

120 FERC ¶ 61,257  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southeast Supply Header, LLC  
Southern Natural Gas Company

Docket Nos. CP07-44-000  
CP07-44-001

Southeast Supply Header, LLC

CP07-45-000  
CP07-46-000  
CP07-47-000

ORDER ISSUING CERTIFICATES

(Issued September 20, 2007)

1. On May 17, 2007, in Docket Nos. CP07-44-000 and CP07-45-000, the Commission issued a preliminary determination<sup>1</sup> addressing the non-environmental issues raised by the applications filed by Southeast Supply Header, LLC (SESH)<sup>2</sup> and Southern Natural Gas Company (Southern) requesting certificate authorization to construct and operate 269 miles of new natural gas transmission facilities.<sup>3</sup> Project facilities will begin near the Perryville Hub in Louisiana, continue through Mississippi, and terminate in Alabama. Final authorization for the construction of the project was reserved pending the completion of the Commission's environmental review.

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<sup>1</sup> *Southeast Supply Header, LLC (SESH)*, 119 FERC ¶ 61,153 (2007) (May 17 Order).

<sup>2</sup> SESH is a newly formed company not engaged in any natural gas operations.

<sup>3</sup> SESH also seeks: in Docket No. CP07-46-000, a Part 157, Subpart F blanket construction certificate; in Docket No. CP07-47-000, a Part 284, Subpart G blanket natural gas transportation certificate; and in Docket No. CP07-44-001 filed on July 10, 2007, for preliminary approval of the proposed changes to its pro forma tariff in compliance with the requirements of the May 17 Order.

2. The Commission has completed its analysis of the project. As discussed below, we will grant the requested authorizations, subject to certain conditions, including the fulfillment of all conditions specified in the May 17 Order.

### **Proposal**

3. SESH and Southern<sup>4</sup> propose to construct and operate 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 first 104.1 miles would consist of 42-inch diameter pipeline, while the remainder will consist of 164.9 miles of 36-inch diameter pipeline.

4. Pursuant to the Joint Ownership Agreement SESH and Southern will own as tenants in common the first 115.4 miles of the project pipeline (the Joint Segment) ending at milepost 115.40 approximately, with the first 104.1 miles consisting of 42-inch diameter pipe and the remaining 11.3 miles consisting of 36-inch diameter pipe. The Joint Segment will extend to and include 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 and will provide service on the Joint Segment as part of the service provided on its existing pipeline system, as a new supply lateral, available to all of its shippers.

5. SESH will own the remaining capacity on the system, approximately 1.0 Bcf/d extending to Coden, Alabama. SESH has entered into precedent agreements with four shippers for 945 MMcf/d of firm transportation service, about 94.5 percent of the overall SESH project capacity.<sup>5</sup>

6. 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,

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<sup>4</sup> Southern, a wholly-owned subsidiary of the El Paso Corporation is a natural gas company within the meaning of the NGA providing open-access transportation services in the states of Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, Tennessee, and Texas.

<sup>5</sup> The four agreements are with: Florida Power and Light Company for 500 MMcf/d; Progress Energy Florida, Inc. for 200 MMcf/d; Southern Company Services, Inc. for 175 MMcf/d; EOG Resources, Inc. for 50 MMcf/d; and Tampa Electric Company for 20 MMcf/d.

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.

7. In addition to the 269 miles of pipeline the proposed project facilities also include: 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 Gas Pipeline Corporation 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 Pipeline Company 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.

8. SESH proposes to connect with nine natural gas pipelines, providing receipt and delivery points for gas supply from emerging Barnett Shale, Bossier Sands, Arkoma, and Fayetteville Shale basins to reach markets in all segments of the Southeast, Atlantic Coast, and Northeast regions of the United States. Also, the multiple interconnections will provide access to numerous existing and proposed liquefied natural gas 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.

### **Notice, Interventions, Comments, and Protest**

9. On June 18, 2007, the Pipeline Workers of America (PWOA) filed an intervention and protest on environmental grounds in response to the SESH Draft Environmental Impact Statement (DEIS) within the time frame set forth in the DEIS. Interventions on environmental grounds are considered timely as long as they are filed within the DEIS' specified comment period.<sup>6</sup> PWOA also filed comments setting forth in detail its objections to the DEIS. We will address in the environmental analysis section of this order the PWOA comments that were not addressed in the Final Environmental Impact Statement (FEIS).

10. On June 22, 2007, the Mississippi Lieutenant Governor and on August 2, 2007, Mississippi Senator Trent Lott, Representative Charles Pickering, and Senator Thad Cochran filed comments supporting the SESH project. Notice of the SESH compliance

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<sup>6</sup> 18 C.F.R. §§ 157.10(a)(2) and 380.10(1)(i) (2007).

filing in Docket No. CP07-44-001 was published in the *Federal Register* on July 25, 2007 (72 Fed. Reg. 40,847). No interventions, comments, or protests respecting the filing were received.<sup>7</sup>

## **Discussion**

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

### **A. Preliminary Determination**

12. In the May 17 Order, the Commission determined that contingent upon a favorable result in our pending environmental review, approval of SESH and Southern's proposal is required by the public convenience and necessity. The Commission found that the Joint Ownership arrangement will allow both pipelines to provide transportation services without constructing duplicative facilities. The proposal was deemed to be consistent with Commission policies, promoting new pipeline infrastructure additions with ease of access for shippers on an open-access basis.

13. The Commission also found that the project could proceed without subsidies and would not adversely affect other pipelines and their customers. Therefore, consistent with our Policy Statement and section 7 of the NGA, we found, pending completion of the environmental review, approval of the project to be required by the public convenience and necessity. Having completed our environment review as discussed below, we affirm our determination in the May 17 Order that approval of the project is required by the public convenience and necessity.

### **B. Rates and Tariff Issues**

14. The May 17 Order approved Southern's proposal to charge its existing Zone 1 rates as initial rates for the Joint Segment. However, the Commission determined that Southern will not be permitted to roll the costs of the joint segment into its existing rates unless Southern is able to demonstrate that doing so will not result in subsidization of the facilities by existing shippers or that benefits of the system outweigh the costs. The Commission also approved SESH's proposed capital structure, rate of return, proposed

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<sup>7</sup> We note that the May 17 Order inadvertently did not include in the list of intervenors the timely, unopposed motions to intervene filed by the Municipal Gas Authority of Georgia, Austell Gas System, and Gulf South Pipeline Company, LLC. Timely, unopposed interventions are permitted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(a)(3) (2007).

cost of service, and negotiated rate authority as conditioned in the order. However, the Commission required SESH to revise its FTS Usage-1 Rate. Although the May 17 Order determined that SESH's pro forma tariff was generally consistent with pipeline tariff provisions accepted by the Commission, the order directed SESH to make certain tariff additions and modifications. Furthermore, the Commission accepted SESH's early shipper subscription provision in the service agreement, but rejected inclusion of a certain transportation service provision which provided for capacity assignment.

15. On July 10, 2007, SESH filed revised tariff sheets as required by the May 17 Order. SESH states that by filing the revised pro forma tariff sheets for approval at this time, all shippers as well as any prospective shippers will have the benefit of knowing the applicable provisions of SESH's tariff. The revised tariff sheets address: (1) changes to Rate Schedule FTS Usage-1 rates to reflect the use of a 100 percent load factor; (2) modification of the credit worthiness standards to establish a three-month collateral requirement for both long-term shippers (contracts longer than one year) and short-term shippers (contracts of one year or less); (3) the addition of provisions dealing with secondary receipt points; and (4) changes to reflect the correct new web address. We find that SESH has made appropriate pro forma tariff changes consistent with the requirements of the May 17 Order.

### **C. Environmental Analysis**

16. On August 10, 2007, the FEIS for the SESH project was issued. The FEIS analyzed the SESH project and addressed the project's: purpose and need, geology, soils, water use and quality, vegetation and wetlands, fish and wildlife resources, threatened and endangered species, land use, recreation and special use areas, visual resources, socioeconomics, cultural resources, air quality and noise, reliability and safety, cumulative impacts, and alternatives. The FEIS addressed comments from individuals, federal and state agencies, organizations, companies, and local authorities who either attended public meetings or provided written comments. The EIS was prepared in cooperation with the following federal agencies: the U.S. Fish and Wildlife Service (FWS), the National Park Service (NPS), the U.S. Army Corps of Engineers (COE), the Environmental Protection Agency (EPA), and the Natural Resource Conservation Service (NRCS).

17. As required by the National Environmental Policy Act (NEPA) and the Commission's implementing regulations, a DEIS was issued on April 27, 2007. Following a 45-day public comment period, the FEIS was issued. The EPA published a *Notice of Availability of the Final Environmental Impact Statement for the Proposed Southeast Supply Header Project* in the *Federal Register* on August 17, 2007 (72 Fed. Reg. 46,217). More than one thousand electronic and one hundred paper copies of the FEIS were mailed to affected property owners, federal and state resource agencies,

interested individuals and organizations, and other parties as indicated on the environmental mailing list.

## **1. Project Background**

18. On May 30, 2006, the Commission approved the use of its pre-filing review process for the proposed project. The purpose of pre-filing review is to work in partnership with the project sponsor, other federal and state agencies, and concerned citizens and non-governmental organizations, to identify and address project-related issues prior to the filing of a certificate application.

19. On December 18, 2006, SESH filed its application with the Commission pursuant to Section 7(c) of the NGA and Part 157 of the Commission's regulations.

20. On March 27, 2007, the Commission issued a *Notice of Schedule for Environmental Review for the Proposed Southeast Supply Header Project*, specifying issuance of the FEIS for August 17, 2007, and the 90-day Federal Agency Action/Decision Target as November 15, 2007.

## **2. Public Outreach and Comments**

### **a. Comments to the NOI**

21. On August 7, 2006, a *Notice of Intent to Prepare an Environmental Impact Statement, Request for Comments on Environmental Issues* for the SESH project was published in the *Federal Register* (71 Fed. Reg. 44,685). The notice was sent to affected landowners, federal, state, and local governmental agencies, elected officials, environmental and public interest groups, Native American tribes, local libraries and newspapers, and other interested parties.

22. In response to the notice and three public meetings held along the proposed project route, numerous written and verbal comments were received from landowners, concerned citizens, public officials, and government agencies representing the public. These comments expressed concerns with the location of the proposed pipeline and the effects of the proposed project on various resources and land uses including soils, waterbodies, wetlands, wildlife, vegetation, cultural resources, threatened and endangered species, safety and reliability, timber production, the Wetland Reserve Program (WRP), and other state and federally-managed lands.

23. In addition to comments provided by the public, staff consulted with several federal and state agencies. Numerous informal conversations, as well as several interagency meetings, were held to discuss the proposed action, the impacts of constructing and operating the proposed project, and possible mitigation measures to minimize project-related impacts.

**b. Comments to the DEIS**

24. During the DEIS comment period, the Commission conducted public comment meetings in Lucedale, Hattiesburg, and Gallman, Mississippi on May 21, 22, and 24, 2007. Fourteen individuals, including landowners, provided oral comments at the public meetings. In addition, written comments were received from five federal agencies, the National Oceanic and Atmospheric Administration (NOAA), Department of the Interior (DOI), NRCS, FWS, and EPA and three state agencies, Mississippi Department of Environmental Quality (MDEQ), Mississippi Department of Marine Resources (MDMR), and the Alabama Historical Commission (AHC), twenty one landowners, and three organizations, including PWOA. The public comment transcripts and all written comments on the DEIS are part of the public record for the project. Comments received on the DEIS and the Commission Staff's responses to these comments are provided in Appendix K of the FEIS. Comments filed with the Commission and interagency and public meeting notes have been placed in the Commission's public record for the proposed project and are available for review by the public on the Commission's eLibrary system.

25. PWOA maintains that, in violation of NEPA and the Council for Environmental Qualities' (CEQ) regulations, the DEIS lacked relevant and essential information to allow for reasoned decision-making by federal officials and meaningful public involvement regarding foreseeable significant adverse impacts and reasonable alternatives to the proposed SESH project. Consequently, PWOA asserts, the DEIS' recommended finding that the proposed SESH project would have only limited adverse impacts on the human environment is unsupported by the public record. Therefore, PWOA requests that the Commission prepare and circulate a revised DEIS to include information it argues should have been in the DEIS.

26. Specifically, PWOA opposes the DEIS' requirement that SESH submit seven items of information prior to the end of the DEIS comment period<sup>8</sup> and six items of

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<sup>8</sup> These are: (1) a plan to be developed in consultation with the Natural Resources Conservation Service (NRCS) regarding the management of loess soils (DEIS at 3-10); (2) a site-specific plan for constructing aboveground facilities located within wetland WE124 (DEIS at 3-37); (3) a red cockaded woodpecker management plan (DEIS at 3-67); (4) a Louisiana black bear management plan (DEIS at 3-68); (5) a plan developed in consultation with the FWS for crossing FWS Partners Program lands (DEIS at 3-82); (6) plans developed in consultation with the Farms Service Agency for crossing Conservation Reserve Program and Conservation Reserve Enhancement Program lands and the NRCS regarding the crossing of Wetlands Reserve Program lands (DEIS at 3-83); and (7) refined air modeling analysis for the Collins and Petal Booster Stations to quantify emission impacts to air quality (DEIS at 3-111).

information prior to construction.<sup>9</sup> PWOA argues that all of this information is relevant to reasonably foresee significant adverse impacts and essential to making reasoned choices among pipeline route variations that may reduce impacts to these lands. PWOA is particularly concerned that the information not required to be submitted until prior to construction will be foreclosed from Commission scrutiny until after the project has been approved and irretrievable commitments have been made. PWOA contends that after the FEIS and issuance of a certificate to SESH, the Commission will have less leverage to demand such plans and actions from SESH.

27. PWOA's contention that the DEIS should have been supplemented is unpersuasive. The DEIS is a draft of the Commission's proposed FEIS, and as such, its purpose is to elicit suggestions for change.<sup>10</sup> CEQ regulations call for a supplemental DEIS or FEIS if the agency "makes substantial changes in the proposed action that are relevant to environmental concerns" or "there are significant new circumstances or information relevant to environmental concerns."<sup>11</sup> The Supreme Court, in *Marsh v. Oregon Natural Resources Council*,<sup>12</sup> stated that under the "rule of reason," "an agency need not supplement an [EIS] every time new information comes to light after the EIS is finalized." The Commission's decision not to supplement the DEIS where gaps were identified within the DEIS was upheld by the D.C. Circuit Court in *National Committee for New River v. FERC*.<sup>13</sup> The court found that the Commission acted reasonably because it included conditions within the FEIS to remedy those gaps before construction and operation of the project could proceed.<sup>14</sup> NEPA only requires agencies to employ proper procedures to ensure that environmental consequences are fully evaluated, not that

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<sup>9</sup> These are: (1) a detailed horizontal directional drilling Contingency Plan (DEIS at 3-38); (2) a longleaf pine vegetative community plan (DEIS at 3-46); (3) an exotic and invasive species control plan (DEIS at 3-47); (4) a plan to mitigate or avoid impacts on state-listed species after consultation with Alabama, Louisiana, and Mississippi natural resource agencies (DEIS at 3-70); (a plan for crossing conservation easements near the Tensas River National Wildlife Refuge (DEIS at 3-81); and (6) a plan for crossing wetlands managed by the Nature Conservancy that are adjacent to the Pascagoula River Wildlife Management Area (DEIS at 3-82).

<sup>10</sup> *City of Grapevine, TX v. DOT*, 17 F.3d 1502, 1507 (D.C. Cir. 1994).

<sup>11</sup> 40 C.F.R. § 1502.9(c)(1) (2007).

<sup>12</sup> 490 U.S. 360, 373 (1989).

<sup>13</sup> 373 F.3d 1323 (D.C. Cir. 2004).

<sup>14</sup> *Id.* at 1329.

a complete plan be presented at the outset of environmental review.<sup>15</sup> *New River* holds that “if every aspect of the project were to be finalized before any part of the project could move forward, it would be difficult, if not impossible, to construct the project.”<sup>16</sup>

28. As PWOA states, the DEIS required SESH to file seven items of information prior to the end of the DEIS comment period and six items of information prior to construction. As shown in the FEIS, the additional reports did not cause the Commission to make “substantial changes in the proposed action,” nor did they present “significant new circumstances or information relevant to environmental concerns.” SESH provided all of the information required by the DEIS to be filed prior to issuance of the FEIS. The FEIS responded to all of the documents requested in the DEIS by explanation, and recommended environmental conditions, which we are imposing in this order, that must be satisfied before the certificate may be effectuated by SESH. Any defects existing in the DEIS were cured by the Commission’s consideration of comments filed during the DEIS comment period and reports submitted by SESH.<sup>17</sup>

29. We disagree with PWOA’s contention that after the FEIS and issuance of a certificate to SESH, the Commission will have less leverage to demand such plans and actions from SESH. As with every other certificate for construction issued by the Commission, the Director of the Office of Energy Projects (OEP) will withhold permission to begin construction until SESH files all of the required documents. This is more than sufficient leverage to ensure compliance with this order’s requirements.

30. PWOA also argues that the DEIS lacked relevant and essential information regarding the proposed project’s impacts to wetlands. It states that it commissioned a report from a wetlands expert, Dr. Richard D. Rheinhardt, to review the DEIS and provide a report expressing his opinion regarding the DEIS’ adequacy in examining the environmental impacts of the project on wetlands.<sup>18</sup> Dr. Rheinhardt concluded that the DEIS is flawed because it does not include a functional (hydrogeomorphic or HGM subtype) assessment of affected wetlands. Instead, PWOA asserts, the DEIS used Cowardin classifications which PWOA states were developed to identify wetlands from aerial photographs for mapping wetland resources nationwide and have limited value for identifying and mitigating wetland functions.

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<sup>15</sup> See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989).

<sup>16</sup> *New River*, 373 F.3d at 1329 (citing *East Tennessee Natural Gas Co.*, 102 FERC ¶ 61,225 at 61,659 (2003)).

<sup>17</sup> See Appendix K of the FEIS for comments filed by federal agencies, state agencies, and landowners.

<sup>18</sup> See PWOA’s June 18, 2007 comments, Attachment 2.

31. In support of its argument that the Commission should have used the HGM approach in analyzing wetlands, PWOA quotes *The National Action Plan to Implement the Hydrogeomorphic Approach to Assessing Wetland Functions (National Action Plan)*<sup>19</sup> which was jointly issued by the COE, the Natural Resources Conservation Service of the Department of Agriculture, the Federal Highway Administration, the Environmental Protection agency and the FWS. It states that the HGM functional approach was developed by scientists at the U.S. Army Engineer Waterways Experiment Station for use by the COE in fulfilling its requirements under the Clean Water Act Section 404 permit review process. The *National Action Plan* states that the HGM approach is a tool the COE can use in its alternatives analysis and in assessment of compensatory mitigation within the Section 404 process.

32. Although we analyze in depth the scope and types of wetlands potentially affected by any proposed project, including SESH's, we do not typically evaluate wetland function in Commission environmental assessments. We note that the *National Action Plan* does not require the Commission to use the HGM approach in its analysis. As stated in the DEIS and the FEIS at 3.4, evaluation of wetland function is an important component of the Army Corps of Engineers' review and its approval of compensatory mitigation. All wetland disturbances and crossings resulting from construction of SESH's project are subject to review and approval by the Vicksburg and Mobile Districts of the COE and SESH has applied for the necessary permits.

33. For all of these reasons, we will deny PWOA's request that we issue a revised DEIS.

### **3. Summary of Facts**

34. The FEIS determined that construction and operation of the proposed SESH project would result in limited adverse environmental impacts based on information provided by SESH, data developed from information requests, field investigations, literature research, alternatives analysis, comments from federal, state and local agencies, input from public groups and individual citizens, and mitigation measures, with one exception. SESH's proposal will have an adverse impact on forested wetlands, since the project results in the conversion of about five acres of forested wetland. The impact on forested wetlands would be substantial, but not significant, and is, therefore, environmentally acceptable.

35. The FEIS concluded that if the proposed project is constructed and operated in accordance with applicable laws and regulations, SESH's proposed mitigation and the Commission's additional mitigation measures recommended by staff (Environmental

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<sup>19</sup> 62 Fed. Reg. 33,607 (June 20 1997).

Conditions below), it would be an environmentally acceptable action. A summary of the anticipated project impacts and staff conclusions are provided below by resource area.

**a. Land Use**

36. Construction of the proposed project affects approximately 4,021 acres of land, including 3,355 acres for the pipeline construction right-of-way, 104 acres for the aboveground facilities and access roads, and 563 acres for extra work areas (extra workspaces and pipe storage and contractor yards). Approximately 45 percent (1,831.62 acres) of the land affected by construction is forest, 23 percent is agricultural, 20 percent is open land, and 8 percent is pine plantation. The remaining land-use categories (residential, industrial, and open water) make up less than 4 percent of the project area. Following construction, all affected areas outside the permanent pipeline right-of-way and aboveground facility sites will be restored and allowed to revert to preconstruction conditions and uses. During operation of the proposed project, the permanent pipeline right-of-way, aboveground facilities, and permanent access roads would encumber approximately 1,697 acres.

37. SESH proposes to use a 125-foot-wide construction right-of-way for the entire length of its 42-inch-diameter pipeline. Other similar projects in Mississippi and Alabama have proposed to use a 100-ft-wide right-of-way for a 42-inch-diameter pipeline. To minimize land disturbance, Environmental Condition 13 directs SESH to limit its nominal construction right-of-way width to 100 feet for the 42-inch diameter pipeline. Alternatively, SESH could file additional information justifying the need for additional workspace in specific areas where topsoil would be segregated and for two-tone construction areas for review and written approval of the Commission's Director of OEP.

38. SESH also proposes a 10-foot-wide buffer between its permanent right-of-way and that of the other utility corridors parallel to the project. To address concerns expressed by landowners and to further reduce the extent of construction-related disturbance, Environmental Condition 14 requires that SESH eliminate its proposed buffer zone and overlap the construction corridor with existing utility easements for the purpose of temporary spoil storage during construction.

39. Six residential structures exist within 50 feet of the proposed project's construction workspace, including three homes, one travel trailer, one mobile home, and an abandoned mobile home. SESH has entered into an agreement with a landowner to purchase one residential property, at milepost (MP) 0.26. The agreement provides that the residential land will be permanently converted to industrial/commercial land for construction and operation of the Delhi Compressor Station. One mobile home will be acquired through a purchase option contract. Another mobile home will be avoided during the crossing of the Mississippi River by horizontal directional drill (HDD). Three

structures (two houses and a travel trailer) are located within the construction work space because of a former landfill on the west side of the right-of-way at MP 261.9. Environmental Condition 15 requires that SESH develop site-specific construction plans and file them prior to construction for these three structures at MP 261.9.

40. Several electric power lines will be constructed to serve the three new compressor stations and the two new booster stations proposed by SESH. Although these facilities are considered to be outside the Commission's jurisdiction, they are directly related to the project. Therefore, to fully comply with NEPA requirements, Environmental Condition 12 requires SESH to not begin service to its project until staff receives documentation from the FWS and State Historic Preservation Officer (SHPO) regarding agency clearances and/or copies of reports prepared for the proposed electric service lines and it receives written notification from the Director of OEP that service may begin.

41. Although the project would not directly cross the Tensas River National Wildlife Refuge (NWR), SESH proposes to cross fee title land and conservation easements managed by the FWS and the Tensas River NWR. In addition, SESH will cross land adjacent to the Pascagoula Wildlife Management Area (WMA). Environmental Condition 33 requires SESH to file as part of its Implementation Plan the status of the special use permits for each of these properties. Also, Environmental Condition 33 requires SESH to file its plan for crossing The Nature Conservancy (TNC) properties prior to construction. The project will also cross the Natchez Trace Parkway, which is managed by the National Park Service (NPS). A separate environmental analysis was prepared by the Commission to assess the potential impacts to the Natchez Trace Parkway (Appendix G of the EIS). The NPS concludes that, based on the selected route and crossing location of the Parkway, the resources present, potential impacts, including cumulative impacts, and mitigation measures, construction and operation of the proposed project would not have a significant effect on the Natchez Trace Parkway. Highway 90 (The Old Spanish Trail) in Mobile County, Alabama, will be crossed using a bore technique, therefore, no adverse impact will result from this crossing.

42. SESH proposes to cross Conservation Reserve Program (CRP) and Conservation Reserve Enhancement Program (CREP) lands and will continue to consult with the applicable agencies and landowners regarding potential project-related effects to these lands. Coastal zone consistency statements would be required where the project crosses designated coastal zone management areas in Alabama and Mississippi. SESH has submitted information to the agencies for evaluation, but has not yet received determination regarding the project's consistency with the state coastal management programs. SESH will file a copy of the Coastal Zone Management Act (CZMA) consistency determinations for Alabama and Mississippi prior to construction in those states.

**b. Geology and Soils**

43. The proposed project traverses a variety of soil types and conditions, including prime farmland and loess soils. Construction activities associated with the proposed project, such as clearing, grading, trenching, and backfilling, could adversely affect soil resources. These effects may include erosion, compaction, and the loss of soil productivity and fertility caused by mixing topsoil and subsoil horizons and/or changing drainage patterns. Such effects are of particular concern in agricultural areas. SESH will implement the mitigation measures contained in its Plan to control erosion, ensure successful revegetation, and minimize any potential adverse impacts to soil resources. Specifically, potential soil impacts to agricultural areas will be mitigated through measures such as topsoil stripping, compaction testing and treatment, and monitoring of crop yields to ensure that construction area yields were similar to yields in adjacent, undisturbed areas. Loess soils have a high susceptibility to erosion. To avoid or minimize impacts to unstable loess soils, Environmental Condition 16 requires SESH to conduct additional consultations with NRCS to finalize its Loess Soil Management Plan.

**c. Water Resources**

44. The project crosses 192 perennial streams, 462 intermittent streams, and 17 ponds/lakes. Most minor and intermediate waterbody crossings will be accomplished using open-cut methods. Potential effects to major and/or sensitive waterbodies (including waterbodies with contaminated sediments) will be largely avoided through the implementation of HDD installation techniques. Thirty-one waterbodies will be crossed using HDDs.

45. Proposed HDDs cross 9 major and/or navigable streams (Macon Bayou, Texas River, Tallahala River, Mississippi River, Bayou Pierre, Pearl River, Chickasawhay River, Big Black River, and Escatawpa River), 7 Nationwide Rivers Inventory listed streams (Big Black River, Bayou Pierre, Pearl River, Bowie Creek, Okatoma Creek, Leaf River and Chickasawhay River), several rivers likely to contain habitat for federally listed fish species (the Mississippi River, Bayou Pierre, Pearl River, Turkey Creek, and the Escatawpa River), and 10 impaired waterbodies (Bayou Macon, Joe's Bayou, Texas River, Bayou Pierre, Pearl River, Bowie Creek, Okatoma Creek, Leaf River, Tallahala Creek, and Escatawpa River). Environmental Condition 17 directs SESH to construct dry crossings and evaluate the feasibility of using HDD methods for the Choctaw, Crump, Dry, Gaines, Long, Shelton, and Thompson creeks, prior to constructing at each waterbody. These creeks are potential habitat for federally listed fish species and are known tributaries that feed into other waterbodies known to support federally listed, threatened and endangered species.

46. SESH will accomplish all waterbody crossings in accordance with SESH's Procedures and the terms of any applicable federal or state permits that may be granted for the project. Environmental Condition 18 directs SESH to prepare and file site-specific HDD contingency plans describing the procedures implemented to monitor for, contain, and clean up any inadvertent releases of drilling fluids during HDD operations. Environmental Condition 18 also requires SESH to prepare a site-specific construction plan prior to open-cutting any surface waters previously designated as HDD crossings, to further minimize the impacts of any HDD failures.

**d. Wetlands**

47. Construction of the proposed project affects 267 wetland areas resulting in a total of approximately 238.8 acres of wetland disturbance, which includes approximately 159.8 acres of forested wetlands and approximately 78.9 acres of scrub-shrub or emergent wetlands. Sensitive wetland areas to be crossed include forested wetlands and potential pitcher plant bogs.

48. SESH identified one pine savanna wetland exhibiting characteristics of a pitcher plant bog. Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP) and the Alabama Department of Conservation and Natural Resources, National Heritage Program (ADCNR NHP) both expressed concerns regarding potential impacts to pitcher plant bogs. Because of agency concerns regarding these unique wetland communities and the likely presence of additional pitcher plant bogs along the proposed pipeline route, Environmental Condition 21 directs SESH to coordinate with the ADCNR NHP and MDWFP in developing a plan to minimize and mitigate impacts to any pitcher plant bog communities.

49. The proposed pipeline would cross lands entered in the NRCS-managed Wetland Reserve Program (WRP). The FEIS does not identify these lands as wetlands; however, based on consultations with the NRCS, WRP lands are considered to be jurisdictional wetlands. As proposed by SESH and described in the FEIS, the crossing of wetlands would be completed using additional construction and mitigation measures. Impacts to WRP lands would be similar to those described in the FEIS for the applicable wetland types. SESH is continuing to work with the NRCS to avoid WRP lands to the greatest extent possible and to minimize impacts to WRP lands that cannot reasonably be avoided. In order to ensure compliance with any additional WRP construction measures or protections required by the NRCS, Environmental Condition 33 directs SESH to file, as part of its Implementation Plan, the status of the subordination agreements with the NRCS. SESH is also coordinating its proposed project activities through wetlands with the TNC and the FWS as necessary.

### **Impacts on Forested Wetlands**

50. Construction and operation of the proposed project will result in the permanent conversion of five acres of forested wetlands. SESH proposes to permanently fill in wetlands associated with the pig receiver/Gulfstream meter site, PAR-RRL1, and the Rock Road meter site at the end of the Rock Road lateral. This action would result in the conversion of forested wetlands to uplands. Per staff's recommendation in the DEIS, SESH filed a site-specific plan to reduce the wetland impacts by collocating these aboveground facilities with other existing natural gas facilities, thus reducing the impacts of palustrine forested wetlands converted to uplands from 6.6 acres to 5.49 acres. The siting of this facility is considered an alternate measure from Section VI.A.6 of FERC Procedures, since: (1) the facility is collocated with another gas facility at the interconnection and is the termination of the lateral, and (2) SESH would minimize unavoidable wetland impacts by completing all wetland crossings in accordance with their Procedures and by complying with the terms and conditions of any Section 404 authorizations issued by the COE, including the provisions of any required wetland compensatory mitigation. As a result of the above mitigation measures, the impact is considered to be substantial but not adverse and is therefore environmentally acceptable.

#### **e. Vegetation**

51. Approximately 59 percent of the upland vegetation resources affected during construction consists of pine plantation and upland forest, with agricultural and open lands making up the remainder. Several extensive forested tracts and areas containing exotic and/or invasive plant species will also be crossed by the pipeline. Vegetative communities of special concern that will be crossed include long-leaf pine ecosystems in Mississippi and Alabama. Environmental Conditions 23 and 24 require SESH to engage in additional coordination with the MDWFP, ADCNR NHP, and the FWS to develop plans to minimize and mitigate impacts to communities of special concern and to control exotic and invasive species.

52. Based on federal and state agency comments, by DOI and MDWFP, Environmental Condition 22 directs SESH to prepare a plan to reduce the amount of riparian/tree clearing required at the East and West Prongs of Silver Creek. The plan must include measures such as reducing the amount of workspace, avoiding cutting of select large diameter trees, and assessing the feasibility of using the HDD method to cross the waterbodies. The plans must be filed for the review and written approval of the Director of OEP prior to constructing those waterbodies.

53. Typically, affected agricultural and open lands would be revegetated by the project sponsor within one or two growing seasons, but impacts to pine plantations and upland forest are usually long-term, taking up to 30 years or more to recover. Impacts to forested areas contained within the permanent pipeline right-of-way represent a more

substantial change in vegetative strata. However, SESH has provided mitigation measures to minimize the impacts to forested areas, including large forested tracts, by routing the pipeline along existing right-of-ways and through other previously disturbed areas to a practical extent. Additionally, many of the large forested tracts crossed by the proposed project are already subject to some disturbance associated with timber management programs. To minimize project-related impacts to vegetative communities, SESH is required to implement measures in its Plan to aid in vegetative restoration, including baseline mitigation measures that minimize erosion and enhance revegetation in upland areas. Implementation of its Plan will aid vegetative restoration and prevent or minimize sedimentation and turbidity in streams and wetlands.

**f. Wildlife and Aquatic Resources**

54. Physical disturbance, displacement, and clearing of upland and wetland herbaceous habitats will affect wildlife at or near the time of construction, but such effects would be largely temporary and many habitats would recover quickly. Upland and wetland forested habitats will be significantly affected due to the long-term conversion of wooded areas to successional stages in the temporary right-of-way and the permanent conversion to scrub-shrub or herbaceous conditions within the permanent right-of-way. A colonial nesting bird rookery is located near MP 18.19 on the proposed route. SESH proposes to construct outside of the sensitive time window (February 16 – September 1) thus avoiding impacts to the rookery. However, in the event construction is not completed near MP 18.19 before February 16, 2008, Environmental Condition 25 directs SESH to conduct a pre-construction survey to determine whether the rookery is in use, prior to constructing in that area. If colonial nesting birds are spotted at the site, SESH must contact the MDWFP to determine what measures may be prudent at that time.

55. Potential waterbody impacts to fisheries and aquatic habitats include sedimentation and turbidity, loss of cover, introduction of pollutants into the aquatic environment, blockage of fish migrations and interruptions of spawning, and entrainment or loss of stream flow during hydrostatic testing. Direct impacts would be avoided by the use of HDD installation at many waterbody crossings. Aquatic habitat impacts at other crossing locations would be largely temporary as most crossings will be completed in less than 48 hours. Additionally, procedures such as, intake screening to limit fish entrainment and maintenance of adequate stream flow rates to protect aquatic life during hydrostatic test water withdrawals would further ensure that any project-related impacts to aquatic species are minor.

**g. Threatened, Endangered, and Special Status Species**

56. Based on consultations with the FWS, fourteen federally listed threatened and endangered species<sup>20</sup> and two candidate species<sup>21</sup> occur or potentially occur near the proposed project.

57. Construction and operation of the proposed project may affect, but is not likely to adversely affect thirteen federally listed endangered or threatened species. Project-related construction and operational impacts may affect the federally listed gopher tortoise. The proposed project would not significantly affect the two candidate species.

58. The DEIS served as the biological assessment for the proposed project. Based on this assessment, the Commission requested formal consultation with the FWS related to impacts on the gopher tortoise, and requested concurrence with our determinations of effect for the other species. The FWS acknowledged the receipt of the DEIS and accepted our request for formal consultation. A biological opinion was prepared and issued by the FWS on July 19, 2007. FWS concurred with our findings and offered conservation measures to be adopted by SESH for minimizing impacts to the gopher tortoise. FWS further concluded that the project would not adversely modify designated critical habitat for the gopher tortoise.

**The Gopher Tortoise**

59. The gopher tortoise is a federally listed threatened species found in Mississippi and Alabama. Approximately 150 acres of gopher tortoise habitat is spread across approximately 160 miles of the proposed pipeline route in Mississippi and Alabama. This habitat would be directly impacted by the construction and operation of the proposed pipeline. The FWS, based on information provided by SESH, anticipates that about twenty-eight to fifty tortoises could be directly impacted as a result of project-related activities.

60. The FEIS describes the potential impacts to gopher tortoises resulting from the proposed project and SESH's proposed mitigation measures. Environmental Condition 26 requires SESH to adhere to the terms and conditions, as well as the conservation recommendations, provided by the FWS in its Biological Opinion. Specifically, the FWS

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<sup>20</sup> Louisiana Quillwort, Pallid Sturgeon, Bayou Darter, Gulf Sturgeon, Mississippi Gopher Frog, Ringed Map Turtle, Gopher Tortoise, Yellow-Blotched Map Turtle, Alabama Red-Bellied Turtle, Eastern Indigo Snake, Interior Least Tern, Red Cockaded Woodpecker, Louisiana Black Bear, and the recently delisted Bald Eagle.

<sup>21</sup> Pearl Darter and Black Pine Snake.

has provided tortoise mitigation and relocation guidelines. The FWS recommended removal of tortoises via mechanical excavation from their burrows to occur between April 1 and October 15, as proposed by SESH. All gopher tortoise surveys, investigations, removals, and relocations need to be completed prior to the start of project construction in the areas of identified habitat. If SESH is not able to complete the relocation activities by October 15, 2007, it must either stop the activities until after April 1, 2008 and not commence construction in the habitat areas, or receive an extension of time from the FWS.

61. On August 13, 2007, SESH requested that the Commission issue an order at the earliest possible date so that SESH may investigate gopher tortoise burrows, remove gopher tortoises from their burrows, and relocate them off of the construction right-of-way by October 15, 2007, as specified by the FWS. However, the CEQ regulations preclude the Commission from approving actions, such as the excavation of burrows and relocation of tortoises, until thirty days after the EPA's notice of the issuance of the FEIS for the project is published in the Federal Register.<sup>22</sup> Since the FEIS was noticed in the *Federal Register* on August 17, 2007, the earliest date SESH can begin relocation of tortoises is September 17, 2007.

62. In order to provide SESH with the maximum amount of time to relocate gopher tortoises and allow project construction to proceed, we are making it clear that upon acceptance of its certificate, SESH can begin the gopher tortoise activities approved by the FWS in its Biological Opinion in those areas where right-of-way acquisition is complete and access roads identified in the FEIS can be used.

### **Other Species**

63. Based on consultation with the FWS to further reduce potential impacts on, and increase protection for, the eastern indigo snake, bald eagle, and interior least tern, Environmental Conditions 26, 27, 28, and 29 require additional impact minimization and mitigation measures.

64. In addition to federally listed species, other special-status state-listed endangered, threatened, imperiled, or rare species, including migratory bird species, colonial nesting water birds, and an additional 14 species, were identified through consultations with the MDWFP, ADCNR, and the LDWF. To ensure that these species are adequately protected, SESH will continue to coordinate with these state agencies to develop and identify a plan to minimize or avoid potential impacts.

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<sup>22</sup> See 40 C.F. R. Part 1506 (2007).

#### **h. Cultural Resources**

65. In Louisiana, two archeological sites that meet the criteria to be listed on the National Register of Historic Places (NRHP) would be avoided through modified construction techniques. Three archeological sites potentially eligible for the NRHP are being tested further to verify their eligibility. In Mississippi, SESH identified three potentially eligible archeological sites. These sites are also being tested further to verify their eligibility. Continued consultation with the SPHOs is necessary to verify the status of the potentially eligible sites. If significant historic properties cannot be avoided, treatment plans will be developed and implemented to ensure recovery of any information that might be lost due to construction impacts. Environmental Condition 35 directs SESH to defer construction until surveys and evaluations of areas not previously accessed or evaluated are completed, all survey reports and any necessary treatment plans have been reviewed by appropriate parties, and the Director of OEP provides written notification to proceed.

#### **i. Noise Quality**

66. Impacts to noise quality associated with construction of the proposed project will generally be temporary, minor, and limited to daylight hours except at HDD sites where drilling and related construction equipment is likely to operate on a continuous basis. SESH has committed to employing mitigation measures at these locations to ensure noise levels are reduced to meet noise benchmarks.

67. The proposed compressor stations will also generate noise on a continuous basis during operations. However, the predicted noise levels attributable to operations of the new compressor stations is modeled to be below 55dBA and would not result in significant effects on the Noise Sensitive Areas nearest to those facilities. In addition, to verify that noise is limited as predicted, Environmental Condition 36 requires completion of post-construction noise surveys and implementation of any appropriate additional mitigation measures, to ensure that actual noise levels resulting from project operations do not exceed significant or existing levels.

#### **j. Reliability and Safety**

68. The proposed project will be designed, constructed, operated, and maintained to meet or exceed all Department of Transportation (DOT) safety standards for natural gas pipelines. Several commenters (Carolyn Beasley Hudson and Austin L. Rainwaters) expressed concerns related to pipeline safety expressing fear of a catastrophic failure similar to the natural gas pipeline rupture and fire near Carlsbad, New Mexico in 2000. Other commenters (Senator Thad Cochran, Jennifer Sullivan, and Marc Wyatt) also expressed concerns about SESH's application for a waiver to Pipeline and Hazardous Safety Materials Administration (PHMSA) requirement 49 C.F.R. § 192.111 to allow operation of the proposed pipeline with a specified minimum yield strength of 80 percent

instead of the typical design factor of 72 percent in Class 1 locations. The FEIS advised that an event like the Carlsbad incident is unlikely to occur with today's corrosion monitoring and pipeline inspection requirements. No substandard pipe material (i.e. reduced wall thickness pipe) would be accepted as part of the proposed project's design. SESH is proposing its waiver to operate its system at pressures 8 percent higher than the specified minimum yield strength of their Class 1 pipe. Following construction, SESH will also initiate a pipeline integrity management plan to ensure public safety during operation. PHMSA is currently evaluating SESH's waiver request. If the pipeline is constructed and FERC grants service at some time in the future, SESH will only be allowed to operate at the pressure currently allowed by regulation, unless PHMSA grants the waiver request. As noted in the May 17 Order, upon receipt of the DOT's approval and before service commences, SESH shall file a copy of the approval with the Commission.

**k. Alternatives**

69. The Mobile County Commissioners and several affected landowners, including James and Martha Middleton, endorsed modified system alternatives considered in SESH's application and identified as Transco Alternatives 1 and 2. These two modified system alternatives involved a new pipeline connection to the existing 30-inch-diameter Transco Line, which runs north to south for the length of Alabama. The Transco alternatives offered some environmental advantages to reduce the amount of greenfield pipeline construction. These alternatives required additional compression (a permanent environmental impact) and pose other engineering constraints. To evaluate whether a SESH-Transco combined system is a viable option from an operational standpoint, Commission staff evaluated additional information provided by Transco and SESH through a staff data request. FERC engineering staff confirmed that the Transco system alternatives were not viable because all of Transco's firm capacity on its Mobile Bay Lateral from Station 85 to Coden, Alabama is fully subscribed, and changing the flow direction on the Mobile Bay Lateral from south-to-north to north-to-south is not possible. Consequently, these alternatives were eliminated from further consideration.

70. SESH attempted to avoid or significantly reduce impacts on sensitive resources in its initial planning and siting of its proposal. Additionally, route variations were analyzed to resolve or reduce construction impacts to localized, specific resources and to accommodate landowner requests. More than 70 variations have been incorporated in the proposed route as a result of comments received during the NEPA process. An additional 12 route variations were received in response to the DEIS; eight of them were evaluated

in the FEIS.<sup>23</sup> SESH has agreed to incorporate six of the route variations into its final alignment (staff concurs with their use);<sup>24</sup> staff did not recommend use of two of the variations and preferred the proposed route.<sup>25</sup>

71. The remaining four route variations have not been fully analyzed,<sup>26</sup> have not had public involvement, and may require additional environmental surveys. Environmental Condition 37 directs SESH to complete the requisite studies on those four variations. SESH can request use of these variations or others pursuant to Environmental Condition 5.

72. Following issuance of the FEIS landowners, James Middleton, Harry Seward, and Robert and Donna Estis filed statements requesting consideration of the Seward/Middleton/Whitehead-Leonard Route 2 variation. This variation is discussed in section 4.4.6 of the FEIS. The property owners clarified the nature and timing of their negotiations with SESH. Environmental Condition 37 will enable SESH to complete consultations with the property owners and conduct the requisite studies. On August 16, 2007 SESH filed a statement reiterating that it is “committed to working with all landowners, throughout the negotiation process to reach an amicable settlement.”

#### **4. Conclusion**

73. We have reviewed the information and analysis contained in the FEIS regarding the potential environmental impacts of the proposed project. Based on our consideration of this information, we agree with the conclusions presented in this FEIS and find that SESH’s proposal if constructed and operated in accordance with its application, supplements, and the FEIS’ recommended environmental mitigation measures, would result in limited adverse environmental impacts with the exception of an adverse affect to five acres of forested wetlands. Therefore, we are including the environmental mitigation

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<sup>23</sup> The Wyatt Route Variation, the Beasley Route Variation, The Nature Conservancy Route Variation, the Springdale Stores Route Variation, the Brigham/McGowin/Hill Route Variation, the Seignious Route Variation, the Barnes Route Variation, and the Alabama Department of Transportation (DOT) Route Variation.

<sup>24</sup> The Beasley Route Variation, The Nature Conservancy Route Variation, the Springdale Stores Route Variation, the Brigham/McGowin/Hill Route Variation, the Seignious Route Variation, the Alabama DOT Route Variation.

<sup>25</sup> The Wyatt Route Variation and the Barnes Route Variation.

<sup>26</sup> The Myers Route, the Herrin Route Variation, the Whitehead-Leonard Route Variation, and the Woolwine Variation.

measures in the FEIS, set forth as conditions to the authorizations issued to SESH in the Appendix to this order.

74. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this order. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>27</sup> SESH shall notify the Commission's environmental staff by telephone, email, or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies SESH. SESH shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

#### **D. Blanket Certificates**

75. In Docket No. CP07-46-000, SESH requested a Part 157, Subpart F blanket certificate. The Subpart F blanket certificate gives a natural gas pipeline authority under section 7 of the NGA to automatically, or after prior notice, undertake certain construction and replacement activities and to abandon certain facilities. Because SESH will become an interstate pipeline with the issuance of a certificate to construct and operate the proposed facilities, we will issue the requested Part 157, Subpart F blanket certificate to SESH.

76. In Docket No. CP07-47-000, SESH requested a Part 284, Subpart G blanket transportation certificate in order to provide certain automatic natural gas transportation authorizations under section 7 of the NGA for individual customers under the terms of its contracts and tariff. SESH filed a pro forma Part 284 tariff to provide open-access services. Because SESH will become an interstate pipeline with the issuance of a certificate to own and operate the proposed facilities, and because a Part 284, Subpart G blanket certificate is required for SESH to offer these services, we will issue the requested blanket certificate authority, subject to the conditions imposed herein.

#### **Conclusion**

77. At a hearing held on September 20, 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 these proceedings. Upon consideration of this record,

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<sup>27</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to SESH and Southern authorizing: SESH to construct, own, and operate the natural gas facilities described in this order and Southern to own a portion of the Joint Segment, as more fully described in the May 17 Order and in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on the following:

- (1) SESH's completing the authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) SESH's compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) SESH's compliance with the environmental conditions listed in the Appendix to this order.

(C) SESH and Southern are directed to execute firm contracts equal to the level of service and in accordance with the terms of service represented in its precedent agreements prior to the commencement of construction.

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

(E) SESH must file, no less than 30 days, or more than 60 days, prior to commencing service, actual tariff sheets consistent with its respective pro forma tariff sheets and the May 17 Order.

(F) The Commission denies PWOA's request that we issue a revised DEIS.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Acting Deputy Secretary.

## Appendix

### Environmental Conditions for Southeast Supply Header Project

1. SESH shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff information requests), and as identified in the EIS, unless modified by the order. SESH must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of OEP **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the Commission's order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, SESH shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility location shall be as shown in the EIS, as supplemented by filed alignment sheets, and shall include all of the staff's recommended facility locations. **As soon as they are available, and prior to the start of construction**, SESH shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the order. All requests for modifications of environmental conditions of the order or site-specific

clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. SESH shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **prior to construction** in or near that area.

This requirement does not apply to route variations required herein or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or would affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this certificate and prior to construction**, SESH shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how SESH will implement the

mitigation measures required by the order. SESH must file revisions to the plan as schedules change. The plan shall identify:

- a. how SESH will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - b. the number of EIs assigned per spread and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - d. what training and instructions SESH will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change) with the opportunity for OEP staff to participate in the training session;
  - e. the company personnel (if known) and specific portion of SESH's organization having responsibility for compliance;
  - f. the procedures (including use of contract penalties) SESH will follow if noncompliance occurs; and
  - g. for each discrete facility a Gantt or Program Evaluation and Review Technique (PERT) chart (or similar project scheduling diagram) and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the mitigation training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. SESH shall employ one or more EIs per construction spread. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigative measures required by the order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract and any other authorizing document;

- c. empowered to order correction of acts that violate the environmental conditions of the order and any other authorizing document;
  - d. a full-time position, separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions of the order as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - f. responsible for maintaining status reports.
8. SESH shall file updated status reports with the Secretary on a **weekly** basis **until all construction-related activities, including restoration, are complete for each phase of the project**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of each spread, work planned for the following reporting period, and any scheduling changes for stream crossings or work in other environmentally sensitive areas;
  - b. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - c. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;
  - d. the effectiveness of all corrective actions implemented;
  - e. a description of any landowner/resident complaints that may relate to compliance with the requirements of the order and the measures taken to satisfy their concerns; and
  - f. copies of any correspondence received by SESH from other federal, state, or local permitting agencies concerning instances of noncompliance and SESH's response.
9. SESH must receive written authorization from the Director of OEP **before commencing service** for the project. Such authorization will only be granted following a determination that rehabilitation and restoration of areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, SESH shall file an affirmative statement with the Secretary, certified by a senior company official:

- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions SESH has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. SESH shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, SESH shall mail the complaint procedures to each landowner whose property would be crossed by the project.
- a. In its letter to affected landowners, SESH shall:
    - (1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
    - (2) instruct the landowners that if they are not satisfied with the response, they should call SESH's Hotline; the letter should indicate how soon to expect a response; and
    - (3) instruct the landowners that if they are still not satisfied with the response from SESH's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030, or at [hotline@ferc.gov](mailto:hotline@ferc.gov).
  - b. In addition, SESH shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
    - (1) the date of the call;
    - (2) the identification number from the certificated alignment sheets of the affected property and approximate location by MP;
    - (3) the description of the problem/concern; and
    - (4) an explanation of how and when the problem was resolved will be resolved, or why it has not been resolved.
12. **SESH shall not begin service until:** the staff receives documentation, including clearances and/or surveys required from the FWS and SHPO regarding the proposed

electric service lines to compressor stations, and SESH has received written notification from the Director of OEP that service may begin. (*Section 1.0*)

13. **Prior to construction**, SESH shall reduce the width of the construction right-of-way to 100 feet in width for its 42-inch diameter pipeline (MP 0.0 to MP 104). SESH shall identify on the revised alignment sheets, and provide a table listing by MP, all additional temporary workspaces beyond the 100-foot nominal construction right-of-way for any area where SESH believes additional right-of-way is required due to site-specific circumstances. The work space table shall include justification for the extra work space (such as association with road, foreign utilities, waterbody, and wetland crossings, two-tone construction areas, or extensive top soil segregation) and must be approved in writing by the Director of OEP. (*Section 2.2.1*)
14. SESH shall modify its project right-of-way requirements and file with the Secretary revised figures and alignment sheets with the Implementation Plan to reflect removal of the proposed 10-foot buffer between the edge of the permanent right-of-way and foreign pipeline rights-of-way. SESH shall file site-specific justification by MP areas where SESH believes use of existing permanent right-of-way to be infeasible for spoil storage and receive written approval from the Director of OEP before use. (*Section 2.2.1*)
15. SESH shall hire and fund a third-party contractor, to work under the direction of the Commission staff, for the sole purpose of monitoring compliance with the environmental conditions attached to the order for the project, including all measures proposed by SESH. A draft monitoring program shall be developed by SESH and filed with the Commission for review and approval of the Director of OEP, along with a proposal from potential contractors that will be available to provide the monitoring and reporting services. The monitoring program shall include the following elements:
  - a. the employment by the contractor of one to two full-time, on-site monitors per construction spread;
  - b. the employment by the contractor of a full-time compliance manager to direct and coordinate with the monitors, manage the reporting systems, and provide technical support to the Commission staff;
  - c. a systematic strategy for the review and approval by the contract compliance manager and monitors of variances to certain construction activities as may be required based on site-specific field conditions;
  - d. the development of an Internet web site for the posting of daily or weekly inspection reports submitted by both the third-party monitors and environmental inspectors; and

- e. a discussion of how the monitoring program could incorporate and/or be coordinated with the monitoring or reporting that may be required by other Federal and state agencies. (*Section 2.5*)
16. **Prior to construction** between MP 39.5 to MP 60.0, SESH shall file with the Secretary a final Loess Soil Management Plan developed in consultation with the NRCS. This plan shall indicate any NRCS recommendations to minimize or mitigate impacts to loess soils and whether SESH would implement these recommendations and if not, explain why. (*Section 3.2.2.8*)
  17. SESH shall use a dry crossing method to cross the Choctaw, Crump, Dry, Gaines, Long, Shelton, and Thompson Creeks, or as an alternate, SESH shall investigate the feasibility of crossing these creeks using the HDD method. SESH shall file site-specific crossing plans for its proposed dry crossing method, for review and written approval by the Director of OEP prior to construction at each waterbody. (*Section 3.3.2.1*)
  18. **Prior to construction**, SESH shall file with the Secretary, for review and written approval by the Director of OEP, a detailed HDD Contingency Plan for the project (e.g. alternative construction measures, agency and emergency contact information, required equipment and materials). The Contingency Plan shall address how SESH:
    - a. will handle any inadvertent release of drilling mud into the waterbody or areas adjacent to the waterbody, including procedures to contain inadvertent releases;
    - b. will seal the abandoned drill hole; and
    - c. clean up any inadvertent releases. (*Section 3.3.2.4*)
  19. SESH shall not begin an open-cut crossing of any of the waterbodies proposed to be crossed using HDD until the HDD attempt has failed and it files an amended crossing plan for review and written approval by the Director of OEP. The amended crossing plan shall include site-specific drawings identifying all areas that would be disturbed using the proposed alternate crossing method. SESH shall file the amended crossing plan concurrent with the appropriate state and federal applications required for implementation of the plan. (*Section 3.3.2.4*)
  20. **Prior to any hydrostatic testing** SESH shall file for review and written approval by the Director of OEP, a detailed report of all water sources proposed for hydrostatic testing including the project component or facility to be tested, the corresponding water source, withdrawal and discharge locations by MP, and estimated volumes of withdrawal required. (*Section 3.3.2.5*)
  21. **Prior to construction**, SESH shall develop a Pitcher Plant Bog Mitigation Plan for review and written approval by the Director of OEP, developed in consultation with

the MDWFP and ADCNR NHP that describes how SESH would avoid pitcher plant bog communities during construction, and the measures, in addition to those in SESH's Procedures, SESH would implement to minimize impacts to these areas. (*Section 3.4.3.1*)

22. **Prior to construction**, in the area between MPs 108.8 and 117.7, SESH shall file with the Secretary for review and written approval by the Director of OEP, a plan for crossing of the East and West Prongs of Silver Creek that minimizes or avoids the cutting of adjacent hardwood forest. The plan shall evaluate the feasibility of performing an HDD. (*Section 3.5.2*)
23. **Prior to construction**, SESH shall file for review and written approval by the Director of OEP, a Longleaf Pine Vegetative Community Plan, developed in consultation with the FWS that describes how SESH would identify longleaf pine vegetative communities during construction, and the measures, in addition to those in SESH's Plan and Procedures, SESH would implement to minimize impacts to these areas. (*Section 3.5.2*)
24. **Prior to construction**, SESH shall file, for review and written approval by the Director of OEP, an Exotic and Invasive Species Control Plan developed in consultation with the FWS, LDWF, MDWFP, and ADCNR. This plan shall identify the specific measures that SESH would implement during construction and operation to control exotic and invasive plant species. (*Section 3.5.3*)
25. If construction is anticipated during the colonial nesting bird rookery time restrictions (February 16 to September 1), SESH shall perform a pre-construction survey to determine if the rookery at MP 18.19 is occupied during the construction period. If colonial nesting birds are observed at the rookery, SESH shall contact the MDWFP to determine what measures would be prudent for use at the time of construction. (*Section 3.6.1.5*)
26. SESH shall adhere to all non-discretionary terms and conditions as well as conservation recommendations 1, 2, and 3 as identified in the FWS Biological Opinion issued July 19, 2007, for the proposed SESH project. (*Section 3.7.1.8*)
27. SESH shall adhere to the following eastern indigo snake protection measures:
  - a. If an eastern indigo snake is sighted during construction, the contractor will be required to cease all operation(s) which might cause harm to the snake.
  - b. If the snake does not move away from the construction area, a state or federal snake expert will be contacted to capture and relocate the snake to suitable habitat either adjacent to the project area or off-site to an acceptable donor site.

- c. If an eastern indigo snake is killed or found dead within the construction area, the snake shall be frozen and the FWS Jackson Field Office notified immediately for transport and evaluation. (*Section 3.7.1.11*)
28. SESH shall immediately notify the FERC staff and the FWS if bald eagles or their nests are observed within 660 feet of work activities prior to or during construction and shall cease such construction activities until notified by FERC to proceed. (*Section 3.7.1.13*)
  29. SESH shall immediately notify the FERC staff and the FWS if interior least terns are observed within 650 feet of proposed waterbody crossings prior to or during construction and shall cease crossing activity until notified by FERC to proceed. (*Section 3.7.1.14*)
  30. SESH shall **not begin construction** of the newly identified variations and any tracts of land that have not been surveyed due to landowner denial of access activities until:
    - a. the staff completes Section 7 consultations with the FWS; and
    - b. SESH has received written notification from the Director of OEP that construction or use of mitigation may begin. (*Section 3.7.1*)
  31. **Prior to construction**, SESH shall consult further with the LDWF, MDWFP and the ADCNR regarding the need for additional surveys or mitigation to further minimize or avoid potential impacts to state listed species. SESH shall file the results of its consultation, and indicate whether it would adopt any mitigation measures recommended by the agencies, and, as applicable, explain why measures were not adopted. (*Section 3.7.2.4*)
  32. **Prior to construction**, SESH shall file a site-specific plan for the residences at MP 261.9. The plan shall include:
    - a. a description of construction techniques to be used (such as reduced pipeline separation, centerline adjustment, use of stove-pipe or drag-section techniques, working over existing pipelines, pipeline crossover, bore, etc.), and include a dimensioned site plan that shows:
      - (1) the location of the residence in relation to the new pipeline and, where appropriate, the existing pipelines;
      - (2) the edge of the construction work area;
      - (3) the edge of the new permanent right-of-way; and
      - (4) other nearby residences, structures, roads, or waterbodies;

- b. a description of how SESH will ensure the trench is not excavated until the pipe is ready for installation and the trench is backfilled immediately after pipe installation; and
- c. evidence of landowner concurrence if the construction work area and fencing will be located within 10 feet of a residence. (*Section 3.8.3.2*)

**33. SESH shall file the following with its Project Implementation Plan:**

- a. the plans developed in consultation with the FSA for crossing CRP and CREP lands. These plans shall indicate any avoidance, minimization, and mitigation measures identified by the FSA (*Section 3.8.5*);
- b. the status of the subordination agreements with the NRCS for WRP tracts crossed (*Section 3.8.5*);
- c. the status of the special-use permit for the fee title and conservation easement lands crossed (*Section 3.8.5*); and
- d. the plan, developed in consultation with The Nature Conservancy, to cross the property between MP 209.1 and MP 210.5. (*Section 3.8.5*)

34. SESH shall file documentation of concurrence from the Mississippi Department of Marine Resources and the ADEM that the proposed project is consistent with the Mississippi and Alabama Coastal Zone Management Plans prior to construction in each state. (*Section 3.8.5*)

35. SESH shall defer implementation of any treatment plans/measures (including archaeological data recovery); construction of facilities; and use of all staging, storage, or temporary work areas and new or to-be-improved access roads in areas not previously evaluated or where access was denied **until**:

- a. SESH files with the Secretary cultural resources survey and evaluation reports; any necessary treatment plans; and the Louisiana, Mississippi and Alabama SHPO comments on the reports and plans; and,
- b. the Director of OEP reviews and approves all cultural resources survey reports and plans, and notifies SESH in writing that treatment plans/procedures may be implemented and/or construction may proceed.

**All material filed with the Secretary containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: “CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.”** (*Section 3.10.4*)

36. SESH shall make all reasonable efforts to assure its predicted noise levels from the Delhi Compressor Station, Petal Booster Station, and Lucedale Compressor Station are not exceeded at nearby NSAs (noise-sensitive areas) and file noise surveys showing this with the Secretary **no later than 60 days** after placing the Delhi Compressor Station, Petal Booster Station, and Lucedale Compressor Station in service. Also, SESH shall file noise surveys with the Secretary **no later than 60 days** after placing the Gwinville Compressor Station and Collins Booster Station in service. If the noise attributable to the operation of the Delhi Compressor Station, Petal Booster Station, Lucedale Compressor Station, Gwinville Compressor Station or Collins Booster Station at full load exceeds an  $L_{dn}$  of 55 dBA at any nearby NSAs, SESH shall file a report on what changes are needed and shall install additional noise controls to meet the level **within 1 year** of the in-service date. SESH shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls. (*Section 3.11.2.3*)
37. SESH shall finalize its route alignment across the Myers (MP 90.0 to 91.6); Herrin (MP 141.7 to 143.6); Whitehead-Leonard/Seward/Middleton (MP 236.0 to 241.8); and Woolwine properties (MP 145.0 to 146.5) in consultation with the landowners. Final alignments shall be filed with SESH's Implementation Plan for the project and shall include the status of landowner concurrences. (*Sections 4.4.1, 4.4.4, 4.4.6, and 4.4.12*)