

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

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Southern LNG Company, L.L.C.

Docket No. CP12-31-000

ORDER GRANTING AUTHORIZATION
UNDER SECTION 3 OF THE NATURAL GAS ACT

(Issued May 17, 2012)

1. On December 15, 2011, Southern LNG Company, L.L.C. (Southern LNG) filed an application under section 3 of the Natural Gas Act (NGA)¹ and Part 153 of the Commission's regulations² to install and operate a new 2,500 horsepower (hp) electric motor-driven compressor and related facilities at the site of its existing liquefied natural gas (LNG) import terminal located at Elba Island near Savannah, Georgia to capture and compress natural gas that boils off from the LNG storage tanks and inject it into the downstream interstate pipelines.

2. The Commission finds that the requested authorization is consistent with the public interest and grants Southern LNG's request to install and operate the proposed facilities, subject to the conditions discussed herein.

I. Background and Proposal

3. Southern LNG is a Delaware limited liability company that is a wholly-owned subsidiary of El Paso Pipeline Partners Operating Company, L.L.C. In 1972, Southern LNG received authorization under section 3 of the NGA to import LNG from Algeria.³

¹ 15 U.S.C. § 717b(a) (2006).

² 18 C.F.R. Part 153 (2011).

³ *Southern Energy Co.*, Opinion No. 622, 47 FPC 1624 (1972), *reh'g granted in part*, Opinion No. 622-A, 48 FPC 723 (1972), *remanded*, *Columbia LNG Corp. v. FPC*

(continued...)

Southern LNG began operations on July 7, 1978, but ceased operations during a supply dispute from 1982 through 2000.⁴ In 1999, the Commission authorized Southern LNG to recommission its facilities and to modify the terminal to provide terminalling service on an open-access basis.⁵ On December 1, 2001, Southern LNG placed its facilities back in service. Since then the Commission has authorized two expansions of the Elba Island facilities.⁶

4. The terminal's current storage capacity is 11.5 billion cubic feet (Bcf), with 1,755 million cubic feet per day (MMcfd) of peak vaporization and send-out capacity. Under the authorizations described above, Southern LNG provides service for the receipt, storage, and vaporization of LNG and delivery of natural gas from its terminal into downstream interstate natural gas pipelines for transportation to domestic markets.

5. Southern LNG states that during normal operations at the terminal a certain amount of LNG naturally evaporates or boils off from the LNG storage tanks. This boil-off gas (BOG) is generally consumed as fuel to operate terminal equipment or converted back into LNG by the terminal's recondensers, and does not accumulate within the plant. However, Southern LNG asserts that due to changes in the global LNG market, the amount of LNG it receives for terminalling service has decreased and the periods of low send-out from the terminal to downstream pipelines has increased. Southern LNG states that during periods of low send-out, the volume of BOG generated can exceed the terminal's designed levels. Southern LNG currently captures, compresses, and injects this excess BOG into downstream interstate pipelines, using a single 1,500 horsepower (hp) electric-driven compressor unit to compress the BOG to pipeline pressure. However, when the volume of BOG generated exceeds the capabilities of the single existing compressor unit, Southern LNG states it is forced to use the terminal's

491 F.2d 651 (5th Cir. 1974), *on remand*, *Southern Energy Co.*, Opinion No. 786, 57 FPC 354 (1977). We note that Southern Energy Company subsequently changed its name to Southern LNG Inc. and then on February 4, 2010, changed it to Southern LNG Company, L.L.C.

⁴ Southern LNG maintained the Terminal in standby mode.

⁵ *Southern LNG Inc.*, 89 FERC ¶ 61,314 (1999).

⁶ *See Southern LNG Inc.*, 103 FERC ¶ 61,029 (2003) (Elba II Expansion); *Southern LNG Inc.*, 120 FERC ¶ 61,258 (2007) (Elba III Expansion, Phases A and B), *aff'd*, 122 FERC ¶ 61,137 (2008), *aff'd sub nom. Anderson v. FERC*, 333 Fed. Appx. 575 (D.C. Cir. 2009). *See also Southern LNG Company, L.L.C.*, 137 FERC ¶ 61,034 (2011) (vacating NGA section 3 authorization for Elba III Expansion, Phase B).

recondensers to process the remaining BOG to pipeline pressure, a process which in turn requires the vaporization of additional LNG, significantly increasing the amount of gas that must be sent out from the terminal each day.

6. To more efficiently manage the higher BOG levels, Southern LNG proposes to install a 2,500 hp electric motor driven compressor unit (K-6 compressor) which will allow it to compress all of the BOG to the downstream pipelines without using the recondensers. Southern LNG states that the new compressor will be able to compress up to 21 MMcf per day of BOG. Southern LNG states that the additional compression will enable it to more efficiently manage the amount of BOG that must be sent into the downstream pipelines each day, but will not increase or change the storage or vaporization capacity of the terminal.

7. Southern LNG proposes to add two new charges to its tariff to recover the costs associated with the new compressor, an incremental rate for operation of the proposed compressor and an incremental rate for electricity costs associated with using the new compressor. Southern LNG will also credit any revenues received from interruptible service associated with the new compression to its customers with firm and interruptible service agreements. Additionally, Southern LNG's sole shipper for this service, BG LNG Services, LLC (BG LNG Services) has agreed to pay a negotiated rate for 100 percent of the capacity of the new compressor.

II. Notice

8. Notice of Southern LNG's application was published in the *Federal Register* on January 6, 2012.⁷ Timely, unopposed motions to intervene were filed by BG LNG Services, Public Service Company of North Carolina, Inc., SCANA Energy Marketing, Inc., and South Carolina Electric & Gas Company.⁸ No protests to the application were filed.

III. Discussion

9. Since the proposed facilities will be part of Southern LNG's LNG terminal and used in its operations to import natural gas, the proposal is subject to the Commission's

⁷ 77 Fed. Reg. 788 (2012).

⁸ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2011).

jurisdiction under section 3 of the NGA.⁹ Section 3 provides that the Commission “shall issue such order on application” if it finds that the proposal “will not be inconsistent with the public interest.”¹⁰

10. The new compressor unit will increase the operational efficiency of Southern LNG’s existing terminal and ensure that Southern LNG will be able to compress LNG boil-off gas into the send-out pipeline and thereby avoid the need for flaring or venting gas. Southern LNG’s proposed project to install an additional boil-off compressor unit and related facilities is minor in nature and will not increase Southern LNG’s storage or send-out capacity or otherwise significantly alter the scope of the Terminal’s operations.

11. Accordingly, we find that, subject to the conditions imposed in this order, Southern LNG’s proposal is not inconsistent with the public interest.

IV. Rates

12. Southern LNG proposes to establish a K-6 Compressor Usage Surcharge rate of \$.4512 per dekatherm (Dth), based on an average first year cost of service of \$2,017,819. Southern LNG bases the rate on its existing depreciation rate of 1.76 percent, a return on equity of 12.5 percent, a capital structure reflecting Southern LNG’s currently-approved 59 percent equity and 41 percent debt, as well as a federal income tax rate of 35 percent and a Georgia state tax rate of six percent. Southern LNG will assess this surcharge only on shippers that use the new K-6 compressor.

⁹ The regulatory functions of section 3 were transferred to the Secretary of Energy (DOE) in 1977 pursuant to section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b) (2006). In reference to regulating imports or exports of natural gas, the DOE Secretary subsequently delegated to the Commission the authority to approve or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports. The DOE Secretary’s current delegation of authority to the Commission relating to import and export facilities was renewed by the Secretary’s Delegation Order No. 00-004.00A, effective May 16, 2006. Section 311 of the Energy Policy Act of 2005 amended section 3 of the NGA to clarify the Commission’s exclusive authority to approve or deny an application for the siting, construction, expansion, and operation of LNG terminals. Pub. L. No. 109-58, § 311, 119 Stat. 594 (2005). The Commission has no authority to approve or disapprove applications to import or export natural gas. The Secretary of Energy has delegated such authority to DOE’s Assistant Secretary for Fossil Energy.

¹⁰ 15 U.S.C. § 717b(a) (2006).

13. In addition, Southern LNG proposes an Electric Power Cost Charge of \$.1878 per Dth, to recover the K-6 compressor electricity costs. These costs are not included in the cost of service used to derive the Compressor Usage Surcharge. Southern LNG calculates the Electric Power Cost Charge by using the estimated annual electricity costs divided by the expected annual Dth of gas compressed. As with the proposed K-6 Compressor Usage Surcharge, Southern LNG will assess the Electric Power Cost Charge only on shippers using the new K-6 compressor.

14. To assure that costs are properly allocated between Southern LNG's existing services and the K-6 compressor services proposed in this proceeding, the Commission will require Southern LNG to keep separate books and accounting of costs attributable to the proposed K-6 compressor. The books should be maintained with applicable cross-reference as required by section 154.309 of the Commission regulations.¹¹ This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710.¹² Such measures protect those customers not using the proposed K-6 compressor from cost overruns and from subsidization that might result from under-collection of the project's incremental cost of service, as well as help the Commission and parties to future rate proceedings determine the costs of the project.¹³

15. As noted above, Southern LNG entered into an agreement with BG LNG for 100 percent of the firm capacity of the K-6 compressor at negotiated rates. In certificate proceedings, the Commission establishes initial recourse rates, but does not make determinations regarding specific negotiated rates for proposed services.¹⁴ In accordance

¹¹ 18 C.F.R. § 154.309 (2011).

¹² *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 73 Fed. Reg. 19389 (April 10, 2008), FERC Stats. & Regs. ¶ 31,267 (2008), *order on reh'g*, Order No. 710-A, 123 FERC ¶ 61,278 (2008), *remanded sub nom. American Gas Ass'n v. FERC*, 593 F.3d 14 (D.C. Cir. 2010), *order on remand*, Order No. 710-B, 134 FERC ¶ 61,033 (2011), *order on reh'g*, Order No. 710-C, 136 FERC ¶ 61,109 (2011).

¹³ 18 C.F.R. § 154.309 (2011).

¹⁴ *Gulf Crossing Pipeline Co. LLC*, 123 FERC ¶ 61,100, at P 97 (2008); *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 Co.*, 101 FERC ¶ 61,360, at n.19 (2002).

with the Alternative Rate Policy Statement¹⁵ and the Commission's negotiated rate policies,¹⁶ Southern LNG must file any negotiated rate agreements or a tariff record describing the essential elements of the negotiated rate agreement associated with this project. In addition, Southern LNG must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates in sufficient detail to permit identification of the data in Statements G, I, and J in any future NGA section 4 or 5 rate proceeding.

V. Environmental Assessment

16. On January 12, 2012, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Elba BOG Compressor Project and Request for Comments on Environmental Issues (NOI). The NOI was mailed to interested parties including federal, state, and local officials; elected officials; agency representatives; Native American tribes; and local libraries and newspapers. We received a response to the NOI from the National Park Service indicating it had no comments on the project.

17. To satisfy the requirements of the National Environmental Policy Act (NEPA), our staff prepared an environmental assessment (EA) for Southern LNG's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, cumulative impacts and alternatives. The EA was placed into the public record on March 16, 2012. All proposed construction activities will take place within Southern LNG's existing LNG terminal boundary. The EA concluded that no significant impacts would occur to any of the affected resources that were analyzed within the EA.

18. We have reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effects of Southern LNG's proposed compressor project. Based on our consideration of this information, we conclude that if constructed and operated in accordance with Southern LNG's application and supplements, and in compliance with the environmental conditions imposed herein, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

¹⁵ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,194 (1996).

¹⁶ See, e.g., *Texas Eastern Transmission, LP*, 133 FERC ¶ 61,220 (2010).

19. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between jurisdictional gas companies 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.¹⁷

20. At a hearing held on May 17, 2012, the Commission on its own motion, received and made a part of the record all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) Southern LNG is granted authorization under section 3 of the NGA to construct and operate the proposed additional boil-off gas compressor unit, as more fully described in Southern LNG's application and supplements, and as conditioned herein.

(B) Southern LNG shall install and make the facilities authorized herein available for service within one year from the date of this order.

(C) Southern LNG shall comply with the environmental conditions contained in the appendix to this order.

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

(E) Southern LNG's proposed incremental rates for the compressor unit and related facilities are approved as initial recourse rates.

(F) Southern LNG shall file actual tariff records to implement its proposed incremental recourse rates for the K-6 compressor usage surcharge and electric power surcharge at least 30 days and not more than 60 days before service commences.

¹⁷See, 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); *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990), *order on reh'g*, 59 FERC ¶ 61,094 (1992).

(G) Southern LNG shall file either its negotiated rate agreement or tariff records describing the transaction for each shipper paying a negotiated rate, at least 30 days and not more than 60 days prior to the commencement of service.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

Environmental Conditions

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Southern LNG Company, L.L.C. (Southern LNG) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Southern LNG must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take all steps necessary to ensure the protection of life, health, property and the environment during construction and operation of the project. This authority shall include:
 - a. stop-work authority and authority to cease operation; and
 - b. the design and implementation of any additional measures deemed necessary to assure continued compliance with the intent of the conditions of the Order.
3. **Prior to any construction**, Southern LNG shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), 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 EA, as supplemented by a filed alignment sheet. **As soon as it is available, and before the start of construction**, Southern LNG shall file with the Secretary any revised detailed survey alignment map/sheet at a scale not smaller than 1:1,000 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 the alignment map/sheet.

5. Southern LNG 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, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the 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 **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by our Upland Erosion Control, Revegetation, and Maintenance Plan and/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:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the Certificate and before construction begins**, Southern LNG shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Southern LNG must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Southern LNG will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Southern LNG 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;

- c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Southern LNG will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Southern LNG's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Southern LNG will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Southern LNG shall file updated status reports with the Secretary on a **monthly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Southern LNG's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes;
 - c. 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);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns;

- g. copies of any correspondence received by Southern LNG from other federal, state, or local permitting agencies concerning instances of noncompliance, and Southern LNG's response; and
 - h. contractor non-conformance/deficiency logs and remedial actions taken. Problems of significant magnitude should be reported to the FERC **within 24 hours**.
- 8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Southern LNG shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
- 9. Southern LNG must receive written authorization from the Director of OEP **before placing into service** the compressor unit and other components of the project. Such authorization will only be granted following a determination that the facilities have been constructed in accordance with FERC approval and applicable standards, can be expected to operate safely as designed, and the rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.
- 10. **Within 30 days of placing the authorized facilities in service**, Southern LNG 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 Southern LNG 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. **Within 6 months of placing the authorized facilities in service**, Southern LNG shall file with the Secretary a noise survey of the Elba Island Liquefied Natural Gas Terminal (Terminal) with the boil-off gas compressor unit operating at full load. If the noise attributable to the operation of the modified Terminal exceeds a day-night level of 55 decibels on the A-weighted scale at any nearby noise-sensitive areas, Southern LNG shall install additional noise controls to meet that level **within 1 year** of the in-service date. Southern LNG should confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

12. **Prior to construction of final design,** Southern LNG shall file a complete set of the Issued for Construction Piping and Instrumentation Drawings with the Secretary for review and approval by the Director of OEP.
13. **Prior to construction of final design,** Southern LNG shall file its Hazard Identification review and the hazard and operability review of the completed design with the Secretary for review and approval by the Director of the OEP. Southern LNG shall also file a copy of each review, list of recommendations, and action taken on the recommendations.
14. **Prior to construction of final design,** Southern LNG shall file the shutdown logic, including cause-and-effect matrices for alarms and shutdowns, with the Secretary for review and approval by the Director of OEP.
15. **Prior to construction of final design,** Southern LNG shall file an updated fire protection evaluation carried out in accordance with the requirements of National Fire Protection Association 59A 2001, chapter 9.1.2 with the Secretary for review and approval by the Director of OEP. The information shall include: the action taken, including justification, for each fire protection evaluation recommendation; hazard detection and hazard control plan drawings; a hazard detection and hazard control list indicating the instrument tag number, manufacturer, model, and location of the equipment; and alarm locations, shutdown functions, and any automatic and manual remote signals that initiate discharge of hazard control equipment.