

113 FERC ¶ 61,199
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Natural Gas Company

Docket No. CP05-388-000

PRELIMINARY DETERMINATION ON NONENVIRONMENTAL ISSUES

(Issued November 22, 2005)

1. On June 29, 2005, Southern Natural Gas Company (Southern) filed an application under section 7 of the Natural Gas Act (NGA) for certificate authorization to expand the capacity of its existing system in Georgia and Florida to provide an additional 500 MMcf/d of firm transportation by constructing and operating approximately 177 miles of 24-inch and 30-inch diameter pipe, 31,050 hp of compression, and appurtenant facilities. Southern plans to build its proposed Cypress Pipeline in three phases, with projected in-service dates of May 2007, May 2009, and May 2010.
2. In this order we reach a preliminary determination supporting approval of Southern's proposed Cypress Pipeline expansion project. In reaching this preliminary determination, we have considered the comments and protests relating to issues of gas quality and interchangeability. As discussed herein, we find that these issues can be most appropriately resolved in the ongoing proceeding in *AES Ocean Express, LLC v. Florida Gas Transmission Company (AES v. FGT)*, in Docket No. RP04-249-001, and thus defer consideration of these issues to that proceeding. We are also granting Southern's request for a predetermination supporting rolled-in rate treatment for the proposed project's costs. In response to customers' concerns, the order explains that this predetermination is subject to material changes in circumstances, e.g., actual costs that exceed estimated costs, such that expansion revenues fail to cover expansion costs.

3. This order does not consider or evaluate any of the environmental issues in this proceeding. Those issues remain under review and will be addressed in a subsequent order, following completion of our environmental analysis. Nothing in this order limits our actions with respect to that pending environmental analysis. Thus, final authorization of Southern's proposal depends on a favorable environmental analysis.

I. Background and Proposal

4. Southern's existing system is directly connected to the Southern LNG, Inc. (Southern LNG)¹ Elba Island liquefied natural gas [LNG] import terminal located near Savannah, Georgia. In 2003, Southern LNG received authorization to expand its Elba Island facilities to increase storage capacity from 4.0 Bcf to 7.33 Bcf and increase vaporization capacity from 675 MMcf/d to 1,215 MMcf/d.² Southern LNG anticipates completing its expansion facilities in the first quarter of 2006. Southern's proposed Cypress Pipeline is designed to transport vaporized LNG from Elba Island to markets in Florida.

5. Southern plans to construct the Cypress Pipeline in three phases, at an estimated total cost of \$320,880,518. Phase I, with a target in-service date of May 1, 2007, will consist of: (1) 166.63 miles of 24-inch diameter pipeline, commencing at an interconnect with Southern's existing Wrens-Savannah pipelines in Effingham County, Georgia, and terminating at an interconnect with FGT in Clay County, Florida; (2) interconnection and measurement facilities with (a) Atlanta Gas Light Company (Atlanta Gas) in Glynn County, Georgia, (b) Southern's South Georgia facilities in Nassau County, Florida, (c) JEA³ in Duval County, Florida, and (d) FGT in Clay County, Florida; and (3) various appurtenant and auxiliary facilities, including replacement facilities, at Southern's existing Marietta Delivery Point to Atlanta Gas in Cobb County, Georgia.

6. Phase II, with a target in-service date of May 1, 2009, will consist of a new 10,350 hp compressor station in Glynn County, Georgia.

¹ Southern LNG is a wholly-owned subsidiary of Southern.

² Southern LNG, 103 FERC ¶ 61,029 (2003) (order issuing authorization) and 101 FERC ¶ 61,187 (2002) (preliminary determination).

³ JEA was formerly known as the Jacksonville Electric Authority.

7. Phase III, with a target in-service date of May 1, 2010, will consist of:
(1) 9.85 miles of 30-inch diameter pipeline loop on Southern's Wrens-Savannah pipelines in Chatham and Effingham Counties, Georgia; (2) a new 10,350 hp compressor station in Liberty County, Georgia; and (3) a new 10,350 hp compressor station in Nassau County, Florida.
8. Southern has entered into precedent agreements for firm transportation service for the full capacity of the proposed project with BG LNG Services, LLC (BG) for a 20-year term, Florida Power Corporation d/b/a Progress Energy Florida, Inc. (Progress Energy) for a 20-year term, and the City of Austell, Georgia (Austell) for a 15-year term.⁴ BG and Progress Energy have agreed to pay a negotiated rate and Austell has agreed to pay Southern's existing maximum firm transportation rate.
9. Southern requests the Commission make a predetermination that it may roll the costs of its proposed Cypress Pipeline facilities into its existing rate base in a future section 4 rate proceeding. Southern states that upon completion, the expansion facilities will become integrated with its existing facilities and enhance the flexibility and availability of the services available on Southern's system. Southern expects its Cypress Pipeline to provide significant long-term economic benefits, pointing to Exhibit N of its application as evidence that over the first ten years of operation, expansion revenues will exceed expansion costs by at least \$124 million.⁵

II. Notice and Interventions

10. Notice of Southern's application was published in the *Federal Register* on July 14, 2005.⁶ Timely motions to intervene were filed by several parties.⁷ Untimely motions to intervene were filed by Austin Hill Realty; ConocoPhillips Company; Dominion Cove Point LNG, LP; and Statoil Natural Gas LLC. We will grant these untimely motions to

⁴ See Southern's Application, Exhibit I (Market Data) (June 29, 2005).

⁵ *Id.*, Exhibit N (Revenues – Expenses – Income).

⁶ 70 Fed. Reg. 40,698 (2005).

⁷ Timely unopposed motions to intervene are granted by operation of Rule 214.18 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2005). The parties to this proceeding are listed in the appendix to this order.

intervene, as we find that to do so will not delay, disrupt, or otherwise prejudice this proceeding or the parties to this proceeding.

A. Comments and Protests

11. Comments and protests in response to Southern's proposal were filed by: Alabama Gas Corporation (Alabama Gas); Alabama Municipal Distributors Group jointly with the Southeast Alabama Gas District (Municipals); Atlanta Gas jointly with Chattanooga Gas Company (Atlanta Gas and Chattanooga Gas); Austin Hill Realty; Charles W. Bostwick; Eugene T. Clark, Sr. jointly with Frances H. Clark, John Aylor, and Debbi Aylor (Clark and Aylor); Florida Gas Utility; Florida Power & Light Company (Florida Power & Light); Henry Morgan and G. P. Morgan, III (Morgans); Hilda Whitaker; and Peoples Gas System, a Division of Tampa Electric Company (Peoples Gas).⁸

12. Austin Hill Realty, Charles W. Bostwick, Clark and Aylor, the Morgans, and Hilda Whitaker are landowners on or adjacent to the planned route of the proposed expansion facilities. These parties raise issues regarding siting and safety that we believe can best be considered in the context of our environmental review. Consequently, we will defer consideration of these issues and address them in a subsequent order that fully examines the environmental aspects of the proposed project.

1. Rolled-In Rate Treatment

13. Atlanta Gas and Chattanooga Gas, Alabama Gas, Florida Power & Light, the Municipals, and Peoples Gas raise concerns regarding Southern's request for a predetermination that the proposed Cypress Pipeline's costs may be rolled into Southern's existing rate base in a future NGA section 4 proceeding. The parties claim that cost estimates for the proposal may be understated, in which case Southern's existing customers could be made to subsidize its expansion customers.

14. Florida Power & Light is apprehensive that BG and Southern might not follow through and execute a service contract consistent with the terms of the precedent agreement, and thus requests that the Commission make any predetermination regarding rolled-in rate treatment contingent on the parties' satisfaction of the levels and terms of service set forth in the precedent agreements. Atlanta Gas and Chattanooga Gas state that

⁸ JEA filed a protest, which it subsequently withdrew. *See* JEA's July 29, 2005 Motion to Intervene and Protest and JEA's September 29, 2005 Notice of Withdrawal of Protest.

Southern's cost estimates appear to be based on preliminary engineering and construction estimates that may be understated, and assert that any decision here on rolling in expansion costs would be premature, and thus request the Commission defer its decision until actual costs are determined. Alabama Gas adds that to reach a predetermination here would be inequitable, as it would place the burden on existing customers to overcome the presumption favoring rolling in expansion costs in a future section 4 proceeding. Finally, Peoples Gas argues the financial support for Phases II and III is insufficient in view of the non-binding nature of the precedent agreements, and recommends the Commission condition authorization on Southern assuming the financial risk for (1) any revenue shortfall that occurs if BG exercises its right to terminate its precedent agreement and (2) any project cost overruns that exceed project revenues.

15. The Municipals and Alabama Gas refer to the Fuel Sharing Mechanism contained in Southern's most recent rate settlement.⁹ Southern's approved tariff, section 35 of the General Terms and Conditions (GT&C), provides that if Southern collects more in fuel than it uses, then customers receive 50 percent of the fuel savings. The parties complain that BG, by negotiating a discounted fuel rate, will potentially reduce the amount of the 50 percent available to be shared among customers. The parties contend this result would be inconsistent with Commission policy that the pipeline assume the burden of any underrecovery of costs attributable to negotiated rate customers,¹⁰ and suggest this would be rectified were Southern to impute fuel it retains from BG at its stated tariff rate.

16. The Municipals state that Southern has listed Net Fuel Retention Revenues as one component of its Exhibit N calculations, and that costs exceed revenues in the first two years of the expansion's operation without the claimed fuel retention revenues of \$7.3 million and \$7.2 million, respectively. Similarly, Alabama Gas states that Southern has attributed \$15 million of projected fuel overrecovery as income for the first three years of the expansion's operation, and comments that had it not done so, expansion costs would exceed revenues for this period. The parties ask Southern to explain and justify this approach by providing workpapers and calculations, and ask the Commission to review Southern's response prior to reaching any predetermination on the treatment of expansion project costs.

⁹ Southern's settlement was approved by Commission letter order on July 13, 2005 in Docket No. RP04-523-000.

¹⁰ See *Natural Gas Pipeline Company of America*, 69 FERC ¶ 61,029 (1994).

2. Adverse Impacts on Existing Pipelines and Customers

17. Parties acknowledge that the LNG currently imported and expected to be imported at Elba Island will conform to the gas quality standards of Southern LNG's and Southern's existing tariffs. However, the parties argue that more restrictive gas quality standards may be necessary to prevent harm to local distribution companies [LDCs] and customers unprepared to accommodate the wider variation in gas supplies that the Cypress Pipeline would make available.

18. Parties speculate that a change in the source of gas supplies could compromise the integrity of pipeline facilities transporting the new supplies and adversely impact end users. For example, Peoples Gas and Florida Gas Utility are concerned that gas with a low level of heavy hydrocarbons, such as vaporized LNG, may accelerate the deterioration of rubber seals employed in compression couplings used to join distribution mains and service lines and thereby lead to gas leaks. Peoples Gas states that by the end of 2005, it will have completed testing its system's compression couplings to determine if exposure to unblended, vaporized LNG could cause accelerated deterioration. If so, it intends to propose remediation measures and a plan "for how, and from whom, the costs of any necessary remediation by Peoples will be recovered."¹¹ Peoples Gas asks that the Commission condition any order in this proceeding on the Commission's reviewing and responding to Peoples Gas' test results.

19. End users express reservations about their capability to safely and efficiently make use of gas that varies in its characteristics depending on the supply source. Previously, this issue of interchangeability rarely arose because interstate pipelines generally shipped gas from domestic supply sources that retained predictable and stable characteristics. Thus, gas consumers were able to tailor their use to match the specific characteristics of the gas received.

20. Different end users have differing levels of sensitivity to variations in the characteristics of the gas supplied. For example, Florida Power & Light operates gas-fired turbines at electric generation plants and states that its turbine units are unable to accommodate gas supplies with wide variations in the Wobbe Index.¹² Florida Power &

¹¹ Peoples Gas' Answer to Southern's Answer at 11 (August 31, 2005).

¹² The Wobbe Index is a measure of combustion characteristics, defined as the saturated Btu value of the gas divided by the square root of the specific gravity of the gas. Florida Power & Light explains that in order to switch over to a gas supply with a different Wobbe Index, it may be required to manually retune turbine units to preclude

(continued)

Light proposes Southern commit to gas quality and interchangeability specifications for deliveries to FGT that are compatible with FGT's gas specifications. FGT's tariff's gas standards are currently under review in *AES v. FGT* in Docket No. RP04-249-001. Florida Power & Light insists that "it is essential that the Commission condition approval of the Cypress pipeline on working with FGT to resolve the gas quality and interchangeability issue" and contends the two proceedings "must be resolved together."¹³ Peoples Gas requests similar constraints on the variability of gas supplies, contending that without such controls, it may be necessary to undertake the impractical task of retuning several thousand gas-fueled appliances.

21. Alternatively, Florida Power & Light asks the Commission to require shippers using the Cypress Pipeline to reimburse it, and other adversely impacted end-users, for costs incurred to adapt systems and facilities to accommodate additional volumes of vaporized LNG from Elba Island. Florida Power & Light reasons this would comport with the Commission's interconnect policy, which requires that a "proposed interconnection and any resulting transportation must not diminish service to the pipeline's existing customers."¹⁴

22. Atlanta Gas and Chattanooga Gas seek clarification on whether Southern's proposal to make deliveries to Austell upstream of its existing Marietta Delivery Point in Cobb County, Georgia, will impact deliveries to Atlanta Gas at Marietta.

B. Answers to Protests and Comments

23. Several parties submitted answers to the protests and comments, and also answers to the answers. Section 385.213(a)(2) of our Rules of Practice and Procedure does not permit answers to protests or answers to answers. However, we may waive this rule for

potential adverse impacts such as tripping the plant, damaging the fuel nozzles, shortening turbine service life, or producing excess emissions.

¹³ Florida Power & Light's Protest at 5-6 (July 29, 2005). To this end, Florida Power & Light suggests Southern's tariff be modified to include: (1) an appropriate Cricondenthem Hydrocarbon Dew Point (CHDP) limitation, (2) an acceptable Wobbe Index range, (3) gas specifications that match those recommended for turbine combustion, and (4) a description of how Southern will measure the CHDP, Wobbe Index, and characteristics of the gas it transports.

¹⁴ *Citing Panhandle Eastern Pipe Line Company*, 91 FERC ¶ 61,037 at 61,141 (2000).

good cause shown, and we do so in this instance to help clarify the issues under consideration.

1. Rolled-In Rate Treatment

24. Southern views the contingencies contained in its precedent agreements for Phases II and III services as routine. Southern points to growth estimate studies by the Florida Reliability Coordinating Council, the Energy Information Administration of the U.S. Department of Energy, and Georgia Power Company in defense of its showing of market need. Southern notes that in its 1999 policy statement addressing new facilities, the Commission observed that generally available projections of market growth can be used to establish the need for a proposed project.¹⁵

25. Southern responds to allegations that its Exhibit N estimates and calculations are insufficiently documented by stating that it has submitted an explanation and workpapers in support of its derivation of the Net Fuel Retention Revenues and the underlying shipper information. Southern notes Commission regulations require the impact of fuel gas to be factored into the costs of an expansion project.¹⁶

26. Southern and BG reject protesting parties' request that the Commission withhold any assessment on rolling in expansion costs until a subsequent section 4 rate proceeding. Southern renews its request that the Commission reach a predetermination in favor of rolled-in rate treatment in this certificate proceeding, citing the Commission's stated expectation in its Policy Statement on New Facilities that a predetermination on how costs will be treated will enable existing and potential shippers to make appropriate decisions before construction to protect their interests either in the certificate proceeding or in their contracts with the pipeline. BG observes that the Commission routinely relies on estimated project costs to reach a predetermination on rolled-in rate treatment in certificate proceedings. BG stresses that postponing a decision on rate treatment until actual, final project costs are tabulated and presented in a future section 4 would defeat the purpose of the Commission's policy on predeterminations.

¹⁵ *Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement on New Facilities)*, 88 FERC ¶ 61,227 at 61,748 (1999), 90 FERC ¶ 61,128 (clarifying statement of policy), 92 FERC ¶ 61,094 (2000) (clarifying statement of policy).

¹⁶ 18 C.F.R. § 157.6(b)(8) (2005). Southern also cites *Williston Basin Interstate Pipeline Company*, 103 FERC ¶ 61,269 (2003), *Kern River Gas Transmission Company*, 96 FERC ¶ 61,137 (2001).

27. BG clarifies that contrary to Florida Power & Light assertions, if BG does not commit to additional Phase II and III service, it will nevertheless retain its full commitment for Phase I service. Further, BG avers that even if the revenues and costs associated with the subsequent phases are omitted, rolled-in rate treatment for Phase I would still remain appropriate. BG states that Peoples Gas' concern about whether Phases II and III will be built can be alleviated by the Commission's standard condition requiring that Southern not proceed with construction of Phase II or Phase III until the relevant conditions precedent have been satisfied or waived.

2. Adverse Impacts on Existing Pipelines and Customers

28. Southern states that the existing tariff of its subsidiary, Southern LNG, contains gas quality specifications applicable to LNG imports,¹⁷ and avers that gas transported on its proposed Cypress Pipeline will meet Southern LNG's quality standards as well as its own gas quality tariff specifications. Southern comments that since Elba Island was reactivated in 2001, Southern has received over 230 Bcf of vaporized LNG, some of which has flowed unblended to end users in Georgia and South Carolina. Southern stresses that all segments of the gas market – including electric generation plants with turbines using dry low NOx technology – have shipped and consumed the vaporized LNG volumes uninterrupted and without any complaints regarding any adverse impacts attributable to the physical characteristics of the LNG imports.¹⁸ BG adds that in the region currently served by LNG imports, there are 31 gas-fired turbine units and several LDCs, and the power generators and LDCs and their customers have not reported any operating problems as a result of their exposure to vaporized LNG supplies.

¹⁷ BG declares that Southern LNG “has the most restrictive LNG specifications of any terminal – existing or proposed – in the nation” and insists that LNG meeting these specifications “when vaporized will meet all reasonable standards for interchangeability.” BG's Answer to Protests at 5-6 (August 15, 2005).

¹⁸ Peoples Gas responds to this latter assertion by pointing out that “Southern Natural's own data demonstrate that the vaporized LNG introduced through Elba Island will be leaner [i.e., stripped of the heavier hydrocarbons more commonly entrained in domestic gas supplies] relative to the gas experienced historically on the FGT system than it has been relative to the gas experienced historically on the Southern Natural system. Moreover, the sources of LNG coming to Elba Island” in the future could “be even leaner than current supplies.” Peoples Gas' Answer to Southern's Answer at 10 (August 31, 2005).

3. Fuel Sharing Provision

29. Southern clarifies that BG will be paying the fuel rates specified in Southern's tariff, and not discounted fuel rates, and that all customers will receive the full measure of any refunds due to the Fuel Sharing Provision. BG points out that its discounted fuel rate was negotiated prior to the settlement in Docket No. RP04-532-000 was finalized, and is now "irrelevant" because Southern's tariff rate is lower.

III. Discussion

30. Because Southern's application pertains to facilities to transport natural gas in interstate commerce, the construction and operation of the proposed facilities are subject to the jurisdiction of the Commission and to the requirements of NGA section 7(c).

31. In order to determine whether a proposed project is required by the public convenience and necessity, we consider whether the proposal meets the criteria set forth in our Policy Statement on New Facilities. In this policy statement, we establish criteria for determining whether there is a need for a proposed project, balance the public benefits against potential adverse impacts, and determine whether the proposed project will serve the public interest. 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 to the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

32. 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 the existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we 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 we proceed to complete the environmental analysis where other interests are considered. In this case, we make a preliminary determination that Southern's proposed Cypress Pipeline is consistent with our Policy Statement on New Facilities.

A. Market Need

33. Southern has submitted three precedent agreements for firm, long-term transportation service for the full capacity of all three phases of the proposed Cypress Pipeline, demonstrating a market need. Further, there is evidence that the market for gas is growing in the region to be served by the proposed expansion, particularly in Florida, and particularly for gas to fuel electric generation facilities. Southern anticipates expansion revenues will exceed expansion costs.¹⁹

34. As discussed below, we also find the proposed Cypress Pipeline can proceed without subsidies and, subject to certain conditions, will not adversely affect other pipelines or customers. The proposed expansion can be expected to allow additional volumes of LNG imports to reach a growing regional market and provide operational benefits to both Southern's and FGT's system. Therefore, consistent with the Policy Statement on New Facilities and NGA section 7, we preliminarily find, pending completion of our environmental review, that approval of Southern's proposed Cypress Pipeline is required by the public convenience and necessity.

B. Subsidization and Rolled-In Rate Treatment

35. We conclude that the project, as contemplated in the application, will not require Southern's existing customers to subsidize Southern's expansion customers. Southern's application's Exhibit N-2 demonstrates that revenues will exceed costs of service for each of the first ten years of service of the proposed expansion project, assuming the three shippers pay the maximum cost-based rate, resulting in cumulative revenues exceeding the cost of service by \$127 million over the initial ten years.²⁰ Thus, we reach a predetermination – pending a subsequent order addressing environmental issues – that

¹⁹ Specifically, Southern states that Exhibit N of its application demonstrates that “the estimated revenues that Southern will generate from the new transportation services subscribed to by BG, Progress Energy, and Austell will exceed the estimated cost-of-service of the Cypress Pipeline Project facilities over the first ten years of the new transportation services by approximately \$124 million.” Southern's Answer to Protests at 21 (August 15, 2005).

²⁰ Southern's Exhibit N-2 scenario using maximum cost-based rates is more appropriate than its alternative Exhibit N-1 scenario using negotiated rates, because consistent with rate design in a NGA section 4 rate case, Southern has to reflect the negotiated rate transactions at the maximum cost-based rate levels.

rolled-in rate treatment in Southern's next section 4 rate proceeding would be appropriate, absent material changes in the relevant facts and circumstances.²¹

36. Although protesters question whether Southern's estimated project costs may be too low, they provide no specific evidence that Southern's estimates are unreasonably low. We deem cost and revenue estimates provided by the applicant to be reasonable unless they appear otherwise on their face or a party demonstrates that estimates are unreasonable.²² In this case, the only specific factor that protesters challenge relates to Southern's projections of net fuel revenue. Southern responded by filing an explanation and workpapers in support of its derivation of the Net Fuel Retention Revenues, which no party sought to refute.²³ Based on this record, we find that Southern's inclusion of fuel usage in its calculations is appropriate and consistent with section 157.6(b)(8) of our regulations and with our past practice.²⁴

37. In view of this, we find it appropriate to rely on Southern's estimates of its project's costs in reaching a predetermination to permit rolled-in rate treatment for service on the proposed facilities.²⁵ While this finding is subject to material changes in circumstances, as discussed below, it is our aim to resolve the issue of rate treatment in

²¹ See, e.g., *Southern Natural Gas Co.*, 100 FERC ¶ 61,281 at 62,214 (2002). See also *CenterPoint Energy Gas Transmission Co.*, 109 FERC ¶ 62,118 at 64,223 (2004) and *Dominion Transmission, Inc.*, 104 FERC ¶ 61,267 at P 48 (2003).

²² See *Northern Border Pipeline Co. (Northern Border)*, 92 FERC ¶ 61,243 at 61,775 (2000).

²³ In view of Southern's explanation, we find BG's negotiated rate does not place existing customers at any potential disadvantage with respect to its Fuel Sharing Provision; consequently, there is no risk of existing customers making inappropriate contributions to BG. We find Alabama Gas' request for a determination on BG's eligibility related to its negotiated rate for fuel savings refunds under Southern's GT&C section 35 to be outside the scope of this proceeding; it is appropriately addressed in the annual filing required under GT&C section 35.

²⁴ See, e.g., *Williston Basin Interstate Pipeline Co.*, 103 FERC ¶ 61,269 (2003), *Kern River Gas Transmission Co.*, 96 FERC ¶ 61,137 (2001).

²⁵ See *Southern Star Central Gas Pipelines, Inc. (Southern Star)*, 102 FERC ¶ 62,165 at 64,274 (2003), stating "that the pre-determination of rolled-in rate treatment relies on the facts, estimates, and assumptions presented" in the certificate proceeding, with the proviso that "changed circumstances are a basis for revisiting the issue" in the subsequent section 4 rate proceeding.

advance of the construction of new facilities, in order to “enable existing and potential new shippers to make appropriate decisions pre-construction to protect their interests either in the certificate proceeding or in their contracts with the pipeline.”²⁶ Finally, we note that our predetermination in favor of rolled-in rate treatment does not constitute approval of the negotiated rates contained in the precedent agreements with BG and Progress Energy.²⁷

38. While protesting parties do not dispute that under the terms of the precedent agreements the proposed Cypress expansion will pay for itself, they worry that if these prospective shippers do not actually contract for service, expansion revenues will be inadequate to cover expansion costs, and existing customers could be required to subsidize the Cypress Pipeline. However, if the Phase II or Phase III facilities are not constructed, or if there are significant cost overruns or other unanticipated expenses, a showing of such by participants in Southern’s future section 4 general rate case will constitute evidence of a material change in relevant facts or circumstances, and result in a reexamination of the rolled-in rate issue.²⁸

C. Adverse Impacts Related to Gas Quality and Gas Interchangeability

39. The LDCs and end users that object to Southern’s proposal – Peoples Gas, Florida Power & Light, and Florida Gas Utility – are all located in Florida; they are served directly by FGT and only indirectly by Southern’s upstream system. Consequently,

²⁶ *Policy Statement on New Facilities*, 88 FERC ¶ 61,227 at 61,746-47 (1999). *See, e.g., Transcontinental Gas Pipe Line Corporation*, 112 FERC ¶ 61,170 at 61,910 (2005).

²⁷ We decline to examine negotiated rates in the context of our review of the merits of a certificate application. *See, e.g., Tennessee Gas Pipeline Company*, 101 FERC ¶ 61,360 at 62,508 (2002); *East Tennessee Natural Gas Company*, 98 FERC ¶ 61,331 (2002); *Texas Eastern Transmission Corporation*, 95 FERC ¶ 61,057, *order on reh'g*, 95 FERC ¶ 61,367 (2001).

²⁸ Moreover, as is our standard practice where a pipeline has relied in its application on precedent agreements to demonstrate market demand for its proposed project, we will condition any future certificate authorization so that Southern cannot commence construction of any phase of its project until it has executed contracts that reflect the levels and terms of service represented in the precedent agreements submitted for that phase of the project.

FGT's tariff will control the character of the gas the protesting parties receive and, therefore, control the gas quality and interchangeability standards that Southern must meet in order to deliver vaporized LNG to FGT.

40. To date, FGT has traditionally received gas from domestic sources. However, in 2004, we approved a proposal by AES to deliver vaporized LNG imports to FGT.²⁹ The gas quality standards in FGT's tariff were not developed in the anticipation of the receipt of vaporized LNG. Therefore, we instituted an NGA section 5 proceeding to address the consequences of the AES proposal to deliver vaporized LNG to FGT.³⁰ We directed FGT to file tariff revisions related to gas quality and interchangeability standards. On July 23, 2004, FGT did so, filing pro forma revisions to its tariff's gas quality provisions to accommodate the introduction of vaporized LNG into its system.³¹ On September 7, 2005, in *AES v. FGT*, Docket No. RP04-249-001, we established a hearing to address the issues raised by FGT's revisions to its gas quality standards.

41. Those parties that object to the gas quality and interchangeability aspects of Southern's proposed expansion are also participating in the *AES v. FGT* proceeding, and in that proceeding they have filed testimony expressing the same concerns regarding gas quality and interchangeability that they have raised here. An initial decision in the Docket No. RP04-249-001 proceeding is scheduled for April 11, 2006. The outcome of that proceeding will dictate not only the gas standards that AES must meet, but also the gas standards that Southern will have to meet to make deliveries to FGT. Thus, the gas quality and interchangeability criteria established in *AES v. FGT* should address the concerns raised by parties in this proceeding. Therefore, we will condition any certificate authorization for Southern's expansion on Southern delivering gas to the Cypress-FGT interconnect that complies with the FGT gas quality standards established in the pending Docket No. RP04-249-001 proceeding.

²⁹ *AES*, 106 FERC ¶ 61,090 (2004) (issuing authorizations), 103 FERC ¶ 61,030 (amending preliminary determination), 103 FERC ¶ 61,326 (2003) (preliminary determination).

³⁰ *AES v. FGT*, 107 FERC ¶ 61,276 (2004).

³¹ FGT filed pro forma tariff revisions to the gas quality provisions in GT&C section 2, applicable to FGT's Market Area, which includes FGT's facilities east of the Alabama-Florida state line. FGT states that it is able to effectively blend imported LNG and domestic gas volumes received in its Western Division, i.e., west of the Alabama-Florida line, and therefore did not propose revisions to its existing gas quality provisions with respect to its Western Division.

42. Southern's proposed Cypress Pipeline can only deliver gas to FGT if FGT constructs a new interconnect and expands its system to accommodate the additional volumes; FGT proposes to do so in Docket No. CP06-1-000.³² FGT and Southern plan to place the initial phase of their proposed companion expansions in service on the same day. We view the two companies' facilities' functional interdependence as sufficient assurance that unless and until FGT comes to terms with its own customers on issues of gas quality and interchangeability in the Docket No. RP04-249-001 proceeding, FGT customers will not be placed in a position of receiving LNG delivered by Southern to a new interconnect with FGT. Because Southern's expansion relies on FGT's expansion, we will condition authorization of Southern's proposal on authorization of FGT's proposal.³³

D. Impacts on Landowners

43. Southern states that 95 percent of the proposed pipeline route will be immediately adjacent to existing right-of-way corridors. Southern notes that its proposed project's route is similar to a route proposed in 2001 by Cypress Natural Gas Company, L.L.C. in

³² FGT filed its expansion application on October 5, 2005. FGT's proposed expansion will interconnect FGT with Southern's proposed Cypress Pipeline and add compression and looping segments on FGT's existing line to transport the volumes received from Southern. Both expansion sponsors participated in prefilings: Southern in Docket No. PF05-7-000 and FGT in Docket No. PF05-11-000. In view of the direct connection between the two proposals, we will study the environmental aspects of both proposals in the same environmental impact statement (EIS).

³³ We note that in 2004, in response to the industry's active interest in developing additional LNG import facilities, the Commission initiated a proceeding in Docket No. PL04-3-000 to consider gas quality and interchangeability issues and how costs incurred to adapt natural gas facilities to accommodate greater LNG imports should be distributed. Parties to this Southern proceeding propose differing cost allocation schemes; however, we believe it would be premature to assign responsibilities for additional costs prior to any evidence that there will, in fact, be costs incurred as a consequence of Southern's transporting increased LNG volumes. In the event the Commission acts in the proceeding in Docket No. PL04-3-000 to impose generic requirements on jurisdictional companies, the new requirements will apply to Southern and its proposed Cypress Pipeline.

Docket No. CP01-180-000, *et al.*³⁴ Thus, for the most part, landowners along the proposed route have been contacted twice, once by Cypress Natural Gas Company, L.L.C. in 2000 and again by Southern in 2004. Southern states that landowners have been “overwhelmingly cooperative” and that approximately 95 percent of the parcels impacted by its proposal have been surveyed.

44. Under our Policy Statement on New Facilities, one factor we consider when certificating a project is the extent to which the applicant has obtained rights of way by negotiation to minimize the use of eminent domain. We acknowledge the efforts, both in 2000 and 2004, undertaken in developing the proposed project’s route, and find these efforts have mitigated adverse economic impacts on landowners. Nevertheless, several landowners have submitted specific objections to the proposed routing. We reach no decision on those objections here, but defer our consideration and review landowners’ concerns to a subsequent order addressing the environmental aspects of Southern’s proposal.

E. Engineering

45. We have reviewed and analyzed the flow diagrams and flow information submitted by Southern. Our analysis confirms that the proposed facilities are properly designed to accommodate up to 500 MMcf/d from Southern’s existing pipeline near Rincon, Georgia, to its terminus at a point of interconnection with FGT’s system in Clay County, Florida. Our analysis also shows that, by virtue of the points of interconnection with Southern’s Wrens-Savannah Line and South Georgia facilities, the Cypress Pipeline will increase Southern’s system operational flexibility and reliability by allowing a new gas supply source at the terminus of the South Georgia system. The points of interconnection with both the South Georgia system and FGT will also offer Southern’s customers greater flexibility in their potential supply portfolios in order to meet both existing and new loads.

46. Atlanta Gas and Chattanooga Gas assert that Southern’s application does not provide sufficient information to be able to assess how additional gas volumes delivered to Austell upstream of the Marietta Delivery Point may affect Southern’s deliveries to Atlanta Gas at Marietta. Southern replies that the engineering information and flow studies provided by its Exhibit G and G-I demonstrate that there will be no impact on

³⁴ See 66 Fed. Reg. 24,127 (May 11, 2001) (notice of proposed project). That previous proposal was rejected because the applicant was unable to present precedent agreements, contracts, or other evidence necessary to establish a need for the proposed project. See Commission letter order of September 5, 2001.

Southern's ability to deliver gas to Atlanta Gas at Marietta. Southern describes the Marietta Delivery Point as near the terminus of the Marietta Line and explains that by reducing the pressure drop as proposed, it will effectively increase the line's capacity without diminishing Southern's capability to serve Atlanta Gas at Marietta.

47. We find that Southern's Exhibit G and G-I and its October 13, 2005 data response demonstrate that its proposed facility modifications will allow Southern to transport additional volumes to Austell while maintaining operating pressures at the terminus of the Marietta Line in excess of the contractual delivery pressure. We therefore conclude that Southern's proposed new service to Austell and the proposed modification to the Marietta Delivery Point will not prevent Southern from maintaining its contractual delivery obligations to Atlanta Gas.

48. Atlanta Gas and Chattanooga Gas claim that Southern is currently limiting its hourly takes at the Marietta Delivery Point. Southern's contractual requirement with Atlanta Gas at Marietta is for even hourly takes, not variable or uneven flow rates. There is no evidence in the record to show that the character of the service provided by Southern to Atlanta Gas will be degraded after proposed facility modifications to the Marietta Delivery Point. Thus, we find nothing to substantiate Atlanta Gas' concerns with respect to variable flow rates at Marietta, and find Southern will be able to continue to provide the same character of service to Atlanta Gas at Marietta before and after the proposed expansion.

F. Environmental

49. On February 18, 2005, the Commission issued a notice of its intent to prepare an EIS for Southern's proposed Cypress Pipeline.³⁵ The Commission staff's independent analysis of the issues will be in the EIS. The draft EIS will be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review after the draft EIS is published. All comments on the draft EIS will be considered before recommendations are made to the Commission.

IV. Summary

50. For the reasons discussed above, we reach a preliminary determination, subject to completion of our environmental review that (1) the benefits of the proposed Cypress

³⁵ 70 Fed. Reg. 9,299 (February 25, 2005).

Pipeline will outweigh any potential adverse effects, consistent with our policy statements on new facilities and interconnections, and that the proposed project is required by the public convenience and necessity, and that (2) absent a material change in circumstances, the costs associated with Southern's proposed expansion will qualify for rolled-in rate treatment when Southern makes its next NGA section 4 rate filing.

51. At a hearing held on November 17, 2005, the Commission, on its own motion, received and made a part of the record all evidence, including the application, as amended and supplemented, and exhibits thereto, submitted in this proceeding. Upon consideration of this record,

The Commission orders:

(A) A preliminary determination is made that the issuance of a certificate to Southern under NGA section 7(c), authorizing the construction and operation of the natural gas facilities, as described and conditioned herein and in the application as amended, would on the basis of all pertinent non-environmental issues, be required by the public convenience and necessity.

(B) The preliminary determination made in Ordering Paragraph (A) contemplates issuance, after completion of a pending review of all environmental matters, of a final order by the Commission determining that the proposal is required by the public convenience and necessity, in accordance with the National Environmental Policy Act and NGA section 7(c).

(C) Any certificate, authority, or approval issued in a final order in this proceeding will be conditioned on:

(1) Southern's constructing and making available for service the facilities described herein, pursuant to paragraph (b) of section 157.20 of the Commission's regulations, on the following schedule: the Phase I facilities by May 1, 2007; the Phase II facilities by May 1, 2009; and the Phase III facilities by May 1, 2010;

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

(3) Southern's executing contracts for the levels and terms of service represented in the precedent agreements for each phase of construction, prior to commencing construction of each phase of construction;

(4) Southern's compliance with FGT's tariff's gas quality standards, as determined in the *AES v. FGT* proceeding in Docket No. RP04-249-001; and

(5) Commission authorization of FGT's proposed companion expansion in Docket No. CP06-1-000.

(D) Southern may roll the costs of its proposed Cypress Pipeline expansion into its systemwide cost of service in its next NGA section 4 rate proceeding, provided there are no material changes in relevant facts and circumstances.

(E) The protests of the Municipals, Florida Power & Light, and Peoples Gas are denied or deferred, for the reasons discussed herein.

(F) The protests of Austin Hill Realty, Charles W. Bostwick, Clark and Aylor, the Morgans, and Hilda Whitaker will be addressed in a subsequent order that fully examines the environmental aspects of the proposed project.

(G) The motions to intervene out-of-time are granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

Intervenors in Southern Natural Gas Company's Docket No. CP05-388-000

Alabama Gas Corporation
Alabama Municipal Distributors Group
Alabama Municipal Distributors Group jointly with Southeast Alabama Gas District
Atlanta Gas Light Company jointly with Chattanooga Gas Company
Austell Gas System
Austin Hill Realty*
BG LNG Services, LLC
Charles W. Bostwick
BP Energy Company
Calhoun Power Company I, LLC
Chevron U.S.A. Inc.
ConocoPhillips Company
Eugene Clark, Sr., jointly with Frances H. Clark, John Aylor, and Debbie Aylor
Columbia Energy Center L.L.C.
Coral Energy Resources, L.P.
Board of Water, Light and Sinking Fund Commissioners of the City of Dalton Georgia
Dominion Cove Point LNG, LP*
Duke Energy Trading and Marketing, L.L.C. jointly with
Duke Energy Marketing America, L.L.C.
Daniel T. Elliot
Dominion Cove Point LNG, L.P.*
ExxonMobil Gas & Power Marketing Company, a division of ExxonMobil Corporation
Florida Cities
Florida Gas Transmission Company
Florida Gas Utility
Florida Power & Light Company
Florida Power Corporation d/b/a Progress Energy Florida, Inc.
Georgia Industrial Group
Georgia-Pacific Corporation
Industrial Gas Users of Florida and Florida Industrial Gas Users
JEA

*Motion to intervene filed out-of-time.

Henry Morgan jointly with G.P. Morgan, III
Municipal Gas Authority of Georgia
Peoples Gas System, a Division of Tampa Electric Company
ProLiance Energy, LLC
SCG Pipeline, Inc.
Shell NA LNG LLC
South Carolina Electric & Gas Company and SCANA Energy Marketing, Inc.
Southeast Alabama Gas District
Southern Cities (the cities of Cordele, Dublin, Cartersville, Cutbert, Hawkinsville, La
Grange, and Tallapoosa, Georgia)
Southern Company Services, Inc.
Statoil Natural Gas LLC*
Transcontinental Gas Pipe Line Corporation
United States Gypsum Company
Hilda Whitaker

*Motion to intervene filed out-of-time.