

161 FERC ¶ 61,205  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Kinder Morgan Louisiana Pipeline, LLC

Docket No. CP17-22-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued November 20, 2017)

1. On December 13, 2016, Kinder Morgan Louisiana Pipeline, LLC (Kinder Morgan Louisiana) filed an application, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations,<sup>2</sup> for authorization to construct and operate certain system modifications, and to abandon, replace, and expand facilities at an existing meter station (Sabine Pass Expansion Project). The project will provide 600,000 dekatherms per day (Dth/d) of firm transportation service in a southerly direction from its existing pipeline interconnects in Evangeline and Acadia Parishes, Louisiana, to a proposed new delivery point at an existing liquefied natural gas (LNG) export facility located near Sabine Pass (Sabine Pass LNG Export Terminal) in Cameron Parish, Louisiana, owned and operated by Sabine Pass Liquefaction, LLC (Sabine Pass Liquefaction).

2. For the reasons discussed below, the Commission will grant the requested certificate and abandonment authorizations, subject to conditions described herein.

**I. Background and Proposal**

3. Kinder Morgan Louisiana, a limited liability company organized under the laws of Delaware, is a natural gas company as defined by section 2(6) of the NGA,<sup>3</sup> which transports natural gas in interstate commerce. Kinder Morgan Inc., a publicly traded company, is the corporate parent.

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<sup>1</sup> 15 U.S.C. § 717f (b), (c) (2012).

<sup>2</sup> 18 C.F.R. pt. 157 (2017).

<sup>3</sup> See 15 U.S.C. § 717a (6) (2012).

4. Kinder Morgan Louisiana's existing pipeline is currently only capable of transporting gas in a northerly direction, from the tailgate of the existing LNG import terminal owned by Sabine Pass Liquefaction at Sabine Pass in Cameron Parish, Louisiana, to various interstate and intrastate pipelines in Louisiana. Kinder Morgan Louisiana states that the pipeline currently has no firm shippers because the anchor shippers that supported the initial construction of the pipeline bought out their firm contracts in 2014 and 2015.

5. The Sabine Pass Expansion Project is designed to provide incremental service by enabling gas to flow from north to south on Kinder Morgan Louisiana's system to the Sabine Pass LNG Export Terminal that is currently being expanded.<sup>4</sup> To provide the incremental service, Kinder Morgan Louisiana seeks authorization to construct, operate, and abandon the following pipeline facilities:

- A new delivery interconnect with the Sabine Pass LNG Export Terminal comprising (a) a 36-inch-diameter tap on Kinder Morgan Louisiana's existing 36-inch-diameter mainline in Cameron Parish, Louisiana, and (b) an approximately 1,200-foot-long 36-inch-diameter lateral pipe connecting the 36-inch-diameter tap to Sabine Pass Liquefaction's meter station facilities;
- Modifications to existing delivery meter stations to enable bi-directional flow at Kinder Morgan Louisiana's interconnects with Columbia Gulf Transmission Company (Columbia Gulf) in Evangeline Parish, Louisiana, and with Texas Gas Transmission, LLC (Texas Gas) in Acadia Parish, Louisiana;
- Modifications to the existing delivery meter station with ANR Pipeline Company (ANR) in Acadia Parish, Louisiana, to (a) enable bi-directional flow, and (b) increase the capacity of the meter station from 200,000 to 650,000 Dth/d;
- A new Compressor Station No. 760 with three 15,900 horsepower gas-fired turbine driven compressor units to be located near Eunice in Acadia Parish, Louisiana;<sup>5</sup>

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<sup>4</sup> *Sabine Pass Liquefaction Expansion, LLC*, 151 FERC ¶ 61,012 (2015).

<sup>5</sup> Kinder Morgan Louisiana also plans to install and operate auxiliary facilities at Compressor Station No. 760, pursuant to section 2.55(a) of the Commission's Regulations. 18 C.F.R. § 2.55(a) (2017).

- Two header pipelines to consist of (a) approximately 1.2 miles of 36-inch-diameter low-pressure pipeline to connect the existing ANR, Texas Gas, and Pine Prairie Energy Center, LLC (Pine Prairie) meter stations, to the suction side of the proposed Compressor Station 760, and (b) approximately 700 feet of 24-inch-diameter high pressure pipeline to connect the Pine Prairie meter station to the discharge side of the proposed Compressor Station 760, all in Acadia Parish, Louisiana; and
- Abandonment by removal of the existing meter facilities at the ANR meter station that are being replaced and expanded.

6. Kinder Morgan Louisiana states that the majority of these facilities are common to, and will be used by, both the Sabine Pass Expansion and its Lake Charles Expansion Project,<sup>6</sup> which the Commission authorized in April 2016.<sup>7</sup> As part of the Lake Charles Expansion Project, Kinder Morgan Louisiana was authorized to construct and operate the meter station modifications described above at the interconnects with Columbia Gulf and Texas Gas, the modifications to enable bi-directional flow at the meter station with ANR, the new Compressor Station 760,<sup>8</sup> and the 36-inch-diameter and 24-inch-diameter header pipelines connecting the ANR, Texas Gas, and Pine Prairie meter stations to Compressor Station 760. Kinder Morgan Louisiana states that while it originally anticipated that the Lake Charles Expansion Project would be constructed prior to the Sabine Pass Expansion Project, that is no longer necessarily the case. Kinder Morgan Louisiana now expects to construct the Sabine Pass Expansion Project first; therefore, it seeks authorization to construct and operate the previously-authorized facilities as part of this project (Kinder

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<sup>6</sup> Application at 14-18.

<sup>7</sup> *Magnolia LNG, LLC*, 155 FERC ¶ 61,033 (2016) (authorizing the Lake Charles Expansion Project under section 7) The Lake Charles Expansion Project is designed to make Kinder Morgan Louisiana's existing pipeline facilities bi-directional, enabling it to transport domestically-produced gas to the Magnolia LNG Project for processing, liquefaction, and export.

<sup>8</sup> As authorized as part of the Lake Charles Expansion Project, Compressor Station 760 will include four 16,000 horse power gas-fired turbine driven compressor units. When both projects are built there will be a total of seven compressor units at Compressor Station 760.

Morgan Louisiana explains that it plans to construct the common facilities as part of whichever project is constructed first).<sup>9</sup>

7. Kinder Morgan Louisiana held an open season from February 14 through March 7, 2014, to solicit interest in the new north-to-south transportation path in order to serve the LNG export market. On March 25, 2015, Kinder Morgan Louisiana and Sabine Pass Liquefaction executed a binding precedent agreement for the full 600,000 Dth/d of firm transportation service to be made available by the Sabine Pass Expansion Project at negotiated rates for a 20-year term.

8. Kinder Morgan Louisiana estimates the total cost for the project to be approximately \$151 million. Kinder Morgan Louisiana proposes to charge its existing system reservation charge and an incremental commodity charge under Rate Schedule FTS as the initial rates for firm service on the proposed facilities. Kinder Morgan Louisiana requests a predetermination that it can roll the costs of the project into its general system rates in its next NGA section 4 general rate proceeding.

## **II. Notice, Interventions, and Comments**

9. Notice of Kinder Morgan Louisiana's application was published in the *Federal Register*, 81 Fed. Reg. 95,580 (2016), with interventions, comments, and protests due on or before January 11, 2017. Magnolia LNG, LLC and Sabine Pass Liquefaction, LLC 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.<sup>10</sup> No protests or adverse comments were received.

## **III. Discussion**

10. Since the proposed facilities will include the abandonment of existing facilities and the replacement and expansion of facilities to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the proposal is subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.<sup>11</sup>

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<sup>9</sup> Application at 17. Kinder Morgan Louisiana states that Sabine Pass Liquefaction needs gas delivery for the Sabine Pass LNG Export Terminal by April 1, 2019, while Magnolia LNG, LLC needs gas delivery from Kinder Morgan Louisiana's Lake Charles Expansion Project by July 1, 2019.

<sup>10</sup> 18 C.F.R. §§ 385.214(c) (2017).

<sup>11</sup> 15 U.S.C. § 717f(b), (c), (e) (2012).

### A. Certificate Policy Statement

11. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>12</sup> 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 Statement explains that in deciding whether to authorize the construction of major new natural gas 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.

12. 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 existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis where other interests are addressed.

13. Kinder Morgan Louisiana's proposal satisfies the threshold requirement that it financially support the project without relying on subsidization from its existing customers. As discussed below, we will approve Kinder Morgan Louisiana's proposal to use its existing system reservation rate and an incremental commodity rate as the initial recourse rates for services utilizing the incremental capacity created by the proposed facilities. We are also granting a predetermination of rolled-in rate treatment for the costs of the project because Kinder Morgan Louisiana has demonstrated that the expected revenues will exceed the costs associated with the proposed facilities. In addition, there are no existing firm shippers. Therefore, Kinder Morgan Louisiana's existing customers will not subsidize the proposed project, and the threshold requirement of no subsidization is met.

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<sup>12</sup> *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).

14. Kinder Morgan Louisiana's proposal also meets the remaining criteria set forth in the Certificate Policy Statement. There will be no adverse effect on existing customers because Kinder Morgan Louisiana has no firm shippers. Nor is there any evidence that Kinder Morgan Louisiana's proposed project will adversely affect any other pipelines or their customers; no other pipeline companies or their captive customers have filed adverse comments regarding Kinder Morgan Louisiana's proposal.

15. While the project will include construction of a new compressor station, a lateral pipeline connecting to the Sabine Pass LNG Export Terminal facilities, and two relatively short header pipelines to connect it to the existing meter stations, no additional mainline pipeline facilities will be needed to provide the proposed north-to-south transportation service. We find that Kinder Morgan Louisiana has designed its project to minimize impact on landowners and the surrounding communities.

16. Kinder Morgan Louisiana's proposed facilities will enable it to provide 600,000 Dth/d of firm north-to-south transportation service for Sabine Pass Liquefaction that has signed a binding precedent agreement for the full capacity of the project. Based on the benefits of the proposed project 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 criteria discussed in the Certificate Policy Statement, that the public convenience and necessity requires approval of Kinder Morgan Louisiana's proposal under section 7 of the NGA, subject to the environmental and other conditions in this order.<sup>13</sup>

17. Additionally, we find that the public convenience and necessity permits Kinder Morgan Louisiana's proposal to abandon facilities at the ANR meter station. Because Kinder Morgan Louisiana will be replacing the facilities it proposes to abandon and remove, it will have no impact on the services currently provided. Thus, we conclude that the proposed abandonment is permitted by the public convenience and necessity.

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<sup>13</sup> Our authorization includes construction and operation of the facilities that are common to this project and the Lake Charles Expansion Project, as discussed above. We will require Kinder Morgan Louisiana to notify the Commission whether it is using the certificate authorization in this proceeding or in the Lake Charles Expansion Project to construct and operate the facilities that are common to both projects, prior to the commencement of construction.

**B. Rates****1. Initial Recourse Rates**

18. Kinder Morgan Louisiana proposes to charge its existing reservation charge under Rate Schedule FTS of \$4.59 per Dth per month, and an incremental recourse commodity charge of \$0.0015 per Dth. Kinder Morgan Louisiana submitted a cost-of-service and rate design study to support its proposed recourse rates. Kinder Morgan Louisiana calculated an illustrative incremental reservation charge of \$3.78 per Dth per month based on fixed costs of \$27,243,579 and annual reservation charge design volumes of 7,200,000 Dth.<sup>14</sup> The proposed incremental commodity charge of \$0.0015 per Dth was based on variable costs of \$337,532 and annual commodity rate design volumes of 219,000,000 Dth.<sup>15</sup> Kinder Morgan Louisiana utilized cost-of-service factors, including the overall rate of return and the depreciation rate, consistent with those approved by the Commission in its certificate proceeding in Docket No. CP06-449-000.<sup>16</sup>

19. For integrated mainline expansion facilities, the Commission has required pipelines to use their existing system rate as the initial recourse rate if the system rate is higher than the appropriately calculated cost-based incremental rate. Here, Kinder Morgan Louisiana has computed an incremental recourse reservation charge of \$3.78 per Dth per month, which is lower than its existing system reservation charge of \$4.59 per Dth per month. Therefore, Kinder Morgan Louisiana's proposal to charge its existing system Rate Schedule FTS recourse reservation charge of \$4.59 per Dth per month is approved.

20. Kinder Morgan Louisiana also proposes an incremental recourse commodity charge of \$0.0015 per Dth applicable for new north-to-south transportation service. This charge is designed to recover the variable costs associated with the new compression facilities that Kinder Morgan Louisiana will be adding to its system for the first time as part of the project.<sup>17</sup> The incremental recourse commodity charge for the project, \$0.0015 per Dth, is greater than the current system commodity charge of \$0.0000 per Dth, and is approved.

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<sup>14</sup> Exhibit P-Part 1 at 2.

<sup>15</sup> *Id.*

<sup>16</sup> *Kinder Morgan Louisiana Pipeline LLC*, 118 FERC ¶ 61,211, at P 42 (2007).

<sup>17</sup> The Commission's regulations require pipelines to base their minimum rates on the variable costs which are properly allocated to the service. 18 C.F.R. § 284.10(c)(4)(ii) (2017).

21. Kinder Morgan Louisiana proposes to charge its existing interruptible transportation charge of \$0.1509 per Dth under Rate Schedule ITS for any interruptible service on the project. Kinder Morgan Louisiana's proposal is consistent with Commission policy<sup>18</sup> and is therefore approved.

## 2. Rolled-in Rate Determination

22. Kinder Morgan Louisiana requests a pre-determination that it may roll the project costs into its system-wide rates in its next NGA section 4 general rate proceeding. Exhibit P-Part V of Kinder Morgan Louisiana's application indicates that revenues from service using the new north-to-south capacity will be \$33,048,000, which exceeds the annual cost of service of \$27,581,111 based on the currently-effective tariff rate.

23. To receive a pre-determination favoring rolled-in rate treatment, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. A pipeline must show that the generated revenues from an expansion project will exceed the costs of the project. To make this determination, the Commission compares the estimated cost of the project to the projected revenues generated utilizing actual contract volumes and the maximum recourse rate, or the actual negotiated rate if the negotiated rate is lower than the recourse rate.<sup>19</sup>

24. Based on a review of Exhibit P-Part V of Kinder Morgan Louisiana's application and a February 2, 2017 data response, the Commission finds that Kinder Morgan Louisiana has properly calculated revenues for the project and that the project's revenues will exceed its costs. Accordingly, we grant a pre-determination of rolled-in rate treatment for the project in Kinder Morgan Louisiana's next general rate proceeding under section 4 of the NGA, absent a material change in circumstances.

## 3. Fuel

25. Currently, Kinder Morgan Louisiana does not charge for fuel since its existing system does not have compression facilities. Kinder Morgan Louisiana's proposed facilities include a new compressor station to enable north-to-south service on its pipeline and it proposes a new fuel reimbursement percentage that would apply to any natural gas transported on the new north-to-south path created by the proposed project. Kinder

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<sup>18</sup> *Texas Eastern Transmission, L.P.*, 139 FERC ¶ 61,138 (2012); *Gulf South Pipeline Co., L.P.*, 130 FERC ¶ 61,015 (2010); and *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077 (2006).

<sup>19</sup> *See Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013).

Morgan Louisiana is proposing a Fuel Gas Reimbursement Percentage of 0.86 percent based upon annual compressor fuel usage of 5,986,000 Dth and annual projected transported volumes of 693,500,000 Dth.<sup>20</sup> In addition to the Fuel Gas Reimbursement Percentage, Kinder Morgan Louisiana proposes to charge its existing Unaccounted for Reimbursement Percentage for Sabine Pass Expansion service. Kinder Morgan Louisiana states the current Unaccounted for Reimbursement Percentage is 0.00 percent.

26. The Commission finds that Kinder Morgan Louisiana has incorrectly included the southbound capacity created by the Lake Charles Expansion Project into the calculation of the Fuel Gas Reimbursement Percentage of 0.86 percent. As noted above, Kinder Morgan Louisiana currently expects to construct the Lake Charles Expansion Project after the Sabine Pass Expansion Project.<sup>21</sup> Therefore, until the Lake Charles Expansion Project goes into service, the initial Fuel Gas Reimbursement Percentage should be based solely on the 600,000 Dth/d of capacity for the Sabine Pass Expansion Project. We require Kinder Morgan Louisiana to charge an initial Fuel Gas Reimbursement Percentage of 0.61 percent, which is based solely on the 600,000 Dth/d authorized for the Sabine Pass Expansion Project.<sup>22</sup> The Commission accepts Kinder Morgan Louisiana's proposal to charge the current Unaccounted for Reimbursement Percentage of 0.00 percent.

27. Kinder Morgan Louisiana explains that the Fuel Gas Reimbursement Percentage and the Unaccounted for Reimbursement Percentage will be adjusted annually through the fuel and unaccounted for gas tracker provisions contained in Kinder Morgan Louisiana's existing General Terms and Conditions (GT&C) section 36. GT&C section 36 contemplates the future incorporation of a Fuel Gas Reimbursement Percentage in the event compression was to be added to Kinder Morgan Louisiana's system.<sup>23</sup>

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<sup>20</sup> 600,000 Dth/d (Sabine Pass Expansion Project capacity) plus 1,400,000 Dth/d (Lake Charles Expansion Project capacity) times 95 percent load factor times 365 days equals 693,500,000 Dth.

<sup>21</sup> Application at 18.

<sup>22</sup> Kinder Morgan Louisiana's February 9, 2017 Response to Commission staff's February 2, 2017 Data Request, response to question 4.

<sup>23</sup> *Kinder Morgan Louisiana Pipeline, LLC*, 118 FERC ¶ 61,211, at P 40 (2007).

#### 4. Reporting Incremental Project Costs

28. The Commission will require Kinder Morgan Louisiana to keep separate books and accounting of costs and revenues attributable to the proposed incremental services and capacity created by the Project in the same manner as required by section 154.309 of the Commission's regulations.<sup>24</sup> The books should be maintained with applicable cross-reference and the information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.<sup>25</sup>

#### 5. Non-Conforming Provisions

29. Kinder Morgan Louisiana and Sabine Pass Liquefaction have executed a long-term, 20-year binding precedent agreement which provides the contractual support for the Sabine Pass Expansion Project. Kinder Morgan Louisiana states that there will be certain differences between the precedent agreement and the *pro forma* Firm Transportation Service Agreement set forth in its tariff. These differences are reflected in redline format in Exhibit P. To the extent these provisions are material deviations and non-conforming, Kinder Morgan Louisiana requests that the Commission find that the provisions to be included in the Firm Transportation Service Agreement are not unduly discriminatory. The differences between the *pro forma* Firm Transportation Service Agreement and the proposed Firm Transportation Service Agreement are as follows:

(1) Minimum Pressure at Receipt Points: Section 18.1 of the GT&C of Kinder Morgan Louisiana's tariff states that gas will be delivered to Kinder Morgan Louisiana at the prevailing pressure in Kinder Morgan Louisiana's system at the receipt points. Section 18.1 also provides for Kinder Morgan Louisiana and a shipper to agree in writing to a different pressure. Accordingly, Exhibit A to the Form of Service Agreement for Rate Schedule FTS in Kinder Morgan Louisiana's tariff provides for a fill-in the blank for inclusion of a minimum pressure number at receipt points on Kinder Morgan Louisiana's system. The precedent agreement with Sabine Pass Liquefaction specifies minimum pressure requirements and the consequences of gas being delivered to Kinder Morgan Louisiana at receipt points with Columbia Gulf, Transcontinental Gas Pipe Line, Texas Eastern Transmission, L.P., Texas Gas, ANR,

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<sup>24</sup> 18 C.F.R. § 154.309 (2017).

<sup>25</sup> *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats & Regs. ¶ 31,367 (2008).

and Pine Prairie, that do not meet the minimum pressure requirements; and

(2) Creditworthiness Provision: This provision addresses creditworthiness requirements from the shipper. Specifically, such provisions require the shipper to provide security in an amount equivalent to 27 months of reservation charges, if such shipper fails to demonstrate creditworthiness in accordance with the provisions of Kinder Morgan Louisiana's tariff.

30. In *Columbia Gas Transmission Corp.*, the Commission clarified that a material deviation is any provision in a service agreement that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties.<sup>26</sup> However, not all material deviations are impermissible. As explained in *Columbia*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.

31. The Commission finds that the minimum pressure provision set forth in its Firm Service Agreement with the project shipper represents a permissible non-conforming provision. As explained above, Kinder Morgan Louisiana's tariff specifically provides for negotiation of the minimum pressure requirement. Although the proposed minimum pressure provision goes beyond filling in a pressure number, we find it is consistent with Kinder Morgan Louisiana's tariff that allows for negotiating minimum pressures. We also find this provision is not unduly discriminatory because all shippers on Kinder Morgan Louisiana's system have the right to negotiate minimum pressure requirements.

32. The Commission finds that the above-described creditworthiness provision constitutes a material deviation from Kinder Morgan Louisiana's *pro forma* Firm Transportation Service Agreement. However, in other proceedings, the Commission has recognized that non-conforming provisions may be necessary to reflect the unique circumstances involved with the construction of new infrastructure and to provide the needed security to ensure the viability of a project.<sup>27</sup> We find the creditworthiness non-conforming provision identified by Kinder Morgan Louisiana is permissible because it does not present a risk of undue discrimination, does not adversely affect the operational

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<sup>26</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001); see also *ANR Pipeline Co.*, 97 FERC ¶ 61,224, at 62,022 (2001).

<sup>27</sup> See, e.g., *Tennessee Gas Pipeline Co.*, 144 FERC ¶ 61,219 at P 32.

conditions of providing service, and does not result in any customer receiving a different quality of service.

33. At least 30 days, but not more than 60 days, before providing service to any project shipper under a non-conforming agreement, Kinder Morgan Louisiana must file an executed copy of the non-conforming agreement disclosing and reflecting all non-conforming language as part of Kinder Morgan Louisiana's tariff and a tariff record identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.<sup>28</sup> In addition, the Commission emphasizes that the above determination relates only to those items described by Kinder Morgan Louisiana in its application and not to the entirety of the precedent agreement or the language contained in the precedent agreement.

## 6. Tariff Issues

34. Kinder Morgan Louisiana has proposed *pro forma* changes to its tariff to recognize the new bi-directional flow capabilities resulting from the proposed project. These changes include the addition of new language applicable to the FTS recourse rates for the north-to-south path, the new fuel percentage, revisions to the statement of negotiated rate transactions, and various other conforming changes. Kinder Morgan Louisiana's proposed *pro forma* tariff changes are approved.

### C. Environmental Analysis

35. On January 24, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Sabine Pass Expansion Project and Request for Comments on Environmental Issues* (NOI).<sup>29</sup> The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received a comment from a stakeholder stating that U.S. Army Corps of Engineers permits and authorizations would be necessary for the various project components. The Commission also received a comment letter from the Louisiana Department of Wildlife and Fisheries stating the project would have minimal or no long-term adverse impacts on wetland functions and a comment from the Choctaw Nation of Oklahoma requesting to be a consulting party, requesting to receive a copy of the cultural resources survey, which Kinder Morgan Louisiana provided, and requesting a copy of the environmental assessment (EA).

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<sup>28</sup> 18 C.F.R. § 154.112 (2017).

<sup>29</sup> 82 Fed. Reg. 8928 (Feb. 1, 2017).

36. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),<sup>30</sup> our staff prepared an EA for Kinder Morgan Louisiana's proposal. The analysis in the EA addresses geology, soils, water resources and wetlands, fisheries, vegetation, wildlife, socioeconomics, land use, recreation, visual resources, cultural resources, air quality, noise, reliability, safety, and cumulative impacts. All substantive comments received in response to the NOI were addressed in the EA.

37. The EA was placed into the public record on July 28, 2017. We received no comments on the EA.

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

39. 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, operation, and abandonment of facilities approved by this Commission.<sup>31</sup>

#### **IV. Conclusion**

40. The Commission on its own motion received and made part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments and upon consideration of the record,

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<sup>30</sup> 42 U.S.C. §§ 4321 *et seq.* (2012). *See* 18 C.F.R. pt. 380 (2017) (Commission's regulations implementing NEPA).

<sup>31</sup> *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).

The Commission orders:

(A) A certificate of public convenience and necessity under section 7(c) of the NGA is issued to Kinder Morgan Louisiana, authorizing it to construct and operate the proposed Sabine Pass Expansion Project, as described and conditioned herein, and as more fully described in Kinder Morgan Louisiana's application and supplements.

(B) The certificate authorized in Ordering Paragraph (A) is conditioned on:

- (1) Kinder Morgan Louisiana's facilities being constructed and made available for service within three years of the date of this order, pursuant to section 157.20(b) of the Commission's regulations;
- (2) Kinder Morgan Louisiana's 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;
- (3) Kinder Morgan Louisiana's compliance with the environmental conditions listed in the Appendix to this order.

(C) Kinder Morgan Louisiana shall file a written statement affirming that it has executed firm contracts for the capacity levels and terms of service represented in its signed precedent agreement, prior to commencing construction.

(D) Kinder Morgan Louisiana is required to notify the Commission whether it is using the certificate authorization in this proceeding or in the Lake Charles Expansion Project to construct and operate the facilities that are common to both projects, prior to the commencement of construction.

(E) Kinder Morgan Louisiana's request to charge the existing system reservation charge and an incremental recourse commodity charge under Rate Schedule FTS for service on the project is approved.

(F) Kinder Morgan Louisiana's request to charge a Fuel Gas Reimbursement Percentage and its current Unaccounted for Reimbursement Percentage is approved, as conditioned and modified above.

(G) Kinder Morgan Louisiana's request for pre-determination of rolled-in rates of project costs is granted as discussed above, absent a material change in circumstances.

(H) Kinder Morgan Louisiana shall file actual tariff records setting forth its recourse rates and other proposed changes to its tariff implementing the project no earlier than 60 days and no later than 30 days, prior to commencement of interstate service consistent with Part 154 of the Commission's regulations.

(I) Kinder Morgan Louisiana must file an executed copy of each non-conforming agreement as part of its tariff, disclosing and reflecting all non-conforming language no earlier than 60 days and no later than 30 days, prior to the commencement of interstate service on the project.

(J) Kinder Morgan Louisiana is granted permission and approval under section 7(b) of the NGA to abandon the facilities described in this order.

(K) Kinder Morgan Louisiana must notify the Commission within 10 days of the abandonment of the facilities discussed in Ordering Paragraph J.

(L) Kinder Morgan Louisiana 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 Kinder Morgan Louisiana. Kinder Morgan Louisiana shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

## Appendix

### Environmental Conditions

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Kinder Morgan Louisiana Pipeline, LLC (Kinder Morgan Louisiana) 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. Kinder Morgan Louisiana 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 measures; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the Order;
  - b. stop-work authority; and
  - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction, abandonment activities and operation.
3. **Prior to any construction**, Kinder Morgan Louisiana shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Kinder Morgan Louisiana shall file with the Secretary any revised

detailed survey alignment maps/plot plans 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/plans.

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

5. Kinder Morgan Louisiana shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, 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, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of the OEP **before construction in or near that area.**

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

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

- a. implementation of cultural resource mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of this authorization and before construction begins**, Kinder Morgan Louisiana shall file an Implementation Plan with the Secretary for review and written approval by the Director of the OEP. Kinder Morgan Louisiana must file revisions to the plan as schedules change. The plan shall identify:
- a. how Kinder Morgan Louisiana will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
  - b. how Kinder Morgan Louisiana will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned per facility, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instruction Kinder Morgan Louisiana 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 Kinder Morgan Louisiana's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Kinder Morgan Louisiana 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. Kinder Morgan Louisiana shall employ at least one EI. 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, Kinder Morgan Louisiana 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 Kinder Morgan Louisiana'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 which 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 Kinder Morgan Louisiana from other federal, state, or local permitting agencies concerning instances of noncompliance, and Kinder Morgan Louisiana's response.
9. **Kinder Morgan Louisiana must receive written authorization from the Director of the OEP before commencing construction of any project facilities. To obtain such authorization**, Kinder Morgan Louisiana must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

10. Kinder Morgan Louisiana must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Kinder Morgan Louisiana shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the facilities have been constructed/abandoned in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the conditions in the Order Kinder Morgan Louisiana has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. **Prior to construction**, Kinder Morgan Louisiana shall file with Secretary a visual screening plan for Compressor Station 760 that includes vegetative screening of the proposed compressor station site, for review and written approval by the Director of OEP.
13. Kinder Morgan Louisiana shall file with the Secretary a noise survey for Compressor Station 760 **no later than 60 days** after placing the station into service. If a full power load condition noise survey is not possible, Kinder Morgan Louisiana shall file an interim survey at the maximum possible power load **within 60 days** of placing the station into service and file the full power load survey **within 6 months**. If the noise attributable to operation of all equipment at the station under interim or full power load conditions exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby noise sensitive area, Kinder Morgan Louisiana shall:
  - a. file a report with the Secretary, for review and written approval by the Director of OEP, on what changes are needed;
  - b. install additional noise controls to meet that level **within 1 year** of the in-service date; and
  - c. confirm compliance with this requirement by filing a second full power load noise survey with the Secretary for review and written approval by the Director of OEP **no later than 60 days** after it installs the additional noise controls.

Document Content(s)

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