speculative.¹⁵⁸

179. We understand Stingray's concerns with possible negatives that Tennessee's abandonment proposal could have on Stingray and its shippers. However, these concerns nevertheless are unsupported speculation. Stingray does not, for example, provide its throughput, information to support its argument that the Targa Barracuda Plant may not have sufficient available capacity to deliver all the quantities that Stingray's shippers desire to be redelivered to Tennessee, nor any study quantifying the potential diversion of its throughput to other pipelines should Kinetica Energy acquire the Supply Area Facilities. The Commission found the Second Bayou System to be jurisdictional in our November 2001 Order,¹⁵⁹ and found Line 507A-100 to be jurisdictional above. Therefore, Stingray's concern of both gathering and transmission lines separating it from Tennessee (and the application of both a gathering rate and a transmission rate) will not occur. To the extent that some of Stingray's shippers need to have their gas transported on the Second Bayou System and Line 507A-100 facilities after those facilities are transferred to Kinetica Energy to reach the interconnections at other downstream points on Tennessee's retained system, we have determined herein that it is not inappropriate that the cost of service on these facilities and the other Supply Area Facilities be recovered from shippers using the facilities. For these reasons, we find in accordance with the Certificate Policy Statement that the potential for harm to Stingray or its captive shippers that could be directly attributable to Kinetica Energy's acquisition of the Supply Area Facilities is relatively small, if any.

180. We believe that markets in general will benefit from Kinetica Energy's operation of the jurisdictional Supply Area Facilities. Kinetica Energy's focus will be on maximizing the efficiency and usage of the facilities, benefiting the development of, and access to, offshore supplies. Also, through Kinetica Energy's plans to give shippers expanded options for accessing processing and downstream pipeline interconnections, Kinetica Energy may provide enhanced market liquidity benefiting competition.

181. In sum, Kinetica Energy is a new natural gas pipeline that has no existing shippers that could be adversely affected, and any potential for adverse impacts to pipelines or their captive shippers is relatively small and outweighed by significant benefits that will accrue from the transfer of the jurisdictional Supply Area Facilities to Kinetica Energy. Thus, the Commission finds that the public convenience and necessity requires the

¹⁵⁸ Tennessee's September 14, 2012 Answer at 8.

¹⁵⁹ November 2001 Order, 137 FERC ¶ 61,105 at P 45.

approval of Kinetica Energy's proposal to acquire and operate these Supply Area Facilities, subject to the conditions in this order.

D. Request for Blanket Certificates

182. Kinetica Energy seeks a Part 157, Subpart F blanket construction certificate, which authorizes an interstate pipeline to engage in certain limited construction and operation activities and certain certificate amendments and abandonment under section 7 of the NGA under simplified procedures. Kinetica Energy also requests a Part 284, Subpart G blanket transportation certificate, which authorizes interstate pipelines to engage in certain automatic NGA section 7 transportation authorizations for individual customers under the terms of its contract and tariff. Since Kinetica Energy will become an interstate pipeline upon the issuance of a certificate of public convenience and necessity for it to acquire the jurisdictional Supply Area Facilities, we also will issue Kinetica Energy the requested Part 157, Subpart F blanket construction certificate and the Part 284, Subpart G blanket transportation certificate.

E. Rates

1. Proposed Rates and Services

183. Kinetica Energy proposes to offer the following transportation services on the jurisdictional Supply Area Facilities: (1) Long Term Firm Transportation (Rate Schedule LFT-1); (2) Short Term Firm Transportation (Rate Schedule SFT-2); (3) Flexible Firm Transportation (Rate Schedule FFT-3); and (4) Interruptible Transportation (Rate Schedule IT). These services will be provided on an open-access, non-discriminatory basis under Part 284 of the Commission's regulations.

184. Kinetica Energy states that its rates are designed on a postage stamp basis using the straight-fixed-variable (SFV) methodology. Kinetica Energy proposes an initial daily reservation charge of \$0.5064¹⁶⁰ per Dth for long term firm service, with no usage charge under Rate Schedule LTF-1; a variable monthly reservation charge for Short Term Firm Service based on length of service under Rate Schedule SFT-2; an interruptible service rate under Rate Schedule IT of \$0.5064¹⁶¹ per Dth; and a flexible firm service rate that is calculated based on average daily volumes delivered plus the commodity rate on actual volumes delivered under Rate Schedule FFT-3.

¹⁶⁰ Kinetica Energy's January 31, 2013 Data Response, Revised Exhibit P at 7.

¹⁶¹ *Id.* at 12.

185. The proposed transportation rates are derived using a first year cost of service of \$70,149,138,¹⁶² reflecting a rate base of \$52,394,875,¹⁶³ an overall rate of return of 11.35 percent,¹⁶⁴ a 0.47 percent straight line depreciation rate, and a 0.49 percent negative salvage rate.¹⁶⁵ The cost of service is composed of: (1) Operations and Maintenance (O&M) Expenses of \$39,607,911; (2) Administrative and General (A&G) Expenses of \$31,647,872; (3) Depreciation Expenses of \$3,993,904; (4) Negative Salvage of \$4,000,000; (5) Return on Rate Base of \$5,946,818; (6) State and Federal Income Taxes of \$3,025,563;¹⁶⁶ (7) Other Taxes of \$1,520,294; and (8) Discount Adjustment credit to the cost of service of \$16,770,499.

186. Kinetica Energy designed its proposed initial firm LFT-1 rates using projected billing determinants of 138,533,406 Dth per year,¹⁶⁷ not including discounted throughput volumes of 99,233,723 Dth.

2. Rate Base

187. Kinetica Energy has designed its rates based on the costs associated with the Supply Area Facilities that it seeks to acquire from Tennessee. Kinetica Energy's application states that these facilities do not include any gathering facilities as they will be acquired by Kinetica Midstream.

188. The Commission has determined in this order that a very minor portion of the Supply Area Facilities included in Kinetica Energy's application—the Offsystem Main Pass Laterals—do perform a gathering function. As discussed above, the Offsystem Main Pass Laterals are a 1-mile-long line and a 1.7-mile-long line, which are partially owned by High Point, operated by High Point, and feed into downstream lines operated by High Point.

¹⁶² *Id.* at 11.

¹⁶³ *Id.* at 13.

¹⁶⁴ The return allowance is based on an estimated capital structure of 70 percent equity and 30 percent debt with an equity cost of 12.99 percent and a debt cost of 10 percent resulting in an overall rate of return of 11.35 percent.

¹⁶⁵ Kinetica Energy states that the facilities have a remaining useful life of 13.69 years and will be completely abandoned with no salvage value.

¹⁶⁶ Kinetica Energy's January 31, 2013 Data Response, Revised Exhibit P at 11.

¹⁶⁷ *Id.* at 11.

189. In addition, the Commission has determined in this order that certain facilities included in the Supply Area Facilities that Kinetica Energy seeks to acquire are unutilized. These unutilized facilities, as discussed above, include some compression facilities and 23 pipeline segments totaling approximately 88 miles of pipeline.

190. While Kinetica Energy may acquire the Offshore Main Pass Laterals which are gathering facilities and the unutilized facilities, costs attributable to these facilities are not recoverable through Kinetica Energy's initial transportation rates. Therefore, as part of its initial rate compliance filing, we require Kinetica Energy to remove from its rate base for jurisdictional services these gathering and unutilized facilities.¹⁶⁸

3. Depreciation and Negative Salvage

191. Kinetica Energy is proposing a depreciation rate of 0.47 percent and a negative salvage rate of 0.49 percent. Kinetica Energy states that its depreciation rate is a weighted average of various composite depreciation groups, with each function having separately derived rates. Kinetica Energy states that the transmission plant depreciation rate was calculated using an economic life of transmission plant of 13.69 years. Kinetica Energy proposes to collect plant decommissioning costs through negative salvage rates, and it states that its rate will recover \$4 million of negative salvage expenses each year.¹⁶⁹

192. Kinetica Energy states that it has calculated its remaining depreciable life using Tennessee's most recent NGA section 4 rate case in Docket No. RP11-1566-000, which resulted in a commission-approved settlement,¹⁷⁰ and data from a study prepared in 2010 for Tennessee's section 4 rate proceeding by Mr. Edward H. Feinstein of Brown, Williams, Moorhead and Quinn on behalf of Tennessee. Kinetica Energy states that because the negative and salvage rates included in Tennessee's approved settlement only reflect individual components of Tennessee's overall settlement on various costs, volumes, and other issues, Kinetica Energy is justified in its modification of these rates in its current proposal. Further, Kinetica Energy states that as part of the depreciation study utilized by Tennessee, Mr. Feinstein calculated 15.69 years as the remaining life for the

¹⁶⁸ The Commission also noted above that Line 527A-600 is reflected by the applicants as gathering when we found that it is transmission. If Kinetica Energy acquires that line, we deem it certificated by this order, and Kinetica Energy's plant-related costs should be appropriately adjusted in the compliance filing required below.

¹⁶⁹ Kinetica Energy's January 31, 2013 Data Response, Revised Exhibit P at 38.

¹⁷⁰ See *Tennessee Gas Pipeline Co., LLC*, 137 FERC ¶ 61,182 (2011).

facilities. Kinetica Energy proposes to accept this study as the basis for establishing the remaining life of the facilities. However, it argues that because two years have passed since the study was conducted, the remaining life of the facilities should reflect this passage of time and therefore proposes a remaining life of 13.69 years.

193. Protesters contend that Kinetica Energy's argument that it proposes negative salvage and depreciation rates different from Tennessee's because Tennessee's rates are based on a "black box" cost of service is not a sufficient reason to use different depreciation and negative salvage rates.¹⁷¹ In other words, protesters argue that Kinetica Energy's statement that the cost of service was not specified in Tennessee's rate case settlement does not explain why the stated depreciation and negative salvage rates used for the settlement rates should not be used. Protesters further argue that if the testimony prepared for Tennessee in its last rate case and submitted by Kinetica Energy in this proceeding is accepted, Kinetica Energy inappropriately modifies the testimony's remaining life analysis by deducting two additional years, representing approximately the passage of time since Tennessee filed that testimony. Protesters argue that the Commission should reject Kinetica Energy's adjustment for passage of time because determining the weighted average economic life of facilities requires multiple data inputs, not merely the passing of time. Protesters argue that in simply subtracting two years from the projected useful life outlined in the testimony based solely on the passage of time, Kinetica Energy cannot be said to be relying on the analysis contained in the testimony.¹⁷²

194. The Commission's policy generally requires that a pipeline use the last approved offshore depreciation and negative salvage rates for new facilities that will be integrated into and operated as part of the pipeline's existing system facilities.¹⁷³ Kinetica Energy's proposed depreciation rate is lower than the 0.80 percent offshore depreciation rate approved in Tennessee's last rate case. Therefore, the Commission will accept Kinetica Energy's proposed depreciation rate of 0.47 percent.

195. On the other hand, we find that Kinetica Energy has not provided adequate support for its proposed negative salvage rate of 0.49 percent. The Tennessee study was contested when first presented in Tennessee's Docket No. RP11-1566,¹⁷⁴ and the

¹⁷¹ Indicated Shippers' March 29, 2013 Answer at 9.

¹⁷² *Id.*

¹⁷³ *Gulf South Pipeline Co., LP*, 120 FERC ¶ 61,291 (2007); *Texas Eastern Transmission, LP*, 101 FERC ¶ 61,120 (2002).

¹⁷⁴ *Tennessee Gas Pipeline Company*, 133 FERC ¶ 61,266, at P 12 (2010).

resulting settlement makes no explicit reference that the study's results were used for the settled rates. Further, Kinetica Energy made no attempt to reconcile the set of facilities that it will acquire from Tennessee and those that were the subject of the Tennessee study. Therefore, we direct Kinetica Energy to revise its rates to reflect the use of the negative salvage rate approved in Tennessee's last general rate case of 0.40 percent.¹⁷⁵

4. Operation and Maintenance and Administrative and General Expenses

196. Kinetica Energy proposes O&M Expenses of \$39,607,911 and A&G Expenses of \$3,167,842. Kinetica Energy states that its proposed O&M Expenses are based on Tennessee's 2012 budget data for the field operations of the Supply Area Facilities. It states that A&G Expenses are based on its own budgeted expenses for the first year following the acquisition, including: budgeted expenses for employees and their benefits; office supplies and expenses; outside services (such as contract scheduling and accounting services); insurance expenses (including property insurance and bonds); IT system expenses (measurement and work planning); and regulatory expenses (such as contract regulatory services and regulatory legal services).

197. Protesters state that Kinetica Energy's proposed A&G Expenses are unsupported. They state the Commission must require Kinetica Energy to provide greater detail as to how these expenses were calculated and from where the underlying data for each account was calculated. Protestors state such details include all "contracted regulatory services" and any other third-party operating or service contracts that Kinetica Energy intends to enter or has entered.

198. Kinetica Energy states that most of its expenses are based on Tennessee's costs, but that additions had to be made for various items. It states that such additions include its substantial insurance costs and helicopter lease costs, which Kinetica Energy states were not part of Tennessee's costs because Tennessee maintained these leases at the corporate level and did not allocate them to individual pipelines or particular facilities. In regard to "contracted regulatory services," Kinetica Energy states that these expenses simply refer to such items as support for expert rate development.

199. Given that Kinetica Energy will be a new pipeline, the Commission recognizes the need for flexibility when estimating A&G Expenses. Kinetica Energy states that most of

¹⁷⁵ However, our finding rejecting Kinetica Energy's requested negative salvage rate is without prejudice to Kinetica Energy's filing a general NGA section 4 rate case to change its initial rates. *See in accord ANR Pipeline Co.*, 140 FERC ¶ 61,260, at P 11 (2012).

the A&G Expenses and O&M Expenses were based on Tennessee's data. Additional costs not shown in Tennessee's data, such as insurance, are reasonable and expected. Therefore, we accept Kinetica Energy's proposed A&G Expenses and O&M Expenses.¹⁷⁶

5. Capital Structure

200. Protesters contend that the proposed capital structure of 70 percent equity and 30 percent debt is unsupported. Indicated Shippers state that even in circumstances where the Commission has approved an equity return of 13 to 14 percent for a new pipeline, the capital structure of that new pipeline would generally be comprised of no more than 30 percent equity. Indicated Shippers state that the Commission should accordingly require Kinetica Energy to use an imputed hypothetical capital structure of 50 percent debt and 50 percent equity to determine its pre-tax and after-tax returns included in its rates.

201. In general, the Commission must determine that proposed rates are based on a reasonably balanced capital structure reflecting the risks of the regulated entity.¹⁷⁷ The Commission's aim is to protect the ratepayer from excessive rates resulting from a capital structure with an unduly high equity ratio.¹⁷⁸ The Commission generally prefers the use of a pipeline's own capital structure, instead of a hypothetical capital structure derived from its parent or other entities, if the pipeline: (1) issues its own debt; (2) has its own separate bond rating; and (3) has an equity ratio that is not excessive in light of other equity ratios approved by the Commission and compared with the equity ratios of the proxy companies.¹⁷⁹ Under Commission policy, a hypothetical capital structure is adopted only in extreme circumstances.

¹⁷⁶ As discussed below, Kinetica Energy will be required to file a cost and revenue study at the end of its first three years of actual operation to justify its existing approved cost-based recourse rates. Interested persons will have another opportunity to comment on the reasonableness of its costs at that time.

¹⁷⁷ *Consolidated Gas Supply Corp.*, 24 FERC ¶ 61,046, at 61,133 (1983).

¹⁷⁸ *Transcontinental Gas Pipe Line Corp.*, Opinion No. 414, 80 FERC ¶ 61,157, at 61,665 (1997); *order on reh'g*, Opinion No. 414-A, 84 FERC ¶ 61,084, at 61,665; *reh'g denied*, Opinion No. 414-B, 85 FERC ¶ 61,323 (1998); *aff'd sub nom. North Carolina Utils. Comm'n v. FERC*, 203 F.3d 53 (D.C. Cir. 2000) (unpublished opinion).

¹⁷⁹ See *Enbridge Pipelines (KPC)*, 100 FERC ¶ 61,260, at P 185 (2002) ("To the maximum extent possible, the Commission bases capital structure on real entities, the pipeline or a company associated with the pipeline, that obtain financing for the

(continued...)

202. Here, we find it appropriate to use Kinetica Energy's proposed capital structure of 70 percent equity and 30 percent debt as it reflects Kinetica Energy's anticipated capital structure based on debt financing capacity available in the marketplace. Kinetica Energy is without firm customers and will operate in the Gulf of Mexico, which has significant weather risks and declining supplies. These factors will make it difficult to finance the project, resulting in the greater use of Kinetica Energy's own equity. Accordingly, we will use Kinetica Energy's proposed capital structure in the design of Kinetica Energy's initial rates.

6. Return on Equity

203. Kinetica Energy proposed a return on equity (ROE) of 12.99 percent on the basis that the Commission permitted TC Offshore¹⁸⁰ and High Point¹⁸¹ the same figure, and that it was based on the most recent litigated NGA section 4 general rate case proceeding.¹⁸² Further, Kinetica Energy contends that its proposed return on equity is proper considering the substantial risks faced by Kinetica Energy's equity investors, including, among other things, the potential of storms. Protesters contend that the Commission should deny Kinetica Energy's proposed return on equity of 12.99 percent because it is excessive and without support or merit.

204. Although the Supply Area Facilities will be newly acquired by Kinetica Energy, the facilities have been in service for many years. In approving an ROE for a new company that will be providing service using facilities already long in service, the Commission generally has found it appropriate to use the most recent ROE approved in a litigated NGA section 4 general rate case.¹⁸³ At the time of Kinetica Energy's filing, its

pipeline."); Opinion No. 414, 80 FERC at 61,665 (rejecting suggestion that the Commission need only ascertain whether a pipeline issues its own debt); Opinion No. 414-B, 85 FERC at 62,266 (stating the focus of the Commission's analysis in all cases continues to be the reasonableness of the pipeline's equity ratio).

¹⁸⁰ *ANR Pipeline Co.*, 139 FERC ¶ 61,238, at P 136 (2011).

¹⁸¹ *Southern Natural Gas Co., LLC*, 139 FERC ¶ 61,237, at PP 153, 156 (2011).

¹⁸² (Citing *Portland Natural Gas Transmission Sys.*, 134 FERC ¶ 61,129, at P 225 (2012) (approving an ROE of 12.99 percent)).

¹⁸³ See, e.g., *Northern Natural Gas Co.*, 119 FERC ¶ 61,035, at PP 36-37 (2007) (approving an ROE of 11.20 percent for the acquisition of existing facilities because this was the ROE established in the most recent litigated NGA section 4 general rate case).

proposed 12.99 percent ROE was consistent with the ROE approved in the most recent litigated NGA section 4 general rate case.¹⁸⁴ However, during the pendency of this proceeding, the Commission approved another ROE for a more recent period: 11.59 percent.¹⁸⁵ As Kinetica Energy provided no other basis of support for its proposed ROE other than Commission policy, the Commission requires that Kinetica Energy to use the last ROE approved in the most recent litigated NGA section 4 general rate case: 11.59 percent.

7. Cost of Debt

205. Kinetica Energy proposes a cost of debt of 10 percent. Protesters argue that Kinetica Energy's proposed debt financing cost of 10 percent is too high, and that Kinetica's assertions to support this debt financing cost are unsupported. Rather than rely on Kinetica Energy's statements that it is engaging in ongoing discussions with lenders, protesters contend that the Commission should require Kinetica Energy to provide additional evidence to support its cost of debt.

206. As noted previously, Kinetica Energy will be an offshore pipeline without firm customers. As such, Kinetica Energy's proposed cost of debt reflects the response by the financial markets. With respect to potential bank financing, Kinetica Energy states that its proposed cost of debt reflects its understanding of the recent and current financial markets and appears to be consistent with the experience of other recent purchasers. Kinetica Energy also cites the increased risk of depletion due to low natural gas prices as a reason for its cost of debt.

207. Nevertheless, the Commission finds that Kinetica Energy has not provided adequate support for its proposed 10 percent cost of debt. Therefore, consistent with Commission policy, we direct Kinetica Energy to file its actual cost of debt with supporting documents, and it is further directed to revise its proposed rates to reflect its actual cost of debt.¹⁸⁶

¹⁸⁴ *Portland Natural Gas Transmission Sys.*, 134 FERC ¶ 61,129, at P 225 (2011) (approving an ROE of 12.99 percent), *aff'd on reh'g*, 142 FERC ¶ 61,198, at P 51 (2013).

¹⁸⁵ *Portland Natural Gas Transmission Sys.*, 142 FERC ¶ 61,197, at P 395 (2013).

¹⁸⁶ *See, e.g., Kern River Gas Transmission Co.*, 98 FERC ¶ 61,205, at 61,722-23 (2002).

8. Rate Design – Billing Determinants

208. Kinetica Energy's proposed billing determinants are based on a projected throughput of 138,533,406 Dth per year. To establish these figures, Kinetica Energy explains that it started with Tennessee's actual throughput of the Supply Area Facilities for the twelve month period ending December 31, 2012.¹⁸⁷ During this period, the annual throughput was 315,406.862 Dth.¹⁸⁸ To project throughput for 2013, Kinetica Energy states it applied a 14 percent annual rate of decline, which was derived from the average month-to-month decline experienced during 2012 (2.4 percent per month). Kinetica then added an incremental throughput of 3,650,000 Dth annually to account for current drilling activity. From this information, Kinetica Energy states it derived a total annual throughput of 237,767,130 Dth.¹⁸⁹

209. However, Kinetica Energy also projects that it will discount services. For these services, Kinetica Energy proposes to credit the cost of service with the projected discounted revenue and to subtract discounted throughput volumes of 99,233,723 Dth from the total estimated annual throughput of 237,767,130 Dth to arrive at its proposed adjusted billing determinants of 138,533,406 Dth per year.¹⁹⁰

210. Protestors state that Kinetica Energy's projected throughput appears to be significantly undercounted and unsupported for three reasons. First, they state that Kinetica Energy has unilaterally adjusted its throughput study to improperly lower the throughput on which its billing determinants have been designed. Second, they state Kinetica Energy's proposed discount adjustment is incorrect and is a significant underlying cause of Kinetica Energy's inflated proposed rates. For the discount adjustment, protestors state the Commission should require Kinetica Energy to provide additional details explaining why such a significant discount will be necessary to secure transportation contracts. Third, citing *Natural Gas Pipeline Company*,¹⁹¹ protestors state reliance on Kinetica Energy's throughput study would be contrary to Commission policy because the study is based on actual volumes rather than system capacity and places the entire burden of risk of unsubscribed capacity on its shippers.

¹⁸⁷ Kinetica Energy's January 31, 2013 Data Response, Revised Exhibit P at 11.

¹⁸⁸ *Id.* at 4.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 11.

¹⁹¹ 73 FERC ¶ 61,050, at 61,129 (1995) (*Natural*).

211. The Commission rejects protestors' request that we require Kinetica Energy to design rates based on system capacity. The Commission's requirement that rates be designed on actual capacity is intended to deter pipelines from proposing and building oversized facilities that may result in an unnecessary environmental impact or a shift in the costs of unsubscribed new capacity to shippers.¹⁹² Because the facilities in question are already built, there is no potential for overbuilding or additional environmental impact. We have permitted other pipelines in similar circumstances to base their rates on projected demand for capacity rather than the actual physical capacity of the facilities.¹⁹³ Kinetica Energy's use of projected throughput based on actual historical information is similar to the data required of pipeline companies in an NGA section 4 general rate case.¹⁹⁴ As such, we find Kinetica Energy's projected throughput acceptable for use in calculating its billing determinants.

212. Further, the cited *Natural* proceeding is not applicable. In that NGA section 4 proceeding, the pipeline proposed to defer unrecovered costs from the turn-back of capacity under firm service agreements. The Commission required *Natural* to make a determined effort to remarket its turnback capacity to new shippers and new markets so that captive customers including local distribution companies would not have to bear the cost consequences thereof. Kinetica Energy has not yet commenced service, and therefore has no firm customers that have turned back capacity. Further, Kinetica Energy will have no facilities in market delivery areas. Thus, while Kinetica Energy hopes to promote and attach additional offshore production to increase throughput on the underutilized Supply Area Facilities, its success in that regard will be largely dependent on demand in downstream market areas for supplies produced in the Gulf of Mexico.

213. However, we agree with protestors that we should reject Kinetica Energy's proposal for a discount transportation adjustment to its initial rate calculations. We have explained that:

to avoid a disincentive to discounting, the Commission has held that the pipeline need not design its rates *in the next rate case* on the assumption that the discounted volumes would flow at the maximum rate, and has permitted the pipelines to

¹⁹² *Southern Natural*, 139 FERC ¶ 61,237, at P 160 (2012).

¹⁹³ *Id.*

¹⁹⁴ See 18 C.F.R. § 154.312(j) (2012) (stating Statement G requires the use of 12-month actual contract and throughput data as the base period, adjusted for nine months of known and measurable changes in the test period).

reduce the discounted volumes used to design its rates so that, assuming market conditions require it *to continue* giving the same level [of] discounts when the new rates are in effect that it gave during the test period, the pipeline will be able to recover 100 percent of its cost of service.^{195]}

214. As described above, discount adjustments are permitted after a pipeline has provided them. Pipelines that propose to recover costs not recovered through discounted rates must show that such discounts were given to meet competition, that there was no undue preference, and that the market conditions require it to continue giving the same level discounts into the future.¹⁹⁶ In its December 31, 2012 data response, Kinetica Energy explains that it has yet to negotiate the discounted rate contract that it is pursuing with an “economically significant” shipper and for which it proposes the discount adjustment to recover costs.¹⁹⁷ Since Kinetica Energy is not yet a functioning pipeline, it does not yet have any operating history that might demonstrate a need for discounting below its proposed initial recourse rate, that the discounts are necessary to meet competition, that the discounts are not undue, or that the discounts will continue. However, our decision is without prejudice to Kinetica Energy filing a section 4 rate case in the future to seek recovery of costs related to any properly supported discounts it actually provides.

215. Consistent with the Commission’s findings above, Kinetica Energy must recalculate its rates to reflect the removal of the discount adjustment from its billing determinants, the removal of the discount revenue credit to the cost of service, and the use of 237,767,130 Dth as its billing determinants.

9. Cost and Revenue Study

216. It is Commission policy to require that a new pipeline company, like Kinetica Energy, file a cost and revenue study three years after it commences operations to justify

¹⁹⁵ *Policy for Selective Discounting by Natural Gas Pipelines*, FERC Stats. & Regs. ¶ 35,547 (2004) (Cross-referenced at 109 FERC ¶ 61,202, at P 6 (2004)) (emphasis added).

¹⁹⁶ *Policy for Selective Discounting by Natural Gas Pipelines*, 111 FERC ¶ 61,309, at PP 59-66 (2005).

¹⁹⁷ Kinetica Energy’s December 31, 2012 Data Response 1-32.

its rates.¹⁹⁸ After three years, Kinetica Energy will have an operating history and be able to generate sufficient actual costs and operations data to review its rates. Therefore, the Commission is requiring Kinetica Energy to file a cost and revenue study at the end of its first three years of actual operation to justify its approved cost-based recourse rates. In the report, Kinetica Energy will be required to project units of service for the Supply Area Facilities, which should be no lower than those upon which Kinetica's approved initial rates are based. The cost and revenue study must be in the form specified in section 154.313 of the Commission's regulations to update cost-of-service data.¹⁹⁹

217. After reviewing the data provided by Kinetica Energy's three-year cost and revenue study, the Commission will determine whether there is any need to exercise its authority under NGA section 5 to establish just and reasonable rates.²⁰⁰ In the alternative, in lieu of filing the cost and revenue study, Kinetica Energy may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the date it commences service.

F. Pro Forma Tariff Provisions

218. Kinetica Energy proposes to offer firm and interruptible services under Rate Schedules LFT-1, SFT-2, FFT-3, and IT. Kinetica Energy requests negotiated rate authority for all of its services.²⁰¹ Kinetica Energy will provide service on an open-access basis, pursuant to Part 284 of the Commission's regulations, under the terms and conditions set forth in the *pro forma* tariff. Kinetica Energy states that it has based its *pro forma* tariff on High Island Offshore System, L.L.C.'s (HIOS) tariff.

219. Kinetica Energy is directed to file actual tariff records consistent with the directives in this order at least thirty to sixty days prior to the commencement of service, making specific tariff modifications as discussed below. To the extent that Kinetica Energy needs to make tariff revisions because the Commission has found that certain facilities are unutilized or found that the facilities were not transmission, Kinetica Energy should make such changes in its compliance filing.

¹⁹⁸ See, e.g., *Cimarron River Pipeline, LLC*, 124 FERC ¶ 61,069, at P 58 (2008); *Northern Natural Gas Co.*, 119 FERC ¶ 61,035, at P 49 (2007).

¹⁹⁹ 18 C.F.R. § 154.313 (2012).

²⁰⁰ 16 U.S.C. § 717d (2006).

²⁰¹ Kinetica Energy's application at Exhibit P, *Pro Forma* Tariff Section 23 of GT&C.

1. Infrastructure Investment Surcharge

220. Kinetica Energy proposes an Infrastructure Investment Surcharge, initially set at zero, to recover net actual costs after insurance of damage due to hurricanes, other natural events, and some other infrastructure investments.²⁰²

221. Protesters argue that Kinetica Energy's proposed Infrastructure Investment Surcharge is overly broad, includes costs that are already recovered in Kinetica Energy's base rates, including certain O&M Expenses, and is contrary to the Commission's general policy of discouraging these types of trackers. Protesters state that although the Commission has permitted certain pipelines to adopt storm event or hurricane trackers, Kinetica Energy's tracker appears to include categories of costs substantially beyond the scope of the costs that other pipelines have been permitted to recover, and that Kinetica Energy could potentially use the surcharge to modify components of its cost of service without needing to file a general section 4 rate case. Protesters also take issue with the 36 month recovery period of Kinetica Energy's proposed Infrastructure Investment Surcharge, which they allege is too short of a period. Additionally, protestors object to language in the surcharge allowing Kinetica Energy to selectively discount its surcharge.

222. Kinetica Energy states shippers would be protected from a double recovery of costs already recovered through its base rates because of the filing requirements imposed by the general terms and conditions (GT&C) of its own tariff. Kinetica Energy states that its tariff requires it to make detailed filings to establish any surcharges, including complete and detailed information on each cost to be recovered, and it cannot be used to recover costs already in its base rates.²⁰³ Kinetica Energy claims that it needs the surcharge so that it may charge its customers for actual repair costs not covered by insurance and not included in its rates.²⁰⁴ Kinetica Energy also states that its proposed 36-month-recovery period is consistent with other similar charges approved by the Commission.²⁰⁵

223. The Commission has recognized that in certain circumstances pipelines may need the ability to recover costs incurred due to storms or hurricanes and has allowed pipelines

²⁰² Kinetica Energy *Pro Forma* Tariff Sheet No. 114.

²⁰³ Kinetica Energy cites section 19.3 of its GT&C of its *pro forma* tariff.

²⁰⁴ Kinetica Energy's September 13, 2012 Answer at 10.

²⁰⁵ Kinetica Energy cites *Southern Natural*, 139 FERC ¶ 61,237, at P 175 (2012) and *ANR*, 139 FERC ¶ 61,238, at P 176 (2012).

to adopt storm event or hurricane trackers. However, Kinetica Energy's proposed tariff language is overly broad and provides for recovery of costs outside those caused by a hurricane, storm, or other such natural disaster typically approved by the Commission.²⁰⁶

224. For example, Kinetica Energy's proposed tariff language attempts to include pipeline safety and environmental compliance costs, which is inconsistent with current Commission policy as described in *Florida Gas Transmission Co.*²⁰⁷ and *Granite State Gas Transmission, Inc.*²⁰⁸ In those cases, the Commission found that cost-of-service tracking provisions related to regulatory obligations are contrary to the requirement to design rates based on estimated units of service.²⁰⁹ This requirement means that the pipeline is at risk for under-recovery of its costs between rate cases, but may retain any over-recovery, giving the pipeline an incentive both to be efficient and to provide effective service.²¹⁰ The Commission found that cost trackers undercut these incentives by guaranteeing the pipeline a set revenue recovery.²¹¹ The Commission also stated that

²⁰⁶ Kinetica Energy states in its application at p. 31 that its proposed tariff language for its Infrastructure Investment Surcharge is similar to that contained in UTOS' tariff. However, Kinetica Energy's proposed language is not identical to UTOS' and, furthermore, UTOS' tracker language was approved in a settlement, which provided for a lower maximum recourse transportation rate than what the pipeline originally proposed in its rate case. *Enbridge Offshore Pipelines (UTOS) LLC*, 135 FERC ¶ 61,096, at P 7 (2011).

²⁰⁷ 105 FERC ¶ 61,171, at PP 45-48 (2003) (*Florida Gas*).

²⁰⁸ 132 FERC ¶ 61,089, at PP 10-11 (2010). We note that the Commission has approved surcharges for pipeline safety costs in uncontested settlements. *Florida Gas Transmission Co.*, 109 FERC ¶ 61,320, at P 18 (2004); *Granite State Gas Transmission*, 136 FERC ¶ 61,153 (2011) (*Granite State*). Our rejection here of Kinetica Energy's Infrastructure Investment Surcharge is without prejudice to such a future settlement.

²⁰⁹ *Florida Gas*, 105 FERC ¶ 61,171 at P 47; *Granite State*, 132 FERC ¶ 61,089 at P 111; 18 C.F.R. § 284.10(c)(2) (2012). See also *ANR Pipeline Co.*, 70 FERC ¶ 61,143, at 61,431 (1995) (rejecting pipeline's request for a base rates cost-of-service tracker).

²¹⁰ *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, FERC Stats. & Regs., Regulations Preambles 1982-1985 ¶ 30,665, at 31,534 and 31,537 (1985).

²¹¹ *Florida Gas*, 105 FERC ¶ 61,171, at P 47 (citing *Canyon Creek Compression Co.*, 99 FERC ¶ 61,351, at PP 14-15 (2002)).

jurisdictional pipelines commonly incur capital costs in response to regulatory requirements intended to benefit the public interest.²¹²

225. However, pipelines are entitled to seek recovery of costs related to regulatory obligations, along with a just and reasonable return, at any time through a general NGA section 4 rate proceeding. Therefore, our rejection of Kinetica Energy's proposed Infrastructure Investment Surcharge tariff language is without prejudice to Kinetica Energy filing a hurricane tracker consistent with other Commission approved hurricane tracking mechanisms in a separate NGA limited section 4 proceeding. Kinetica Energy is directed to file tariff sheets reflecting the removal of the proposed Infrastructure Investment Surcharge from its *pro forma* tariff records when it files actual tariff records.

2. Reservation Charge Credits

226. Section 4.2 of Rate Schedules LFT-1, SFT-2 and FFT-3 in Kinetica Energy's *pro forma* tariff provides for reservation charge credits if it is unable to deliver gas to or for a shipper with a contract for firm service.

227. Protesters contend that Kinetica Energy's proposed reservation charge mechanism is inconsistent with Commission requirements because Kinetica Energy would not provide revenue credits if: (1) a shipper is not paying the currently effective maximum rate for service; or (2) Kinetica Energy is not able to schedule deliveries to a shipper's secondary point(s) of delivery. Kinetica Energy responds and states that a shipper that has received full deliveries, albeit at its secondary point of delivery, does not warrant a reservation charge credit. In addition, it states that shippers paying less than the maximum rate do not need to be afforded a reservation charge credit as these issues can be the subject of each individually negotiated discount agreement.²¹³

228. The Commission has formulated its reservation charge crediting policy through a series of adjudications concerning the reservation charge crediting tariff provisions of particular pipelines. That policy requires that all interstate pipelines provide reservation charge credits to their firm shippers during both *force majeure* and non-*force majeure* outages.²¹⁴ The Commission requires full reservation charge credits for outages of

²¹² *Id.* P 48.

²¹³ Kinetica Energy's September 13, 2012 Answer at 13.

²¹⁴ See, e.g., *Southern Natural Gas Co.*, 135 FERC ¶ 61,056, *order on reh'g*, 137 FERC ¶ 61,050 (2011); *Kern River Gas Transmission Co.*, 135 FERC ¶ 61,050 (2011), *order on reh'g*, 139 FERC ¶ 61044 (2012); *Northern Natural Gas Co.*, 135 FERC ¶ 61,250, *order on reh'g*, 137 FERC ¶ 61,202 (2011); *Midwestern Gas*

primary firm service due to non-*force majeure* events and partial reservation charge credits for outages due to *force majeure* events to share the risk of such events for which neither party is responsible. Partial credits may be provided pursuant to: (1) the No-Profit method under which the pipeline gives credits equal to its return on equity and income taxes starting on Day 1; or (2) the Safe Harbor method under which the pipeline provides full credits after a short grace period when no credit is due (i.e., 10 days or less).²¹⁵ The Commission has defined *force majeure* outages as events that are both unexpected and uncontrollable.²¹⁶ The Commission has held that routine, scheduled maintenance is not a *force majeure* event, and this policy is not dependent on the specific operational conditions of the pipeline.²¹⁷ That is because, even if such outages are considered reasonably within the pipeline's control, they are expected.

229. In *North Baja Pipeline, LLC v. FERC*,²¹⁸ the U.S. Court of Appeals for the District of Columbia Circuit affirmed the major elements of the Commission's reservation charge crediting policies. As the Commission explained in *Texas Eastern Transmission, LP*,²¹⁹ because our reservation charge crediting policies have been developed in individual adjudications, they have the force of law. Further, while the court in *Pacific Gas &*

Transmission Co., 137 FERC ¶ 61,257 (2011); *Gulf South Pipeline Co. LP*, 141 FERC ¶ 61,224 (2012) (*Gulf South*); *Tennessee Gas Pipeline Co., LLC*, 133 FERC ¶ 61,208 (2011), *order on reh'g*, 139 ¶ 61,050 (2012).

²¹⁵ See, e.g., *Tennessee Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 (1996) (Opinion No. 406), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997) (Opinion No. 406-A), *as clarified by, Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006); *Ingleside Energy Center, LLC, et al.*, 112 FERC ¶ 61,101, at P 58 (2005); and *Midwestern Gas Transmission Co.*, 137 FERC ¶ 61,257, at PP 19-22 (2011). The Commission has also stated that pipelines may use some other method which achieves equitable sharing in the same ball park as the first two methods.

²¹⁶ See, e.g., Opinion No. 406, 76 FERC ¶ 61,022, at 61,088 (1996).

²¹⁷ *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262, at 61,350 (2003).

²¹⁸ 483 F.3d 819, 823 (D.C. Cir. 2007), *aff'g*, *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh'g*, 111 FERC ¶ 61,101 (2005).

²¹⁹ 140 FERC ¶ 61,216, at P 24 (2012).

*Electric v. Federal Power Commission*²²⁰ held that policy statements do not establish a “binding norm,” the court also stated that, in contrast to a policy statement:

An administrative agency has available two methods for formulating policy that will have the force of law. An agency may establish binding policy through rulemaking procedures by which it promulgates substantive rules, or through adjudications which constitute binding precedent.

230. Therefore, consistent with *PG&E v. FPC*, the Commission’s orders in its adjudications concerning pipeline reservation charge crediting provisions constitute “binding precedents” which establish “binding policy” that has “the force of law.” Similarly, in *Michigan Wisconsin Pipe Line Co.*,²²¹ the court stated:

There is no question that the Commission may attach precedential, even controlling weight to principles developed in one proceeding and then apply them under appropriate circumstances in a *stare decisis* manner.

231. As discussed above, Commission policy requires that pipelines provide full reservation charge credits for outages due to non-*force majeure* events and partial crediting for outages due to *force majeure events or circumstances*. Kinetica Energy’s *pro forma* tariff is not consistent with this policy and precedent as it would not provide reservation charge credits if (1) a shipper is not paying the currently effective maximum rate for service; or (2) Kinetica Energy is not able to schedule deliveries to a shipper’s secondary points of delivery. Therefore, the Commission rejects Kinetica Energy’s proposed reservation charge crediting provisions and directs Kinetica Energy to file reservation charge crediting language consistent with Commission policy when it files its actual tariff sheets.²²²

²²⁰ 506 F.2d 33, 38 (D.C. Cir. 1974) (*PG&E v. FPC*) (footnote and citations omitted). *See also, e.g., Consolidated Edison Co. of New York, Inc. v. FERC*, 315 F.3d 316, 323 (D.C. Cir. 2003) (an agency may “change the established law and apply newly created rules . . . in the course of an adjudication . . .”).

²²¹ 520 F.2d 84, 89 (D.C. Cir. 1975).

²²² *See Williston Basin Interstate Pipeline Co. v. FERC*, 165 F.3d 54, 61 (D. C. Cir. 1999) (holding that to the extent “arguments reflect efforts to skirt or modify, rather than comply” with current Commission policy, the Commission may reject them).

3. Company Used Gas and Lost and Unaccounted For Gas

232. Section 26 of Kinetica Energy's *pro forma* tariff proposes a company use charge to reimburse Kinetica Energy for Compressor Fuel Used and Lost And Unaccounted For Gas. Kinetica Energy states that it intends to true up company used gas (both compressor fuel and Lost and Unaccounted For Gas) annually, so that shippers pay for the company used gas actually incurred in each production month. Kinetica Energy's tariff provides for an annual Company Use Percentage filing with an effective date of April 1. The tariff filing is to include workpapers setting forth the calculation of the prospective Compressor Fuel, Unaccounted For Gas and Company Use True up percentages as determined in accordance with Kinetica Energy's Tariff.

233. Protesters submit the Commission should require Kinetica Energy to establish initial company used gas percentages now and revise them to reflect actual average gas used pursuant to Tennessee's records for the six months prior to the effective date of the conveyance of the Supply Area Facilities. Protesters contend that shippers should not be required to guess what company used gas percentages will be on the facilities and then face a change after Kinetica Energy has made its annual true-up filing long after the conveyance is approved.

234. Kinetica Energy states that it does not anticipate having any gas used for compression and it cannot anticipate what, if any, its lost and unaccounted for gas percentage might be.²²³ Kinetica Energy states it plans to only charge shippers for *actual* company use when that use becomes known, through the mechanisms of a monthly cash-out and an annual true-up.²²⁴

235. The Commission approves Kinetica Energy's proposed company use mechanism and the proposed initial rate of zero. However, because Kinetica Energy's tariff requires it to make an annual filing to true up company used gas, interested parties will have an opportunity to raise any objections to the calculations used in Kinetica Energy's true-up mechanism at that time.

4. Condensate Transportation, Separation, and Dehydration Rates

236. Kinetica Energy states that it will provide, in addition to basic natural gas transportation, condensate transportation, separation, dehydration, and enhanced options for the extraction of natural gas liquids (NGLs) for its customers.

²²³ Kinetica Energy's September 13, 2012 Answer at 12.

²²⁴ *Id.*

237. Protesters contend the Commission should require Kinetica Energy to file rates for these additional services.

238. The Commission has no jurisdiction over rates set for the handling and transportation of NGLs. In *Mobil Oil Corp. v. FPC*,²²⁵ the court held that the Commission lacked jurisdiction over rates for liquids transportation. Thus, while the Commission can allocate costs to liquids transportation for the purpose of setting natural gas transportation rates, it cannot set the rates for the liquids transportation.²²⁶ The Commission has also previously stated that “processing of natural gas is a non-jurisdictional activity that the Commission has no authority to regulate.”²²⁷ Therefore, the Commission will not further address these non-jurisdictional issues.

5. Gas Quality and Processing

239. Section 4.1 of the GT&C of Kinetica Energy’s *pro forma* tariff provides for processing and treatment of gas and sets gas quality specifications for Kinetica Energy’s system. Protesters state that Kinetica Energy’s *pro forma* tariff language in section 4.1b of its GT&C, which deals with gas processing, could be interpreted as providing Kinetica Energy with the authority to compel a shipper or its designee to agree to have its gas processed, even if the gas in question does not require processing, with the shipper or its designee being required to incur any resulting processing costs. Protesters request that the Commission require Kinetica Energy to clarify that shippers or their designees will not be compelled by Kinetica Energy to have their gas processed for their own account when such gas meets Kinetica Energy’s gas quality specifications. Protesters further request that the Commission require Kinetica Energy to modify its GT&C so that gas which meets Kinetica Energy’s gas quality specifications does not need to be processed, regardless of where it is sourced.

240. Kinetica Energy states that the purpose of the proposed gas quality provisions is to ensure that gas quality is maintained to an extent necessary to safely move gas through its system and that gas is processed to meet merchantability requirements.²²⁸

²²⁵ 483 F.2d 1238 (D.C. Cir. 1973).

²²⁶ *ANR*, 139 FERC ¶ 61,238, at P 150 (2012).

²²⁷ *Columbia Gulf Transmission Co.*, 123 FERC ¶ 61,153, at P 37 (2008).

²²⁸ Kinetica Energy’s September 13, 2012 Answer at 10.

241. Section 4.1 b of the GT&C of Kinetica’s proposed tariff records states that:

Transporter may subject or permit the subjection of Gas to compression, cooling, cleaning, or other processes and helium, natural gasoline, butane, propane, and any other hydrocarbons except methane may be removed to such an extent as may be required in Transporter’s sole opinion for its transmission from the Points of Receipt to the Points of Delivery.

This language proposed by Kinetica Energy contains a “sole discretion” phrase, which is contrary to Commission policy and precedent. As explained in *Pacific Gas Transmission Company*,²²⁹ tariff provisions containing “sole discretion” language are potentially discriminatory because they give a pipeline unfettered discretion to waive a default or provision on behalf of one shipper, while not waiving the same default or provision for another shipper under similar conditions resulting in discriminatory practices.

242. Therefore, Kinetica Energy is directed to remove the phrase “Transporter’s sole opinion” from section 4.1b of its GT&C. If Kinetica Energy deems it necessary to process a shipper’s gas, then that decision must be based off standards equally applicable to all shippers on Kinetica Energy’s system and any processing requirements must be applied on a non-discriminatory basis.

6. Form of Reserve Commitment Agreement – Rate Schedule IT

243. Section 2.1 of the Form of Reserve Commitment Agreement under Rate Schedules LFT-1 and IT in Kinetica Energy’s proposed tariff records states that in exchange for the provisions of Article XI, which only states “further agreement,” shippers agree to transport their gas through Kinetica Energy’s pipeline facilities for the producible life of any committed leases.

244. Protesters object to the Form of Reserve Commitment Agreement under Kinetica’s Rate Schedule IT because they assert an IT shipper should not be required to commit reserves to Kinetica Energy under any circumstances, unless and to the extent a shipper voluntarily chooses to do so.

245. Kinetica Energy states that its proposed tariff language would not alter an IT shipper’s service priority and states that the association of a reserve commitment with IT

²²⁹ 40 FERC ¶ 61,193, at 61,623-24 (1987).

service is entirely voluntary and available to shippers as an option, perhaps in connection with obtaining a discounted IT rate.²³⁰

246. The blank space stating on the form of agreement that provides for “further agreement” is contrary to the Commission’s policies governing forms of service agreements. As explained in *Northern Natural Gas Company*, “allowing a blank section labeled ‘Other’ in a *pro forma* service agreement is too broad and vague, and could lead to the inclusion of impermissible terms and conditions of service. Further, it could inhibit interested customers from easily tracking and understanding all agreement provisions.”²³¹ Contract provisions must be fully transparent and implemented in a non-discriminatory manner. Therefore, the Commission rejects Section 2.1 of the proposed Form of Reserve Commitment Agreement under Rate Schedules LFT-1 and IT and directs Kinetica Energy to remove this provision, and any similar tariff provisions, from its *pro forma* tariff when it files actual tariff records.

7. NGL Bank

247. As part of its *pro forma* tariff, Kinetica Energy proposes a mandatory NGL Bank agreement to provide a mechanism to balance economic imbalances it states will occur among its shippers as a result of the comingling of its shippers’ gas, which contain different natural gas liquid compositions. Kinetica Energy states that it will implement an NGL Bank agreement fashioned after the NGL Bank contained in HIOS’s tariff.

248. Protesters question whether Kinetica Energy’s proposed NGL Bank is appropriate, as it was taken directly from HIOS’s tariff and the circumstances on HIOS’s system may be different from those on Kinetica Energy’s system. Protesters further state that they believe processing inequities that currently plague Tennessee’s system could be exacerbated after Kinetica Energy acquires the Supply Area Facilities.

249. The “processing of natural gas is a non-jurisdictional activity that the Commission has no authority to regulate.”²³² Further, the Commission has no jurisdiction over the rates for the handling and transportation of liquids.²³³ Given the non-jurisdictional status

²³⁰ Kinetica Energy’s September 13, 2012 Answer at 10.

²³¹ *Northern Natural Gas Co.*, 102 FERC ¶ 61,171, at PP 14-18 (2003) (rejecting a blank labeled “Other” in a *pro forma* service agreement).

²³² *Tennessee Gas Pipeline Co.*, 123 FERC ¶ 61,153, at P 37 (2008).

²³³ *ANR Pipeline Co.*, 139 FERC ¶ 61,238, at P 150 (2012).

of the issues that the proposed NGL Bank agreement attempts to address, we find it is inappropriate to include the proposed NGL Bank agreement in Kinetica Energy's tariff. Kinetica Energy is thus directed to remove the proposed NGL Bank agreement and all language related to the NGL Bank agreement when it files actual tariff records.

8. Compliance Filings

250. At least thirty to sixty days prior to the in service date of the Supply Area Facilities, Kinetica Energy is directed to file actual tariff records to place its tariff into effect.²³⁴ In addition, Kinetica Energy is required to include in that compliance filing revised initial maximum recourse rates calculated using Kinetica Energy's proposed A&G costs, proposed O&M costs, proposed capital structure and rate design. Consistent with the Commission's findings above, Kinetica Energy must file its actual cost of debt with supporting documents. Kinetica Energy's new rates must be recalculated to reflect actual debt costs, the removal of the discount adjustment from its billing determinants, revised ROE, revised negative salvage rates, and the removal of the discount revenue credit to the cost of service.

251. In addition, as discussed above, Kinetica Energy's revised rates must reflect the removal from its rate base for jurisdictional services the Supply Area Facilities that are gathering facilities or that are unutilized. The facilities removed from Kinetica Energy's rate base must be listed on an electronic Excel spreadsheet detailing all costs attributable to those facilities. Kinetica Energy is required to provide work papers in electronic Excel spreadsheet format, including formulas, showing the recalculation of the rate base, return, cost of service, billing determinants and initial rates.

252. Kinetica Energy's tariff changes should include the removal of the proposed Infrastructure Investment Surcharge from its *pro forma* tariff sheets; revised reservation charge crediting language consistent with Commission policy;²³⁵ the removal of the phrase "Transporter's sole opinion" from section 4.1b of its GT&C; the removal of section 2.1 of the proposed Form of Reserve Commitment Agreement under Rate Schedules LFT-1 and IT and any similar tariff provisions from its *pro forma* tariff; and the removal of the proposed NGL Bank agreement and all language related to the NGL Bank agreement.

²³⁴ Kinetica Energy's compliance filing will need to comply with the Commission's electronic filing requirements set forth in Order No. 714 and Part 154 of the Commission's regulations. *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008); 18 C.F.R. § 154.4 (2012).

²³⁵ See, e.g., *Dominion Transmission, Inc.*, 142 FERC ¶ 61,154 (2013).

253. Kinetica Energy is also required to file a cost and revenue study at the end of its first three years of actual operation to justify its approved cost-based recourse rates. Kinetica Energy's cost and revenue study should be an eTariff filing using a Type of Filing Code 580. In addition, Kinetica Energy is required to include as part of the Filing Title description a reference to Docket No. CP12-489-000 and the cost and revenue study.

G. Tennessee's Settlement

1. Background and Proposal

254. Together with Tennessee's abandonment application in Docket No. CP12-490-000, Tennessee submitted for approval a settlement agreement in Docket No. RP12-887-000. Tennessee states this settlement agreement was negotiated with certain of its shippers regarding the proposed rate treatment and rate relief associated with the sale of the Supply Area Facilities, which includes the facilities addressed by the Commission's November 2011 Order on Tennessee's previous application and the additional Supply Area Facilities presented in Tennessee's current application.

255. Tennessee states that the settlement agreement, if approved by the Commission, will resolve all rate issues associated with its Part 284 transportation services for its abandonment by sale of the facilities. Tennessee states that the settlement agreement is submitted in lieu of filing a general section 4 rate case and is the result of extensive discussions and negotiations among Tennessee and its shippers. Tennessee also seeks a waiver or amendment, to the extent necessary, of its settlement approved by the Commission in its previous section 4 rate proceeding in Docket No. RP11-1566-000 (2011 Rate Settlement),²³⁶ to effectuate the provisions of the settlement agreement in this proceeding.

256. Article I of the settlement agreement in Docket No. RP12-887-000 provides background including a description of the cost recovery and rate reduction mechanisms established by the settlement and discussed in greater detail below.

257. Article II defines the conditions precedent to the effective date of the settlement and provides conditions under which a partial sale to Kinetica Partners may be implemented. Article II also establishes the effective date of the settlement, stipulating that the settlement will become effective on the first day of the calendar month after the conditions precedent have been met or waived.

²³⁶ *Tennessee Gas Pipeline Co., LLC*, 137 FERC ¶ 61,182 (2011).

258. Article III provides for Tennessee's establishment of a regulatory asset for a portion of the unrecovered net book value of the facilities to be sold and also for making an adjustment to its rates in recognition of the sales proceeds and operating and maintenance expenses savings within 30 days following the effective date of the settlement, as discussed in greater detail below. Article III states that the rate adjustment shall remain in effect until the effective date of Tennessee's firm transportation rates established in Tennessee's next general rate proceeding.

259. Article IV provides for the recovery in rates and the amortization of the regulatory asset established by Tennessee. Article IV states that commencing on the effective date of the settlement, Tennessee shall amortize the balance in the regulatory asset account using a twenty year amortization period. Article IV stipulates the limitations under which consenting parties may challenge certain costs included in the regulatory asset account. Article IV also provides for an adjustment in rates or establishment of a regulatory liability once the regulatory asset has been fully amortized. Article IV also describes the liabilities associated with decommissioning costs and environmental liabilities which Kinetica Partners will assume.

260. Article V states that the settlement resolves all rate issues related to Tennessee's proposed sale to Kinetica Partners; that the offer of settlement does not diminish, enlarge, or waive rights except as specified; and that the settlement is not "settled practice" in future proceedings.

261. Article VI defines consenting and contesting parties for purposes of the settlement and the effect of such classifications with respect to the provisions of the settlement, stipulating that contesting parties will not be entitled to any of the settlement's benefits or be subject to any of its burdens.

262. Article VII provides for an adjustment to the revenue crediting threshold included in the 2011 Rate Settlement to reflect the reduction in rates after closing of the sale of the Transferred Assets to Kinetica Partners.

263. Article VIII requests any waivers of the Commission's rules and amendments to the 2011 Rate Settlement necessary for Commission approval and to effect the provisions of the settlement, including the adjustment in rates to be made by Tennessee following closing of the sale of the facilities to Kinetica Partners.

2. Regulatory Asset Account and Rate Effects

264. Under the cost adjustment mechanism proposed in the settlement, Tennessee would establish a regulatory asset account for an amount equal to: (1) the difference between the net book value of the Original Supply Area Facilities (\$131 million) and \$10 million and (2) fifty percent of the difference between the net book value of the additional Supply Area Facilities (\$147 million) and the balance of the sales proceeds

(\$32 million). As part of the settlement, Tennessee agrees to absorb fifty percent of the loss of the unrecovered net book value of the additional Supply Area Facilities (approximately \$62 million). The remaining \$184 million will be included in a regulatory asset account to be amortized over a period of 20 years, for inclusion in Tennessee's rate base in its next general NGA section 4 rate proceeding. Article IV stipulates that consenting parties may not challenge costs included in the regulatory asset account for amounts less than \$190 million.

265. The settlement also provides for an immediate reduction in Tennessee's rates by the cost of service effect of: (1) the removal of depreciation, return, and related income taxes associated with the facilities and (2) five million dollars of operating and maintenance cost savings. The settlement stipulates that Tennessee shall use: (1) the same cost allocation and rate design methodology reflected in the 2011 Rate Settlement; and (2) a 13.25 percent pre-tax return and applicable depreciation and amortization rates to compute the adjustment. The settlement further stipulates that Tennessee's rate adjustment filing will include work papers detailing the derivation of the rate adjustment, and that the rate adjustment will remain in effect until Tennessee's next section 4 or 5 NGA rate proceeding.

3. Protests and Comments

266. Protesters argue that many of Tennessee's shippers, suppliers, and other affected parties were not parties to Tennessee's settlement and thus were not privy to the negotiations. Moreover, protestors state the settlement omits required information necessary to evaluate its impacts. Protesters further state that Tennessee acknowledges that in negotiating a resolution of the rate treatment of the proposed sale of the facilities, it did not include all of its shippers in the negotiations and that consequently, the settlement is unduly discriminatory and preferential, in violation of the NGA.

267. Tennessee responds that the settlement provides for it to absorb part of the loss on the sale, a write-off of approximately \$62 million that will further reduce rate base with the estimated effect of reducing cost of service in total by approximately \$18 million in Tennessee's next general rate case. Tennessee states that the estimated reduction in cost of service reflects the full cost and revenue impact of the proposed sale, including amortization of the regulatory asset covering the portion of the loss that Tennessee is not absorbing.²³⁷

268. Tennessee states that protesters' requests to reject the settlement should be denied, as the settlement is supported or not opposed by customers paying nearly all of

²³⁷ Tennessee's September 13, 2012 Answer at 4.

Tennessee's system revenues.²³⁸ Tennessee further states that protesters' interests in the settlement are only in relation to the sale, which they oppose on completely separate grounds.²³⁹

269. In response to a Commission issued data request, Tennessee filed *pro forma* tariff records reflecting the effects of the settlement on its currently effective tariff. In response to that same data request, Tennessee stated that only consenting parties would be charged the reduced rates reflecting the removal of the costs discussed above, while contesting parties would continue to be charged Tennessee's currently effective rates.

4. Commission Determination

270. As discussed in *Discovery Gas Transmission LLC*, the Commission may approve an uncontested settlement upon a finding that the settlement "appears to be fair and reasonable and in the public interest."²⁴⁰ By contrast, to approve a contested settlement, the Commission must make "an independent finding supported by 'substantial evidence on the record as a whole' that the proposal will establish 'just and reasonable' rates."²⁴¹ When a settlement is contested and the Commission lacks an adequate record to make a finding on the merits that the settlement rates are just and reasonable, the Commission may sever the contesting party and approve the settlement as uncontested for the consenting parties.²⁴² However, the severance must provide the contesting party an opportunity to obtain a litigated decision of the issues in which they have a legitimate interest.²⁴³

271. The Commission approves the settlement for the consenting parties and severs all contesting parties from the settlement. The settlement is an agreement that allows

²³⁸ *Id.* at 37.

²³⁹ *Id.*

²⁴⁰ *Discovery Gas Transmission, LLC*, 122 FERC ¶ 61,099, at P 24 (2008); 18 C.F.R. § 385.602(g)(3) (2012).

²⁴¹ *Mobil Oil Corp. v. FERC*, 417 U.S. 283, 313 (1974).

²⁴² See 18 C.F.R. § 385.602(h)(1)(iii) (2012); *United Municipal Distributors Group v. FERC*, 732 F.2d 202, 209-10 (D.C. Cir. 1984); *Arctic Slope Regional Corp. v. FERC*, 832 F.2d 158, 164 (D.C. Cir. 1987).

²⁴³ *Southern California Edison Co. v. FERC*, 162 F.3d 116, 118-19 (D.C. Cir. 1998) (holding that severance should "fully protect the objecting party's interest").

Tennessee and its customers to establish a reduced rate structure without the expense of litigation. Consistent with the Commission's guidance for settlement outside the context of an existing proceeding,²⁴⁴ the agreement resolves rate issues without a hearing and lengthy litigation. When a pipeline negotiates an agreement with its customers and others to change its rates or terms and conditions of service, and it desires approval of the agreement before making an actual NGA section 4 tariff filing, it may file, pursuant to Rule 207(a)(5),²⁴⁵ a petition for approval of the agreement, along with *pro forma* tariff records reflecting how the agreement will be implemented.²⁴⁶

272. Tennessee has followed this procedure. The settlement provides for an immediate reduction in Tennessee's rates by the cost of service effect of: (1) the removal of depreciation, return, and related income taxes associated with the facilities; and (2) five million dollars of operating and maintenance cost savings, for a total cost of service reduction of \$9.3 million. The Commission finds that the proposed settlement appears to be fair and reasonable and in the public interest, and it is hereby approved for the consenting parties.

273. However, since the settlement was filed in lieu of Tennessee making a rate change filing under section 4 of the NGA, there is no record that would permit the Commission to find, based on substantial evidence, that the settlement rates are just and reasonable as they relate to contesting parties. Thus, we cannot approve the settlement for contesting parties, and we therefore sever contesting parties from the settlement.

274. If Tennessee wishes to modify the rates currently applicable for service on its remaining system to contesting parties, it must make a filing pursuant to NGA section 4 proposing revised rates that would be applicable to contesting parties, and it must include in that filing the supporting information required by Part 154 of the Commission's regulations. Unless and until Tennessee makes such a section 4 filing, it must continue to offer service over its remaining system to contesting parties pursuant to its currently filed rates.²⁴⁷

275. It is the Commission's long standing policy to encourage, not discourage, settlements. Rate case settlements almost always involve compromise, as well as a

²⁴⁴ See *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005).

²⁴⁵ 18 C.F.R. §385.207(a)(5) (2012).

²⁴⁶ *Dominion*, 111 FERC ¶ 61,285 at P 32.

²⁴⁷ See *El Paso Natural Gas Co.*, 54 FERC ¶ 61,316, at 61,962-63 (1991).

considerable amount of time and expense of all parties, to resolve a multitude of contentious issues. Although the Commission must protect the interest of the contesting parties, the Commission seeks to do so in a manner that allows the consenting parties to enjoy the benefits of their bargain. Approving Tennessee's settlement for the consenting parties, while severing contesting parties, preserves the benefits of the settlement for the consenting parties and ensures that contesting parties will have an opportunity to litigate the merits of any rate change Tennessee seeks to apply to contesting parties.

276. The Commission directs Tennessee to file actual tariff records in a compliance filing implementing the settlement with respect to all consenting and contesting parties 30 days prior to the sale of the facilities. Tennessee must continue to offer service over its remaining system to contesting parties under its currently filed rates, unless and until it makes a filing under NGA section 4 to modify its rates applicable to service to those contesting parties. The rates for contesting parties must remain in Tennessee's tariff.

H. Accounting

1. Tennessee

277. Tennessee intends to transfer its transmission and gathering facilities at a \$246 million loss. Tennessee's proposed accounting for the transfer removes from Account 101, Gas Plant in Service, the original cost of the facilities of \$983,760,937 and from Account 108, Accumulated Provision for Depreciation of Gas Utility Plant, the related accumulated depreciation of \$707,877,199. Tennessee intends to clear the sale transaction through Account 102, Gas Plant Purchased or Sold, record the proceeds of the sale in Account 131, Cash, and record the related loss in Account 421.2, Loss on Disposition of Property.

278. Tennessee proposes to defer recognition of part of the loss by recording a regulatory asset of \$183,427,105 in Account 182.3, Other Regulatory Assets. Under the Commission's Uniform System of Accounts, a loss may be recorded in Account 182.3 if it is probable that the loss will be included in future rates that a pipeline is authorized to charge for its utility services.²⁴⁸ Since we are approving Tennessee's offer of settlement, as discussed above, allowing Tennessee to collect the loss from its customers over

²⁴⁸ The term "probable," as used in the definition of regulatory assets refers to that which can reasonably be expected or believed on the basis of available evidence or logic but is neither certain nor proved. *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2-A*, Order No. 552, FERC Stats. & Regs., Regulations Preambles 1991 - 1996 ¶ 30,967 (1993).

20 years, the probability test on future rate recovery is met. Accordingly, we will approve Tennessee's request to defer that part of the loss that will be recovered from its customers under the offer of settlement in Account 182.3. Tennessee's proposed accounting for the disposition of the facilities, as detailed above, is consistent with Gas Plant Instruction No. 5 and the requirements of the Commission's Uniform System of Accounts.

2. Kinetica Energy

279. Kinetica Energy submitted its proposed accounting for its acquisition of Supply Area Facilities from Tennessee in Exhibit S of its filing. Kinetica Energy's proposed accounting clears the purchase through Account 102 and records the original cost of the facilities acquired of \$803,943,453 in Account 101 and accumulated depreciation of \$584,848,983 in Account 108, consistent with Gas Plant Instruction No. 5.²⁴⁹ Kinetica Energy's proposed accounting also recognizes a \$184,676,066 negative acquisition adjustment as a credit to Account 114, Gas Plant Acquisition Adjustments, for the amount paid less than the depreciated original cost of the assets purchased, after taking into consideration costs related to the purchase of \$6,205,290.

280. It is Commission policy to clear negative acquisition adjustments by debiting Account 114 and crediting Account 108 at the time of purchase.²⁵⁰ Accordingly, Kinetica Energy is directed to revise its proposed accounting to clear the negative acquisition adjustment to Account 108 at the time of purchase.

IV. Conclusion

281. Finally, Tennessee's application for authorization to abandon the Supply Area Facilities so that they be acquired by Kinetica Energy and Kinetica Midstream qualifies for the categorical exclusion set forth in section 380.4(a)(31) of the Commission's regulations.²⁵¹ Further, environmental review of Kinetica Energy's request for blanket certificate authorities confirms that the Commission's actions in granting those certificates also qualify as categorical exclusions under sections 380.4(a)(21) and (22).²⁵²

²⁴⁹ 18 C.F.R. Part 201 (2012).

²⁵⁰ See *Locust Ridge Gas Co.*, 29 FERC ¶ 61,052, at 61,114 (1984); *Southwestern Public Service Co.*, 23 FERC ¶ 61,153 (1983).

²⁵¹ 18 C.F.R. § 380.4(a)(31) (2012).

²⁵² 18 C.F.R. §§ 380.4(a)(21), (22) (2012).

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

The Commission orders:

(A) In Docket No. CP12-490-000, permission for and approval of the abandonment by Tennessee of the subject facilities and services, as described above and in the application, is granted.

(B) Tennessee shall notify the Commission within ten days of the date(s) of its abandonment(s) of facilities as authorized by this order. Tennessee shall complete the authorized abandonments by November 3, 2014.

(C) Tennessee shall comply with all applicable regulations including but not limited to Part 154 of the Commission's regulations.

(D) In Docket No. CP12-489-000, Kinetica Energy is granted a certificate to acquire and operate the Supply Area Facilities determined to be jurisdictional transmission facilities under the Natural Gas Act.

(E) A blanket construction certificate is issued to Kinetica Energy under Subpart F of Part 157 of the Commission's regulations.

(F) A blanket transportation certificate is issued to Kinetica Energy under Subpart G of Part 284 of the Commission's regulations.

(G) The motions to intervene out-of-time are granted, except for SPSC Yscloskey, LLC's out-of-time motion, which we deny.

(H) Motions for leave to file answers are granted and the answers of the parties are accepted as discussed in the body of the order.

(I) The requests for a technical conference are denied.

(J) Tennessee and Kinetica Energy shall adhere to the accounting requirements discussed in the body of the order.

(K) Applicants must file their final journal entries to clear Account 102 no later than six months after the completion of the transaction. The accounting submission must provide all the accounting entries related to the transfer, along with narrative explanations describing the basis for the entries.

(L) Kinetica Energy is directed to file revised rates in a compliance filing reflecting the changes described in the body of this order thirty to sixty days prior to the in service date of the Supply Area Facilities. Kinetica Energy is required to provide work papers in electronic spreadsheet format, including formulas, showing the recalculation of the initial rates.

(M) Kinetica Energy is directed to file actual tariff records in a compliance filing consistent with the directives in this order at least thirty and not more than sixty days prior to the commencement of service, reflecting the changes described by the Commission in the body of this order.

(N) Kinetica Energy is required to file a cost and revenue study at the end of its first three years of actual operation to justify its approved cost-based recourse rates as described by the Commission in the body of this order. In the alternative, in lieu of such a filing, Kinetica Energy may make an NGA section 4 filing to propose alternate rates to be effective no later than three years after the date it commences service.

(O) Tennessee's settlement is approved as discussed in the body of this order for consenting parties. Contesting parties are severed from the subject settlement.

(P) Thirty days prior to the sale of the facilities, Tennessee is directed to file actual tariff records implementing the settlement with respect to all consenting parties.

(Q) Tennessee must continue to offer service on its remaining system to contesting parties under its currently filed rates, unless and until it makes a filing under NGA section 4 to modify its rates applicable to service to those contesting parties.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Interventions

Docket Nos. CP12-489-000, CP12-490-000, and RP12-887

Anadarko Energy Services Company, Anadarko Petroleum Corporation, and Anadarko U.S. Offshore Corporation
Apache Corporation
Atmos Energy Corporation
Atmos Energy Marketing LLC
BG Energy Merchants, LLC
BP Energy Company and BP America Production Company
Chevron U.S.A. Inc.
ConocoPhillips Company
Consolidated Edison Company of New York. and Orange and Rockland Utilities
Discovery Gas Transmission LLC
Exelon Corporation
ExxonMobil Gas & Power Marketing Company
Hess Corporation
Louisiana Municipal Gas Authority
National Fuel Gas Distribution Corporation
National Grid Gas Delivery Companies
New England Local Distribution Companies
New Jersey Natural Gas Company and NJR Energy Services Company
PSEG Energy Resources & Trade, LLC
Shell Offshore Inc.
Stingray Pipeline Company, L.L.C.

Docket Nos. CP12-489-000 and CP12-490-000

Arena Energy, LP
Century Exploration New Orleans, LLC, jointly with
Dynamic Offshore Resources, LLC Energy XXI (Bermuda) Ltd., Hilcorp Energy Company, Inc, McMoRan Oil & Gas LLC, Pisces Energy LLC, and W&T Offshore, Inc.
Deep Gulf Energy LP
LLOG Exploration Company, L.L.C.
Plains Gas Solutions, LLC
SPSC Yscloskey, LLC
Targa Gas Marketing LLC
Walter Oil & Gas Corporation

Docket Nos. CP12-489-000 and RP12-887

UGI Distribution Companies

Docket Nos. CP12-490-000 and RP12-887

East Tennessee Group
Louisville Gas and Electric Company
New York State Electric & Gas Corporation
NiSource Distribution Companies
Piedmont Natural Gas Company, Inc.
Tennessee Customer Group
Tennessee Valley Authority

Docket No. CP12-490-000

Kinetica Energy Express, LLC

Docket No. RP12-887

New York Public Service Commission
Pivotal Utility Holdings, jointly with
Northern Illinois Gas Company and Chattanooga Gas Company
ProLiance Energy, LLC
Tennessee Customer Group