

161 FERC ¶ 61,149
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Natural Gas Pipeline Company of America, LLC

Docket No. CP16-488-000

ORDER ISSUING CERTIFICATE AND GRANTING ABANDONMENT

(Issued November 8, 2017)

1. On August 1, 2016, Natural Gas Pipeline Company of America, LLC (Natural) filed an application pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to abandon, construct, and operate certain compression and pipeline facilities in Texas. (Gulf Coast Expansion Project). As discussed below, the Commission will grant the requested authorizations, subject to conditions.

I. Background and Proposal

2. Natural, a limited liability company organized under the laws of Delaware,³ is a natural gas company as defined by NGA section 2(6).⁴ Its transmission system consists of two mainlines, the Amarillo Line and the Gulf Coast Line, as well as the A/G Line connecting the two mainlines. The Amarillo Line extends from gas producing areas in Texas, Oklahoma, and New Mexico, through Kansas, Nebraska, Iowa, and Illinois, to terminal points in the Chicago metropolitan area. The Gulf Coast Line extends from gas producing areas in Louisiana and Texas, through Arkansas, Missouri, and Illinois, to common terminal points with the Amarillo Line in the Chicago metropolitan area. The

¹ 15 U.S.C. §§ 717 f(b), (c) (2012).

² 18 C.F.R. pt. 157 (2017).

³ Natural is a subsidiary of Kinder Morgan, Inc. and Brookfield Infrastructure Partners, L.P.

⁴ 15 U.S.C. § 717 (a)(6) (2012).

A/G Line extends from the Amarillo Line in Carter County, Oklahoma to the Gulf Coast Line in Cass County, Texas.

3. Natural requests authorization to construct and operate one compressor station, a lateral pipeline, and appurtenant facilities, and to abandon two compressor units. Specifically, Natural proposes to:

- construct and operate a new 15,900 horsepower (hp) compressor station, identified as Compressor Station 394 (CS 394), consisting of a single gas-fired turbine compressor;
- construct and operate approximately 4,000 feet of 30-inch-diameter pipeline lateral from CS 394 to Natural's existing A/G Line in Cass County, Texas;
- abandon in place inactive compressor units 5 and 6 at Compressor Station 301 (CS 301), resulting in a reduction of 5,600 hp at CS 301;⁵ and
- install minor suction and discharge station interconnection piping.

Natural states that the proposed facilities, along with existing capacity that it reserved on its Gulf Coast and A/G Line, will allow it to provide 460,000 Dth per day of firm natural gas transportation service south bound on the Gulf Coast Line to markets in the Texas Gulf Coast Area and Mexico.

4. Natural held an open season from February 18 through March 4, 2014, to gauge interest in an expansion of its Gulf Coast Line from a receipt point at Natural's existing interconnection with Rockies Express Pipeline LLC (Rockies Express) in Moultrie County, Illinois, to delivery points in the Texas and Louisiana Gulf Coast area. On April 6, 2015, Natural expanded its open season to include additional receipt points on the Gulf Coast Line and A/G Line in the Texok Receipt Zone to markets in the South Texas, Texok, and Louisiana Delivery Zones. As a result of the open season, Natural executed binding precedent agreements for firm transportation service with Rice Drilling B LLC (Rice) for 75,000 Dth per day and Corpus Christi Liquefaction, L.L.C. (Corpus Christi) for 385,000 Dth per day.

5. Natural's precedent agreements with Rice and Corpus Christi provide for 460,000 Dth per day of southbound firm transportation service from Natural's existing interconnections with Rockies Express in Moultrie County, Illinois, Fayetteville Express Pipeline LLC in White County, Arkansas; MarkWest Energy Partners, L.P. in Bryan

⁵ The units have not operated since 2006.

County, Oklahoma; and Midcontinent Express Pipeline, LLC in Cass County, Texas, to an existing delivery point with NET Mexico, L.P. in Nueces County, Texas and a new delivery point with Cheniere Corpus Christi Pipeline, L.P in San Patricio County, Texas.⁶ Pursuant to section 5.1(c)(11) of the General Terms and Conditions (GT&C) of its tariff, Natural reserved existing unsubscribed capacity to support 220,000 Dth per day of service on its Gulf Coast and A/G Lines for the project, and thus will provide firm transportation service for Rice and Corpus Christi via a combination of existing capacity on its system and the capacity created by the expansion facilities.⁷ Natural notes that by reserving certain existing capacity that was not otherwise subscribed on a long-term basis, it was able to reduce the facilities that would need to be constructed as part of the Gulf Coast Expansion Project.

6. On September 30, 2016, Natural filed a Transportation Rate Schedule FTS Agreement (FTS Agreement) in Docket No. RP16-1305-000 to supersede and terminate Rice's precedent agreement for the Gulf Coast Expansion Project. The FTS Agreement allows Rice to utilize some of the project's 220,000 Dth per day of existing reserved service on Natural's Gulf Coast Line prior to the Commission's authorization of the proposals herein. The FTS Agreement is identical to the precedent agreement executed by Rice and filed in this proceeding, except for the inclusion of some terms specific to the use of existing capacity before construction of the proposed facilities is completed. The Commission approved, subject to the outcome of this certificate proceeding, the FTS Agreement's non-conforming provisions and allowed the tariff records to become effective November 1, 2016.⁸

7. Natural estimates that the construction costs associated with the project will total \$69,399,000.⁹ It proposes to use its existing rates under Rate Schedule FTS as the maximum recourse rates for service on the project. Natural states that Rice and Corpus Christi have elected to pay negotiated rates, plus fuel and applicable surcharges, for their

⁶ Natural states that it will construct the new delivery point pursuant to its blanket certificate.

⁷ As part of its open season, Natural states that it solicited interest in turn-back capacity but that no shippers offered to turn back capacity.

⁸ *Natural Gas Pipeline Co. of America LLC*, 157 FERC ¶ 61,073 (2016).

⁹ Application at Exhibit K.

firm transportation service.¹⁰ Natural requests that the Commission approve non-conforming provisions in its precedent agreement and FTS Agreement as permissible material deviations from the *pro forma* service agreement contained in its FERC Gas Tariff.

II. Public Notice, Interventions, and Comments

8. Notice of Natural's application in Docket No. CP16-488-000 was published in the *Federal Register* on August 18, 2016, with comments and interventions due September 2, 2016.¹¹ The parties listed in Appendix A filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹² No protests or adverse comments were received.

III. Discussion

9. Since the proposed project includes the abandonment of existing facilities and the construction and operation of facilities to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the proposal is subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.¹³

A. Certificate Policy Statement

10. The Commission's Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.¹⁴ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy

¹⁰ The precedent agreements with Corpus Christi and the FTS Agreement with Rice have primary terms of 20 and 17 years, respectively. Because Rice has already executed its FTS Agreement effective November 1, 2016, the primary term of the FTS Agreement ends on October 31, 2033.

¹¹ 81 Fed. Reg. 55,185.

¹² 18 C.F.R. § 385.214(c) (2017).

¹³ 15 U.S.C. § 717f (b), (c), (e) (2012).

¹⁴ *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).

Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

11. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis, where other interests are addressed.

12. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. As discussed below we are approving Natural's proposal to charge its existing general system rates as the initial maximum recourse rates for services utilizing the new capacity created by the project. Both Rice and Corpus Christi have agreed to pay a negotiated rate and as discussed below, Natural has demonstrated that the expected revenues from the service agreements will exceed the cost of service associated with the proposed facilities. Thus, subject to the conditions discussed in this order, we find that Natural's existing customers will not subsidize the project.

13. We also find that the proposed project will not degrade service to existing customers. Additionally, the project will not adversely affect other pipelines or their captive customers because the project is not designed to replace firm transportation service on any other pipeline. Further, no pipelines or their captive customers have protested Natural's proposal. Consequently, we find that there will be no adverse impacts on other pipelines or their captive customers.

14. We also find that Natural has taken steps to insure that the proposed construction activities resulting from the project will have minimal impacts to landowners and surrounding communities. Specifically, Natural states that it has acquired an option to purchase the land required for the construction of CS 394. Natural also states that it is currently negotiating a right-of-way agreement for its 4,000-foot-long lateral pipeline.

15. The Gulf Coast Expansion Project will enable Natural to provide the requested firm transportation service for Corpus Christi and Rice. Based on the benefits the project will provide and the lack of adverse effects on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of Natural's proposal, as conditioned in this order. Further, we find that the public convenience or necessity permits Natural to abandon compressor units 5 and 6 at CS 301 in Wharton County, Texas, because the units have not been in operation since 2006 and are no longer needed to meet its existing or anticipated future firm contractual commitments.

B. Rates

1. Initial Recourse Rates

16. Natural proposes to use its existing Rate Schedule FTS¹⁵ rates as the initial maximum recourse rates for firm transportation service and its existing Rate Schedule ITS rates as the recourse rates for interruptible transportation utilizing the project's expansion capacity.

17. Natural calculated an illustrative incremental reservation charge of \$4.1231 and a commodity charge of \$0.0007 based on an estimated first-year incremental project cost of service of \$11,933,433 and the additional 240,000 Dth per day of service made possible by the proposed facilities.¹⁶ This cost of service is based on the estimated capital cost of \$69,399,000 for the proposed facilities, Natural's existing total transmission depreciation rate of 2.10 percent, and a pre-tax rate of return of 14.98 percent.¹⁷ Natural also calculated weighted average reservation and commodity charges for project service using its existing maximum FTS rates as applied to the primary paths designated under the shippers' precedent agreement and FTS Agreement¹⁸ (Corpus Christi has three primary paths and Rice has one primary path under their respective agreements).¹⁹

¹⁵ Natural's Rate Schedule FTS offers Peak rates, effective November through March, and Off-Peak rates, effective April through October.

¹⁶ Application, Exhibit P, Part I, p. 3-4.

¹⁷ Application, Exhibit P, Part 1, page 5 of 8. *Natural Gas Pipeline Co. of America LLC*, 74 FERC ¶ 61,228 (1996); and *Natural Gas Pipeline Co. of America LLC*, 132 FERC ¶ 61,082 (2010).

¹⁸ The Commission has previously relied on this type of analysis, involving a weighted average system rate based on current reservation rates, for projects with (continued ...)

18. Natural's weighted average maximum tariff reservation charge of \$7.6774 is greater than the incremental reservation charge of \$4.1231, and the weighted average maximum tariff commodity charge of \$0.0036 is greater than the incremental commodity charge of \$0.0007.²⁰ Because Natural's rate analysis demonstrates that its maximum Rate Schedule FTS tariff reservation and commodity charges under the precedent agreement and FTS Agreement are greater than the illustrative incremental reservation and commodity charges based on the cost of the project facilities, we will approve Natural's request to use its existing rates in Rate Schedules FTS and ITS as the initial recourse rates for services utilizing the project capacity.

2. Fuel Gas Analysis

19. Natural proposes to use its existing tariff fuel rates as the recourse rates for the expansion capacity, asserting that its proposal is consistent with Commission precedent establishing recourse rates for expansion projects.

20. Natural's fuel gas analysis also employs a weighted average fuel retention percentage for the primary paths under the Corpus Christi precedent agreement and Rice FTS Agreement,²¹ which is compared with the incremental fuel retention percentage associated with transportation of the shippers' volumes under the precedent agreement and FTS Agreement. Based on its existing applicable tariff fuel retention percentages, Natural calculated a weighted average fuel retention factor of 0.85 percent. Natural also computed two incremental fuel rates, one for the Winter Period (November – March) and one for the Summer Period (April – October) because flow levels on Natural's system

shippers with various flow paths. *See Texas Eastern Transmission, LP*, 153 FERC ¶ 61,311, at P 21 (2015).

¹⁹ *See* Application, Exhibit P, Part I, page 2 of 8. The contract path and currently effective Rate Schedule FTS maximum reservation and commodity charges include: Iowa-Illinois to South Texas (\$9.6600 and \$0.0049 per Dth), Gulf Coast Line to South Texas (\$5.4200 and \$0.0018 per Dth), and Texok to South Texas (\$6.6100 and \$0.0031 per Dth). Natural Gas Pipeline Company of America LLC, FERC NGA Gas Tariff, FERC Gas Tariff; [Part 4.0, Currently Effective Rates-Rate Schedule FTS \(Peak\), 4.0.0.](#)

²⁰ *See* Application, Exhibit P, Part I, p. 1.

²¹ *See* Application, Exhibit P, Part II, p. 2. The contract path and currently effective fuel percentages include: Iowa-Illinois to South Texas (0.47 percent), Gulf Coast Line to South Texas (0.89 percent), and Texok to South Texas (1.29 percent). Natural Gas Pipeline Company of America LLC, FERC NGA Gas Tariff, FERC Gas Tariff; [Part 4.17, Currently Effective Rates-Transportation Fuel Retention, 2.0.0.](#)

vary throughout the year and on a seasonal basis. Natural's analysis resulted in an incremental fuel rate of 0.63 percent during the Winter Period and -0.29 percent during the Summer Period, or an annual rate of 0.34 percent.

21. Natural's fuel gas analysis demonstrates that its weighted average tariff fuel rate of 0.85 percent is higher than the project's incremental annual fuel rate of 0.34 percent (comprising the 0.63 percent Winter Period rate and -0.29 percent Summer Period rate). Accordingly, we will approve Natural's request to use its currently effective fuel retention percentages for transportation on the capacity associated with the proposed facilities.

3. Negotiated Rates

22. Natural proposes to charge negotiated rates to Rice and Corpus Christi. Natural must file either its negotiated rate agreements or tariff records setting forth the essential elements of the agreements in accordance with the Alternative Rate Policy Statement²² and the Commission's negotiated rate policies.²³ Natural must file the negotiated rate agreements or tariff records at least 30 days, but no more than 60 days, before the proposed effective date for such rates.

4. Pre-Determination of Rolled-In Rate Treatment

23. Although Natural has not requested a predetermination of rolled-in rate treatment for the costs of the expansion, we will provide one in the interest of rate certainty.²⁴ In considering a pre-determination for rolled-in rate treatment, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities into system rates will not result in existing customers subsidizing the expansion. In general, this means that a pipeline must show that the revenues to be generated by an

²² *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,194, order on reh'g and clarification, 75 FERC ¶ 61,024, reh'g denied, 75 FERC ¶ 61,066, reh'g dismissed, 75 FERC ¶ 61,291 (1996), petition denied sub nom. *Burlington Res. Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

²³ *Natural Gas Pipeline Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), order on reh'g and clarification, 114 FERC ¶ 61,042, dismissing reh'g and denying clarification, 114 FERC ¶ 61,304 (2006).

²⁴ See, e.g., *Millennium Pipeline Co., L.L.C.*, 145 FERC ¶ 61,007, at P 31 (2013).

expansion project will exceed the costs of the project.²⁵ For purposes of making a determination in a certificate proceeding as to whether it would be appropriate to roll the costs of a project into the pipeline's system rates in a future NGA general section 4 rate proceeding, the Commission compares the cost of the project to the revenues generated using actual contract volumes and the maximum recourse rate (or the actual negotiated rate if the negotiated rate is lower than the maximum recourse rate).²⁶

24. The Gulf Coast Expansion Project will provide an additional 240,000 Dth/d of new firm transportation service. For the purposes of the rolled-in analysis, the first year project revenues for the expansion capacity total approximately \$22 million.²⁷ Project revenues exceed Natural's estimated first year cost of service of approximately \$11.9 million, therefore, we will grant Natural a predetermination of rolled-in rate treatment for the Gulf Coast Expansion Project in its next NGA general section 4 rate proceeding, absent any significant change in material circumstances.

C. Non-Conforming Provisions

25. Natural requests that we pre-approve, as permissible material deviations from its *pro forma* service agreement, two non-conforming provisions regarding creditworthiness and temporary capacity release in the negotiated rate agreements with Corpus Christi and Rice.

1. Creditworthiness Provisions

26. Natural's proposed creditworthiness provisions require the shippers to provide security in an amount equivalent to 12 months of reservation charges, if such shipper fails to demonstrate creditworthiness in accordance with the provision of Natural's tariff. Natural asserts that the provisions reflect a reasonable sharing of the project's risk between Natural and the shippers. Furthermore, Natural states that the provisions are consistent with credit provisions included in other pipeline agreements supporting new projects, including Natural's recently approved Chicago Market Expansion Project.²⁸

²⁵ See, e.g., *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161, at P 23 (2015).

²⁶ See *Tenn. Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013).

²⁷ Both shippers are paying contract rates above the system rate, therefore, the weighted average maximum tariff reservation charge is used in determining the project revenues for the roll-in analysis.

²⁸ See *Natural Gas Pipeline Co. of America LLC*, 154 FERC ¶ 61,220 (2016).

27. We find that incorporation of the non-conforming creditworthiness provision constitutes a material deviation from Natural's *pro forma* service agreement. The Commission's longstanding policy has been to require no more than the equivalent of three months' worth of reservation charges as security for a shipper that has been found to be non-creditworthy. We believe this amount reasonably balances the shippers' right to continued service with the pipelines' risk in remarketing the capacity.²⁹ However, when undertaking the construction of new pipeline infrastructure, a transporter and its lenders bear a substantially greater risk of cost recovery. Therefore, the Commission's creditworthiness policy permits larger collateral requirements for pipeline construction projects to be executed between the pipeline and the initial shippers. Here, Natural proposes to construct new facilities. Thus, we find that the non-conforming creditworthiness provision is permissible. Consistent with Commission policy, we will accept Natural's proposal to require the project shippers to provide security in an amount equivalent to 12 months of reservation charges, if such shipper fails to demonstrate creditworthiness in accordance with the provision of Natural's tariff.³⁰

2. Temporary Capacity Release Provisions

28. Natural proposes that any replacement shippers acquiring released capacity from a project shipper shall be subject to the same negotiated fuel rate provisions as the project shipper.³¹ Natural states that this tariff change is necessary to keep it whole and, in the event there is a temporary release of the project shippers' capacity, the replacement shippers should step into the shoes of the project shippers, which have agreed to negotiated usage and fuel charges.³² Natural states that Corpus Christi and Rice have agreed to a provision where the fuel retention percentage is based on a formula that more accurately reflects the fuel cost of the project and that, under this provision, Corpus Christi and Rice will either pay a negotiated fuel gas rate equal to the applicable fuel retention percentage as set forth in Natural's FERC Tariff, or a higher fixed fuel gas percentage, depending on the actual flow of volumes on its Gulf Coast Line, as set forth

²⁹ *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Stats. & Regs. ¶ 31,191 (2005).

³⁰ *See Northern Border Pipeline Co.*, 51 FERC ¶ 61,261, at 61,769 (1990) (12 months' worth of collateral for new project).

³¹ *See Application, Exhibit P, Part III.*

³² Natural states the negotiated commodity charges under the precedent agreement and FTS Agreement are equal to the applicable maximum tariff commodity charges, and any temporary releases of expansion capacity will be at the same commodity charges. This is not the case for the negotiated fuel charges, which are discussed below.

in the negotiated rate agreements. Natural states this provision will allow it to retain the benefit of the negotiated rate agreement entered into with the Corpus Christi and Rice that supports construction of the project. Natural asserts that it is essentially a middleman and facilitator under the capacity release mechanism and that it should remain neutral from a revenue standpoint.

29. Natural also states this provision will prevent its existing shippers from subsidizing the project. Natural asserts that, without this provision, a replacement shipper could pay a lower tariff fuel rate than otherwise required under the negotiated fuel rate formula.³³ Accordingly, Natural states that the temporary capacity release provision, which is limited to the 460,000 Dth per day of project shippers' capacity, is just and reasonable and should be approved.

30. We find that the incorporation of the non-conforming temporary capacity release provision constitutes a material deviation from Natural's *pro forma* service agreement. However, in the past, we have found that such non-conforming provisions may be necessary to reflect the unique circumstances involved with the construction of new infrastructure and to ensure the viability of a project,³⁴ and that pipelines may, on a case by case basis, give a replacement shipper the same negotiated usage and fuel charge as the releasing shipper, especially where the replacement shipper is expected to use the capacity in a similar manner as the releasing shipper.³⁵ Further, this provision is permissible because it does not present a risk of undue discrimination, does not affect the operational conditions of providing service, and does not result in any customer receiving a different quality of service. As a result, we find the non-conforming temporary capacity release provision to be permissible.

31. At least 30 days, but not more than 60 days, before providing service to any project shipper under a non-conforming service agreement, Natural must file an executed copy of the non-conforming service agreement disclosing and reflecting all non-conforming language as part of Natural's tariff, and a tariff record identifying this agreement as a non-conforming agreement, consistent with section 154.112 of the Commission's regulations.³⁶ In addition, we emphasize that the above determination

³³ Natural states it will file any temporary capacity releases with the Commission as negotiated rate agreements.

³⁴ See, e.g., *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 32 (2013); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008).

³⁵ *Texas Eastern Transmission, LP*, 129 FERC ¶ 61,031, at P 19 (2009).

³⁶ 18 C.F.R. § 154.112 (2017).

relates only to those items as described by Natural in its application and not to the entirety of the precedent agreement or FTS Agreement or the language contained in the precedent agreement or FTS Agreement.³⁷

D. Environmental Analysis

32. On September 14, 2016, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was published in the Federal Register on September 20, 2016, and was mailed to interested parties including federal, state, and local officials; agency representatives; conservation organization; potentially interested Indian tribes; local libraries and newspapers; and affected landowners in the vicinity of the project.

33. In response to the NOI, we received a letter from the Federal Emergency Management Agency requesting that the Commission contact Community Floodplain Administrators for review and possible permit requirements, if the project is federally funded in compliance with Executive Orders 11988 and 11990. The project is not federally funded, therefore neither executive order applies. In addition, we received a letter from Texas Parks & Wildlife Department regarding Texas state listed threatened and endangered species; fish and wildlife resources; the need for a revegetation plan; and invasive species. We also received comments from the Bureau of Indian Affairs, which indicated that it had no concerns with the project. The Coushatta Tribe of Louisiana, Tonkawa Tribe of Oklahoma, and United Keetoowah Band of Cherokee Indians in Oklahoma each commented that no historic properties would be affected by the project, but that they be notified of inadvertent discoveries during construction. The United Keetoowah Band of Cherokee Indians also requested that we conduct a cultural resources survey.

34. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an environmental assessment (EA) for Natural's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

³⁷ A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreement(s) and a tariff record identifying the agreement(s) as non-conforming are filed with the Commission, consistent with section 154.112 of the Commission's regulations. *See, e.g., Tennessee Gas Pipeline Co., L.L.C.*, 150 FERC ¶ 61,160, at P 44 n.33 (2015).

35. The EA was placed into the public record on April 21, 2017. Based on the analysis in the EA, we conclude that if constructed, operated, and abandoned in accordance with Natural's application and supplements, and in compliance with the environmental conditions in Appendix B of this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

36. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction/abandonment or operation of facilities approved by this Commission.³⁸

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

The Commission orders:

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

³⁸ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

(B) The certificate issued in ordering paragraph (A) is conditioned on Natural's:

- (1) completion of the construction of the proposed facilities and making them available for service within two years of the date of this order, pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all applicable Commission regulations, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) compliance with the environmental conditions in Appendix B of this order.

(C) Prior to commencing construction, Natural shall file a written statement affirming that it has executed firm contracts for the capacity levels and terms of service represented in the signed precedent agreement between Natural and Corpus Christi and the FTS Agreement between Natural and Rice accepted in Docket No. RP16-1305-000.

(D) Natural's request to abandon facilities, as described in this order and in the application, is granted, subject to the conditions described herein and in Appendix B.

(E) Natural shall notify the Commission within 10 days of the date(s) of its abandonment(s) of facilities as authorized by this order.

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

(G) Natural's proposal to use its existing system Rate Schedules FTS and ITS rates as the initial recourse rates is granted.

(H) Natural's request to utilize its existing Fuel Retention Percentages for the project capacity is granted.

(I) Natural is directed to file actual service agreements within 30 to 60 days prior to the in-service date of the facilities.

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(J) Natural is granted a predetermination supporting rolled-in rate treatment for the Gulf Coast Expansion Project's costs in its next general section 4 rate proceeding is granted, absent a significant change in material circumstances.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Timely Interventions

Antero Resources Corporation
Calpine Energy Services, LP
Corpus Christi Liquefaction, LLC
NJR Energy Services Company
Rice Energy Marketing, LLC

Appendix B

Environmental Conditions

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

1. Natural Gas Pipeline Company of America LLC (Natural) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Natural must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to (1) issue (or deny) any approvals or authorizations necessary to carry out the conditions of this order, and (2) take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority may include:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures, **including stop-work authority**, to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Natural shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as described in the EA, as supplemented by filed maps and/or alignment sheets. **As soon as they are available, and before the start of construction**, Natural shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances

must be written and must reference locations designated on these alignment maps/sheets.

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

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

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

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

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

- b. how Natural would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned per spread, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Natural will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Natural's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Natural will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Natural shall employ at least one EI for the Project. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;

- e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Natural shall file updated status reports with the Secretary on a **monthly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Natural's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints that may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Natural from other federal, state, or local permitting agencies concerning instances of noncompliance, and Natural's response.
9. Natural must receive written authorization from the Director of OEP **before commencing construction of any project facilities**. To obtain such authorization, Natural must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Natural must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Natural shall file an affirmative statement with the Secretary, certified by a senior company official:

- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Natural has complied with or would comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. Natural shall file noise surveys with the Secretary **no later than 60 days** after placing the Compressor Station 394 in service. If a full load condition noise survey is not possible, Natural shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of all the equipment at Compressor Station 394, under interim or full horsepower load conditions, exceeds an day-night sound level of 55 A-weighted decibel at any nearby noise sensitive areas, Natural shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Natural shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

Document Content(s)

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