

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Freeport-McMoRan Energy LLC

Docket Nos. CP04-68-000
and CP04-69-000

ORDER ISSUING CERTIFICATE

(Issued May 18, 2006)

1. On February 27, 2004, Freeport-McMoRan Energy LLC (Freeport-McMoRan) filed in Docket No. CP04-68-000 an application under section 7(c) of the Natural Gas Act (NGA) for authority to construct and operate an approximately 5.1-mile, 36-inch diameter pipeline (Codan pipeline) in Mobile County near Codan, Alabama. Freeport-McMoRan also requested a waiver of the open-access requirements of Part 284 of the Commission's regulations,¹ as well as the related accounting and reporting requirements, so that it may operate the Codan pipeline on a proprietary or sole-use basis. Additionally, in Docket No. CP04-69-000, Freeport-McMoRan requested a blanket construction certificate under subpart F of Part 157 of the Commission's Regulations.² For the reasons discussed below, we will issue the certificates requested by Freeport-McMoRan and grant its waiver request, subject to conditions.

¹ 18 C.F.R. Part 284 (2006).

² 18 C.F.R. Part 157, subpart F (2006).

Background and Proposal

2. On February 27, 2004, Freeport-McMoRan also filed an application with the Secretary of the United States Department of Transportation (DOT)³ for authority to reconfigure into a deepwater port the existing infrastructure located in Main Pass Block 299, offshore Louisiana, which was formerly used for a sulphur offshore mining business. At the deepwater facility, which is called the Main Pass Energy Hub or MPEHTM, Freeport-McMoRan will operate an LNG terminal which can receive foreign sources of LNG from ocean-going vessels, a re-vaporization plant, and a natural gas storage facility. It will also operate, as part of the MPEHTM, several submerged pipelines that will interconnect with other interstate pipelines offshore or interconnect with the onshore Coden pipeline proposed in this proceeding. Freeport-McMoRan states that it intends to operate all of the facilities associated with the MPEHTM on an integrated basis.

3. Freeport-McMoRan explains that the 92-mile, 36-diameter submerged offshore pipeline that will interconnect with its proposed Coden pipeline will terminate at the high water mark onshore near Coden, Alabama. While there are no physical

³ Pursuant to the Deepwater Port Act of 1974, as amended, 33 U.S.C. §§ 1501-1524 (2006), the Secretary of Transportation has exclusive jurisdiction over the licensing, ownership, construction and operation of deepwater ports. A deepwater port is defined as “any fixed or floating manmade structure . . . or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any State,” *id.* at §1502 (9)(A), and includes, “all components and equipment, including pipelines, pumping stations, service platforms, buoys, mooring lines, and similar facilities to the extent they are located seaward of the high water mark.” *Id.* at §1502 (9)(B). The Secretary of Transportation delegated its responsibility to license deepwater ports to the Maritime Administrator, with the United States Coast Guard (Coast Guard) and United States Maritime Administration (MARAD) sharing responsibility for the processing of applications for such licenses. Currently, the Coast Guard performs the technical and environmental review and MARAD reviews the financial and accounting aspects of a project. The Coast Guard retained its responsibility for reviewing deepwater port license applications when it was transferred from the DOT to the Department of Homeland Security (DHS). The Coast Guard is the lead agency on this project and it issued the Final Environmental Impact Statement (FEIS). Nevertheless, as discussed below, the Commission also performed an environmental review of the onshore facilities to comply with its responsibilities under the National Environmental Policy Act (NEPA) and is imposing conditions herein on the construction and operation of the pipeline.

interconnecting facilities to mark that point, the contiguous Coden pipeline begins there. Freeport-McMoRan anticipates commencing service on these integrated facilities in December 2007.

4. From the high water mark onshore, the Coden pipeline, which is subject to the Commission's jurisdiction, will extend approximately 5.1 miles to interconnections with three existing interstate pipelines.⁴ In addition to the pipeline, Freeport-McMoRan states that it will construct and operate one main line valve and two metering stations to monitor natural gas volumes that flow through the Coden pipeline to the interconnections with the other interstate pipelines. According to Freeport-McMoRan, the onshore pipeline is designed to transport a maximum of 1.5 billion standard cubic feet per day (Bcf/d) of natural gas, will have a maximum operating pressure of 2,220 psig, and will transport pipeline quality gas.

5. Freeport-McMoRan indicates that horizontal directional drilling (HDD) will be used to take the offshore pipeline to the highwater mark at a depth of approximately 40 feet. From the HDD landing point north of the Henry Johnson Road, the pipeline route will extend in an easterly and then northerly direction parallel to Henry Johnson Road, to a point approximately 1000 feet to the north of Highway 188. At that point, the route continues in a northeasterly direction to the metering tie-ins referred to above, which are located south of, but adjacent to, Rock Road. Freeport-McMoRan maintains that the right-of way required for the entire route runs adjacent to Gulfstream's and Transco's existing easements, which are in a utility corridor.

6. Freeport-McMoRan states that the Coden pipeline will have a minimal effect on landowners and the environment because of the limited size of the project. It indicates that only 70 acres of land, including access roads, will be affected during construction and only 32.8 acres will be permanently affected. At the time the application was filed, Freeport-McMoRan had obtained rights to survey about 94 percent of the land needed. It states that it expects to obtain most of the right-of-way through negotiations with affected landowners and anticipates minimal use of the power of eminent domain.

7. Freeport-McMoRan asserts that its proposed route is the environmentally preferred alternative because it parallels existing pipeline rights-of-way for its entire length. In this regard, it notes that only a few years ago, the Commission approved, with

⁴ These pipelines are Gulf South Pipeline Company, LP (Gulf South), Gulfstream Natural Gas System, L.L.C. (Gulfstream), and Transcontinental Gas Pipe Line Corporation (Transco).

a finding of no significant environmental impact, the routing of the Gulfstream pipeline route, along which most of Freeport-McMoRan right-of-way will run.⁵ Freeport-McMoRan also emphasizes that the construction, operation, and maintenance of the Coden pipeline will be in full compliance with the federal standards of the Office of Pipeline Safety at the DOT.⁶

8. As noted, Freeport-McMoRan requested that it be permitted to operate the Coden pipeline on a proprietary or sole-use basis under a case-specific certificate pursuant to Part 157 of the Commission's regulations.⁷ It maintains that the Deepwater Port Act, as amended by the Maritime Transportation Security Act of 2002,⁸ provides that licensees of a deepwater port may use the entire capacity in the facility, including those portions of the deepwater port facility used to transport gas away from the terminal, on an exclusive basis. Freeport-McMoRan asserts that although the scope of the Deepwater Port Act does not extend onshore, since the Coden onshore pipeline will be operated on an integrated basis with the MPEHTM and will have no excess capacity beyond that required by Freeport-McMoRan, it, too, should be operated on a single-use, rather than open-access, basis. This approach, according to Freeport-McMoRan, would best reflect Congress' intent to promote the development of natural gas import facilities and would relieve Freeport-McMoRan from unnecessary open-access and other regulatory requirements.

9. Freeport-McMoRan also contends that allowing it to operate on a proprietary basis would be consistent with other cases in which the Commission has approved such proposals.⁹ Freeport-McMoRan acknowledges that in recent cases where the Commission permitted a pipeline to operate on a sole-use basis, the Commission conditioned the authority to operate the facilities on the pipeline's filing for a Part 284 certificate if another shipper requests service. It states that it is willing to accept such a condition if the Commission deems it is necessary to impose it.

⁵ *Gulfstream*, 94 FERC ¶ 61,185 (2001).

⁶ 49 C.F.R. Part 192 (2006).

⁷ 18 C.F.R. Part 157 (2006).

⁸ P.L. 107-295, 116 Stat. § 2065 (2002)

⁹ Citing Transcontinental Gas Pipe Line Corp., 91 FERC ¶ 61,180 (2000); and White Rock Pipeline, L.L.C., 98 FERC ¶ 61,220 (2002).

10. In connection with its request to operate on a proprietary basis, Freeport-McMoRan also requests waiver of all of the Commission's regulations under Part 284, including the reporting requirements and the obligation to maintain an electronic bulletin board, as well as other reporting and filing requirements not necessarily relating to Part 284 service. Specifically, Freeport-McMoRan requests a waiver of the requirement to file with its application Exhibits H, K, L, N, O and P, as required by sections 157.14 (a) (10), (11), (13), (14), (16), (17) and (18), respectively, and the filing requirements of Parts 201 and 250, relating to the Uniform System of Accounts and Approved Forms, respectively, and of section 260.2 (Form No. 2-A).

11. Freeport-McMoRan contends that its proposal is consistent with the criteria articulated by the Commission in its Certificate Policy Statement¹⁰ because, as a new pipeline, it has no existing shippers that will subsidize the project. Additionally, it contends that the project will have no adverse effect on existing pipelines and their customers and, indeed, will benefit existing interstate pipelines by providing an additional source of natural gas supplies that will improve the deliverability of gas during peak demand periods. Further, Freeport-McMoRan asserts that the Coden pipeline will have minimal impact on landowners and communities in proximity to the proposed pipeline. This is evidenced by the fact that, as noted above, Freeport-McMoRan has met with little opposition to its requests to survey nearly all the tracts of land required for the pipeline.

12. In any event, Freeport-McMoRan posits that any potential adverse effects of the project will be outweighed by the significant benefits the MPEHTM project which will make available a new source of competitively priced natural gas to meet the growing energy requirements of the United States. Freeport-McMoRan points to numerous instances where U.S. government reports, as well as studies from other groups, have documented these increasing requirements, including an increase in demand for natural gas which domestic production may not be able to meet. Freeport-McMoRan notes that LNG imports have been frequently cited as one important resource for alternative gas supplies. For these reasons, Freeport-McMoRan urges that the Coden pipeline is required by the public convenience and necessity and that the project should be approved as proposed.

¹⁰ Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 (1999); order clarifying statement of policy, 90 FERC ¶61,128 (2000); order further clarifying statement of policy, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

Interventions

13. Notice of Freeport-McMoRan's application was published in the *Federal Register* on March 11, 2004 (69 *Fed. Reg.* 11606). Eight timely, unopposed motions to intervene were received.¹¹ Motions to intervene out-of-time were filed by BP Energy Company, Compass Pass Pipeline LLC, Duke Energy Field Services, LP, ExxonMobil Gas Marketing Company (a Division of ExxonMobil Corporation), and Sempra Energy LNG. Because the companies have demonstrated an interest in this proceeding and their late intervention will not delay or otherwise prejudice this proceeding, we will grant the motions to intervene out-of-time for good cause shown. No other motions, notices of intervention or protests were filed.

Discussion

14. The Coden pipeline will be used to provide transportation service in interstate commerce. Therefore, the construction and operation of the facilities will be subject to the Commission's jurisdiction under section 7 of the NGA.

Application of the Certificate Policy Statement

15. On September 15, 1999, the Commission issued its Certificate Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.¹² That policy statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement 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. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the

¹¹ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2006). These intervenors include: FPL Group Resources, LLC, Florida Power Corporation, The Forum, Industry Partners in Environmental Progress, Inc., Mobile Gas Service Corporation, the Portersville Revival Group, Southern Company Services, Inc., and Transco.

¹² *See supra* note 10.

environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

16. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on its existing customers. The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' captive customers, and on landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified, after efforts have been made to minimize them, 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 then proceed to complete the environmental analysis where other interests are considered.

17. As noted above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Since the Coden pipeline is a new pipeline with no existing customers, the no-subsidy requirement is satisfied.

18. With regard to adverse effects on competing pipelines and such pipelines' captive customers, the Commission finds that the Coden pipeline should serve to benefit other pipelines and their customers because it will transport new, competitively priced natural gas supplies into the interstate grid to meet the ever-growing demand for natural gas in major U.S. markets. Further, we note that no competing pipelines or their existing customers filed interventions or comments opposing this project.

19. With respect to the effect of this project on landowners and communities in proximity to the route, the Commission finds that Freeport-McMoRan has made efforts to minimize any adverse impacts on landowners and nearby communities. No nearby landowners or communities have filed protests in this proceeding. Moreover, as discussed further below, all comments relating to environmental concerns are addressed in the FEIS associated with the project and by the conditions we will impose on the construction and operation of the pipeline.

20. To the extent there are any residual adverse effects on landowners and communities, the Commission agrees with Freeport-McMoRan that the benefits associated with this project, as delineated by the applicant and described above, will significantly outweigh any possible adverse effects. Accordingly, the Commission finds

that Freeport-McMoRan's proposal meets the criteria of our Certificate Policy Statement and that it is required by the public convenience and necessity.

Request to Operate the Pipeline on a Proprietary Basis and for Waivers

21. We now turn to Freeport-McMoRan's requests to operate the Coden pipeline on a proprietary basis and for waivers of various Commission regulations related to open-access service under Part 284 and other general reporting requirements. The MPEHTM/Coden pipeline project is structured so that the full capacity of the pipeline facilities extending from the NGA-exempt LNG terminal and submerged pipeline to the high water mark and on to the Coden hub will be utilized solely by the project sponsor. The MPEHTM deepwater port facility, including the 92-mile long offshore pipeline, are already proprietary under the Deepwater Port Act. Granting Freeport-McMoRan's request for waiver of the Commission's open-access requirements will continue the proprietary operation for the relatively short distance of 5.1 miles between the high water mark, where the Commission's jurisdiction begins, and the interstate pipeline hub at Coden, where the pipeline will deliver gas to three interstate pipelines.

22. The Coden pipeline's only upstream interconnection, which is not demarked by physical facilities, is with the offshore deepwater LNG port through the contiguous, affiliated, non-jurisdictional MPEHTM pipeline facilities, making it unlikely that other shippers will request firm service over the Coden pipeline. Allowing the proposed proprietary use of the pipeline under these circumstances will relieve Freeport-McMoRan from the administrative and regulatory burden associated with operating a single, unified pipeline under two different regulatory regimes and provide, to the extent practicable, regulatory and operational consistency over the complete chain of facilities. Freeport-McMoRan will also be relieved of the requirement to file a Part 284 tariff for a short 5.1-mile haul where no other party is likely to request transportation service.

23. Although the Commission generally requires new pipelines to operate on an open-access basis,¹³ the Commission explained in *Hackberry LNG* that a flexible regulatory approach is appropriate in assessing proposals for the introduction of much-needed supplies of LNG into the U.S. interstate pipeline system.¹⁴ The Commission's goal is to

¹³ See, e.g., *Trans-Union Interstate Pipeline, L.P.*, 92 FERC ¶ 61,066 at 61,219-21 (2000) (*Trans-Union*) (summarizing post-Order No. 636 policy on sole-use pipeline proposals), *order on clarification*, 93 FERC ¶ 61,115 (2000).

¹⁴ *Hackberry LNG Terminal L.L.C. (Hackberry LNG)*, 101 FERC ¶ 61,294 (2002), *order issuing certificates and granting reh'g*, 104 FERC ¶ 61,269 (2003).

provide incentives for developing additional energy infrastructure while, at the same time, ensuring competitive commodity prices and an open-access interstate pipeline grid. Under the particular circumstances of this proceeding, we believe that allowing Freeport-McMoRan to operate its proposed pipeline on a proprietary, single-use basis will not undermine the Commission's policy encouraging competition in the pipeline industry. To the contrary, we believe that this will actually encourage competition by facilitating the introduction of new, heretofore unavailable, sources of LNG into the pipeline grid.

24. In view of these considerations, we will not require Freeport-McMoRan to establish initial section 7 rates or file a Part 284 tariff at this time to comply with the Commission's open-access policies and regulations. However, to ensure that our action here does not result in frustration of our pro-competitive policies, we will condition the certificate issued herein to require that Freeport-McMoRan apply for a Part 284 open-access blanket transportation certificate within 30 days of receiving a *bona fide* request for firm transportation service on its pipeline, if there is capacity available to provide the requested service.¹⁵ Further, we will require that Freeport-McMoRan maintain records to identify separately the original cost and related future depreciation on the facilities consistent with the Uniform System of Accounts, since any future calculation of rates for open-access transportation service would require this cost-of-service accounting information.¹⁶

25. As explained above, Freeport-McMoRan also requests waiver of a number of the Commission's regulations, in addition to those in Part 284, relating to the accounting and reporting requirements for natural gas pipelines under Part 201, Uniform System of Accounts; Part 250, Approved Forms; Sections 260.1 and 260.2, Annual Report; and Form No. 2 and Form No. 2-A, respectively, Annual Report. Freeport-McMoRan also seeks waiver of the requirement in section 157.14 to file certain exhibits with its application. We have previously granted waivers of certain of our accounting and

¹⁵ The Commission has imposed a similar condition in other appropriate cases. See, e.g., *White Rock Pipeline, L.L.C. and Tri-State Ethanol Co., L.L.C.*, 98 FERC ¶61,220 at P 24 (2002) (*White Rock*); *South Carolina Public Service Authority*, 91 FERC ¶ 61,180 at 61,650 (2000) (*South Carolina*); and *B-R Pipeline Co. and Portland General Electric Co.*, 89 FERC ¶ 61,312 at 61,954 (1999) (*B-R Pipeline*).

¹⁶ *White Rock*, 98 FERC ¶ 61,220 at P 23; *South Carolina*, 91 FERC ¶ 61,180 at 61,650; *B-R Pipeline*, 89 FERC ¶ 61,180 at 61,956.

reporting requirements for other limited-purpose pipelines such as interstate pipelines constructed to serve affiliated industrial operations.¹⁷

26. Here, Freeport-McMoRan has proposed its pipeline solely for the purpose of transporting regasified LNG over the final 5.1 miles necessary to move gas from its affiliate's deepwater port facility to the interstate pipeline hub at Coden, Alabama. Under these circumstances, we find it appropriate to waive the accounting and reporting regulations as requested. However, although we are granting the requested waiver of Section 260.2 (Form No. 2-A) of the regulations, we note that such waiver does not extend to the FERC's annual charge adjustment (ACA). Further, Freeport-McMoRan is required to file page 520 of Form 2A, reporting the gas volume information which is the basis for imposing an ACA charge. In addition, Freeport-McMoRan is required to follow any business practices (*e.g.*, entering into Operational Balancing Agreements) and any applicable North American Energy Standards Board (NAESB) timelines that are required to enable interconnecting pipelines to comply with the NAESB standards. Finally, as discussed, Freeport-McMoRan must maintain certain records consistent with the requirements of the Uniform System of Accounts.

Issuance of a Part 157, Subpart F, Blanket Certificate

38. In addition to authority to construct and operate the Coden pipeline and operate it on a sole-use basis, Freeport-McMoRan seeks a blanket certificate under Part 157, subpart F. Pursuant to this blanket certificate, pipelines may construct and operate eligible facilities without filing a case-specific application for a certificate under NGA section 7(c). A pipeline holding a blanket construction certificate may construct and operate eligible facilities without notifying the Commission in advance or with prior notification, depending on the cost of the facilities. A pipeline must be an interstate pipeline and must state that it will comply with all of the terms, conditions and procedures in Part 157, subpart F. Freeport-McMoRan will become an interstate pipeline once it accepts the certificate to construct and operate the facilities issued in this order and it has stated in its application that it will comply with the Provisions of Part 157, subpart F. Therefore, we will issue a blanket construction certificate to Freeport-McMoRan.

¹⁷ *White Rock*, 98 FERC ¶ 61,220 at P 24; *South Carolina*, 91 FERC ¶ 61,180 at 61,650; *B-R Pipeline*, 89 FERC ¶ 61,180 at 61,955-56.

Environmental Review

39. As explained earlier, the Secretary of DOT has delegated its authority to review the technical and environmental aspects of proposals for deepwater ports to the Coast Guard, while MARAD has the responsibility for review of the financial and accounting aspects. Although the Coast Guard is the lead agency for the environmental review of the MPEH^{MT} project, MARAD is the agency that actually issues the FEIS. MARAD issued the FEIS for this project on March 14, 2006 and the final comment period ended on April 24, 2006. Comments in response to the FEIS were submitted to DOT; however, those comments relevant to the Coden onshore pipeline were also placed into the docket in this proceeding.¹⁸ Further, the Commission performed its own environmental review of the onshore facilities to comply with its responsibilities under the National Environmental Policy Act of 1969 (NEPA) and is imposing conditions on the construction and operation of the pipeline based upon material received from the applicant and the data provided in the FEIS.

40. The commenters include the Coden Community House Association, the South Bay Communities Alliance, Jim Fuller and Barbara Holley Reid (who is the president of the Portersville Revival Group, which also filed comments with the Commission and in response to the draft EIS). Since the commenters raise many of the same concerns, we will address them by topic and not by commenter.

41. The commenters assert that the FEIS failed to recognize that the Alabama Department of Transportation (ALDOT) plans to extend interstate highway I-10 to intersect at State Route 188 and Hemley Road. The commenters contend that the area of this intersection, as well as along Henry Johnson Road which the pipeline route follows from the point it begins onshore, are slated to become high density residential areas. They note that future plans involve major developments in Coden, including residential condominiums adjacent to Henry Johnson Road.

42. With respect to these concerns, the ALDOT Five Year Plan for Plan 2006 does not indicate any extensions of I-10 into the project area. However, even if improvements or new construction are proposed, the Coden onshore pipeline would be located between Hemley Road and the existing Gulfstream right-of-way. Should residential or new

¹⁸ This was also the case with comments filed in response to the issuance of the draft EIS. Other comments were filed in this docket in response to the filing of Freeport-McMoRan's certificate application with the Commission. Generally, commenters filed in both the Commission and DOT proceedings.

highway construction occur along Hemley Road, the proposed pipeline would be separated from the development by either the road or the existing natural gas pipeline. Additionally, as indicated in the FEIS, building inspectors for both the city of Bayou La Batre and Mobile County unincorporated areas (which include Coden) indicate there is no current or near future development planned nor have any plans for such development been received. Thus, any development could only be in the early planning stages. In this regard we note that it is anticipated that residential and commercial development would not begin until after the city creates basic infrastructure such as sewage treatment plants. Further, the pipeline would be sited in an existing corridor that already contains an operating natural gas pipeline so that very little new land in proximity to where development could occur would be affected. Accordingly, the FEIS concluded that there would be no adverse impact on future development in the area and the Commission agrees with this finding.

43. On a related issue, the commenters contend that the Coden pipeline will increase the existing safety hazards associated with natural gas pipelines and that if the planned development occurs, for example, along Henry Johnson Road, in the event of an explosion the loss of human life would be catastrophic. The commenters note that Coden does not have a fire department and the city of Bayou La Batre only has a volunteer fire department. Further, they point out that there are no warning systems or evacuation plans in place and that both communities lack medical facilities. One commenter urges that the pipeline should be re-routed to come onshore at a more remote area, otherwise the coastline of Alabama in this area would be damaged forever and would ensure the destruction of economic growth in Coden.

44. In response, we observe that interstate natural gas pipelines are subject to the DOT's pipeline safety regulations.¹⁹ These regulations provide for different standards depending on the extent of residential development in an area and the terrain. The standards, among other things, relate to the thickness of pipe, the depth at which a pipeline must be buried and the pressures at which a pipeline may operate. If the extent of development increases over time, pipelines are required to take certain steps to address any additional risks. Further, pipelines are subject to extensive procedures relating to maintaining the safety of their facilities and must also have plans to address the safety of the inhabitants near a pipeline in the event of safety hazard. Section 5 of the FEIS is devoted to a discussion of risk management for both the offshore and onshore facilities. Regarding the recommended pipeline route, a total of three alternative pipeline corridors were evaluated in the FEIS. The proposed alternative had only three residences that

¹⁹ See 49 C.F.R. Part 192 (2006).

would be located within 50 feet of the proposed pipeline construction right-of-way. Based upon the analysis of alternative routes in the FEIS, the Commission approves the route recommended in the FEIS.

45. In a similar vein, the commenters maintain that the FEIS lacks scientific data necessary to adequately evaluate the health risks, including the hazard rates and environmental risk, to the members of the affected communities as a result of cumulative and multiple exposures. They urge that the FEIS fails to correctly assess reasonably foreseeable and future known actions that will impact the affected communities and that the FEIS understates such impacts, limiting analysis only to the additional effect the Compass Pass Pipeline LLC project would have on the area.²⁰ The commenters take exception to the FEIS' classification of such cumulative and multiple impacts on Coden as long-term, but minor, and contend that this classification lacked supporting data. They assert that the FEIS failed to evaluate these impacts with regard to the unique culture which exists in the affected community. They state that these impacts cannot be adequately measured by the national and general standards applied in the FEIS. They note, for example, that the FEIS fails to assess the impact of future hurricanes, as well as those from Hurricane Katrina, upon the affected communities, the infrastructure of the pipelines, and the natural gas industry. They note that major hurricanes bring significant environmental, economic, and societal changes to the areas that are affected.

46. The commenters are incorrect. The FEIS, in fact, considered and adequately characterized a number of onshore, cumulative impacts, including other natural gas pipelines and associated facilities. *See* section 6.1.2.1 and Table 6.1-5. The FEIS concludes that the Coden pipeline's impacts are minor because they would occur within an existing pipeline corridor. In this respect, the possible cumulative effects of the Coden pipeline project are not unique, but typical of those encountered with nearly all pipeline construction. With regard to future hurricanes, the Commission concludes that damage to onshore natural gas pipelines would be minimal because pipelines are buried to a minimum depth of 3 feet and typically are drilled beneath the shoreline to much greater depths. Consequently, the potential exposure of the onshore pipeline to winds and tidal surges is limited. Our environmental review of this project included requests for

²⁰ The Compass Pass Pipeline LLC project, proposed in Docket Nos. CP04-114-000 and CP04-115-000, would be the onshore, jurisdictional portion of a pipeline that would connect the deepwater LNG terminal that Compass Port LLC proposes to construct in the Gulf of Mexico. The Compass Pass LLC pipeline, if approved, also would come onshore in Coden, would utilize Gulfstream's rights-of-way, and would terminate at the Coden Hub.

information from other agencies on environmental conditions resulting from Hurricane Katrina. A representative from the U.S. Army Corps of Engineers, Mobile District, walked the onshore pipeline corridor subsequent to the hurricane and reported that no permanent changes had occurred to the land use.

47. A commenter also expressed concerns that wetlands along the proposed route would be negatively affected. While it is true that the proposed pipeline traverses wetlands, those impacts will either be avoided or would be minimized and mitigated through the U.S. Army Corps of Engineers permitting process, which addresses wetlands. *See* Section 4.3.2.2 of the FEIS. Environmental Condition 14 in the Appendix hereto also requires Freeport-McMoRan to comply with the Commission's *Wetland and Waterbody Construction and Mitigation Procedures* (January 2003, with modifications as noted in Appendix G2, Table 1) which also address procedures to minimize or eliminate the effects of pipeline construction on wetlands.

48. Several commenters stated that the site where the Coden pipeline begins onshore would be located near an area documented as archeologically significant (1MB1 site). One maintained that the FEIS failed to note that the site has been recommended as eligible for listing upon the National Register of Historic Places (NRHP) and that it is much larger in extent than noted by industry studies. The commenters also point out that the cultural site 1MB372, also near the proposed route, was the home place of Josephine and Clarence Allen, African-Americans of great significance to southern history. They explain that the site was destroyed by previous projects for which the permitting process lacked proper cultural resource assessment. They contend that this site will be adversely affected by the Coden pipeline. The commenters assert that the FEIS failed to address the cultural resources of the affected communities as they relate to traditional cultural practices of members of the community that consider the sites to be of religious and cultural significance. For example, they contend that the FEIS fails to adequately address the altering of the practical uses and functions of land and the marine environment that are related to the unique cultural/social/economic practices of the areas.

49. The FEIS indicates that Freeport-McMoRan filed a report assessing site 1MB372 and finding that it is not eligible for listing in the NRHP. On April 7, 2005, the Alabama Historical Commission concurred that site 1MB372 is not eligible for listing on the NRHP because it would be unlikely to yield information important to an understanding of the history of southern Alabama due to the site's poor integrity and lack of intact cultural features or architectural remains. We believe that the FEIS characterizes the relevant features of the human environment to the degree necessary to assess the impacts of the proposed project and adopt its findings on this issue. *See* Sections 3.3.3, 3.3.7, 4.3.3, 4.3.7, and 6.4.3 of the FEIS.

50. The commenters contend that the FEIS' conclusions reflect a lack of consultation with members and associations of the affected communities, in particular with regard to places of religious and cultural significance to these communities. We disagree. Public involvement has occurred throughout the review of this project, including the onshore Coden pipeline. In addition to the issuance of a July 29, 2004 notice of intent to prepare the environmental impact statement, the Coast Guard and MARAD held informational open houses and public hearings at the Grand Bay St. Elmo Community Center, Grand Bay, Alabama; the Jackson County Civic Center, Pascagoula, Mississippi; and the Hyatt Regency at the Louisiana Superdome, New Orleans, Louisiana; on July 18, 19, and 20, 2005, respectively. *See* Section 1.4 of the FEIS. Additional public meetings were held following issuance of the FEIS. Further, the public had opportunities to file comments at the Commission in response to the filing of the application for the Coden pipeline and in response to the draft EIS and the FEIS. As noted, comments were received throughout the entire review process. Thus, the Commission's concludes that the citizens and groups within the affected communities have had ample opportunity to raise their concerns with the appropriate regulatory authorities.

51. A question has also been raised by the commenters as to whether the FEIS sufficiently considered environmental justice, since the affected communities are low-income. First, the Commission notes that the proposed pipeline corridor has only three residences that would be located within 50 feet of the proposed pipeline construction right-of-way. Therefore, any physical impacts resulting from the construction and operation of the pipeline would be minimal and generally short-term. Secondly, Section 4.3.7.2 of the FEIS addresses the issue of environmental justice. That section predicts that a minor, direct, beneficial socioeconomic impact would result from construction and operation of the Coden pipeline. Further, a linear corridor traverses a mixed assemblage of regions with varying socioeconomic characteristics. The Commission has encouraged pipelines to co-locate new pipelines within or adjacent to existing easements with the objectives of minimizing environmental impacts and avoiding the establishment of new utility corridors to the extent possible. The proposed Coden pipeline route is completely co-located in this manner and achieves both of these objectives.

52. For the reasons discussed, the Commission concludes that the FEIS addresses all issues relevant to the Coden pipeline. Further, we find that the comments received in response to the FEIS do not raise any issues that were not considered and addressed by the FEIS and the Commission's own environmental review. Therefore, we adopt the findings and conclusions in the FEIS and based on our review of the information and analysis contained in the FEIS, and our own environmental review, the Commission finds that Freeport-McMoRan's Coden pipeline project is environmentally acceptable, if the project is constructed and operated in accordance with the FEIS and with the

environmental mitigation conditions in the Appendix hereto. However, Freeport-McMoRan's authorization issued herein to construct and operate the Coden pipeline is conditioned on its receiving approval from MARAD to construct and operate the proposed offshore MPEHTM terminal facilities.

53. We note further that any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.²¹ Freeport-McMoRan shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Freeport-McMoRan. Freeport-McMoRan shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

Conclusion

54. For all of the reasons discussed herein, we conclude that the Coden pipeline is required by the public convenience and necessity; therefore, we will issue a certificate authorizing the construction and operation of the Coden pipeline, subject to the conditions discussed above and in the Appendix attached hereto.

55. At a hearing held on May 18, 2006, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity pursuant to section 7(c) of the NGA is issued to Freeport-McMoRan in Docket No. CP04-68-000, authorizing the construction and operation of facilities as described in the body of this order and as described more fully in the application, subject to environmental mitigation conditions set forth in the Appendix.

²¹See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(B) The authorization granted in paragraph (A) above is conditioned upon Freeport-McMoRan's compliance with all applicable Commission regulations that have not been waived herein, including paragraphs (a), (c), (e), and (f) of section 157.20.

(C) Freeport-McMoRan is issued a blanket construction certificate under Subpart F of Part 157 of the Commission's regulations in Docket No. CP04-69-000.

(D) Freeport-McMoRan's authorization to construct and operate the Coden pipeline shall be contingent upon its receiving authorization from MARAD to construct and operate the related offshore Main Pass Energy HubTM facilities.

(E) Freeport-McMoRan, subject to the requirement in Paragraph (F) below, is granted waivers of the applicable portions of Parts 154, 157, 201, 250, 260 and 284 of the Commission's regulations; however, the waiver does not extend to the FERC's annual charge and Freeport-McMoRan is required to maintain records to separately identify the original cost and related future depreciation on its gas pipeline and to file page 520 of Form 2-A..

(F) In the event that Freeport-McMoRan receives a *bona fide* request from a shipper for open-access services, it must file within 30 days with the Commission an application for a Part 284 blanket certificate authorizing it to transport natural gas under Part 284 of the Commission's regulations. Any request by Freeport-McMoRan for Part 284 authorization must be filed with a *pro forma* tariff containing the terms and conditions of service and proposed rates.

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

(H) The facilities authorized in this order shall be completed and placed into operation within three years of the date of issuance of this order in compliance with section 157.20(b) of the Commission's regulations.

(I) The motions to intervene out-of-time in this proceeding are granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

Contingent upon Freeport-McMoRan Energy (Freeport-McMoRan) receiving approval from the United States Coast Guard (USCG) and the Maritime Administration to construct and operate the proposed offshore Main Pass Energy Hub (MPEHTM) terminal facilities, it is recommended that the following conditions be included as specific conditions to further mitigate environmental impacts associated with the installation and operation of the proposed Coden Onshore Pipeline.

1. Freeport-McMoRan shall follow the construction procedures and mitigation measures described in its application and supplements (including its Environmental Construction Procedures and responses to the USCG and the FERC staff data gap requests) and as identified in the Environmental Impact Statement (EIS). Freeport-McMoRan must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (the FERC Secretary),
 - b. justify each modification relative to site-specific conditions,
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure, and
 - d. receive approval in writing from the Director of the FERC Office of Energy Projects (OEP) before using that modification.

2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and activities associated with abandonment of the project. This authority shall allow:
 - a. the modification of conditions of any FERC Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions, as well as avoidance or mitigation of adverse environmental impacts resulting from project construction.

3. **Prior to any construction**, Freeport-McMoRan shall file an affirmative statement with the FERC Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector'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 EIS, as supplemented by filed alignment sheets. As soon as they are available, and before the start of construction, Freeport-McMoRan shall file with the FERC 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 this Order. All requests for modifications of environmental conditions in the EIS, or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.
5. Freeport-McMoRan's exercise of eminent domain authority granted under Natural Gas Act (NGA) Section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Freeport-McMoRan'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 ROW for a pipeline to transport a commodity other than natural gas.
6. Freeport-McMoRan shall file with the FERC 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 FERC 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 OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by FERC's Upland Erosion Control, Revegetation, and Maintenance Plan; 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 route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures,
- b. implementation of endangered, threatened, or special concern species

- mitigation measures,
 - c. recommendations by state regulatory authorities, and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
7. **At least 60 days before construction begins**, Freeport-McMoRan shall file an Implementation Plan with the FERC Secretary for review and written approval by the Director of OEP describing how Freeport-McMoRan would implement the mitigation measures required by this Order. Freeport-McMoRan must file revisions to the plan as schedules change. The plan shall identify:
- a. how Freeport-McMoRan 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;
 - b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions Freeport-McMoRan will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), the company personnel (if known) and specific portion of Freeport-McMoRan's organization having responsibility for compliance;
 - e. the procedures (including use of contract penalties) Freeport-McMoRan will follow if noncompliance occurs; and
 - f. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
8. Freeport-McMoRan shall employ at least one environmental inspector per construction spread. The environmental inspector(s) shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this EIS and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of

- c. the environmental mitigation measures required in the contract (see measure ON-6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this EIS and any other authorizing document;
 - d. responsible for documenting compliance with the environmental conditions of this EIS, as well as any environmental conditions/permit requirements imposed by other Federal, state, or local agencies; and
 - e. responsible for maintaining status reports.
9. Freeport-McMoRan shall file updated status reports prepared by the environmental inspector with the FERC Secretary on a bi-weekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other Federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current 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;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector 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);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Freeport-McMoRan from other Federal, state, or local permitting agencies concerning instances of noncompliance and Freeport-McMoRan's response.
10. Freeport-McMoRan must receive written authorization from the Director of OEP before commencing service from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the ROW and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the certificated facilities in service**, Freeport-McMoRan shall file an affirmative statement with the FERC 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 Freeport-McMoRan 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. Freeport-McMoRan shall defer implementation of any treatment plans/measures (including archaeological data recovery), use of new or to-be-improved access roads, staging, storage or temporary work areas outside the surveyed 200-foot-wide corridor until Freeport-McMoRan files with the Secretary cultural resources survey and evaluation reports, any necessary treatment plans, and the Alabama State Historic Preservation Office comments; and the Director of OEP reviews all cultural resources survey reports and plans and notifies Freeport-McMoRan in writing that treatment plans may be implemented or that use of these areas may proceed.

All material filed with the Commission containing location character and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **“CONTAINS PRIVILEGED INFORMATION-DO NOT RELEASE”**.

13. Freeport-McMoRan shall follow the FERC’s *Upland Erosion Control, Revegetation, and Maintenance Plan* (January 2003, with modifications as noted in Appendix G2, Table 2) and *Wetland and Waterbody Construction and Mitigation Procedures* (January 2003, with modifications as noted in Appendix G2, Table 1).
14. Freeport-McMoRan shall not construct its Coden Onshore Pipeline until it has received a determination from the Alabama Department of Environmental Management that the project is consistent with the state’s Coastal Zone Management Program and Freeport-McMoRan has filed a copy of the coastal zone consistency determination with the Commission.
15. Freeport-McMoran shall not begin construction activities for the Coden Onshore Pipeline until the staff receives comments from the U.S. Fish & Wildlife Service (FWS) regarding the proposed action; the staff completes formal consultation with the FWS, if required; and Freeport-McMoRan has received written notification from the Director of OEP that construction or use of mitigation may begin.

16. For all residences located within 50 feet of the construction work area for the Coden Onshore Pipeline, Freeport-McMoran shall:
- a. not remove mature trees and landscaping within the edge of the construction work area, unless necessary for safe operation of construction equipment;
 - b. immediately after backfilling the trench, restore all lawn areas and landscaping within the construction work area consistent with the requirements of FERC's Modified Plan;
 - c. fence the edge of the construction work area adjacent to the residence for a distance of 100 feet on either side of the residence to ensure that construction equipment and materials, including the spoil pile, remain within the construction work area;
 - d. try to maintain a minimum distance of 25 feet between the residence and the edge of the construction work area; and
 - e. for any residence closer than 25 feet to the construction work area, file a site-specific plan with the Secretary for the review and written approval of the Director of OEP before construction. The plan should include:
 - i. a description of construction techniques to be used (such as reduced pipeline separation, centerline adjustment, use of stove-pipe or drag-section techniques, working over existing pipelines, pipeline crossover, bore, etc.), and include a dimensioned site plan that shows:
 - (1) the location of the residence in relation to the new pipeline and, where appropriate, the existing pipelines;
 - (2) the edge of the construction work area;
 - (3) the edge of the new permanent right-of-way; and
 - (4) other nearby residences, structures, roads, or waterbodies.
 - ii. a description of how Freeport-McMoRan will ensure the trench is not excavated until the pipe is ready for installation and the trench is backfilled immediately after pipe installation; and
 - iii. evidence of landowner concurrence if the construction work area and fencing will be located within 10 feet of a residence.