119 FERC ¶ 61,153
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.

Southeast Supply Header, LLC Southern Natural Gas Company	Docket Nos.	CP07-44-000
Southeast Supply Header, LLC		CP07-45-000 CP07-46-000 CP07-47-000

PRELIMINARY DETERMINATION ON NON-ENVIRONMENTAL ISSUES

(Issued May 17, 2007)

1. On December 18, 2006, Southeast Supply Header, LLC (SESH) and Southern Natural Gas Company (Southern) filed applications pursuant to section 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's regulations, for certificates of public convenience and necessity authorizing the construction and operation of 269 miles of new natural gas transmission facilities beginning near the Perryville Hub near Delhi, Louisiana, continuing in a southeasterly direction through Mississippi and portions of Alabama, and terminating near Coden, Alabama (the SESH project).[1] The first 115.4 miles of the new pipeline, referred to as the Joint Segment,[2] will have a capacity of 1.14 billion cubic feet per day (Bcf/d), while the remaining 154 miles, owned by SESH alone, will have a capacity of 1.0 Bcf/d. Applicants request that the Commission issue a preliminary determination on the non-environmental aspects of the project and specifically the joint ownership structure (as set out in the Joint Ownership Agreement between SESH and Southern).

[1] SESH also seeks, in Docket No. CP07-46-000, a blanket construction certificate under Part 157, Subpart F, and, in Docket No. CP07-47-000, a blanket certificate authorizing SESH to transport natural gas under Part 284, Subpart G, of the Commission's regulations.

[2] The Joint Segment will be owned by SESH and Southern jointly and operated by SESH.

2. In this order, the Commission makes a preliminary determination that the proposal, subject to the conditions discussed herein, is in the public interest. While our findings here contemplate issuance of each of the requested authorizations in the Final Order, 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 proposal is dependent on a favorable environmental review and nothing in this order limits our actions regarding our environmental analysis.

Background

3. SESH is a Delaware limited liability company, headquartered in Houston, Texas. SESH has two members, each of which holds a 50 percent interest: CenterPoint Energy Southeastern Pipelines Holding, LLC and Spectra Energy Corporation. CenterPoint Energy Southeastern Pipelines Holding, LLC is an indirect, wholly-owned subsidiary of CenterPoint Energy, Inc., a publicly traded company.

4. SESH is a newly formed company which currently does not own any existing pipeline facilities and is not engaged in any natural gas operations. Upon Commission approval of the authorizations requested herein, and after completion of pipeline facility construction and commencement of operations, SESH will be a natural gas company engaged in the transportation of natural gas in interstate commerce and will be subject to the Commission's jurisdiction under the NGA.

5. Southern is a Delaware corporation with its headquarters and principal place of business in Birmingham, Alabama. Southern is a natural gas company within the meaning of the NGA and is subject to the Commission's jurisdiction. Southern provides open-access transportation services pursuant to a Commission-approved tariff and various authorizations under section 7 of the NGA. Southern, on behalf of shippers, transports and delivers natural gas through its jurisdictional pipeline facilities in the states of Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, Tennessee, and Texas. Southern is a wholly-owned subsidiary of the El Paso Corporation, a publicly traded company.

Open Season and Precedent Agreements

6. SESH held an open season from December 8, 2005, to January 20, 2006, to gauge interest in its project. The open season drew substantial interest from potential shippers and, as a result, SESH and Southern established the capacity of the project to be at least 1.0 Bcf/d. SESH has entered into precedent agreements for firm transportation service for 945 MMcf/d of firm service, about 94.5 percent of the overall SESH project capacity, which indicates ample market demand for the project. SESH states that the full capacity commitment to the project will be phased in over time. The precedent agreements

provide for a ratcheting up of the volumes to be transported over a two-to-three year time period.

7. Subsequent to the open season, SESH and Southern executed the Joint Ownership Agreement. As a result, Southern has an undivided ownership interest in the Joint Segment of 140 MMcf/d, with rights under certain circumstances as set out in the Joint Ownership Agreement to expand its interest in the Joint Segment to 500 MMcf/d through additional compression. Such potential expansion is not part of the current application. Southern will treat its Joint Segment ownership capacity as a new supply lateral that will be available to all of its shippers.

8. Capacity will be made available to Southern's shippers through an open season consistent with the terms of Southern's existing FERC Gas Tariff. Thus, the additional capacity obtained by Southern in the Joint Segment will be offered to Southern's customers in a seamless fashion simply by adding the new receipt points to the Southern tariff. Southern states that the Joint Segment will enable Southern to provide new and extended access to additional sources of supply at the western portion of its system at the Perryville Receipt Points, resulting in greater supply diversity on Southern's system and enabling its customers to be less reliant on traditional Gulf Coast supply. Southern's capacity in the Joint Segment will be made available to Southern's customers at existing rates under the terms and conditions of the Southern tariff, as discussed below.

Proposal

9. Proposed project facilities include the following: approximately 104.1 miles of 42-inch diameter pipeline and 164.9 miles of 36-inch diameter pipeline; Compressor Station 1 near Delhi, Louisiana, consisting of two 15,000 horsepower (hp) gas compressor units; Compressor Station 2 near Gwinville, Mississippi, consisting of one 15,000 hp gas compressor unit; Compressor Station 3 near Lucedale, Mississippi, with one 15,000 hp gas compressor unit; the Collins booster station at the existing Transcontinental Metering and Regulating (M&R) Station consisting of two 3,550 hp gas-driven reciprocating compressor units; the Petal booster station at the Tennessee Gas M&R station consisting of one 3,550 hp gas-driven reciprocating compressor unit; up to thirteen interconnects and M&R Stations; and pig launching and receiving facilities, mainline valves and other appurtenant pipeline facilities.

10. The project will provide the following thirteen interconnections with nine natural gas pipelines, providing receipt and delivery interconnect locations for gas supply to reach markets in all segments of the Southeast, Atlantic Coast and Northeast regions of the United States:

Proposed Interconnections	**Milepost**
CenterPoint Energy Gas Transmission (Line CP)	0.00
Gulf South Pipeline Company LP (Mississippi Expansion)	0.00
Columbia Gulf Transmission Company	0.00
CenterPoint Energy Gas Transmission (Line FM 63)	0.10
Texas Eastern Transmission, LP	72.39
Southern Natural Gas Company	115.40
Transcontinental Gas Pipe Line Corporation	138.22
Tennessee Gas Pipeline Company	166.83
Florida Gas Transmission Company	212.34
Mobile Gas Services	262.35
Transcontinental Gas Pipe Line Corporation (South)	268.73
Gulf South Pipeline Company LP (South)	268.82
Gulfstream Natural Gas System, L.L.C.	268.88

11. The multiple interconnections also will provide access to numerous existing and proposed liquefied natural gas facilities and storage facilities, including Egan Hub Partners, Moss Bluff Hub Partners, Southern Pines Energy Center, Petal Gas Storage, Copiah Hub Partners, and MoBay Storage Hub. Applicants state that the proposal will provide opportunities for increased supply and transportation reliability, flexibility, and price competition.

12. Applicants state also that the SESH project will provide a facility that is safe, efficient, and capable of being operated and maintained with minimal effects on the environment. All facilities will be designed and constructed in accordance with governing federal and state regulations and specifically in accordance with the Department of Transportation's (DOT) Minimum Federal Safety Standards at 49 C.F.R. Part 192, "Transportation of Natural and Other Gas by Pipeline."[3]

The Joint Segment

13. The Joint Segment will be owned by SESH and Southern as tenants in common pursuant to the Joint Ownership Agreement. The Joint Segment will consist of the first 115.4 miles of the project pipeline (ending at MP 115.40 approximately), with the first 104.1 miles consisting of 42-inch diameter pipe. The remaining 11.3 miles will consist

[3] SESH states that it has incorporated the necessary design specifications and filed a petition with the DOT on February 6, 2007, for waiver of the requirements of 49 C.F.R. § 192.111 to allow operation of the pipeline with a specified minimum yield strength (SMYS) of 80 percent instead of a typical design factor of 72 percent in Class 1 locations.

of 36-inch diameter pipe, extending to and including a proposed interconnection between the project and Southern's existing pipeline system near Southern's Gwinville Compressor Station in Jefferson Davis County, Mississippi (Southern Delivery Point). The total capacity of the Joint Segment is 1.14 Bcf/d. Southern will own 140 MMcf/d of this capacity, from the Perryville Hub to the Southern Delivery Point. SESH will own the remaining capacity on the system, approximately 1.0 Bcf/d extending to Coden, Alabama.

14. The Perryville Receipt Points and the Southern Delivery Point are considered part of the Joint Segment. All other receipt points and delivery points on the project are owned by SESH alone and do not constitute part of the Joint Segment. SESH and Southern will provide service on the Joint Segment pursuant to their own individual Commission-approved tariffs. SESH has filed a pro forma tariff for review and approval that will be applicable to its service over the entire project. Southern will provide service on the Joint Segment as part of the service provided on its existing pipeline system.

15. Neither SESH nor Southern will use the other's capacity without executing an appropriate service agreement under the respective capacity holder's tariff. Any real property rights (*e.g.*, rights of way and easements) will be held in the name of SESH, although each applicant will have beneficial ownership in proportion to its ownership interest. SESH will be the construction manager and operator of the project, including the Joint Segment, although construction and operation costs will be divided between SESH and Southern pursuant to the Joint Ownership Agreement. SESH and Southern state that joint ownership of the Joint Segment is a common sense approach based on sound economics and will minimize environmental impacts that would otherwise result from multiple pipelines having to be built. They also note that the Commission has previously approved the joint ownership of pipelines where the owners separately provide transportation service under separate tariffs.[4]

16. Applicants state that the SESH project also creates the potential for efficient and relatively cost-effective expansibility, should it become necessary, particularly in the Joint Segment. Southern has the right under certain circumstances as set out in the Joint Ownership Agreement to expand its interest in the Joint Segment to 500 MMcf/d by adding compression to the Joint Segment. The applicants have fully agreed on the terms of this potential future expansion in the Joint Ownership Agreement, to assure that when the potential for expansion materializes, it will not be an issue between the respective

[4] *Citing, e.g., Southern Natural Gas Co.*, 99 FERC ¶ 61,345, at P 15-16, 24-26, 72 (2002); *Florida Gas Transmission Co.*, 93 FERC ¶ 61,203, at 61,671, 61,681, 61,683 (2000); *Kern River Gas Transmission Co.*, 50 FERC ¶ 61,069, at 61,143, 61,146 (1990).

owners. Should the applicants elect in the future to expand the Joint Segment, a separate application will be filed with the Commission under section 7(c) of the NGA.[5]

SESH Segment

17. The SESH Segment will consist of: the remaining 154 miles of 36-inch diameter pipeline; Compressor Station 3; the Collins Booster Station in Covington County, Mississippi; the Petal Booster Station in Forest County, Mississippi; and associated meters, regulators, valves, piping, and appurtenant facilities. The SESH Segment will extend from the endpoint of the Joint Segment to the terminus of the project near Coden, Alabama. The SESH Segment will be wholly owned by SESH.

Rates

18. SESH, as a new pipeline, is proposing to offer firm and interruptible transportation service and parking and lending service. In addition, SESH is seeking negotiated rate authority. Southern will be providing firm transportation, firm no-notice transportation, interruptible transportation, and park and loan services. Southern proposes to charge its existing Commission-approved Part 284 rates for Zone 1 on its system and intends to roll in the cost of its portion of the Joint Segment in when it files its next section 4 general rate case.

19. SESH filed a pro forma tariff setting forth the proposed services and the terms and conditions of service. SESH characterizes the project as a “virtual header” and states that it includes no secondary points of receipt, with all receipt points serving as primary points. SESH has entered into five precedent agreements with shippers for a total committed capacity of 945,000 Dth/d.[6] The applicants estimate that the total capital cost of constructing the pipeline and appurtenant facilities will be approximately $842 million, with approximately $782 million attributed to SESH and approximately $60 million attributed to Southern.

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[5] The Commission notes that should such an application be filed to add compression to increase the capacity of the Joint Segment for the benefit of Southern, project approval will be contingent on a showing that there will be no subsidization of such an expansion by the then-current customers of SESH.

[6] The agreements are with: Florida Power and Light Company for 500,000 Dth/d ; Progress Energy Florida, Inc. for 200,000 Dth/d; Southern Company Services, Inc. for 175,000 Dth/d ; EOG Resources, Inc. for 50,000 Dth/d; and Tampa Electric Company for 20,000 Dth/d.

Notice, Interventions, Comments, and Protests

20. Notice of the application was published in the *Federal Register* on January 8, 2007 (72 Fed. Reg. 771). A number of timely unopposed interventions were filed.[7] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.[8]

21. Southern Company Services, Inc. filed a late motion to intervene. The Commission finds that granting this late-filed motion to intervene at this early date 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 late-filed motion to intervene.[9] In addition, a number of state legislators from Mississippi and Louisiana filed letters of support, as indicated in the Appendix to this order. Finally, as discussed more fully below, several commercial and individual land-owners have filed comments regarding issues raised in the continuing environmental review process.

Discussion

22. Since SESH and Southern propose facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the facilities proposed will be subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Certificate Policy Statement

23. The Commission's September 15, 1999 Certificate Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction.[10] 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 explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's

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[7] The parties filing timely motions to intervene are listed in the Appendix to this order.

[8] 18 C.F.R. § 385.214 (2006).

[9] *See* 18 C.F.R. § 385.214(d) (2006).

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

responsibility for unsubscribed capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

24. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on 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.

25. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. SESH is a new entrant in the interstate natural gas transmission market and has no existing customers. Therefore, it meets the no subsidization requirement. Southern will provide service through its portion of the Joint Segment using its existing tariff and at its existing Part 284 rates. Since none of Southern's share of the costs of the proposed project are included in Southern's currently effective rates, accepting Southern's proposal to charge these rates as initial rates for service through the facilities will not result in subsidization of that service by Southern's existing customers. Further, as discussed below, the Commission is not making a predetermination that rolled-in rate treatment will be appropriate. Thus, the Commission finds that SESH and Southern have satisfied the threshold requirement of the Certificate Policy Statement.

26. The proposed SESH and Southern facilities will have no adverse impact on existing customers or services. SESH has no current customers or services, and Southern's existing customers will be protected by the Southern's use of system rates as well as by the rate conditions imposed below. The Commission is also satisfied that there will be no negative impact on existing pipelines or their captive customers. The proposed project will be located in a competitive market and will serve new demand in a region that is experiencing rapid growth in natural gas use. The proposal will also enhance supply options available to pipelines and their customers, and thus, will increase competitive alternatives. Applicants note that gas supply available to the Southern system has been steadily declining in recent years because of 1) declining shallow water production in the Gulf of Mexico, and 2) wellhead production problems caused by

hurricanes. Applicants state that the project will help to alleviate such supply decline and offer further competitive options to Southern's traditional Gulf Coast supply.[11]

27. Further, the joint ownership of a substantial portion of the new pipeline facilities will allow both pipelines to provide transportation services without constructing duplicative and potentially expensive facilities and without the associated environmental impacts associated with duplicative facilities. The proposal is consistent with Commission policies, promoting needed new pipeline infrastructure additions with ease of access for shippers on an open-access basis.

28. SESH has worked with landowners, governmental agencies, public officials, and other stakeholders to identify and resolve issues. In its application, SESH incorporated variations in its proposed route to resolve or reduce construction impacts to localized, specific resources and to accommodate landowner requests made during the pre-filing and scoping periods for the proposed project. More than 70 variations were incorporated in the proposed route because of comments received during the NEPA process. SESH states that it will continue to work cooperatively with all affected landowners to address their concerns and minimize, to the extent possible, any perceived adverse impacts. Additionally, no pipeline company has protested the application. Accordingly, consistent with the Certificate Policy Statement and NGA section 7, we preliminarily find that, pending completion of our environmental review, approval of SESH and Southern's proposal is required by the public convenience and necessity, subject to the conditions discussed below.

B. Rate Issues

Southern's Proposed Rates

29. Southern's proposes to provide Firm Transportation Service (FT), Firm Transportation-No Notice Service (FT-NN), Interruptible Transportation Service (IT), and Park and Loan Service (PAL) on its portion of the Joint Segment using its existing Zone 1 rates. Southern estimates that it will contribute approximately $60 million for the construction costs of the 115.4 miles of the Joint Segment pipeline. Southern will finance its portion of the Joint Segment initially through the use of available cash from operations and ultimately from permanent financing.

30. Southern will have capacity to transport up to 140,000 Dth/d of firm transportation from the Perryville Receipt points to the Southern Delivery Point interconnect with the SESH Segment in Jefferson Davis County, Mississippi. Southern states that it intends to

[11] The project will provide access to the emerging Barnett Shale, Bossier Sands, Arkoma and Fayetteville Shale basins, as well as to LNG imports.

treat its interest in the Joint Segment as a supply lateral accessing additional sources of supply at the western portion of its system. Southern has provided no information enabling us to compare the revenues it expects to receive from services utilizing the Joint Segment to the costs of providing those services. Nor has Southern demonstrated that existing customers will receive sufficient benefits from the new facilities to warrant them bearing the costs.

31. Southern states that it does not seek a presumption of rolled-in rates at this time, and notes that it has an obligation to file a rate case no later than March 31, 2010, as required by the Stipulation and Agreement approved by the Commission in a letter order issued July 13, 2005 in Docket No. RP04-523. The Commission will accept Southern's proposal to charge existing Zone 1 rates as initial rates for service over the Joint segment but finds that Southern will not be allowed to roll the costs of the Joint Segment facilities into its existing rates in a future section 4 rate proceeding unless it is able to demonstrate at such time that doing so will not result in the subsidization of the facilities by existing shippers or that the benefits to the system outweigh the costs.

SESH's Proposed Rates

32. SESH proposes to charge a maximum recourse firm transportation rate under Rate Schedule FTS of \$0.3827 per Dth of daily contract demand (\$11.446 per Dth per month); and a maximum rate for Rate Schedules ITS and PALS service of \$0.3827 per Dth based on 100 percent load factor derivative of the firm service rate. In addition, SESH has determined that approximately \$1.7 million of the proposed cost of service is variable costs. SESH proposes a FTS Usage-1 rate of \$0.0064 per Dth based on a 70 percent load factor and an FTS Usage-2 rate of \$0.3827 per Dth.[12] The proposed rates are based on a \$1.5 million allocation of costs to interruptible service, provided under Rate Schedules ITS and PALS, in lieu of revenue crediting for those services.

33. SESH will contribute a total of \$782 million for the construction of its portion of the Joint Segment and the remainder of the pipeline. SESH will transport a total of 1.0 Bcf/d on the entire pipeline. SESH's rates are based on an estimated first year cost of service of \$145,075,638 and billing determinates of 12,395,412 Dth for the FTS reservation rate. The proposed annual cost of service includes: (1) operation and maintenances expenses of \$11,283,791; (2) depreciation expense of \$13,025,015, which is based on a 1.67 percent straight-line depreciation rate; (3) taxes other than income of \$9,920,856; (4) federal income tax of \$28,365,188; (5) state income taxes of \$5,172,983; and (6) return allowance of \$77,307,805, based on a total rate base of \$773,078,050.

[12] FTS Usage Rate-1 is a commodity rate based on throughput; FTS Usage Rate-2 is the charge for firm transportation service above a shipper's MDQ or for unscheduled service.

34. SESH proposes a capital structure of 50 percent equity/50 percent debt; a 13.50 percent return on equity and a 6.65 percent cost of long-term debt, with an overall return of 10 percent. The Commission finds that SESH's proposed capital structure of 50 percent debt/50 percent equity, a 13.5 percent rate of return with an overall return of 10 percent is consistent with recent construction projects for new companies and will approve the rate of return and cost of service calculation.[13] The Commission will approve SESH's proposed cost of service, finding that the costs and allocations are appropriate.

35. In designing its rates, SESH used a 100 percent load factor for establishing rates for Rate Schedules FTS, ITS, and PAL, but used a 70 percent load factor for the FTS-1 Usage Rate, claiming it is based on the estimate of the actual throughput for FTS service. SESH contends that the volumes of natural gas moving on its system will primarily serve a power load market and that it believes that 70 percent is a reasonable assumption for such customers.

36. The Commission finds that SESH's proposed 70 percent load factor is not necessarily reflective of the throughput that SESH will transport on its system. SESH will be able to transport gas to nine interstate pipelines, moving gas in either direction, serving as a bilateral pipeline, with multiple paths. Further, SESH has the opportunity to cycle capacity throughout its 269 mile pipeline system and has 94.5 percent subscription rate for its available capacity. Thus, the Commission believes it is likely that the throughput on SESH's system will exceed a 70 percent load factor. Accordingly, we will require SESH to revise its FTS Usage-1 Rate, designing the rates based on 100 percent load factor, as was done in its FTS Usage-2 Rate.

<u>SESH's Negotiated Rates</u>

37. SESH seeks authority to charge negotiated rates for its proposed service, providing for such rates in proposed General Terms and Conditions (GT&C) section 30. The Commission approves negotiated rate authority for SESH and finds that SESH's

[13] *Cameron LNG, LLC,* 115 FERC ¶ 61,229 at P 31 (2006); *Ingleside Energy Center, LLC,* 112 FERC ¶ 61,101 at P 32 (2005); *Enbridge Pipelines (KPC),* 109 FERC ¶ 61,042 at P 97 (2004); *Tractebel Calypso Pipeline LLC,* 103 FERC ¶ 61,106 at PP 29-30 (2003); *AES Ocean Express LLC,* 103 FERC ¶ 61,030 at PP 29-31 (2003).

negotiated rate proposal is consistent with the Alternative Rate Policy Statement[14] and the Commission's decision in *NorAm Gas Transmission Company (NorAm)*.[15] Each time SESH enters into a negotiated rate contract, it must file either the contract or numbered tariff sheets. The filed tariff sheets must include the name of the shipper, the negotiated rate, the type of service, the receipt and delivery points applicable to the service, and the volume of gas to be transported. Where the negotiated rate agreement is a formula, the formula should be fully set forth in the tariff sheet or contract. In order to file a tariff sheet summary, SESH must affirmatively state that the affected service agreement does not deviate in any material respect from the form of service agreement in its pro forma tariff. SESH is required to abide by the terms and reporting requirements of the Alternative Rate Policy Statement as it may be modified from time to time.

38. SESH must also disclose any other agreement, understanding, negotiation, or consideration associated with the negotiated rate agreements. Finally, SESH must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I and J in any future NGA section 4 or 5 rate case proceeding.[16] Lastly, we are not approving the negotiated rate agreements filed in this certificate application.[17] SESH must file its negotiated rate contracts or numbered tariff sheets not less than 30 days or more than 60 days prior to the commencement of service, providing the information discussed above.

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[14] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines (Alternative Rate Policy Statement),* 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied,* 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996), *aff'd sub nom., Burlington Resources Oil & Gas Co. v. FERC*, 172 F. 3d (D.C. Cir. 1998); and *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006).

[15] 77 FERC ¶ 61,011 (1996).

[16] Also, consistent with the Alternative Rate Policy Statement and *NorAm*, the Commission will not permit SESH to recover from other shippers any revenue shortfall due to the charging of negotiated rates**.**

[17] *CenterPoint Energy -- Mississippi River Transmission Corp.*, 109 FERC ¶ 61,007 at P 19 (2004); *ANR Pipeline Co.*, 108 FERC ¶ 61,028 at P 21 (2004); *Gulfstream Natural Gas System, LLC,* 105 FERC ¶ 61,052 at P 37 (2003); *Tennessee Gas Pipeline C*o., 101 FERC ¶ 61,360 at n. 19 (2002).

Pro Forma Tariff

39. SESH asks the Commission to approve its pro forma tariff in Exhibit P of the application, which sets forth the rates under Rate Schedules FTS, ITS, and PALS, terms and conditions of service, and negotiated rate authority. The Commission finds that SESH's pro forma tariff is generally consistent with pipeline tariff provisions accepted by the Commission. With the exception of the tariff provisions discussed below, SESH's pro forma tariff provisions are accepted. We will require SESH to file, in compliance with this order, revised actual tariff sheets no less than 90 days prior to placing the Joint Segment and SESH Segment into service.

Creditworthiness

40. SESH proposes creditworthiness provisions at section 27 of its GT&C which, among other things, specify the procedures for reviewing a shipper's creditworthiness, what happens when a shipper fails to meet SESH's standards for creditworthiness, and collateral requirements when a shipper becomes uncreditworthy. Specifically, in sections 27.2(b), 27.3(a), and 27.3(b) (iii), SESH requires long-term shippers (those with contracts for a term of service longer than one year) who become uncreditworthy to provide collateral equal to 12 months of reservation charges and short-term shippers (contracts for a term of service of one year or less) to provide up to six months of reservation charges. Further, uncreditworthy short-term shippers are also required to provide an amount equal to the three highest cashout payments (*i.e.*, payments made for shipper imbalances), if any, incurred during the previous twelve months, plus, if applicable, an amount equal to any lending requirements under Rate Schedule PALS.

41. SESH states that the proposed creditworthiness collateral standards are necessary to secure financing for the project and are consistent with FERC precedents, citing three cases in which the Commission found that a 3-month collateral requirement is inadequate and that a 12-month collateral requirement is reasonable.[18] SESH anticipates that 50 percent of the required capital for the project will be secured through non-recourse or limited recourse debt and contends it must show lenders that SESH will generate a stream of revenues sufficient to satisfy debt service. SESH contends that a twelve-month collateral requirement for uncreditworthy customers with long-term contracts will be required by lenders to extend financing on the most attractive and reasonable terms. SESH also argues that, since it will be serving new electric generation markets, if a shipper fails to fulfill its contract obligation, it may be difficult to find a replacement shipper.

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[18] *Gulfstream Natural Gas System, L.L.C.*, 94 FERC ¶ 61,185 at 61,638 (2001); *Alliance Pipeline Co*., 84 FERC ¶ 61,239 at 62,214-15 (1998); *Northern Border Pipeline Co*., 51 FERC ¶ 61,261 at 61,769 (1990).

42. The Commission has recognized that pipelines building new or expanded facilities may require higher collateral requirements in order to satisfy lending arrangements, as SESH maintains. The Commission, however, has found that collateral requirements between the pipeline and its expansion shippers must be contained in precedent or other agreements between the pipeline and the expansion shippers, and not in the tariff.[19] The collateral in the precedent or agreements can continue after the pipeline project is in service.[20]

43. As the Commission explained in the Policy Statement on Creditworthiness, the collateral requirements that may be necessary for expansion shippers are not necessarily just and reasonable when applied to shippers signing up for service after the project is in service.[21] For example, the financing requirements applicable to expansion shippers are not applicable to shippers on which the pipeline did not rely for financing. For shippers using existing facilities, the Commission's policy is to permit up to three months of collateral, which reasonably balances the shipper's right to continued service and the pipeline's risk.[22] Because the collateral applicable to expansion shippers is not appropriate for later shippers on already-constructed facilities, the Commission has found that the collateral requirements in the tariff should reflect only the collateral applicable to those shippers that commence service at a date after the facilities are placed in service.

44. SESH cites to cases involving project financed pipelines in which the Commission permitted a collateral requirement longer than three months' worth of reservation charges to remain in the pipeline's tariff.[23] These cases, however, predate the Commission's change in policy. As we have explained, we no longer find it just and reasonable routinely to apply the collateral associated with initial financing needs, such as those cited by SESH, to future shippers taking service under the pipeline's tariff.

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[19] *Policy Statement on Creditworthiness of Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking, FERC Statutes and Regulations* ¶ 31,191 at P 18 (2005) (Policy Statement on Creditworthiness).

[20] *Id.* at P 19 (2005).

[21] *Id.* at P 19 (2005).

[22] *Id.* at P 14 (2005).

[23] *Citing Gulfstream Natural Gas System, L.L.C.*, 94 FERC ¶ 61,185 at 61,638 (2001); *Alliance Pipeline Co*., 84 FERC ¶ 61,239 (1998); *Northern Border Pipeline C*o., 51 FERC ¶ 61,261 (1990).

45. Thus, the Commission will reject the tariff provisions proposed by SESH. Such rejection, however, is without prejudice to SESH entering into agreements with its shippers which impose a higher collateral requirement than three months and presenting those agreements to the bank to support its loan. Accordingly, SESH is required to remove the provisions of its tariff at sections 27.2(b), 27.3(a), and 27.3(b)(iii) which provide for a collateral requirement greater than three months and replace such provisions with the Commission's traditional maximum three month requirement.

Secondary Points

46. SESH argues that it is a virtual header pipeline system interconnecting with nine natural gas pipelines, providing 13 receipt and delivery interconnect opportunities for supply to reach customers in virtually all segments of the Southeast, Atlantic Coast and Northeast regions of the United States. SESH states that it will be able to serve as a bilateral pipeline, transporting gas in either direction on its system. Further, SESH notes that it has signed precedent agreements for 94.5 percent of the available capacity, indicating significant interest in the project. SESH contends that, as a virtual header, there are no secondary points of receipt on its system, that all receipt points are primary points. Thus, SESH's proposed tariff does not include any secondary point of service.

47. We reject the applicants' characterization of the project as a virtual header. Nothing in SESH's proposal distinguishes it from any system required by the Commission's policy and regulations to provide open-access transportation service. Order No. 636-A provides that each pipeline should be required to provide maximum receipt and delivery point scheduling flexibility, subject only to reasonable operational limitations.[24] SESH has not provided any operational justification for restricting flexible secondary point rights. Since the proposal fails to provide for secondary point rights, thereby hindering capacity release in the secondary market and segmentation of shipper capacity, SESH is directed to revise its tariff to provide for secondary point rights.

Website

48. SESH at Original Sheet No. 29 provides its "Internet Website" as hhttp://www.link.duke-energy.com. Since the application was filed, SESH ownership changed, with the current Internet World Wide Web address, http://sesh.degt-projects.com. SESH is required to revise its tariff to reflect the new web address.

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[24] Order No. 636-A, *FERC Stats. & Regs.*, ¶ 30,950 at 30,584; *see also Alabama-Tennessee Natural Gas Co*., 63 FERC ¶ 61,054 (1993).

Order 2004

49. SESH requests waiver of Order No. 2004 and Part 358 (Standards of Conduct for Transmission Providers) of the Commission's regulations or any similar requirements, until it commences operations. SESH contends that prior to commencement of operations, SESH's relatively small number of start-up employees will make compliance with Part 385 unworkable.

50. On November 17, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated Order No. 2004 as it pertains to natural gas pipelines. *National Fuel Gas Supply Corp.* v. *FERC*, 468 F.3d 831 (D.C. Cir., November 15, 2006). On January 9, 2007, the Commission issued an Interim Rule (Order No. 690)[25] to re-promulgate the standards in a manner consistent with the Court's mandate pending consideration of a Notice of Proposed Rulemaking regarding permanent standards (RM07-1). Order No. 690 provides that newly certificated gas transmission providers would not be required to observe the standards of conduct until they commence transmission services.[26] Therefore, no waiver of Order No. 2004 or Part 358 is necessary.

Service Level Phase In

51. SESH states the precedent agreements with certain of its shippers provide for a ratcheting up of the volumes to be transported over a two-to-three year time period. SESH understands that prior to a shipper taking service using its full increment of capacity , as an open-access pipeline, SESH will be required to make the unutilized capacity available to other shippers on an interim basis. SESH seeks confirmation that a shipper using firm transportation service on an interim basis will not have a right of first refusal (ROFR) to that capacity.

52. The Commission will grant SESH's request for clarification. Under SESH's agreements, with the anchor shippers increasing their volumes over a period of three years, a shipper taking firm transportation service on an interim basis will not be able to exercise a ROFR which would restrict shippers who have already executed service agreements from obtaining their full contracted for capacity.

Encouragement of Early Shipper Subscription

53. SESH seeks confirmation that a provision in the service agreement which encourages shippers to subscribe to the project as early as possible is not unduly

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[25] Reg-Preamble, FERC Stat. & Regs. ¶ 31, 237, *Standards of Conduct for Transmission Providers*, Order No. 680, January 19, 2007, Docket No. RM07-6-000.

[26] *Id.* at P 8.

discriminatory. Pursuant to section 4.1(b) of Rate Schedule FTS, pertaining to shippers who enter into binding service agreements on or before December 29, 2006, the Receipt Point MDQ at certain interconnection points will be equal to the MDQ specified in the service agreement.[27] SESH contends that this provision was offered to encourage shippers to subscribe to the project as early as possible and is important to the project's economic feasibility.

54. We will grant SESH's request for clarification that the proposed provision in section 4.1(b) of Rate Schedule FTS, which assures the early subscribers of specific levels of receipt point capacity at four system receipt points, is not unduly discriminatory. In this instance, SESH held a transparent open season under which fixed receipt point capacity was available to all potential shippers, as long as they have committed to the SESH project on or before December 29, 2006.

55. The Commission has found that under negotiated rate programs, a pipeline is permitted to negotiate individual rates for particular customers as long as they do so in a not unduly discriminatory manner.[28] Recently, the Commission clarified that its existing negotiated rates and discount policies permit, under certain circumstances, project sponsors to provide rate incentives to shippers on a number of grounds, including volumes to be transported, without such incentives constituting undue discrimination.[29] The Commission stated it would review different rate incentives on a case-by-case basis and observed that the risk of undue discrimination would be reduced to the extent that the rate incentives offered are clearly defined in the announcement of the open season, publicly verifiable, and equally available to all potential shippers.[30] Under these policy parameters, we find that the proposed treatment is not unduly discriminatory. We note that the five shippers who requested service for 94.5 percent of the available SESH capacity have all entered into precedent agreements prior to the December 29, 2006 deadline.

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[27] Section 4.1(b) at Original Sheet No. 12 identifies four receipt points where this provision is applicable.

[28] *Alternative Rate Policy Statement*, supra, n. 13.

[29] *Revisions to Blanket Certificate Regulations and Clarification Regarding Rates*, FERC Stats. & Regs. ¶ 32,606 at P 93-107 (2006) *(order proposing to amend blanket certificate regulations and clarifying rates).*

[30] *Id.* at P 102.

<u>Certain Capacity Assignment</u>

56. SESH seeks confirmation from the Commission that certain non-conforming provisions of its firm transportation service agreement with Florida Power and Light Company (FPL) are not unduly discriminatory. SESH explains that FPL executed a precedent agreement for 500,000 Dth/d along the entire length of the pipeline, which represents approximately 50 percent of the planned capacity. As an incentive to enter into the service agreement, the parties agreed that FPL will have assignment rights in certain limited circumstances which are not available to other shippers. SESH indicates that under the assignment provisions, FPL would have the ability to assign some or all of its capacity to a wholly-owned affiliate outside of the capacity release mechanism, so long as the affiliate is deemed creditworthy.

57. In addition, SESH asserts that the agreement provides that FPL may assign some or all of its capacity to a creditworthy third party outside of the capacity release mechanism, if FPL assigns underlying generating capacity to that third party. SESH relies upon *Rockies Express* to support its position, contending that the Commission explained that certain non-conforming provisions are acceptable for new projects, and that the Commission accepted deviations from the pipeline's form of service agreement that reflect the unique circumstance involved with the construction of new infrastructure and provide the needed security to ensure that the project gets built.[31] SESH contends that without FPL's commitment, it would have been unable to go forward with the project and that the Commission has found that certain non-conforming provisions do not present a risk of undue discrimination.[32]

58. The Commission rejects SESH's proposal to give FPL a special right to assign its capacity to an affiliate or a third party, without going through the capacity release program. The Commission adopted its capacity release regulations, including the posting and bidding requirements in section 284.8(c) through (e), to minimize undue discrimination and control the exercise of market power in the capacity release market. Therefore, the Commission has only permitted the assignment of capacity outside the capacity release program in certain narrow circumstances.

59. In *CenterPoint*,[33] the Commission rejected, as overly broad, a pipeline's proposal to revise its tariff to permit shippers to assign their capacity to affiliates under any

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

[32] *Id*. at P 78.

[33] *CenterPoint Energy-Mississippi River Transmission Corp.*, 115 FERC ¶ 61,013 at P 5 (2006) *(CenterPoint).*

circumstances without going through the pipeline's capacity release program. The Commission required CenterPoint to revise its proposal to permit assignments from one affiliate to another only where, after the shipper obtains the capacity, a corporate reorganization results in a transfer of the function for which the capacity was obtained to another company within the same corporate family.

60. SESH misreads the Commission's order in *Rockies Express* to suggest that there is no risk of undue discrimination associated with any non-conforming provision found necessary to induce a potential customer to commit to a new project. That is not the case. It is one thing to grant a shipper a rate inducement to increase its commitment to a project, or to allow a government entity the right to terminate its obligation if a change in law or policy prohibits the entity's continued participation.[34] It is quite another to enable a single holder of half the capacity on a system to circumvent one of the cornerstones of the Commission's open-access transportation program, *i.e.*, capacity release, for the sole purpose of obtaining the shipper's business.

61. Accordingly, the Commission directs SESH to remove the assignment provision from its agreement with FPL. Alternatively, SESH may include a tariff provision to permit assignment in situations where the assignment occurs as part of a corporate reorganization resulting in a transfer of the function for which the capacity was obtained to another company within the same corporate family. Further, SESH may seek a waiver of the Commission's competitive bidding procedures for a particular assignment provided that it demonstrates that the waiver is in the public interest.[35]

Three-Year Rate Review Requirement

62. Consistent with Commission precedent, we will require SESH to file a cost and revenue study at the end of its first three years of actual operation to justify its existing recourse rate. The filing must include a cost and revenue study in the form specified in section 154.313 of the regulations that updates cost-of-service data for the latest 12-month period including, among other things, the cost of plant-in-service and throughput. In order to enable the Commission to determine the impact of SESH's transportation at negotiated rates, SESH must keep separate information concerning

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[34] One of the shippers in *Rockies Express* was the Minerals Management Service which needed to implement specific statutory requirements governing its Royalty in Kind program. The other was BP Energy Company which increased its initial commitment from 100,000 Dth/d up to 300,000 Dth/d of firm capacity, with the right for an Anchor Shipper rate. The Commission approved the non-conforming provisions which were tailored to address the unique circumstances of the respective shippers.

[35] *North Baja Pipeline, LLC,* 109 FERC ¶ 61,159 at P 20 (2004).

volumes transported, billing determinants, rate components, surcharges, and revenue associated with its negotiated and recourse rates. SESH should include this information as part of Statements G, I, and J in its future rate proceeding. After reviewing the study, we will be able to determine whether to exercise our authority under section 5 to establish just and reasonable rates. In the alternative, in lieu of this filing, SESH may make a section 4 filing to propose alternative recourse rates to be effective no later than three years after the in-service date.

C. Engineering

63. The Commission reviewed and analyzed the capability and operational information provided in the SESH project application supporting the proposed facilities. Our analyses confirm that the proposed facilities can support 1.14 Bcf/d of firm transportation on the Joint Segment and 1.0 Bcf/d on the remainder of the system. However, this determination assumes DOT approval, prior to commencement of service, of the February 6, 2007 waiver request allowing the project pipeline facilities to operate at 80 percent of SMYS. Upon receipt of the DOT approval and before service commences, SESH shall file a copy of the approval with the Commission.

D. Accounting

64. SESH, a newly-created company, proposes to calculate its Allowance for Funds Used During Construction (AFUDC) based on its proposed debt and equity capital structure. This approach is consistent with the accounting guidance we have given other newly-created companies.[36] Consistent with Commission precedent, we will require SESH to capitalize the actual costs of borrowed and other funds for construction purposes, not to exceed the amount of debt and equity AFUDC that would be capitalized based on the overall rate of return approved.

E. Environmental

65. On April 27, 2007, the Commission issued a draft environmental impact statement (DEIS) for this project. The DEIS concludes that the project, with appropriate mitigating measures as recommended, would have limited adverse environmental impacts. The DEIS has been mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers and libraries in the project area, and the Commission’s official service list for this proceeding. Comments

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[36] *See, e.g., Cheniere Creole Trail Pipeline, L.P.*, 115 FERC ¶ 61,331 (2006), *Port Arthur Pipeline, L.P.*, 115 FERC ¶ 61,344 (2006), and *Golden Pass Pipeline, L.P.*, 112 FERC ¶ 61,041 (2005).

may be filed until June 18, 2007. All comments on the DEIS will be considered before recommendations are made to the Commission.

Summary

66. For the reasons discussed above, we reach a preliminary determination, subject to completion of our environmental review and the fulfillment of all conditions specified in this order, that the benefits of SESH's and Southern's proposed project will outweigh any potential adverse effects, consistent with our policy statement on new facilities, and that the proposed facilities are required and permitted by the public convenience and necessity, subject to the conditions identified below and in the body of this order.

67. At a hearing held on May 17, 2007, the Commission, on its own motion, received and made a part of the record, all evidence, including the applications, as 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 certificates to SESH and Southern under 7(c) of the NGA to construct and operate certain facilities, as described and conditioned in this order and in the application, would on the basis of all pertinent non-environmental issues, be required by the public convenience and necessity.

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

(C) SESH shall adhere to the accounting requirements discussed in the body of the order.

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

(1) The parties must execute firm service agreements equal to the level of service and in accordance with the terms of service represented in its precedent agreements prior to the start of construction.

(2) SESH must file its executed non-conforming negotiated rate service agreements or numbered tariff sheets with the various shippers not less than 30 days nor more than 60 days prior to the commencement of service.

(3) SESH must file revised actual tariff sheets no less than 90 days prior to placing the proposed facilities into service, as discussed in the body of this order.

(4) SESH shall revise its recourse rates in accordance with the discussion in the body of this order and file the rates and work papers supporting the revised recourse rates in conjunction with the revised pro forma tariff required in Ordering Paragraph (D)(3).

(5) SESH must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, J, K and other Statements in any future NGA section 4 or 5 rate cases.

(6) SESH must make a filing after three years of operating showing actual costs and revenues supporting the rates, as discussed in the body of this order. In the alternative, in lieu of this filing, SESH may make an NGA section 4 filing to propose alternative rates to be effective not later than 3 years after the in-service date for its proposed facilities.

(E) SESH's and Southern's proposed initial rates are approved as discussed above.

(F) SESH shall file a copy of DOT's approval of SESH's request for waiver for the 80 percent SMYS before initiating operation of the proposed facilities.

By the Commission.

(S E A L)

Philis J. Posey,
Deputy Secretary.

Appendix

Timely Intervention:

SG Resources Mississippi, LLC
Mobile Gas Service Corporation
Willmut Gas Company
City of Vicksburg
Florida Power Corporation
Atmos Energy Corporation
Dalton Utilities
Alabama Municipal Distributor's Group
Southeast Alabama Gas District
South Carolina Electric & Gas Company
Atlanta Gas Light Company
Peoples Gas System, a Division of Tampa
Alabama Gas Corporation
MoBay Storage Hub, Incorporation
SCANA Energy Markets, Inc.

Comments filed Out-of-Time:

Southern Company Services, Inc.
Mississippi State Senator Bob M. Dearing
Mississippi State Senator Stacey E. Pickering
Mississippi State Senator Lynn Posey
Mississippi State Senator T.O. Moffat
Mississippi State Senator Tom King
Mississippi State Senator Perry Lee
Mississippi State Senator Joey Filingane
Mississippi State Senator Cindy Hyde-Smith
Mississippi State Senator Tommy Robertson
Mississippi State Senator Mike Chaney
Mississippi State Representative Eric Robinson
Mississippi State Representative Tom Weathersby
Mississippi State Representative Frank Hamilton
Mississippi State Representative Merle Flowers
Mississippi State Representative J.P. Compretta
Mississippi State Representative Deryk Parker
Mississippi State Representative Clint Rotenberry
Mississippi State Representative Bobby Shows
Mississippi State Representative J. Shannon Walley
Mississippi State Representative Gary V. Staples

Louisiana State Representative Wilfred Pierre
Louisiana State Representative Francis Thompson
Louisiana State Representative Joe R. Salter
Louisiana State Senate President Don Hines
AL-Mobile County Commission