UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Natural Gas Pipeline Company of America	Docket Nos.	CP06-448-000
Kinder Morgan Louisiana Pipeline LLC		CP06-449-000 CP06-450-000 CP06-451-000

PRELIMINARY DETERMINATION ON NON-ENVIRONMENTAL ISSUES
AND PRELIMINARY DETERMINATION ON ABANDONMENT AUTHORITY

(Issued March 15, 2007)

1. On September 8, 2006, Natural Gas Pipeline Company of America (Natural) filed an application in Docket No. CP06-448-000 pursuant to section 7(b) of the Natural Gas Act (NGA), for approval to abandon by lease to Kinder Morgan Louisiana Pipeline, LLC (KMLP), certain firm capacity on a long-term basis. Also on September 8, 2006, KMLP filed in Docket Nos. CP06-449-000, CP06-450-000 and CP06-451-000, pursuant to section 7(c) of the NGA and Part 284 of the Commission's regulations, for a certificate of public convenience and necessity to construct and operate natural gas pipeline facilities that will originate in Cameron Parish, Louisiana and terminate in Evangeline Parish, Louisiana (Louisiana Pipeline Project) and to lease firm capacity on a long-term basis from Natural.[1] Further, KMLP requests a blanket construction certificate under Part 157,

[1] On February 17, 2006, the Commission granted KMLP's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF06-16-000 to staff activities involving its proposed Louisiana Pipeline Project. As of September 8, 2006, with the filing of the Louisiana Pipeline Project certificate applications, the NEPA Pre-Filing Process for this project ended.

Subpart F of the Commission's regulations and requests authority for self-implementing interstate transportation service under Part 284, Subpart G of the Commission's regulations. KMLP also seeks approval of proposed recourse rates for transportation service, approval of its pro forma tariff, and the issuance of a preliminary determination on non-environmental issues.

2. As discussed below, we find that the requested authorizations to abandon and acquire firm capacity will be required in the public convenience and necessity and will be granted, subject to certain conditions, most importantly, the completion of the environmental review of the proposals and issuance of a final order.[2]

3. Further, the Commission makes a preliminary determination that the construction authorizations requested in this proceeding, subject to the conditions discussed herein, will be in the public interest. While our findings herein support issuance of the requested authorizations, this order does not consider or evaluate any of the environmental issues in this proceeding. These issues are still pending and will be addressed in a subsequent order when the environmental review and analysis are complete. Thus, final approval of the proposals herein is dependent on a favorable environmental review and nothing in this order limits our actions regarding the environmental analysis.

I. Background

4. Natural is a Delaware corporation with a gas transmission system consisting of the Amarillo Line (Amarillo mainline) and the Gulf Coast Line (Gulf Coast mainline) as well as the A/G Line connecting the two mainlines. The Amarillo mainline extends from gas producing areas in North Central Texas, Southwest Texas, Southeast New Mexico, Southwest Oklahoma and the Panhandle areas of Texas and Oklahoma through the States of New Mexico, Texas, Oklahoma, Kansas, Nebraska, Iowa and Illinois, terminating at points in and near the metropolitan Chicago area. The Gulf Coast mainline extends from the offshore and onshore gas producing areas of South Louisiana and the Gulf Coast of Texas through the States of Louisiana, Texas, Arkansas, Missouri and Illinois, terminating at points in and near the metropolitan Chicago area, which are in common with the terminal points of the Amarillo Line. The A/G Line, an interconnection between the Amarillo mainline and the Gulf Coast mainline, runs from Carter County, Oklahoma to Cass County, Texas.

---

[2] Capacity lease arrangements are construed as an abandonment pursuant to NGA section 7(b) by the lessor and an acquisition pursuant to NGA section 7(c) by the lessee. *See e.g., Midwestern Gas Transmission Corp. and Trunkline Gas Co.*, 73 FERC ¶ 61,210 (1995).

5. KMLP is a new limited liability company formed by Kinder Morgan Energy Partners (KMP) to construct a new pipeline system to transport regasified imported LNG from the Cheniere Sabine Pass LNG Terminal in Cameron Parish Louisiana to various delivery points in Louisiana. KMLP does not currently own any pipeline facilities and is not currently engaged in any natural gas transportation operations. Upon acceptance of any certificates of public convenience and necessity issued in this proceeding, and the commencement of service authorized thereunder, KMLP will become a "natural gas company" engaged in the transportation of natural gas in interstate commerce and subject to the Commission's jurisdiction under the NGA.

II. Interventions, Protests, Comments

6. Joint notice of the Natural and KMLP applications was published in the *Federal Register* on September 26, 2006 (71 Fed. Reg. 56,139). Central Illinois Light Company d/b/a AmerenCILCO, *et al*., Chevron U.S.A. Inc. (Chevron U.S.A.), ConocoPhilips Company, [3] Pine Prairie Energy Center, LLC, Sabine Pass, LNG LP (Sabine), Sempra LNG, Targa Louisiana Field Services and Targa Louisiana Intrastate LLC (jointly), The Peoples Gas Light and Coke Company and North Shore Gas Company (jointly), Total Gas & Power North America, Inc.(Total Gas), and W.L. Vincent Limited Partnership filed timely, unopposed motions to intervene.[4] Chevron U.S.A.'s and Sabine's filings also contained comments. On November 30, 2006, and December 13, 2006, respectively, Chevron U.S.A. and Total Gas filed additional comments in support of the applications. On October 13, 2006, Nicor Gas filed a late motion to intervene. The Commission finds that granting the motion to intervene out of time will not delay, disrupt, or otherwise prejudice this proceeding or place an additional burden on existing parties. Therefore, for good cause shown, we will grant the motion.[5]

[3] ConocoPhilips Company and Pine Prairie Energy Center did not file to intervene in the Natural application.

[4] Timely unopposed motions to intervene and timely notices of intervention are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2006).

[5] 18 C.F.R. § 385.214(d) (2006).

III. Request for Abandonment by Lease Authority

Proposals

7. KMLP proposes a new interstate natural gas pipeline system to provide open-access natural gas transportation to the systems of other interstate and intrastate natural gas pipelines. KMLP has entered into precedent agreements with Chevron and Total Gas providing for firm transportation service on the Louisiana Pipeline Project from the Cheniere Sabine Pass LNG Terminal. To effectuate such transportation service, in part, KMLP proposes to lease firm capacity from Natural. By leasing capacity from Natural, KMLP states that it will reduce the overall cost and improve the efficiency of the project, as well as reduce new pipeline construction and the potential for associated environmental disruption.

8. Correspondingly, Natural seeks authority to abandon 200,000 Dth/d of available firm capacity on its system by lease to KMLP on a long-term basis pursuant to the terms of a capacity lease agreement between the parties dated August 31, 2006. The leased capacity will start at a point on Natural's Louisiana Line in Cameron Parish, Louisiana, where it will interconnect with the Louisiana Pipeline Project. The leased capacity will extend east about 16 miles to a lateral of Natural's that extends south to Johnson's Bayou, where KMLP proposes two delivery points. That 24-inch lateral (which is approximately 3 miles long and is called the UTOS Lateral) historically has had a north-bound flow into Natural's Louisiana Line for movement westbound. In recent years, there has been little or no flow. The leased capacity will also exist in the interconnection facility between the Louisiana Pipeline Project and Natural's Louisiana Line, and in each of the two delivery points to be built at Johnson's Bayou.

9. The redirection of these flows from west to east on the Louisiana Line is being made possible by the installation of certain auxiliary piping facilities at Natural's existing Compressor Station No. 342 (CS 342) under section 2.55(a) of the Commission's Regulations. KMLP will reimburse Natural for the cost of these facilities. Natural states that the lease arrangement will positively impact Natural's shippers by making additional capacity available in the short term. Further, Natural states that the short-haul nature of the lease arrangement on Natural's Louisiana Line means that there will be no incremental compressor utilization as a result of the lease.

10. The lease of 200,000 Dth/d of firm capacity from Natural is an integral part of the Louisiana Pipeline Project and will avoid the construction of new pipeline facilities. Under the capacity lease agreement, KMLP has contracted with Natural for an initial primary term of 21 years and 6 months, with an initial annual lease payment of $500,000 escalating to $1,000,000 annually over its primary term with additional escalation clauses

built into the agreement covering the negotiated roll-over provisions. The lease payment compensates Natural for its related costs in providing the lease capacity.

11. Natural says that it and its customers will not subsidize the project. Natural also says that its customers will not suffer any economic detriment because the revenues received by Natural will exceed its costs.

Discussion

12. Since Natural and KMLP propose a lease agreement for the transportation capacity of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposals are subject to the requirements of subsections (b), (c) and (e) of section 7 of the NGA.

The Certificate Policy Statement

13. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction by establishing criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest.[6] A proposal to lease capacity with no related construction of facilities, such as in this proceeding, does not educe the Policy Statement's concerns with overbuilding, disruptions of the environment and the exercise of eminent domain.

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

15. Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.[7] To enter into a lease agreement, the lessee generally needs to be a natural gas company under the NGA and needs section 7(c) certificate

---

[6] *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000).

[7] *Texas Eastern Gas Transmission Corp.*, 94 FERC ¶ 61,139 at 61,530 (2001).

authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits for using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease on a net present value basis; and (3) the lease arrangement does not adversely affect existing customers.[8]

16. No current transmission service will be affected by the abandonment. By leasing capacity from Natural, KMLP will reduce the overall cost and improve the efficiency of the Louisiana Pipeline Project. It will also minimize new pipeline construction and the potential for associated environmental disruption. Under the lease agreement, KMLP will pay less than Natural's maximum tariff rate.

17. Natural's shippers will benefit from the fact that 200,000 Dth/d of currently unutilized capacity will now be subject to a long-term lease. In addition, Natural's existing customers will have short-term access to the redirected capacity. Also, the short-haul nature of the lease arrangement on Natural's Louisiana Line means that there will be no incremental compressor utilization as a result of the lease. Natural and its customers will not subsidize the Louisiana Pipeline Project. KMLP will reimburse Natural for the cost of building the interconnection facilities. Natural shall treat the capacity lease as an operating lease for accounting purposes. Natural is directed to record the monthly receipts in Account 489.2, Revenues from Transportation of Gas of Others Through Transmission Facilities. We have authorized similar accounting treatment for transportation capacity lease agreements in other cases.[9] These revenues will be available as a credit against Natural's cost of service in any future rate case.

18. Therefore, the project will not result in adverse operational or economic impacts on existing Natural customers or on any other pipelines or its customers. Based on the benefits the proposed project will provide to the market and the lack of adverse effects on existing customers, other pipelines, landowners, or communities, we find that the public convenience and necessity will require the approval of the lease proposal, subject to the

---

[8] *See Columbia Gas Transmission Corp.*, 79 FERC ¶ 61,160, at 61,755-59 (1997); *Midwestern Gas Transmission Co.*, 73 FERC ¶ 61,320, at 61,888 (1995); and *Mobile Bay Pipeline Projects*, 55 FERC ¶ 61,358, at 62,078 (1991).

[9] *See Millennium Pipeline Company, L.P.*, 97 FERC ¶ 61,292 (2001), and *Trunkline Gas Company*, 80 FERC ¶ 61,356 (1997).

environmental review of KLMP's Louisiana Pipeline Project proposal and issuance of a final order in these dockets.

Environmental Impact

19. Since the lease proposal by KLMP requires no construction of facilities, the proposal qualifies as a categorical exclusion under section 380.4(a)(27) of the Commission's regulations and therefore no environmental assessment is required.[10]

20. Because the interconnection facilities to be constructed by Natural will be done under its existing blanket certificate authority, all environmental clearances must be obtained prior to construction and must be reported in Natural's annual report of blanket certificate projects for the year in which the construction occurs. Therefore, the Commission's approval of this proposal will not be a major federal action significantly affecting the quality of the human environment.

IV. KLMP's requests for certificate authority

21. KMLP is a new company formed for the purpose of constructing, owning, and operating the Louisiana Pipeline Project. This project began when Total and Chevron (collectively, Anchor Shippers) issued a public request for proposals (RFP) looking for a company to build a pipeline that could transport revaporized LNG from the tailgate of the Cheniere Sabine Pass LNG Terminal in Cameron Parish Louisiana (Terminal), where the Anchor Shippers each have 1 Bcf of firm capacity, to various delivery points in Louisiana.

22. The Anchor Shippers requested, and KMLP agreed to construct, a project that would function to give the Anchor Shippers access to multiple markets. KMLP states that another purpose of the project is to address concerns that a constraint in existing pipeline takeaway capacity might cause the Terminal to reduce its vaporization levels, creating the possibility that the Terminal's storage capacity could quickly become full. This, in turn, could delay tankers offloading, prevent the effected tankers from lifting their next scheduled cargoes, and possibly strand LNG liquefaction capability. KMLP states that to avoid such an undesirable upstream "domino" effect, the project is designed to include redundant off-take capability that exceeds the Anchor Shippers' firm rights at the Terminal, thus enabling the Anchor Shippers to physically "unload" the Terminal.

[10] 18 C.F.R. § 380.4 (a)(27) (2006).

23. Accordingly, KMLP requests certificates of public convenience and necessity authorizing: (i) the construction and operation of a new pipeline system, which will not include any compression, that will extend from the Terminal to various delivery points in Cameron, Calcasieu, Jefferson Davis, Acadia and Evangeline Parishes, Louisiana, including a long-term lease of capacity from Natural, along a path within Cameron Parish, Louisiana from Natural's proposed interconnect with KMLP near Sabine Pass to two proposed delivery points off Natural's 24-inch UTOS Lateral in the Johnson's Bayou area; (ii) the undertaking of self-implementing interstate transportation of natural gas under Part 284, Subpart G of the Commission's Regulations; and (iii) the future construction of facilities pursuant to the blanket certificate authority under Part 157, Subpart F of the Commission's Regulations. KMLP also requests approval of its proposed recourse rates for transportation service, and of its pro forma Tariff, which includes the authority to enter into negotiated rate agreements. Further, KMLP requests that the Commission issue a preliminary determination of the non-environmental aspects of this proceeding.

24. Specifically, the proposed Louisiana Pipeline Project which will consist of: (1) approximately 132 miles of 42-inch pipeline from the Cheniere Sabine Pass LNG Terminal (Sabine LNG Terminal) in Cameron Parish, Louisiana to a point of interconnection with an existing Columbia Gulf Transmission Company line in Evangeline Parish, Louisiana (Leg 1); (2) approximately 1 mile of 36-inch pipeline that will extend from the Sabine LNG Terminal to a point of interconnection with Natural's existing interstate pipeline located north of the Terminal (Leg 2); and (3) approximately 2.3 miles of 24-inch pipeline extending away from Leg 1 (at about milepost 110) to the existing Florida Gas Transmission Company compressor station in Acadia Parish, Louisiana. KMLP designed the project to have a peak day capacity of not less than 2,130,000 Dth on Leg 1 and not less than 1,265,000 Dth on Leg 2 (for a total not less than 3,395,000 Dth of natural gas).

25. The project will provide a new supply source for other pipelines. Specifically, Leg 1 interconnects with ANR, Columbia Gulf, Florida Gas, Sabine Pipe Line, Southwest Loop Delivery Point, Tennessee Gas , Texas Eastern, Texas Gas, Transco, and Trunkline Gas, and Leg 2 interconnects with Natural.

26. Leg 2 of the project includes a long-term lease of 200,000 Dth per day of firm capacity from Natural along a path within Cameron Parish, Louisiana from Natural's proposed interconnect with KMLP to two proposed delivery points off Natural's 24-inch UTOS Lateral in the Johnson's Bayou Southwest Loop for deliveries to Bridgeline Holdings, L.P. and Southwest Loop Johnson's Bayou. KMLP will regulate the 1,440 psig at the Terminal down to 1,100 psig for delivery to Natural.

27. KMLP proposes to place Leg 1 of the project in service by October 1, 2008, and Leg 2 as soon as possible thereafter, but no later than April 1, 2009.

Open Season and Precedent Agreements

28. KMLP held an open season from September 22 to October 12, 2005, to solicit interest in its proposed project. KLMP offered both negotiated and recourse rates. No other parties besides the Anchor Shippers expressed interest. Therefore, KMLP awarded the Anchor Shippers 100 percent of the firm capacity created by the project. KMLP executed Precedent Agreements at negotiated rates with twenty-year terms with both of the Anchor Shippers.

Discussion

29. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

Certificate Policy Statement

30. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.[11] The Certificate 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 explained that in deciding whether to authorize the construction of major new pipeline facilities, we balance 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 environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

31. 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

[11] *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000).

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 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 we proceed to complete the environmental analysis where other interests are considered.

32. The threshold requirement for certification of major new facilities is a finding that the applicant will financially support the project without relying on subsidization from its existing shippers. Since KMLP is a new pipeline company and has no existing customers, there is no potential for subsidization by existing customers. Likewise, there are no existing shippers that could be adversely affected.

33. No existing service by any other pipeline system will be displaced because this new system will provide initial transportation service away from the newly constructed Terminal.[12] However, the transportation service provided by the KMLP system will provide a new source of gas supply for existing pipelines.

34. KMLP states that it will negotiate to acquire right of way wherever possible and will seek to minimize use of eminent domain procedures.

35. We find that Louisiana Pipeline Project's benefits will outweigh any adverse impacts. The Project provides a necessary link between the Terminal and existing pipeline systems capable of transporting natural gas throughout the eastern United States.

36. In sum, the proposed facilities will be constructed without subsidies. We find no identified adverse effect on existing customers, other pipelines, landowners, or communities. Thus, this order makes a preliminary determination, pending completion of the environmental review, that KMLP's proposals herein are in the public convenience and necessity under section 7(c).

[12] We note that Sabine generally supports the construction of facilities that will provide more take away capacity options from the Terminal and thus benefit terminal users. However, in its comments, Sabine rejects the suggestion that the KLMP facilities address any operational shortcomings at the terminal.

Project Financing

37. The estimated cost of the Louisiana Pipeline Project is $ 517 million, including overhead, contingency, section 2.55(a) auxiliary installations, and reimbursement of facility costs to interconnect pipelines. KMLP plans equity financing through its parent, KMP, and debt raised in the commercial bank market. Upon commencement of service from the proposed project, KMLP will replace its construction debt with long term debt at 6.75 percent and will maintain a debt/equity capitalization of 60 percent debt and 40 percent equity.

Recourse Rates

38. KMLP proposes firm and interruptible open-access transportation services under Rate Schedules FTS and ITS and related General Terms and Conditions (GT&C) on a nondiscriminatory basis under Part 284 of the Commission's regulations. Because of the scope of its system and the operational need for all shippers to have use of the entire system, KMLP proposes a single zone for its system with postage stamp rates.

39. KMLP proposes a two-part recourse rate for firm transportation service based on the applicable cost of service, the design capacity of the proposed facilities, plus an imputed level of interruptible service. Specifically, KMLP calculates a $2.4300 per Dth maximum monthly reservation rate and a zero initial firm commodity rate, since the system will be a free flow system with no compression. KMLP proposes a one-part recourse rate for interruptible transportation service. KMLP calculated the $0.1065 per Dth maximum interruptible rate at 75 percent load factor of the Rate Schedule FTS rate. Because KMLP oversized the project to provide redundant takeaway capacity from the terminal, interruptible shippers' use of the backup capacity will have little risk of interruption. As a result, KMLP asserts, any party that receives an allocation of terminal vaporization capacity but receives interruptible capacity on the project could access the project with a quality of service that, although interruptible, is in fact firm.

40. KMLP also proposes an authorized overrun rate equal to its interruptible rate at $0.1065 per Dth. The shippers will also be responsible for Annual Charge Adjustments and for line heating fuel and unaccounted for fuel (GLU).[13] KMLP's current design of the new system contemplates no compression, because the system design and operating

[13] GT&C section 36 requires the shippers to reimburse KMLP for unaccounted for gas and line heater fuel necessary to transport their respective contract quantities. Shippers will also reimburse KMLP for fuel gas if and when compression is added to the system in the future.

parameters rely upon the send out pressure of the Terminal.[14] Exhibit P shows KMLP's calculation of its estimated 0.10 percent Line Heater Gas charge and 0.40 percent GLU charge for its first year of service.

41. KMLP's application shows that the proposed cost-based rates reflect a straight fixed variable (SFV) rate design calculated over a projected 33.3 year life of the project. KMLP estimates a $99,387,977 first year cost-of-service and 3,405,000 Dth per day in design capacity (3,395,000 Dth per day in firm transportation and 10,000 Dth per day in interruptible transportation or 1,242,825,000 Dth annually). The major components underlying KMLP's estimated annual cost of service include a 60 percent debt and 40 percent equity capital structure, with a debt cost of 6.75 percent, a 14 percent return on equity, a 9.65 percent overall rate of return, and an annual straight line depreciation accrual rate of 3 percent.[15]

42. The Commission approves KMLP's proposed 60/40 debt/equity ratios and 14 percent ROE as consistent with determinations for similar pipeline projects designed to serve LNG import terminals.[16] Further, the Commission approves KMLP's proposed straight-line 3 percent depreciation rate per annum based upon KMLP's projected 33.3-year life of the project. Such depreciation method conforms to the Commission's Uniform System of Accounts.[17]

---

[14] Leg 1 of the project will receive gas from the Terminal at 1,440 psig.

[15] KMLP indicates that its proposed 3 percent depreciation rate places risk on KMLP because the FTSAs contain a 20-year primary term, and the proposed rate is lower than the 5 percent depreciation rate approved by the Commission for other LNG related projects. *Citing Cheniere Corpus Christi Pipeline Co*., 112 FERC ¶ 61,081 (2005); *Sabine Pass LNG, L.P., et al.*, 109 FERC ¶ 61,324 (2004); and *Ingleside Energy Center, LLC and San Patricio Pipeline LLC*, 112 FERC ¶ 61,101 (2005).

[16] *See, e.g. Port Arthur LNG, L.P.*, 115 FERC ¶ 61,344 at P 31 (2006) and *Corpus Christi LNG, L.P.*, 111 FERC ¶ 61,081 at P 33 (2005); *San Patricio Pipeline LLC*, 112 FERC ¶ 61,101 (2005); *Cheniere Sabine Pass Pipeline Co.*, 109 FERC ¶ 61,234 (2004); and *Dominion South Pipeline, L.P.*, 113 FERC ¶ 61,064 (2005) (approving 14 percent ROE based on 50 percent debt/equity ratio).

[17] *See, e.g. Port Arthur LNG, L.P.*, 115 FERC ¶ 61,344, at P 56 (approving a 5 percent depreciation rate for a 20-year life).

43. The Commission finds the initial firm recourse rates consistent with rate proposals approved for similar greenfield projects. However, generally, the Commission will not permit an interruptible rate that is derived from the firm rate at a load factor that varies from 100 percent.[18] Since interruptible service and released capacity compete with each other, the Commission normally requires pipelines to offer firm and interruptible service at rates based on the same design. Because we are not persuaded by KMLP's argument that its interruptible service is essentially firm, we will reject KMLP's proposed interruptible rate and require KMLP to file a recalculated rate based on the 100 percent load factor equivalent of its firm rate when it files to comply with this order.

44. Further, consistent with Commission precedent, the Commission will require KMLP to file a cost and revenue study at the end of its first three years of actual operation to justify its existing cost-based firm and interruptible recourse rates.[19] In its filing, the projected units of service should be no lower than those upon which KMLP based its approved initial rates. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost-of-service data. After reviewing the data, we will determine whether to exercise our authority under NGA section 5 to establish just and reasonable rates. In the alternative, in lieu of that future filing, KMLP may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

Negotiated Rates

45. KMLP requests negotiated rate authority for its transportation services under Rate Schedules FTS and ITS pursuant to the Commission's rate policy. In its solicitation for the new Sabine LNG Terminal capacity, KMLP offered potential customers the option of paying the recourse rates or negotiated rates for the new services. KMLP's *pro forma* GT&C section 30 implements negotiated rate authority which allows the customer and KMLP to negotiate a rate or rate formula which may be less than, equal to, or greater than the cost-based maximum rate (*i.e.*, recourse rate). As specified in section 30.1(c), KMLP will file with the Commission either the negotiated rate agreement or a tariff sheet

---

[18] *See, e.g., Southern Natural Gas Company and SCG Pipeline, Inc.*, 99 FERC ¶61,345 at P 87 (2002).

[19] *See, e.g., Trunkline LNG Co.*, 82 FERC ¶ 61,198, at 61,780 (1998), *aff'd sub nom. Trunkline LNG Co. v. FERC*, 194 F.3d 68 (D.C. Cir. 1999); *Horizon Pipeline Co., L.LC.*, 92 FERC ¶ 61,205, at 61,687 (2000); and *Vector Pipeline Co.*, 85 FERC ¶ 61,083 (1998).

no later than the business day on which service commences under the negotiated rate agreement reflecting the legal name of the negotiated rate shipper, the negotiated rate or rate formula, the type of service, the receipt and delivery points applicable to the service, the volume of gas to be transported, and other charges. The tariff sheet will also incorporate a statement that the agreement does not deviate from the form of service agreement in any material respect. KMLP's negotiated rate provisions also include capacity award procedures at section 30.2 providing, in part, that KMLP will treat shippers paying a negotiated rate that exceeds the maximum rate as paying the maximum rate for purposes of capacity allocation and right-of-first refusal bids. KMLP will not permit replacement shippers to bid or pay a rate greater than the maximum rate.
At section 30.3, KMLP proposes to maintain separate accounting records identifying all quantities transported, billing determinants, rate components, surcharges and revenue associated with each negotiated rate transaction to allow parties examining these transactions to separately identify them in future rate cases.

46. The Commission finds that KMLP's proposal to offer negotiated rates conforms to the guidelines for negotiated rates as articulated in the Commission's Alternative Rate Policy Statement,[20] with one exception. If KMLP elects to file a tariff sheet summary of its negotiated rate agreements, the summary must include the beginning and ending dates of the contract term for each transaction.[21] We direct KMLP to revise GT&C section 30.1(c), accordingly.

Pro Forma Tariff

47. KLMP's proposed pro forma tariff contains the recourse rates for KMLP's new firm and interruptible services, related rate schedules, the GT&C, and a form of service agreement for each service. KMLP states that the tariff complies with Commission Order Nos. 636 and 637 (e.g., an interactive website, a capacity release program, segmentation, flexible receipt and delivery point rights, scheduling priorities, creditworthiness procedures, a regulatory right of first refusal for maximum recourse rate contracts of one year or greater duration, operational control parameters and imbalance provisions, certain penalty provisions and a related penalty crediting mechanism, incorporation of the most recent version of the North American Energy Standards Board (NAESB) standards), and other standard terms and conditions consistent with other Commission-approved tariffs.

---

[20] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996).

[21] *See CenterPoint Energy Gas Transmission Co.*, 117 FERC ¶ 61,003, at P 22 (2006).

In addition, KMLP states that the GT&C under its Interactive Website provisions includes an Energy Affiliates provision to comply with the Commission's policies under Order No. 2004 and Part 358 of the Commission's regulations.

48. The Commission finds that KMLP's pro forma tariff generally complies with Part 284 of the Commission regulations and current Commission policy with the exceptions discussed below. The Commission directs KMLP to file actual tariff sheets consistent with the following directives at least 30 days but no more than 60 days prior to the commencement of service on the new facilities.

Interruptible Revenue Crediting Mechanism

49. KMLP proposes a revenue crediting mechanism in GT&C section 11.7 which requires KMLP to credit to its firm shippers 75 percent of the interruptible revenue collected. KLMP states that the crediting mechanism, when combined with an allocation of costs to interruptible service, assures that the revenue from interruptible services will benefit the Anchor Shippers underwriting the project and supporting the KMLP system.

50. The Commission's policy requires pipelines to credit 100 percent of interruptible (IT) and authorized overrun service (AOS) revenues, net of variable costs, to firm and interruptible shippers; or, in the alternative, allocate costs and volumes to these services.[22] We are not persuaded by KMLP's explanation for deviating from this policy. Accordingly, the Commission will require KMLP to revise its tariff to provide for a mechanism to credit 100 percent of the IT and AOS revenues, net of variable costs, to its firm and interruptible shippers.[23]

Creditworthiness

51. GT&C section 12 reflects the credit provisions which require Anchor Shippers, new shippers, and replacement shippers (under a capacity release or permanent assignment), to provide security in an amount equal to 42 months of reservation fees and commodity fees if such shipper fails to demonstrate creditworthiness in accordance with KMLP's tariff. KMLP determined that it needs 42 months of reservation fees backed by

[22] *See, e.g., Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272 at P 50 (2006).

[23] *See e.g., Port Author LNG, L.P.*, 115 FERC ¶ 61,344 at P 36 (2006).

a creditworthy source to justify taking the risk in the project.[24] KMLP states that the 42 months of security reflects a balance between KMLP and the Anchor Shippers committed for the full capacity of the project. At the negotiated contract rates, 42 months of credit covers less than 50 percent of the projected construction cost on the project. KMLP states that, in the case of a new pipeline, it is reasonable to extend this requirement to replacement shippers and other new shippers. Otherwise KLMP states, non-creditworthy shippers could step into the shoes of the Anchor Shippers and receive service on credit terms and conditions that do not appropriately reflect the risk to the project. KLMP states that this would leave KMLP with credit assurances lower than KMLP expected when it decided to proceed with the project.

52. The Commission recognizes the need for greater collateral for initial shippers on new construction projects. However, recently in *North Baja*, the Commission did not find it reasonable to accept a 12-month collateral requirement for subsequent shippers on the pipeline.[25] The Commission concluded that a shipper's failure to meet an excessive collateral requirement could itself result in a request for termination of service and abandonment. In such circumstances, the Commission reiterated that its three-month collateral requirement more reasonably balances the interests of the pipeline and subsequent shippers. Given the Commission's ruling in *North Baja,* we will not approve KMLP's 42-month collateral requirement for subsequent shippers here. Further, unless a permanent capacity release is approved by the pipeline, the releasing Anchor Shipper would remain bound to its contract and its collateral requirement. Thus, we are not persuaded by KMLP's argument that non-creditworthy shippers might step into the shoes of its Anchor Shippers through capacity release. Accordingly, we will accept the collateral requirements in the precedent agreements, but direct KMLP to revise its creditworthiness tariff provisions to reflect the Commission's three-month policy requirement.

NAESB Standards

53. KMLP states that its tariff proposal contains Version 1.7 Standards of the NAESB, and the recommendations of NAESB's Wholesale Gas Quadrant adopted by the Commission in Order No. 587, et al. KMLP states that the tariff includes Version 1.7

[24] *Citing, e.g., Calpine Energy Services, L.P. v. Southern Natural Gas Co.*, 103 FERC ¶ 61,273, at P 31 (2003)(approving a 30-month collateral requirement). *Citing also Creditworthiness Standards for Interstate Natural Gas Pipelines*, 111 FERC ¶ 61,412, at P 17 (2005).

[25] *North Baja Pipeline, LLC (North Baja)*, 117 FERC ¶ 61,146 (2006).

Standards regarding implementation of Order No. 2004 and gas quality reporting standards.

54. With respect to the NAESB Standards, KMLP does not address its compliance with each standard adopted under Order No. 587, et al.[26] Accordingly, when KMLP files actual tariff sheets in this proceeding, its tariff must conform to the standards adopted in Order No. 587, et al., as modified by any future NAESB requirements in effect at the time of filing. The filing must include a cross-reference showing each NAESB standard number, the tariff section containing the standard, and whether KMLP incorporated the standard verbatim or by reference. KMLP must file any information it considers relevant to its compliance with the NAESB Standards.

55. With respect to Order No. 2004,[27] subsequent to KMLP's filing, the U.S. Court of Appeals vacated the order as it applied to natural gas pipelines and remanded the case to the Commission.[28] For this reason, we direct KMLP to revise its tariff to remove affiliate information specifically required by Order No. 2004.

---

[26] On May 9, 2005, the Commission issued Order No. 587-S, in which the Commission incorporated by reference the most recent version, Version 1.7, of the consensus standards promulgated by the Wholesale Gas Quadrant of NAESB. *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-S, 70 Fed. Reg. 28,204 (May 17, 2005), FERC Stats. & Regs. ¶ 31,179 (May 9, 2005).

[27] *Standards of Conduct for Transmission Providers*, Order No. 2004, 68 Fed. Reg. 69,134 (Dec. 11, 2003), FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, 69 Fed. Reg. 23,562 (Apr. 29, 2004), FERC Stats. & Regs. ¶ 31,161 (2004), *order on reh'g*, Order No. 2004-B, 69 Fed. Reg. 48,371 (Aug. 10, 2004), FERC Stats. & Regs. ¶ 31,166 (2004), *order on reh'g*, Order No. 2004-C, 70 Fed. Reg. 284 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,172 (2005), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated*, *National Fuel Gas Supply v. FERC*, 468 F.3d 831 (D.C. Cir. 2006).

[28] The Commission has issued an interim rule promulgating temporary regulations consistent with the Court's decision and initiated a further rulemaking to propose permanent regulations. *See*, *Standards of Conduct for Transmission Providers*, Order No. 690, 72 Fed. Reg. 2427 (Jan. 19, 2007), FERC Stats. & Regs. ¶ 31,327 (2007); *Standards of Conduct for Transmission Providers, Notice of Proposed Rulemaking,* 72 Fed. Reg. 3958 (Jan. 29, 2007), FERC Stats. & Regs. ¶ 32,611 (2007) (Standards of Conduct NOPR).

Non-Conforming Precedent Agreements

56. As noted above, KMLP executed Precedent Agreements containing negotiated rates with Chevron and Total Gas for the full capacity created by the project. KMLP indicates that it tailored the agreements to address particular issues during the period prior to the in-service date without affecting the terms or conditions of the base service. KMLP requests a preliminary determination that, although certain contractual provisions may constitute a material deviation from the form of service agreement, none of the provisions are unduly discriminatory.[29] These material deviations cover liquidated damages and shipper termination rights in the event KMLP fails to meet certain milestones toward completion of the project, and a capacity test upon operation of the new pipeline to determine actual system capacity to adjust maximum daily quantities (MDQ) for the Anchor Shippers. GT&C section 1.23 incorporates the right for KMLP and the Anchor Shippers to adjust the MDQs upon completion of the project.

57. KMLP also requests that the Commission accept the firm transportation service agreements executed with the Anchor Shippers to the extent they constitute non-conforming agreements. The non-conforming provisions are discussed below.

58. The agreements provide the right for the Anchor Shippers to receive the same terms and conditions of service as future shippers paying recourse rates. KMLP indicates that this provision assures the Anchor Shippers that future competing shippers will not receive more favorable terms and conditions of service. KMLP states that these provisions conform to the Commission's Order No. 637 policy that all shippers receive service on reasonably equivalent terms and conditions. Specifically, KMLP asserts that the policy precludes interstate pipelines from individually negotiating terms and conditions of service – permitting only non-conforming contract provisions that would not negatively impact the service provided to other shippers.[30]

[29] *Citing, e.g., CenterPoint Energy Gas Transmission Co.*, 104 FERC ¶ 61,280, at P 7 (2003); and *Gulfstream Natural Gas System*, 100 FERC ¶ 61,036, at PP 14-15 (2002).

[30] *Citing* Order No. 637, FERC Stats. & Regs. Regulations Preambles (July 1996 – December 2000) ¶ 31,091 (Feb. 9, 2000); *order on reh'g*, Order No. 637-A, FERC Stats. & Regs. Regulations Preambles (July 1996 – December 2000) ¶ 31,099 (May 19, 2000); *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000); *aff'd in part and denied in part, INGAA v. FERC*, 285 F. 3d 18 (D.C. Cir. 2002). *See e.g., Northwest Pipeline Corp.*, 97 FERC ¶ 61,163 (2001).

59. The agreements provide a tariff moratorium stating that KMLP may not change and the Anchor Shippers may not challenge the terms and conditions of service under the contracts, with the exception of tariff changes mandated by the Commission and changes to the tariff balancing provisions. KMLP incorporates this arrangement with its Anchor Shippers under its Rate Schedule FTS at section 9(b).

60. The Anchor Shippers are permitted to terminate their contracts if the KMLP system fails to meet its service obligations for an extended period. KMLP indicates that the Anchor Shippers emphasized their need to be free to pursue alternative off-take options if it appeared that KMLP would not be able to perform. KMLP incorporated this right under its Rate Schedule FTS section 4(b).

61. The agreements address each Anchor Shipper's satisfaction of the credit standards in the tariff. KMLP states that these provisions conform to the GT&C and represent the application of the tariff's general principles to the specific circumstances of each Anchor Shipper. KMLP claims that these provisions provide it with adequate assurance of credit quality, while providing the Anchor Shippers protection against a change in KMLP's interpretation of its tariff.

62. Anchor Shippers agree to limitations on their rights to argue for rate changes. KMLP indicates that the Commission found, where the parties agreed to a negotiated rate, it is reasonable for the parties to include a provision that the customer not seek to change the agreed-upon negotiated rate as this assures rate certainty for the duration of the contract and both parties will receive the benefits of their bargain.[31]

63. The agreements contain a favored-nations clause such that, if KMLP offers a negotiated, discount, or recourse rate to another shipper more favorable than the Anchor Shippers' negotiated rates, KMLP must provide the favorable rate to the Anchor Shippers. KMLP states that this provision reflects the expectation of the Anchor Shippers that KMLP will not place them in the position of subsidizing other competing shippers for the purchase of LNG and the sale of gas.[32]

64. The agreements allow for liquidated damages in the event KMLP fails to perform its contractual obligations. KMLP states that this clause is within the scope of its negotiated rate authority because KMLP's ultimate liability under the liquidated damages

---

[31] *Citing Columbia Gulf Transmission Corp*., 109 FERC ¶ 61,152 (2004).

[32] *Citing Gulfstream Natural Gas System, LLC,* 100 FERC ¶ 61,036 (2002); *order on reh'g,* 101 FERC ¶ 61,368 (2002).

provision cannot exceed the reservation fees that the Anchor Shippers will pay, and therefore, it, in effect, is a provision that adjusts the total level of the reservation fee.

65. The Commission finds that the above non-conforming provisions constitute material deviations from KMLP's pro forma service agreements. However, the Commission in other proceedings has found such non-conforming provisions necessary to reflect the unique circumstances involved with the construction of new infrastructure and to provide the needed security to ensure the viability of the project.[33] KMLP supports the need for each provision to secure the necessary financial commitments for construction of the project. For this reason, the Commission finds the proposed non-conforming provisions permissible, in that they do not present a risk of undue discrimination, will not affect the operational conditions of providing service, nor result in any customer receiving a different quality of service from that available to KMLP's other customers.[34]

66. NGA section 4(c) requires that pipelines file with the Commission and "keep open . . . for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission . . . together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services." A fundamental purpose of this requirement is to provide the Commission and public with the ability to ensure against undue discrimination in a pipeline's contracting practices with respect to jurisdictional services.[35]

67. Where a pipeline's service agreement with a customer for transportation service conforms to the form of service agreement in the pipeline's tariff, that service agreement need not be filed with us or made public.[36] Under those circumstances the Commission and other interested parties have had an opportunity to determine that the form of service agreement provided in the tariff is just and reasonable and not unduly discriminatory and thus there is no need to review subsequent conforming contracts to determine if they

[33] *See Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272 at P 78 (2006).

[34] *See, e.g.*, *Gulf South Pipeline Co., L.P.*, 115 FERC ¶ 61,123 (2006); and *Gulf South Pipeline Co.*, 98 FERC ¶ 61,318 at 62,345 (2002).

[35] *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011 at 61,038-39 (1996); *ANR Pipeline Co.*, 65 FERC ¶ 61,280 at 62,304-06 (1993).

[36] 18 C.F.R. § 154.210 (2006).

comply with the NGA.[37] However, where a contract deviates materially from the form of service agreement, the Commission and the public have not had an opportunity to review the material deviation, and the contract must be filed and made public.[38] We require disclosure of contracts with material deviations, because the public disclosure of these agreements prevents undue discrimination through secret rates or terms.

68. Accordingly, KMLP must file at least 30 days before the in-service date of the proposed facilities an executed copy of each non-conforming agreement reflecting the non-conforming language and a tariff sheet identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.

Related Agreements

69. KMLP filed Facility Option Agreements between itself and Chevron and between itself and Total Gas and a Capacity Lease Agreement between itself and Natural. KMLP commits to filing any cash management agreement required by 18 C.F.R. § 260.400 within 10 days after signing the agreement.

70. KMLP filed the Facility Option Agreements and served a copy on each Anchor Shipper for informational purposes only. Under these agreements, KMLP agrees to install certain line heating, compression, interconnection, and expansion facilities if requested by the Anchor Shippers for expected and/or potential future needs. We will accept these agreements because they do not affect the Firm Transportation Service Agreements or the Part 284 transportation services created by the project.

71. KMLP filed a Capacity Lease Agreement and requests Commission approval of the August 31, 2006 agreement with Natural to lease approximately 200,000 Dth per day of firm capacity at an annual expense of $500,000 for the first five years, with increases of $250,000 on an incremental basis every five years thereafter. This lease contains initial term and term extension provisions comparable to KMLP's service commitments to the Anchor Shippers. The capacity lease path begins at the Leg 2 interconnect with Natural's Louisiana Line system and extends east approximately 16 miles to a lateral that extends south to Johnson's Bayou, where KMLP proposes two delivery points, each capable of delivering the full lease capacity. KMLP proposes to account for the 200,000 Dth per day of leased capacity as an operating lease. KMLP will record any

[37] *ANR Pipeline Co.*, 97 FERC ¶ 61,224 at 62,022 (2001).

[38] 18 C.F.R. § 164.1(d) (2006).

lease payments to Natural in FERC Account No. 858, Transmission and Compression of Gas by Others.

72. We accept KMLP's characterization of the Capacity Lease Agreement as an operating lease because it is consistent with General Instructions 19 and 20 of the Uniform System of Accounts, in that, the lease does not specify transfer of ownership to KMLP at the end of the lease term. Further, KMLP's recording of the lease payments to Account No. 858 is consistent with the accounting practices required for other pipelines.[39]

Subpart F Blanket Certificate

73. Pursuant to Section 157.204 of the Commission's Regulations, KMLP requests a blanket certificate of public convenience and necessity authorizing, *inter alia*, the construction and operation of facilities and certain abandonments under section 7 of the NGA. KMLP states that the issuance of the requested authorization will permit KMLP to respond expeditiously to the needs of the public it will serve following the receipt of the project-specific certificate authority requested herein.

Subpart G Blanket Certificate

74. Pursuant to Section 284.221 of the Commission's regulations, KMLP requests a blanket certificate of public convenience and necessity to enable it to provide open-access transportation service. KMLP states that this blanket authority will allow KMLP to provide firm and interruptible open-access transportation service on a non-discriminatory basis to all parties requesting such service consistent with the terms and conditions set forth in KMLP's proposed FERC Gas Tariff, Original Volume No. 1. In accordance with Section 284.221(b)(1)(ii) of the Commission's Regulations, KMLP states that it will comply with Section 284.221(c), thereby subjecting its blanket certificate to the conditions of Part 284, Subpart A of the Commission's regulations.

V. Conclusion

75. For the reasons set forth herein, we find, subject to completion of our environmental review and KMLP's acceptance of the conditions set forth below, that the proposed project is in the public convenience and necessity under section 7 of the NGA. Further, the benefits of the proposals will outweigh any potential adverse effects and will

---

[39] *See Horizon Pipeline Company, L.L.C. and Natural Gas Pipeline Company of America*, 92 FERC ¶ 61,205 at 61,688 (2000).

be consistent with the Certificate Policy Statement and section 7(c). Thus, we will make a preliminary determination to grant the requested authorizations to KMLP.

76. At a hearing held on March 15, 2007, 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) Authority will be granted to Natural, in Docket No. CP06-448-000, to abandon by lease to KMLP, 200,000 Dth per day of firm capacity on Natural's system in southern Louisiana, subject to the environmental review of the proposals and issuance of a final order.

(B) A certificate of public convenience and necessity will be issued to KMLP authorizing it to lease the subject capacity from Natural, as described and conditioned herein, subject to the environmental review of the proposals and issuance of a final order.

(C) A preliminary determination is made that a certificate of public convenience and necessity under section 7(c) of the NGA should be issued to KMLP authorizing it to construct and operate the Louisiana Pipeline Project, as described and conditioned herein, subject to the environmental review of the proposals and issuance of a final order.

(D) A preliminary determination is made that a blanket transportation certificate should be issued to KMLP under Subpart G of Part 284, subject to the environmental review of the proposal and issuance of a final order.

(E) A preliminary determination is made that a blanket construction certificate should be issued to KMLP under Subpart F or Part 157, subject to the environmental review of the proposal and issuance of a final order.

(F) Any authority granted in the final order in this proceeding shall be conditioned upon KMLP'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 regulations.

(G) Any authority granted in the final order in this proceeding shall be conditioned upon KMLP's facilities being constructed and made available for service within three years of the date of the final order in this proceeding.

(H) KMLP's *pro forma* tariff, which includes the authority to charge negotiated rates, is approved, subject to KMLP filing actual tariff sheets that comply with the requirements contained in the body of this order at least 30 days but no more than 60 days prior to the commencement of service on the new facilities.

(I) KMLP's proposed recourse rates are approved, subject to KMLP filing a recalculated interruptible rate (and authorized overrun rate) as directed above when it files to comply with this order. Further, KMLP must file a cost and revenue study at the end of its first three years of actual operation to justify its existing cost-based firm and interruptible recourse rates.

(J) The non-conforming negotiated rate agreements are accepted for filing, subject to KMLP filing the executed agreements and related tariff sheet at least 30 days prior to the in-service date of the new facilities consistent with the discussion in this order.

(K) The motion for late intervention is granted.

By the Commission.

(S E A L)

Philis P. Posey,
Acting Secretary.