139 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Natural Gas Company, L.L.C. Docket Nos. CP12-4-000

High Point Gas Transmission, LLC CP12-9-000

ORDER APPROVING ABANDONMENT, DETERMINING JURISDICTIONAL STATUS OF FACILITIES, AND ISSUING CERTIFICATES

(Issued June 21, 2012)

1. On October 7, 2011, Southern Natural Gas Company, L.L.C. (Southern) filed an application pursuant to section 7(b) of the Natural Gas Act (NGA)[1] requesting approval to abandon by sale approximately 604 miles of natural gas pipeline, and appurtenant facilities, located in offshore and onshore Louisiana. The facilities are on the East Leg of Southern's pipeline system, south of the Toca Compressor Station (South of Toca Facilities or Facilities).

2. On October 13, 2011, High Point Gas Transmission, LLC (High Point) filed an application pursuant to section 7(c) of the NGA[2] and Parts 157 and 284 of the Commission's regulations[3] requesting certificate authorization to acquire and operate the South of Toca Facilities as jurisdictional transportation facilities.

3. Southern currently operates all of the South of Toca Facilities as jurisdictional transmission facilities for which certificates of public convenience and necessity have been issued, and High Point's certificate application encompasses all of the South of Toca Facilities. In considering High Point's request for a certificate the Commission has

[1] 15 U.S.C. § 717f(b) (2006).

[2] 15 U.S.C. § 717f(c) (2006).

[3] 18 C.F.R. Parts 157 and 284 (2011).

applied its primary function test to the subject facilities and has determined that some of the Facilities actually perform a gathering function. As described and conditioned in this order, the Commission approves Southern's request to abandon by sale to High Point the South of Toca Facilities. In addition, the Commission issues certificates to High Point to acquire and operate those components of the South of Toca Facilities we have determined will primarily function as jurisdictional transmission facilities.

I. Background and Proposal

A. Southern Proposal

4. Southern is a limited liability company organized and existing under the laws of Delaware with its principal place of business in Birmingham, Alabama. Southern is a natural gas company under section 2(6) of the NGA[4] engaged in the operation of an interstate pipeline system for the transportation of natural gas in Texas, Louisiana, Mississippi, Alabama, Georgia, South Carolina, Florida, and Tennessee.

5. Southern's South of Toca Facilities are located on the East Leg of Southern's system upstream of the Toca Compressor Station in Plaquemines and St. Bernard Parishes, Louisiana, and the offshore Louisiana areas of Mississippi Canyon, West Delta, Main Pass, South Pass, Viosca Knoll, and Breton Sound. The South of Toca Facilities include: (1) 604 miles of onshore and offshore pipeline ranging in diameter from 4 to 26 inches, in water depths of up to 1,000 feet;[5] (2) 67 meter stations; (3) four platforms located in water depths of less than 20 feet; (4) pig launching and receiving equipment, fixtures, machinery, electronic flow measurement and communications equipment associated with the facilities, rights of way, easements, permits, and line pack related to the South of Toca Facilities; and (5) liquids separation and storage equipment located adjacent to the Toca Processing Plant yard.[6]

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[4] 15 U.S.C. § 717a(6) (2006).

[5] Southern's application states that the Facilities include 617 miles of pipeline. However, in response to later data requests, Southern has confirmed that the total mileage of the Facilities is 604 miles. Southern February 29, 2012 Response to Data Request No. 1.

[6] The Toca Processing Plant is operated by Enterprise Products Operating, LLC (Enterprise). It is located immediately upstream of Southern's Toca Compressor Station, which Southern will retain.

6. Upon receipt of authorization to abandon the South of Toca Facilities by sale to High Point, Southern would create a new receipt point at the interconnection of the new High Point system and Southern's remaining system.[7] At the closing of the sale to High Point, the firm receipt points in Southern's firm service agreements will change to the new firm receipt point at the interconnection between High Point and Southern.

7. The gas stream transported by the South of Toca Facilities includes liquefiables, which are removed at Enterprise's Toca Processing Plant, either to meet downstream pipeline gas quality specifications or because the liquefiables are commercially more valuable as separate byproducts. Thus, by the time the gas stream reaches the point of interconnection between High Point and Southern, the liquefiables will have been removed. Accordingly, Southern proposes to discontinue all liquefiable transportation service by terminating its Liquefiables Transportation Agreements, which are interruptible and terminable with five days notice.

8. Southern entered into a Customer Letter Agreement with many of its firm shippers that sets forth the conditions under which the customers will agree to support the proposed abandonment by sale as presented in the application. Southern states that under the terms of the Customer Letter Agreement, in its next NGA section 4 general rate proceeding[8] Southern may seek recovery of a regulatory asset in its jurisdictional rates in an amount equal to the difference between the net book value of the South of Toca Facilities and the proceeds to be realized from the sale of the Facilities (net book value of $85 million minus proceeds of $50 million to equal a $35 million regulatory asset).[9] The Customer Letter Agreement further provides for Southern to amortize the regulatory asset over a three-year period starting from the date of the sale of the assets to High Point, and to make a limited section 4 filing to eliminate the cost of service effect of the regulatory asset when it has been fully recovered. Southern seeks a finding by the Commission supporting the Customer Letter Agreement's provisions for Southern to record the regulatory asset.

[7] Southern proposes to install a new custody transfer meter station and reroute the dehydration header within the station yard at its Toca Compressor Station. This meter will be constructed under Southern's blanket authority granted in Docket No. CP82-406.

[8] Pursuant to the terms of the settlement underlying Southern's currently-effective rates, Southern is required to file an NGA section 4 general rate case no later than March 31, 2013.

[9] Southern states that repairs associated with Hurricanes Ivan and Katrina have increased the book value of the South of Toca Facilities to $85 million, from a pre-hurricane level of under $5 million.

9. The Customer Letter Agreement also provides for Southern to seek recovery in a future NGA section 4 limited rate proceeding for any residual or secondary liability arising out of its prior ownership of the South of Toca Facilities.[10] Southern seeks a finding by the Commission supporting approval in future NGA section 4 rate proceedings of rate adjustments to recover costs relating to Southern's residual and secondary liability.

10. Southern states that the effectiveness of the Customer Letter Agreement is contingent upon final Commission approval, without modification, of Southern's abandonment application and the Customer Letter Agreement's provisions for Southern's rate adjustments and cost recovery in future rate proceedings. Southern states that firm shippers on its system that entered into the Customer Letter Agreement represent 72 percent of its revenues from, and 63 percent of its firm services for, the transportation of gas supplies originating on the South of Toca Facilities.[11] In addition, Southern states that it has received consent from other firm shippers, which either support Southern's proposal to abandon the Facilities and High Point's proposal to acquire the Facilities, or do not oppose the proposals as presented in the applications. These other, non-signatory firm shippers on its system represent an additional 19 percent of Southern's revenues from, and an additional 27 percent of its firm services for, the transportation of gas supplies originating on the South of Toca Facilities.

B. High Point Proposal

11. High Point is a newly-formed limited liability company that is organized and existing under the laws of Delaware and has its principal place of business in Houston,

[10] This residual and secondary liability would include costs that might ultimately be imposed on Southern as the result of environmental claims that relate to Southern's operation of the South of Toca Facilities prior to its sale of the Facilities to High Point, as well as any liabilities Southern might be held responsible for as the result of claims related to another company's activities in the future when the South of Toca Facilities are abandoned or retired in place or sold for salvage and the responsible parties fail to pay such costs.

[11] Southern classifies some of the South of Toca Facilities as transmission facilities and some as gathering facilities for accounting purposes. However, Southern's costs associated with all of the South of Toca Facilities are recovered in the rates paid by its shippers to have their supplies delivered at points downstream of the South of Toca Facilities. Southern does not charge separate rates for service on any of the South of Toca Facilities, including those classified for accounting purposes as gathering.

Texas.[12] High Point is not affiliated with Southern and currently does not own any pipeline facilities, is not engaged in natural gas transportation under the NGA, and is not an entity that is subject to the Commission's jurisdiction. Upon receipt of the requested authorizations, High Point will become a natural gas company within the meaning of NGA section 2(6), and will be subject to the Commission's jurisdiction.

12. High Point's application seeks, pursuant to section 7(c) of the NGA and the Commission's regulations: (1) a certificate to acquire and operate the South of Toca Facilities;[13] (2) a blanket certificate under Part 157, subpart F of the Commission's regulations authorizing High Point to construct, operate, and abandon eligible facilities;[14] (3) a blanket certificate under Part 284, subpart G of the Commission's regulations authorizing High Point to provide open-access transportation services;[15] (4) approval of proposed NGA section 7 initial rates, tariff, and accounting provisions; and (5) waiver of the Commission's segmentation requirement.[16]

13. High Point proposes to provide basic transportation and pooling services on the South of Toca Facilities. Specifically, High Point proposes to offer the following services: (1) firm transportation service under Rate Schedule FTS; (2) interruptible transportation service under Rate Schedule ITS; (3) park and loan service on an interruptible basis under Rate Schedule PAL; (4) pooling service for the aggregation of

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[12] High Point is owned by High Point Energy, LLC, a limited liability company formed and organized under the laws of Texas, and ArcLight Capital Partners, LLC, a limited liability company formed and organized under the laws of Delaware. High Point Energy, LLC, is a midstream energy company that owns and operates non-jurisdictional natural gas gathering pipelines through its wholly-owned subsidiary High Point Gas Gathering, and a natural gas liquids transmission pipeline through its wholly-owned subsidiary Dry Trails Midstream Energy.

[13] 15 U.S.C. § 717f(c) (2006).

[14] 18 C.F.R. §§ 157.201-218 (2011).

[15] 18 C.F.R. §§ 284.221-227 (2011).

[16] Section 284.7(d) of the Commission's regulations requires open-access pipelines to permit their shippers to make use of their reserve firm capacity by segmenting that capacity for the purpose of releasing that capacity to replacement shippers to the extent segmentation is operationally feasible. 18 C.F.R. § 284.7(d) (2011).

gas supply under Rate Schedule PS; and (5) title transfer service under Rate Schedule TTS.

14. High Point states that its *pro forma* tariff is modeled on other pipeline gas tariffs that have been approved by the Commission, and that the terms and conditions of its *pro forma* tariff have been structured to comply with the requirements of the Commission's Order Nos. 636 and 637. High Point further states that its tariff has the same gas quality specifications as Southern's tariff because Southern will be the sole interconnecting interstate pipeline to which High Point will deliver gas.

15. High Point's *pro forma* tariff includes a provision that would establish a hurricane surcharge mechanism and a methodology by which High Point could recover hurricane-related costs in the future. High Point proposes an initial $0.00 per dekatherm rate for the hurricane surcharge because it has not incurred any hurricane-related expenses to date. However, the hurricane surcharge would allow High Point to pass through and recover the costs it may incur to repair or replace facilities damaged in the future by hurricanes and tropical storms, to the extent such costs were approved in a subsequent NGA section 4 proceeding.

16. Because there is no compression on the South of Toca Facilities, High Point would not charge for system fuel. Also, although High Point does not propose to charge initially for lost and unaccounted for gas, the *pro forma* tariff provides a mechanism through which High Point would recover future costs through a lost and unaccounted for gas tracker. If approved in a subsequent NGA section 4 proceeding, then High Point could charge for system fuel through the lost and unaccounted for gas tracker.

17. High Point proposes to account for the transportation of liquefiables based on receipt volumes (less lost and unaccounted for gas) instead of delivery volumes, which High Point contends would simplify the contract, nomination, allocation, and invoicing process for shippers and will provide for continuity of service for liquefiables after Southern terminates its Liquefiables Transportation Agreements.

18. High Point proposes to establish an abandonment account of $50,892,866, amortized over the 25-year anticipated useful life of the Facilities, to reflect projected negative salvage costs when the South of Toca Facilities are retired from service.[17] Annually, High Point would place in the abandonment account an amount equal to the annual negative salvage expense, currently estimated at $2,035,715. High Point also proposes to establish security against its own abandonment liability in the amount of $15 million.

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[17] The estimated abandonment cost is based on a third-party engineering study.

II. Notices of Applications and Pleadings

19. Notices of Southern's abandonment application in Docket No. CP12-4-000 and High Point's certificate application in Docket No. CP12-9-000 were issued on October 19, 2011.[18] The close of the notice period and deadline for filing motions to intervene was November 10, 2011. Parties that filed timely, unopposed motions to intervene are listed in Appendix A.[19] Arena Energy, LP (Arena) and LLOG Exploration Company, LLC (LLOG) filed motions to intervene in both proceedings on November 11, 2011, one day late. We will grant these unopposed, untimely motions to intervene because to do so at this stage in the proceedings will not unduly delay, disrupt, or otherwise prejudice this proceeding or other parties.[20]

20. On March 16, 2012, Manti Exploration Operating LLC (Manti) filed an out-of-time motion to intervene and protest in both proceedings. Manti's motion to intervene explained that it has an interest in these proceedings because it owns production wells that are connected to American Midstream, LLC's (American Midstream) intrastate pipeline facilities that transport and deliver Manti's production to the South of Toca Facilities at a point 100 feet upstream from Enterprise's Toca Processing Plant, from which the gas enters Southern's downstream facilities. Southern filed a motion opposing Manti's motion to intervene.

21. Manti has an interest in the proceeding because, as the Facilities are currently configured, Manti's gas production is transported on the South of Toca Facilities by American Midstream, and continuation of service on the Facilities will necessitate that Manti become a customer of High Point if we approve Southern's sale of the Facilities to High Point. Granting Manti's late intervention will not unfairly prejudice any other party to the proceeding nor cause undue delay. Therefore, Manti's request for late intervention is granted.

22. In addition to the protest included in Manti's motion to intervene, protests were also filed by American Midstream, Arena, Indicated Shippers,[21] LLOG, PetroQuest

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[18] 76 Fed. Reg. 66,054 (Oct. 25, 2011) and 76 Fed. Reg. 66,053 (Oct. 25, 2011), respectively.

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

[20] 18 C.F.R. § 385.214(d) (2011).

[21] Indicated Shippers consists of Apache Corporation, BP America Production Company and BP Energy Company, and Shell Offshore, Inc.

Energy, L.L.C. (PetroQuest), and the Producer Coalition.[22] Protestors all produce gas that is delivered into the South of Toca Facilities.[23] In general, as producers of gas supplies that can be accessed by the South of Toca Facilities, the protestors are concerned that shippers will take the increased transportation costs into account in deciding whether to purchase the protestors' gas. Protestors object to Southern's abandonment of the Facilities by sale to High Point arguing that segregation of the South of Toca Facilities from the rest of Southern's system and its long-standing rate design will result in shippers having to pay more to have gas transported over the Facilities. The protestors also object to specific provisions in High Point's *pro forma* tariff.

23. Southern, High Point, and the Municipal Group[24] filed answers to the protests, to which American Midstream, Indicated Shippers, and the Producer Coalition filed answers. Southern, High Point, American Midstream, and Indicated Shippers filed subsequent answers. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers, the Commission finds good cause to waive Rule 213(a) and admit these answers because they clarify the concerns raised by the protestors in their initial filings and provide information that has assisted in our decision making, and admitting the answers will not cause undue delay or unfairly prejudice other parties.[25]

24. Comments in support of the applications were filed by Atmos Energy Corporation; Atlanta Gas Light Company; Chattanooga Gas Company; the Municipal Group; PCS Nitrogen Fertilizer, L.P.; SCANA Energy Marketing, Inc.; South Carolina Electric & Gas Company (South Carolina); Southern Cities;[26] and Southern Company Services, Inc.[27] Additional comments were filed by Chevron U.S.A. Inc. (Chevron).

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[22] Producer Coalition consists of Century Exploration New Orleans, LLC; Dynamic Offshore Resources, LLC; Energy XXI (Bermuda) Ltd.; Hilcorp Energy Company, Inc.; McMoRan Oil & Gas LLC; Pisces Energy LLC; and W&T Offshore, Inc.

[23] Indicated Shippers states that it also ships on the Facilities, but it has not contracted for firm capacity on the South of Toca Facilities.

[24] The Municipal Group consists of the Alabama Municipal Distributors Group, Austell Gas System, the Municipal Gas Authority of Georgia, and the Southeast Alabama Gas District.

[25] 18 C.F.R. § 385.213(a)(2) (2011).

[26] Southern Cities consists of the City of Tallahassee, Florida; the Cities of Cordele, Cartersville, and La Grange, Georgia; and JEA.

III. <u>Abandonment Authorization: Docket No. CP12-4-000</u>

25. Because the facilities Southern proposes to abandon by sale are certificated facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposed abandonment is subject to the requirements of section 7(b) of the NGA.[28] As discussed below, we approve Southern's proposed abandonment by sale of the South of Toca Facilities to High Point.

26. Section 7(b) allows an interstate pipeline company to abandon jurisdictional facilities or services only if the abandonment is permitted by the "present or future public convenience or necessity." The courts have explained that, in considering the criteria for abandonment under section 7(b), two important principles apply: (1) a pipeline which has obtained a certificate of public convenience and necessity to serve a particular market has an obligation, deeply embedded in the law, to continue to serve; and (2) the burden of proof is on the applicant to show that the public convenience or necessity permits abandonment, that is, that the public interest will in no way be disserved by abandonment.[29] This does not mean, however, that abandonment is not permitted if there is any harm to any narrow interest. Rather, the Commission takes a broad view in abandonment proceedings and evaluates proposed abandonment proposals against the benefits to the market as a whole.[30]

27. The Commission examines abandonment applications on a case-by-case basis. In deciding whether a proposed abandonment is warranted, the Commission considers all relevant factors, but the criteria vary as the circumstances of the abandonment proposal vary. Historically, in reviewing a request for abandonment by sale, the Commission has

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[27] Southern Company Services, Inc. is an agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company.

[28] 15 U.S.C. § 717f(b) (2006).

[29] *See Michigan Consolidated Gas Co. v. F.P.C.*, 283 F.2d 204, 214 (D.C. Cir. 1960); *Transcontinental Gas Pipe Line Corp. v. F.P.C.*, 488 F.2d 1325, 1328 (D.C. Cir. 1973).

[30] *See Southern Natural Gas Co.*, 50 FERC ¶ 61,081, at 61,222 (1990). *See also Consolidated Edison Co. v. FERC*, 823 F.2d 630, 643-644 (D.C. Cir. 1987) ("We agree with FERC that the 'public convenience or necessity' language of the NGA's abandonment provision envisions agency policy-making to fit the regulatory climate.") (citation omitted).

considered: (1) the needs of the two natural gas systems and the customers they serve; (2) the environmental effects of its decision; (3) the economic effect on the pipelines and their current customers; (4) the level of assurance of continued service to customers dependent on the subject facilities; and (5) the relative abilities of the companies to use the facilities to provide natural gas services.[31] The Commission weighs the claimed benefits of the abandonment against any detriments.

A. Arguments in Support of Abandonment

28. Southern argues that the proposed abandonment by sale of the South of Toca Facilities to High Point is consistent with the present or future public convenience or necessity because the current and long-term needs of its existing and future customers can be better served through its sale of the South of Toca Facilities and recovery of a regulatory asset and future liabilities, as proposed in the Customer Letter Agreement.

29. Southern states that its continued operation of the South of Toca Facilities is inconsistent with its efforts to provide high value service to its customers. Southern explains that over the past decade, it has sought to assist its shippers in their efforts to diversify their sources of supply in order to limit the impact of hurricanes and other events that can potentially damage offshore facilities and thereby curtail access to offshore supplies.[32] As part of Southern's efforts to reduce dependency on gas supplies from the Gulf of Mexico, it has purchased capacity on the Southeast Header System, added LNG supply to its system, and added interconnects with new pipelines that access shale gas supplies so that they can be moved to Southern's system.

30. Virtually all of the South of Toca Facilities were originally constructed to connect new gas supplies required for Southern's then-existent merchant functions. Although Southern is now an open-access pipeline providing unbundled transportation services for

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[31] *Northern Natural Gas Co. and PVR Midstream LLC*, 123 FERC ¶ 61,325, at P 12 (2008). *See also Cimarron River Pipeline, LLC and Northern Natural Gas Co.*, 124 FERC ¶ 61,069, at P 33 (2008) (explaining that where the proposed abandonment involves the transfer of certificated facilities to another jurisdictional company that would operate the facilities under an NGA certificate a relevant factor is the economic impact on existing customers).

[32] Southern states that in the past its system was largely dependent on gas supplies from the Gulf of Mexico, making it subject to supply reductions and curtailments during tropical storms and hurricanes when wells had to be shut down or facilities shut-in until repairs could be completed.

its shippers, it still has a firm to wellhead rate design.[33] Thus, Southern explains, its market area transportation customers are still bearing the costs of Southern's facilities used to access Gulf of Mexico production, regardless of whether those customers' supplies are sourced from offshore production areas. Because the industry restructuring after Commission Order Nos. 436 and 636 has resulted in the responsibility for obtaining gas supply shifting to pipelines' customers, Southern has been reevaluating and restructuring its services and assets.

31. Southern argues that its abandonment of the South of Toca Facilities would provide an economic benefit to its firm transportation customers through a reduction in current costs and elimination of future costs and risks by reducing operating and maintenance costs, ad valorem taxes, and depreciation expense. Southern estimates that the sale will result in a $4 million rate reduction beginning in its next NGA section 4 general rate filing. Southern further estimates that when its proposed regulatory asset is fully amortized after three years, the sale would reduce Southern's annual cost of service by an additional $15 million. In particular, Southern states that its future capital expenditures for maintenance, repair, and replacement of the South of Toca Facilities due to hurricane and tropical storm damage would be eliminated, and its future abandonment liability associated with the Facilities would be assumed by High Point as part of the sale.[34] Southern argues that these cost savings will benefit Southern's customers now and in the future and will ultimately help to make Southern more competitive by aligning its costs and services in a more economically-efficient manner.

32. Southern asserts that its customers desiring continued access to offshore supplies will be able to obtain service from High Point. Southern states that it will amend current transportation service agreements with its shippers to shift the current firm transportation receipt points on the South of Toca Facilities to the new interconnection with High Point. Southern states that High Point plans to maintain all existing interconnections and receipt points on the South of Toca Facilities, and will be able to provide uninterrupted service to the producers and shippers. Southern asserts that continued service will be assured

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[33] Southern has a non-additive zone rate design for its firm reservation charge, sometimes referred to as a "city-gate" rate design. Shippers' reservation charges are billed on the basis of the point of delivery, not on the point of receipt. Under this rate design, shippers with delivery points in downstream zones pay for a significant amount of costs originating from upstream zone locations.

[34] Southern states that it incurred almost $170 million of hurricane-related repair and replacement costs associated with the South of Toca Facilities as a result of Hurricanes Ivan and Katrina, $73 million of which were not reimbursed by insurance.

because High Point will work with shippers and producers to offer service at jurisdictional rates approved by the Commission.

33. None of Southern's shippers with firm service agreements have filed in opposition to its proposed abandonment of the South of Toca Facilities. A number of such shippers filed comments in support of Southern's application. The Municipal Group asserts the protestors' principal concern is that their gas will be less competitive because Southern's service for firm shippers purchasing the protestors' production will no longer include transportation on the South of Toca Facilities. Instead, Municipal Group contends that High Point will be recovering the costs associated with transportation over the Facilities to Enterprise's processing plant and Southern's downstream system under its own rate, and thus, either the producer or Southern's firm shippers will have to pay the High Point rate.

B. Continuity of Service

34. Protestors assert that the NGA section 7(b) standard includes a deeply embedded obligation to continue service, particularly when the facilities are essential to interstate transportation,[35] and a presumption in favor of continued service under existing terms and conditions.[36] Protestors argue that the fact that Southern's system now accesses a diversified supply portfolio including new sources of production does not support a conclusion that the South of Toca Facilities are no longer an integral part of its system, or that they are unnecessary to support Southern's obligation to provide open-access transportation service. Protestors assert that the volumes shipped on the South of Toca Facilities are not insignificant, and Southern has not shown that it cannot recover its costs of operating the facilities. American Midstream, an intrastate pipeline that delivers into the South of Toca Facilities 100 feet upstream from the Toca Processing Plant, asserts that it is not in the public interest to transfer facilities without some assurance that existing customers will continue to have access to comparable services.

35. Southern emphasizes that its downstream customers will continue to have access to offshore supplies connected to the South of Toca Facilities and that the Facilities will

[35] Citing *Transcontinental Gas Pipe Line Co., LLC and Copano Field Services/Central Gulf Coast, L.P.*, 129 FERC ¶ 61,255, at P 42 (2009) (Transco III); *Transcontinental Gas Pipe Line Corp. and Crosstex CCNG Transmission, Ltd.*, 110 FERC ¶ 61,337, at PP 33-34 (2005) (Transco II).

[36] Citing *Tennessee Gas Pipeline Co.*, 137 FERC ¶ 61,105 (2011) (*Tennessee*); *Northern Natural Gas Co, et al.*, 135 FERC ¶ 61,048 at P 35, *reh'g denied*, 137 FERC ¶ 61,091 (2011) (*MOPS*).

continue to be available to transport the production of the protesting producers and other potential shippers at Commission-approved rates to Southern's onshore system, for subsequent transportation to market areas. High Point asserts that while supplies in the Gulf of Mexico have declined, it expects the Gulf producing region to continue to contribute to the overall United States natural gas supply portfolio, and contends that producers will benefit from High Point's commercial focus and commitment to meeting their need for continued operation of the South of Toca Facilities in order to market and ship their production. High Point further states that it is willingly assuming the risks involved with the acquisition of the South of Toca Facilities, and will consider the investment of additional capital as needed to assist producers to bring new supplies to market.

36. While none of the protestors is a shipper on Southern's system with a firm service agreement providing for service including the transportation of gas on the South of Toca Facilities, the Commission recognizes that the protestors sell their gas to Southern's shippers and therefore have a reasonable basis for concern over whether those shippers will continue to have access to their production. However, we find that the proposed abandonment will have no impact on the ability of offshore supplies accessed by the South of Toca Facilities to access markets. Upon acquisition of the Facilities, High Point will be a fully jurisdictional interstate pipeline under the NGA. Thus, all of the Commission's open-access policies and regulations will continue to apply to the services to be provided by High Point and those services will be provided at Commission-approved rates.

37. Protestors reliance on the cases cited is unavailing. In *Transco III*, the Commission denied the proposed abandonment because it found the McMullen Lateral was functioning to provide interstate transportation service to existing Transco shippers and Transco had proposed to abandon the facilities to a non-jurisdictional gathering company.[37] In *Transco II*, the Commission denied abandonment of the South Texas Pipeline Facilities (including the McMullen Lateral) because the proposal involved the "conversion of extensive interstate mainline transportation facilities flowing significant volumes of gas to intrastate regulatory status."[38] In contrast to both of these cases, in the current proceeding Southern proposes to abandon the facilities by sale to a company that will become an interstate natural gas company under the NGA, subject to regulation by the Commission. Therefore, the protestors' fear that essential interstate transportation facilities will no longer be available to continue service is unwarranted.

[37] 129 FERC ¶ 61,255 at PP 41-42.

[38] 110 FERC ¶ 61,337 at P 34.

38. In *MOPS*,[39] a group of interstate pipeline companies attempted to sell 67 miles of interstate pipeline. After several unsuccessful attempts, the group proposed to abandon the facilities by retirement and cease service. The Commission denied abandonment authority, finding in its consideration of continuity of service issues that there did not appear to be reasonable transportation alternatives available to existing shippers.[40] In contrast, here Southern proposes to abandon the South of Toca Facilities to another interstate pipeline company that will be subject to the Commission's jurisdiction. Thus, there will continue to be open-access transportation service available for Gulf of Mexico gas supplies over the Facilities owned by High Point. Moreover, High Point cannot terminate service over its jurisdictional facilities without prior abandonment authority from the Commission.

39. Protestors also rely on *Tennessee* to argue that the abandonment should be denied because continuity and stability of existing service will not be assured if the abandonment by sale to High Point is approved.[41] The factual circumstances in *Tennessee,* however, were significantly different than those presented here. In that case, Tennessee proposed to abandon its facilities by sale to a non-jurisdictional gathering company. The Commission analyzed the primary function of the facilities and found that some of the facilities functioned as transmission facilities. Because the acquiring company had not sought a certificate to acquire and operate jurisdictional facilities as a natural gas company, the Commission found it could not approve the proposed abandonment.[42] The Commission stated that its denial was without prejudice to the acquiring company seeking a certificate to operate the facilities as fully jurisdictional, open-access facilities under the NGA.[43] In the instant proceeding, Southern proposes to abandon by sale its facilities to a company that will become an interstate pipeline company upon acceptance of the authorizations granted herein. Therefore, Southern's proposal satisfies the

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[39] 135 FERC ¶ 61,048, *reh'g denied*, 137 FERC ¶ 61,091.

[40] *MOPS*, 135 FERC ¶ 61,048 at P 38. In particular, the Commission found that while two shippers could possibly construct pipeline facilities to access alternative transportation for production currently transported on MOPS, the companies had not demonstrated that the alternative would be cost effective. In addition, it was unclear that there would be any alternative transportation for approximately 30-40 percent of the volumes flowing on MOPS at that time.

[41] *Tennessee*, 137 FERC ¶ 61,105 at P 20.

[42] *Id*. P 28.

[43] *Id.*

presumption in favor of continued service because High Point will continue to offer all jurisdictional services previously offered by Southern under High Point's Commission-approved tariff.

C. **Benefits to Southern's Shippers**

40. Protestors assert that the proposed abandonment lacks evidence of benefits to the pipeline's customers because Southern's claimed economic benefit of reduced future costs is illusory and speculative,[44] and the benefits identified are not sufficient to outweigh the negative impacts.[45] Protestors argue that Southern has presented no evidence that cost of service savings would exceed revenues that are currently received from shippers that use the Facilities. In addition, while Southern and its shippers that do not rely on the South of Toca Facilities for any of their supplies may benefit from the reduced hurricane exposure, the proposed abandonment would shift all of that risk ultimately to shippers that do have to rely on the facilities.

41. Southern refutes the protestors' claims that the benefits of the proposed abandonment are speculative or illusory, and that Southern's end-use customers will continue to be subject to offshore supply disruptions in the event of hurricanes. Southern points to the Customers Letter Agreement under which unrecovered South of Toca Facilities' plant costs would be quickly amortized and the fact that, under the terms of the settlement underlying its currently-effective rates, Southern will be filing an NGA section 4 general rate case that will likely reflect the removal of the Facilities' costs.[46] Southern states that because the regulatory asset will begin to amortize immediately upon the closing of the proposed sale, Southern's customers will recognize an economic benefit from a partially amortized regulatory asset balance that will likely be reflected in Southern's next NGA section 4 general rate proceeding. Southern further argues that the large block of firm customers that signed the Customer Service Agreement or intervened in support of the proposal have clearly indicated that they perceive a tangible long-term benefit that will accrue to them should the abandonment be approved.

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[44] Citing *MOPS*, 137 FERC ¶ 61,091; *Northern Natural Gas Co.*, 117 FERC ¶ 61,117 (2006) (*Northern*); *Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,118 (2005).

[45] Citing *Transco III*, 129 FERC ¶ 61,255.

[46] Southern states that it is required to file its next NGA section 4 general rate case no later than March 31, 2013, which is less than nine months after it anticipates closing the proposed sales transaction.

42. Finally, Southern asserts that shippers that need to rely on the South of Toca Facilities will still be able to receive service from High Point at Commission-approved rates. Southern asserts it is not unfair that producers that find it necessary to become shippers themselves on the Facilities and receive service from High Point should share in High Point's costs, including any future hurricane-related repairs.

43. Southern argues that its abandonment of the Facilities will reduce the risk exposure and ultimately, if the city-gate rate design is not modified in the next rate case, lower the rates of its market area customers that are no longer heavily reliant on supplies from the Gulf of Mexico. Southern emphasizes that none of the protestors are firm shippers on its system, and none of the protestors have paid to ship gas on an interruptible basis during the past three years.

44. Southern argues that the majority of its shippers that are no longer dependent on supplies from the Gulf of Mexico should no longer have to subsidize the costs of operating these facilities. With the growth of unconventional production occurring closer to load centers, Southern asserts its downstream shippers no longer demand the same level of offshore production, which is transported by facilities that are more expensive to operate and maintain.

45. Contrary to the position of the protestors, we find that the public interest[47] does permit Southern's abandonment and High Point's acquisition of the South of Toca Facilities. The Commission takes a broad view in abandonment proceedings and evaluates proposed abandonment proposals against the benefits to the market as a whole.[48] While we accept the protestors' position that they do not believe they will receive any affirmative benefit as a result of the proposal, the showing of support from Southern's firm shippers for its proposed abandonment is a strong indication that those shippers do believe the abandonment will result in tangible benefits to themselves as customers. Their support is also a strong indication that they are not concerned that they will lose access to the Gulf of Mexico supplies accessed by the South of Toca Facilities. Further, we disagree with protestors that Southern's claimed benefits are speculative or

[47] *See Consolidated Edison Co. v. FERC*, 823 F.2d 630, 635 (D.C. Cir. 1987) (explaining the Commission's shift in identification of the public interest under section 7(b) from the interest of only specific customers to the interests of the market as a whole).

[48] *See Southern Natural Gas Co.*, 50 FERC at 61,222. *See also Consolidated Edison Co. v. FERC*, 823 F.2d 630, 643-644 (D.C. Cir. 1987) ("We agree with FERC that the 'public convenience or necessity' language of the NGA's abandonment provision envisions agency policy-making to fit the regulatory climate.") (citation omitted).

illusory. Southern has outlined its plan regarding the cost impacts of the abandonment, noting that it is required to file an NGA section 4 general rate proceeding no later than March 31, 2013.

46. These circumstances differ significantly from those in the *Northern* proceeding cited by protestors.[49] Not only did that proposal lack the support of shippers holding a majority of the firm capacity rights on the facilities to be transferred, but in contrast to Southern, Northern was under a rate case moratorium at the time, and under no obligation to file a rate case in the future wherein any realized cost savings could be passed on to shippers. Based on these circumstances, among others, the Commission found that Northern's abandonment proposal lacked evidence of benefits sufficient to outweigh the potential detrimental impacts.[50] Here, on balance, we find that the broader public interest will not be disserved by Southern's abandonment of the South of Toca Facilities by sale to High Point.

D. Higher Rates for Shippers that Use the Facilities

47. High Point proposes an interruptible transportation recourse rate of $0.3295 per dekatherm on a postage-stamp basis for transportation to the interconnection with Southern. Protestors argue that adding High Point's rate to Southern's rate for downstream transportation constitutes rate stacking and, more importantly, will result in higher overall transportation costs for shippers that purchase the protestors' gas, thereby making the protestors' gas less competitive. Protestors assert that a shipper's rate for downstream service currently includes transportation of the gas on the South of Toca Facilities to Southern's pool. However, if the applications are approved, protestors argue that shippers will have to pay High Point up to the proposed interruptible transportation rate of $0.3295 per dekatherm for transportation from receipt points on the South of Toca Facilities to the interconnection with Southern's system. Protestors argue that this situation violates the Commission's policy that there should be only one charge for transportation into and out of a pool.

48. Protestors assert that interruptible customers, pooling customers, and affected producers should not now be penalized because Southern has decided that it no longer is willing to provide the types of services that it has historically provided that rely on the South of Toca Facilities. Protestors argue that the inevitable increased transportation costs will reduce producers' gas sales netbacks, or force producers to shut-in reserves.

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[49] 117 FERC ¶ 61,117.

[50] *Id.* P 39.

49. American Midstream and shippers on its system, which deliver gas to the South of Toca Facilities 100 feet upstream from the new interconnection, argue that High Point's proposed rate is unfair for transportation over this short distance. American Midstream adds that High Point's proposed rate will make it harder for American Midstream to compete for supplies, that current production delivered to the American Midstream system will be delivered to other systems, and that future development to add new production along American Midstream's system will become less attractive when compared to drilling in areas where the production can access other markets or Southern's system downstream of the Toca Compressor Station.[51]

50. Southern responds that protestors should be afforded little deference in this proceeding because none have subscribed for any firm capacity on any part of Southern's system in the past three years. Southern responds that protestors concerns about rate stacking are overstated and do not outweigh the public interest benefits of the proposed abandonment. Southern further asserts that rates are not the only factor that bear on the public convenience or necessity, and that the cases cited by protestors to support the proposition that the Commission affords rate stacking special significance involved circumstances where the acquirer of the facilities to be abandoned sought to operate the facilities as non-jurisdictional facilities. Southern states that protestors true concern is that any increase in transportation costs will result in lower producer profits through reduced netbacks.

51. High Point adds that the protestors' arguments should not distract the Commission's focus from Southern's firm shippers, which in this case overwhelmingly support Southern's proposed abandonment. High Point emphasizes that the mere fact that a separate rate will be paid does not constitute the kind of rate stacking that the Commission has found contrary to the public interest. Further, the fact that High Point will charge for transportation of shippers' gas to the onshore processing plant and Southern will charge for transportation downstream of the processing plant is not

[51] As an alternative, American Midstream requests that the Commission require the new interconnection between High Point's and Southern's systems to be located upstream of American Midstream's interconnect with the South of Toca Facilities. American Midstream argues this would maintain the status quo for liquids and liquefiables and would obviate the need for Southern to enter into agreements with High Point regarding the operation of the dehydration and bypass facilities near the Toca Processing Plant.

inconsistent with Commission policy.[52] High Point argues that the proposals will simply result in a separation of operations between the offshore and the onshore systems, with High Point providing a separate and distinct transportation service, for which the shippers will be charged separately.

52. With respect to liquefiables transportation, High Point asserts that protestors inappropriately compared Southern's liquefiables-only transportation rate to High Point's initial rates, because High Point's initial rates include service for the transportation of both natural gas and liquefiables. High Point emphasizes that all of the gas transported on the South of Toca Facilities is a mixture of natural gas and liquefiables. High Point states that it has accounted for this fact and has simplified the nomination process by proposing initial rates that cover the transportation of both.

53. High Point also urges rejection of the protestors' assertion that the proposal violates the Commission's pooling policy because High Point will require shippers on High Point's system to pay for transportation across its system, and require shippers on Southern's system to pay for transportation on Southern's system upon exiting Southern's pool. High Point responds that the Commission's pooling policy is applicable only to a pool in a single rate zone. Shippers on High Point's system will pay a transportation charge for upstream transportation service that enables their gas to enter Southern's system and Southern's pool, and shippers on Southern's system will pay a transportation charge to exit Southern's pool and for downstream transportation.

54. The Commission has stated that in determining whether a pipeline's proposed abandonment of jurisdictional facilities is in the public convenience or necessity it will consider the potential that shippers will be charged higher rates for the same services they are currently receiving.[53] Here, the protestors contend that most of the shippers upstream of Southern's pooling points do not currently pay for transportation service over Southern's offshore facilities. Because such shippers will be required to pay for offshore transportation if the proposals are approved, the protestors argue that the new set of rates imposed upon them will constitute rate stacking. However, the fact that offshore shippers have not usually paid for this service does not mean that the service has been provided for free. Under the Commission's pooling policy, pipelines may only charge shippers once

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[52] Citing *Trunkline Gas Co.*, 95 FERC ¶ 61,337, at 62,232 (2001) (interstate pipeline operators may charge separate rates for producers to transport gas from the wellhead to onshore processing plants or to the interstate transmission grid).

[53] *Transco II*, 110 FERC ¶ 61,337 at P 44.

for gas transported through a pool.[54] Southern charges the shippers downstream of the pool for upstream services. Thus, while the protestors are correct that they do not currently pay for offshore transportation services, Southern has been billing the shippers downstream of the pool for that upstream service. We do not view a change in revenue responsibility as rate stacking. Thus, we find that a situation where shippers upstream of Southern's pooling points will now pay High Point for the offshore transportation that is currently being paid for by downstream shippers is not impermissible rate stacking. We further note that while the rates of Southern's downstream shippers will continue to include the costs associated with the Facilities and services that will now be provided by High Point until Southern files an NGA section 4 general rate case, none of those shippers have protested the proposed abandonments.

55. The proposal here is unlike the one presented to the Commission in *Transco II,*[55] where the Commission denied Transco's request to abandon facilities (South Texas Pipeline Facilities) by sale to Crosstex CCNG Transmission, an intrastate pipeline, because, among other things, the Commission found that the proposed abandonment would result in higher, stacked rates. Like Southern's South of Toca Facilities, Transco's South Texas Pipeline Facilities (part of Transco's IT Feeder System) function primarily to move gas from production areas (on and offshore in Texas) to Transco's Station 30 for subsequent transportation on Transco's downstream mainline. Unlike the situation on Southern, Transco charges a separate IT Feeder rate for service on its IT Feeder system, which includes service on the South Texas Pipeline Facilities and service through Station 30. Further unlike the situation here, Transco was proposing to abandon only a portion of its IT Feeder system; as proposed, Transco would have retained both Station 30, located at the downstream end of the facilities to be abandoned, and its North Padre Island Lateral (NPI Lateral), which is located upstream of the South Texas Pipeline Facilities. Therefore, under the circumstances presented in *Transco II*, in order to access Transco's system downstream of Station 30, shippers would have had to pay two separate rates, both designed to recover costs associated with the South Texas Pipeline Facilities: Crosstex's new rate and Transco's still-existing IT Feeder rate.[56]

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[54] *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-F, FERC Stats. & Regs., Proposed Regulations 1988-1998 ¶ 32,527, at 33,351 (1996) (Order No. 587-F) ("[W]hen a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool.").

[55] *Transco II*, 110 FERC ¶ 61,337.

[56] Similarly, in *Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,118 (2003) (*Transco I*), the abandonment proposal rejected by the Commission would have resulted

(continued…)

Here, in contrast, shippers on the South of Toca Facilities will pay only a single rate, albeit to High Point, calculated to recover the costs associated with service over those facilities. Any rate paid to Southern will be for transportation service downstream of the interconnection point between High Point and Southern and will recover costs primarily related to that downstream service.[57]

56. Protestors' arguments also are not supported by the cited *Tennessee* order.[58] As described above, the Commission did not reject Tennessee's abandonment proposal in that proceeding because of potential adverse economic impacts on producers. Rather, in *Tennessee*, the Commission denied the proposed abandonment of the transmission facilities by sale to a company that planned to operate them as non-jurisdictional gathering facilities because the Commission found that certain of the facilities functioned as jurisdictional transmission facilities and the acquiring company had not sought a certificate under section 7 of the NGA to operate those facilities.

57. Finally, we also disagree with protestors' argument that Southern's and High Point's proposals would result in violation of the Commission's pooling policy, which requires pipelines to charge shippers only once for gas transported through a pool. The Commission has pointed out that Order No. 587-F set forth the Commission's policy that, "[W]hen a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool."[59] High Point will charge shippers its approved rate to transport gas to the new delivery interconnection with Southern. High Point's rate covers transportation service on the South of Toca Facilities that it will own; High Point's rate does not cover service on any facilities to be retained by Southern. Transportation on Southern's facilities, including into and

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in shippers on Transco's North Padre Island facilities paying both Transco's IT Feeder Rate and the proposed acquiring facility's Natural Gas Policy Act (NGPA) section 311 rate to reach Station 30.

[57] Another difference between this case and the *Transco II* scenario is that it would have inserted a non-jurisdictional entity in the middle of the transportation path of customers transporting gas from the NPI Lateral, such that their gas would have flowed from Transco's interstate NPI Lateral, onto Crosstex's intrastate facilities, then back onto Transco's interstate facilities on its way to Station 30.

[58] *Tennessee Gas Pipeline Co.*, 137 FERC ¶ 61,105 (2011).

[59] *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-F, FERC Stats. & Regs., Proposed Regulations 1988-1998 ¶ 32,527, at 33,351 (1996).

downstream of its pool, will be under Southern's existing rate. Southern is not proposing to change its billing policy to charge for transportation both into and from its pool. As discussed below, both Southern and High Point are in conformance with the Commission's billing policy from transportation through a pool.

58. Regarding the argument that this proposal could negatively impact the competitiveness of gas connected to the South of Toca Facilities, we note that the extent to which the price of transportation affects the price of natural gas at either the well-head or the end-use market in a competitive natural gas environment cannot be gauged precisely. Further, while the proposal before us involves the abandonment of Southern's offshore facilities by sale to another natural gas company, we note that the same reallocation of responsibility for the risks and costs associated with those facilities from Southern's downstream shippers to only those shippers actually using the facilities could have been accomplished absent an abandonment. Southern could have retained the subject facilities and instead proposed to create a new, distinct offshore rate zone in an NGA section 4 general rate proceeding. Under such a scenario, although Southern would still be the provider of service over the offshore facilities, the rate effect on offshore shippers would be very similar to the result here, i.e., they would be subject to a rate designed to recover all the costs associated with providing service on the South of Toca Facilities. Under either scenario, the gas markets and individual gas contracts will ultimately determine how costs related to the continued maintenance and operation of these offshore facilities will be reflected in the prices customers are willing to pay for South of Toca production, and, in turn, the prices that South of Toca producers receive at the well head. These markets and contracts are not subject to the Commission's jurisdiction.

E. Other Issues

1. Request for NGA Section 4 Rate Proceeding in Lieu of Abandonment

59. Protestors argue that the proper forum for resolving Southern's alleged cost under-recovery issues with respect to the South of Toca Facilities is in an NGA section 4 rate proceeding, not in an NGA section 7 proceeding with an application requesting authorization to abandon the facilities. Protestors rely on *MOPS* to argue that if Southern is abandoning for economic reasons, then the appropriate action is for Southern to file an NGA section 4 proceeding to more appropriately allocate the cost of operating and maintaining the Facilities.[60] In response, Southern argues that filing an NGA section 4 rate case to allocate costs associated with maintaining the South of Toca Facilities to its

[60] Citing MOPS, 135 FERC ¶ 61,048, *reh'g denied*, 137 FERC ¶ 61,091 at P 22.

downstream customers would cause Southern to operate its system less efficiently and could ultimately result in turnback of capacity by its firm shippers that can obtain replacement transportation service elsewhere. Southern asserts that pipeline companies need to have the ability to rationalize their facilities to operate the whole system efficiently.

60. The *MOPS* case does not stand for the proposition that it is inappropriate for a company faced with increased costs and/or a misalignment of costs and revenues to seek to abandon a portion of its system. Unlike Southern, which is seeking to abandon its facilities by sale to a newly-formed interstate pipeline company, the owner/operators of the MOPS facilitates were proposing to retire the facilities, i.e., remove them entirely from service. The Commission can authorize abandonment under section 7(b) of the NGA upon a finding either "that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted" or "that the present or future public convenience or necessity permit such abandonment." In reviewing the *MOPS* proposal, the Commission found that a not insignificant amount of gas was still flowing on the MOPS facilities, that there was continuing well development activity in the vicinity served, that the existing MOPS shippers had no readily-available alternatives to transporting their gas on MOPS, and that the facilities proposed to be abandoned were otherwise capable of continuing to provide service. Thus, while indicating that it was sensitive to the economic realities faced by pipelines, the Commission reaffirmed that "continuity and stability of existing service are the primary considerations in assessing the public convenience or necessity of a permanent cessation of service under section 7(b) of the NGA,"[61] and found that the evidence presented by the applicants did not support a finding that the public convenience and necessity permitted removal of the subject facilities from service. Given that, the Commission observed that "[i]n the absence of Applicants and their shippers agreeing to negotiated rates, the appropriate forum for determining what rates are necessary to provide the Applicants an opportunity to recover their costs in providing services using the MOPS facilities is a section 4 rate case."[62] Here, unlike in *MOPS,* Southern is not proposing to retire its offshore facilities from service. As proposed, continued service will be available from High Point.

2. <u>Negative Salvage</u>

61. Protestors argue that Southern has not addressed what will happen to the negative salvage dollars that Southern has collected during its ownership of the South of Toca

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[61] *MOPS,* 135 FERC ¶ 61,048 at P 35 (citing *Southern Natural Gas Co.,* 126 FERC ¶ 61,246 (2009)).

[62] *Id.* P 43.

Facilities. Protestors contend that since Southern has been collecting a separate offshore negative salvage rate through its jurisdictional rates, it should be required to return these amounts to its customers.

62. Southern has addressed this issue by proposing to account for negative salvage by reducing the net book value of the South of Toca Facilities by the negative salvage amount.[63] Southern determined the net book value of the facilities sold by subtracting the amount of accumulated depreciation included in Account 108, Accumulated Provision for Depreciation of Gas Utility Plant, including the amount of negative salvage applicable to the property sold, from the original cost of the South of Toca Facilities sold included in Account 101, Gas Plant in Service. Southern then calculated the loss on the sale by subtracting the proceeds from the sale from the estimated net book value of the facilities. Finally, Southern would establish a regulatory asset for the loss in Account 182.3, Other Regulatory Assets, for which it will seek collection from its customers in its next NGA section 4 general rate filing.

63. Because Southern is reducing the regulatory asset for which it intends to seek collection from its customers by the negative salvage amount previously collected from customers, Southern is proposing, in effect, to return the accumulated negative salvage to its customers.

3. Southern's Recovery for Residual and Secondary Liability

64. Southern has requested that the Commission make a finding that would create a presumption that it will be allowed in future NGA section 4 rate proceedings to recover in its Part 284 transportation rates residual and secondary liability costs associated with the South of Toca Facilities, as provided for in its Customer Letter Agreement. While nothing bars Southern from proposing to recover any such costs in future rate proceedings, the Commission will expect any proposal to be fully supported, explained, and justified. At this point, these costs are speculative and Southern has not explained its responsibilities for these costs, or why these costs should be recoverable from its customers. Therefore, the Commission will not take any position here regarding the potential recovery in future rate proceedings of costs related to residual and secondary liability.

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[63] Southern October 7, 2011 Application at Exhibit Y, Item 2. Southern estimated the net book value by the total costs, reducing that amount by the accumulated Depletion, Depreciation, & Amortization, inclusive of negative salvage.

4. Alleged Violation of Southern's Settlement

65. In their December 9, 2011 filing, Indicated Shippers raise a new issue asserting that Southern's abandonment of the South of Toca Facilities would be a violation of a Stipulation and Agreement dated October 5, 2009, filed in Docket No. RP09-427-000 (the Settlement).[64] Indicated Shippers cite the following settlement provision: "Settlement Rate Provisions and/or the Settlement Tariff Provisions shall not be modified or changed prior to September 2, 2012 under the terms of any proceeding." Indicated Shippers argue this provision serves as a bar to changes to the transportation rates on Southern's system in *any* proceeding until September 2, 2012.

66. The Commission rejects Indicated Shippers' argument. Southern has not proposed to change its system-wide rates in this abandonment proceeding. Any modification of Southern's system-wide rates to reflect the abandonment of the South of Toca Facilities will not occur until Southern's next NGA section 4 general rate case, which Southern is required to file no later than March 31, 2013.

F. Accounting Issues

67. Southern submitted its proposed accounting for the sale of the South of Toca Facilities to High Point in Exhibit Y to Southern's application. Southern's proposed journal entries clear the abandonment by sale through Account 102, Gas Plant Purchased or Sold, and remove the original cost and related accumulated depreciation of the assets from its books, consistent with Gas Plant Instruction (GPI) No. 5. The sale results in an estimated loss of approximately $35 million that Southern proposes to record in Account 421.2, Loss on Disposition of Property.[65] In addition, Southern seeks authorization to defer the loss on the sale of the South of Toca Facilities as a regulatory asset in Account 182.3, Other Regulatory Assets, and amortize the costs over 36 months beginning on the closing date of the sale to High Point as outlined in the Customer Letter Agreement dated September 23, 2011.

68. The Customer Letter Agreement between Southern and certain of its firm customers sets forth the conditions under which those customers would agree to support this abandonment application and pursuant to which Southern may seek recovery of,

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[64] Settlement approved at *Southern Natural Gas Co.*, 130 FERC ¶ 61,004 (2010).

[65] Southern provided the estimate ($35 million) for its loss on the sale of the Facilities at the time it filed its application for abandonment authority in this proceeding on October 7, 2011. Southern states that this figure will be adjusted to reflect the actual costs as of the date the Facilities are transferred.

among other items, the loss on its sale of the Facilities abandoned in its jurisdictional rates in the future. The Customer Letter Agreement provides that Southern may set up a regulatory asset in Account 182.3 in an amount equal to the difference between the net book value at the closing date and the sales proceeds related to the assets sold. Thereafter, Southern will begin reducing the regulatory asset each month using a 36-month amortization period from the closing date until the date when the revised rates become effective, subject to refund in Southern's next general section 4 rate proceeding. The Customer Letter Agreement further provides that upon the effective date of the rates established in Southern's next general rate proceeding, Southern may include in such rates the cost-of-service effect of the amortization, return, and related income taxes associated with the unamortized balance of the regulatory asset.

69. Because Southern proposes to begin amortization of the regulatory asset reflecting its loss on the sale upon closing of the sale to High Point, Southern estimates that approximately one-third of the regulatory asset may be amortized before Southern files its next NGA section 4 general rate case. Southern submits that the Commission's approval in this proceeding of Southern's establishment and recovery of the regulatory asset would be consistent with Commission policy and will benefit Southern's customers through the elimination of future risk and costs associated with the South of Toca Facilities.[66]

70. Under the Commission's USofA, a natural gas company may record a regulatory asset for specific expenses or losses that would have been included in net income determination in one period under the general requirements of the USofA but for it being probable that such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services.[67] The USofA also specifies that if rate recovery of all or part of an amount deferred as a regulatory asset is disallowed, the disallowed amount shall be charged to Account 426.5,

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[66] Southern estimates that the sale will result in a $4 million rate reduction in its upcoming NGA section 4 general rate case, and that when Southern makes its subsequent section 4 filing when the regulatory asset is fully amortized after three years, the sale will further reduce Southern's annual cost of service by an additional $15 million.

[67] The term "probable," as used in the definition of regulatory assets, refers to that which can reasonably be expected or believed on the basis of available evidence or logic but is neither certain nor proved. *See Revisions to Uniform System of Accounts to Account for Allowances under the Clean Air Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2-A*, Order No. 552, FERC Stats. & Regs., Regulations Preambles 1991 - 1996 ¶ 30,967 (1993).

Other Deductions, or Account 435, Extraordinary Deductions, in the year of the disallowance.

71. Under the USofA, Southern is required to record its loss on the sale of the Facilities at the time of the sale. However, Southern has provided support in the form of a signed Customer Letter Agreement indicating that all or a portion of the loss may be recovered from certain customers in future rates. Therefore, Southern has a basis for its proposal to defer the portion of the loss in Account 182.3 that it regards as probable of future recovery. The remaining portion of the loss not probable of future recovery should be recorded in Account 421.2, at the time of the sale. Further, at each reporting date Southern must reassess the recoverability of the regulatory asset and write-off any additional portions which are not probable of future recovery from Account 182.3 to Account 426.5. Finally, we note that Southern can implement the requirements of the Customer Letter Agreement by recording monthly memorandum entries for book purposes.[68]

72. In examining the function of the South of Toca Facilities, the Commission has found that certain pipeline segments are no longer providing service.[69] Accordingly, Southern must, for accounting purposes, classify these unused facilities in Account 121, Nonutility Property, effective the date of this order, because they are not currently being used to provide gathering or transmission services. In addition, as discussed below, we have determined that certain facilities currently certificated as transmission facilities are actually performing a gathering function. Accordingly, should Southern for whatever reason not proceed with the abandonment of these facilities by sale to High Point, Southern must refunctionalize the original cost of the facilities from transmission to gathering accounts, effective the date of this order.[70] In such a case, Southern must also transfer the accumulated provision for depreciation carried in the account for the refunctionalized property between functions in accordance with GPI No. 12 of the Commission's USofA. The amount of accumulated depreciation associated with the

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[68] General Instruction No. 2, Records, 18 C.F.R. Part 201 (2011). Although we are addressing the appropriate accounting for the regulatory asset Southern proposes to create, we are making no finding in this order that would create a presumption supporting approval of Southern's recovery of the regulatory asset in a rate proceeding.

[69] The Commission's pipeline segment findings are summarized in Appendix B of this order.

[70] *See Tennessee Gas Pipeline Co.*, 138 FERC ¶ 61,179 at P 20, *clarified*, 138 FERC ¶ 61,082, at P 10 (2012).

refunctionalized gas plant to transfer between functions must be determined by using the actual recorded amount of accumulated depreciation on a vintage basis.[71]

IV. High Point Application: Docket No. CP12-9-000

73. High Point proposes to acquire and operate all of the South of Toca Facilities as jurisdictional transmission facilities under section 7(c) of the NGA. The South of Toca Facilities consist of 51 pipeline segments, four platforms, and 67 meter stations, the majority of which were authorized by the Commission in the 1950s, with subsequent authorizations in the 1960s through 1980s, and one facility authorized in 1990. Southern constructed the Facilities to connect new gas supplies for its then-existent merchant function.

74. All of the South of Toca Facilities were constructed or acquired pursuant to certificates issued by the Commission under section 7(c) of the NGA. However, prior to the Commission's open-access policies requiring unbundling of pipeline services, there was no need, as a practical matter, to review applications by pipelines for certificate authority to ascertain whether any of the proposed new facilities may have actually functioned as gathering facilities. Thus, in many instances, gathering facilities were constructed under certificate authority and the costs associated with those facilities were part of the rate base of the pipeline's sales rates. Later, many of those facilities were found by the Commission to perform a gathering function.[72]

75. Having been constructed to access offshore producing areas, it is quite possible that some of the South of Toca Facilities actually perform a non-jurisdictional gathering function. The only way to definitively determine the jurisdictional status of facilities is to perform a primary function test, which the Commission has not previously performed on the South of Toca Facilities. While neither Southern nor High Point has requested a functional analysis of the South of Toca Facilities, and both note that refunctionalization of the subject facilities is not contemplated in their transaction, we nevertheless find it is appropriate for the Commission to take this opportunity to analyze the jurisdictional status of the Facilities to insure that the certificate of convenience and necessity issued to High Point in this proceeding only encompass facilities and services over which the Commission actually has jurisdiction under the NGA.

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[71] *See Transwestern Pipeline Co.*, 72 FERC ¶ 61,085, at n.17 (1995).

[72] *See Equitrans, L.P.*, 109 FERC ¶ 61,209, at P 59 (2004).

A. Primary Function Test

76. Under section 1(b) of the NGA, the Commission's jurisdiction does not extend to facilities used for "the production or gathering of natural gas."[73] The NGA, however, does not define the term "gathering." As a result, the Commission has developed a legal test, known as the "primary function test," to determine which facilities are non-jurisdictional gathering facilities and which facilities are jurisdictional transmission facilities.[74]

77. The "primary function test" considers, as applicable, several physical and geographic factors, including: (1) the lengths and diameters of the pipelines at issue; (2) the extension of the subject facilities beyond the central point in the field; (3) the facilities' geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facilities; and (6) the operating pressures of the lines. In addition, the Commission considers the purpose, location, and operation of the facilities, the general business activity of the owner of the facilities, and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978.[75] The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.[76]

78. While the courts have sanctioned giving some weight to non-physical factors, including the location and operation of the facilities, and the general business activities of the owner, non-physical factors are secondary, and generally relevant only if consideration of the physical and geographic factors are indeterminate.[77] Nevertheless, the primary function test is not applied mechanically, and therefore not all factors in the test need be met, nor is any one factor determinative.[78]

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[73] 15 U.S.C. § 717(b) (2006).

[74] *See Amerada Hess Corp., et al.*, 52 FERC ¶ 61,268 (1990); *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

[75] 15 U.S.C. §§ 3301-3432 (2006).

[76] *Columbia Gas Transmission Corp.*, 93 FERC ¶ 61,278, at 61,913 (2000).

[77] *Transcontinental Gas Pipe Line Corp.*, 121 FERC ¶ 61,157, at P 11 (2007).

[78] *Id*.

79. The South of Toca Facilities consist of approximately 604 miles of pipeline (composed of fifty-one individual segments),[79] 67 meter stations, and four platforms[80] located offshore in the Gulf of Mexico and in onshore Louisiana. There are no processing plants or compressor stations on the South of Toca Facilities. All of the facilities that Southern proposes to abandon are located upstream of Enterprise's Toca Processing Plant. When considering the function of onshore facilities, the location of facilities upstream of the plant where the gas stream is processed to pipeline quality usually supports a finding that the facilities' primary function is non-jurisdictional gathering. However, because it is impracticable to locate processing plants offshore or in marsh area, the "behind-the-plant" test is not useful here in accessing the jurisdictional status of the South of Toca Facilities.[81] Accordingly, our functionalization assessment relies on other primary function test factors.

80. Here, our analysis relies heavily on the "spine and lateral" geographic configuration of the South of Toca Facilities. As discussed below, approximately 17 miles upstream of the Toca Compressor Station, the three pipeline segments that receive gas at the Gate 6 Platform split into essentially four long upstream spines composed of multiple linear pipeline segments through which all gas from the various laterals is transported to the Toca Compressor Station. We find that the four spine-like segments of facilities are transmission facilities.

81. The conclusion that these facilities are transmission facilities is supported by application of the primary function test. The geographic configuration of these facilities lacks the traditional web-like configuration associated with many gathering systems. The facilities generally do not have wells located along all or most of their length. In addition, the average operating pressure of these facilities is generally equal to or less than the average operating pressure of Southern's mainline facilities at the point of

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[79] The 51 pipeline segments are identified in Appendix B of this order. Appendix B includes the line designation number, the design capacity of the segment, and the Commission's determination of the function of each segment.

[80] The platforms are named Gate 6, Olga, Lake Washington, and Huertes. Each has valves used to isolate or direct flow into or out of specific lines, as needed, for operations, pigging, and maintenance activities. Gas processing activities, such as compression, separation, measurement, or dehydration, are not performed on the platforms. Southern and High Point March 9, 2012 Response to Data Request at No. 2.

[81] *See Tennessee Gas Pipeline Co. and PSI Midstream Partners, LP*, 124 FERC ¶ 61,128, at P 15 (2008) (explaining that in the offshore context, the absence of processing plants is of little value in assessing the primary function of facilities).

interconnection with High Point.[82] The above described function of the facilities leads to the conclusion that the primary function of these facilities is transmission. Our analysis of individual facilities follows.

82. Approximately 17 miles upstream from the Toca Compressor Station is the Gate 6 Platform, where gas coming from five upstream pipelines is aggregated.[83] From the Gate 6 Platform, three parallel pipelines carry the gas 17 miles first to the Enterprise Processing Plant, and then to Southern's adjacent Toca Compressor Station. These lines are the 20-inch-diameter Main Pass-Franklinton Main Line (Line No. 104D), the Main Pass-Franklinton Loop Line (Line No. 104D-L1), and the 26-inch-diameter Main Pass-Franklinton Second Loop Line (Line No. 104D-2L1). The combined design capacity of the three parallel lines is 1.12 billion cubic feet per day. The Commission finds that the spine-like parallel configuration of these pipelines, relatively long lengths and large diameters, and lack of well connections support a finding that they are transmission facilities.

83. One of the five upstream pipelines that brings gas to the Gate 6 Platform is the Pointe-a-la-Hache line (Line No. 127), which is a 6.76-mile-long, 8-inch-diameter line with only one upstream receipt point. It has a design capacity of 47,000 Mcf per day. The Pointe-a-la-Hache's relatively short, small diameter lateral line feeds gas it gathers into the main spine. These factors support a finding that the line is a gathering facility.

84. The four other pipelines that bring gas to the Gate 6 Platform, and numerous lines that interconnect with these lines constitute the Southeast Branch Facilities and the Southwest Branch Facilities. These facilities are discussed below.

1. Southeast Branch Facilities

85. The gas received at the Gate 6 Platform is accumulated by the Southeast Branch Facilities that collect gas produced in the Mississippi Canyon, South Pass, Main Pass, and Breton Sound offshore areas. The upstream pipeline segments that directly connect to the Gate 6 Platform are the upstream segments of Line Nos. 104D (Main Pass-Franklinton

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[82] The maximum allowable operating pressure (MAOP) at the interconnection with High Point is 1,200 psig. Exhibit U of Southern's application. Attachment 3B of applicants' January 11, 2012 data response indicates the range in operating pressure on the South of Toca facilities is between 730-1,300 psig.

[83] Four of the five pipelines are the farthest downstream of the South of Toca Facilities delivering gas to the Gate 6 Platform. The other pipe, Line No. 127, is discussed below.

Main Line) and 104D-L2 (Main Pass-Franklinton Loop Line) that transport gas to shore.[84] Line Nos. 104D and 104D-L2 extend 29 miles further upstream to the Olga Platform. The combined design capacity of these two pipeline segments between the Olga Platform and the Gate 6 Platform is 828,000 Mcf per day. There are only two receipt points and one short interconnecting lateral (discussed below) from which additional gas supplies are received by Line Nos. 104D and 104D-L2, between the Olga Platform and the Gate 6 Platform. Based on their length, diameter, spine configuration, location between two mainline platforms and the fact that the lines receive gas from upstream gathering facilities, the Commission finds that the pipeline segments of Line Nos. 104D and 104D-L2 between the Olga Platform and the Gate 6 Platform are transmission facilities.

86. The Cox Bay Field Line (Line No. 126) is a 2.53-mile-long, 6-inch-diameter lateral off one of the mainlines that transports gas from the Olga Platform and the Gate 6 Platform. The Cox Bay Field Line’s design capacity is 27,000 Mcf per day. The line has one active receipt point and one redelivery point at its upstream origin. The Cox Bay Field Line is a short, small diameter lateral line feeding gas it gathers into the mainline spine. These factors support a finding that the Cox Bay Field Line is a gathering facility.

87. One additional line, the Coquille Bay Field line (Line No. 107), directly interconnects with the Olga Platform. This 0.17-mile-long, 8-inch-diameter line last flowed gas on June 23, 2003. Line No. 107 has not been used for almost a decade, and High Point has not provided any information to indicate that it has plans to use the line again. Therefore, while High Point can acquire the line, we will not include Line No. 107 in our grant of certificate authority to High Point.

88. The four farther upstream pipelines that currently deliver gas to the Olga Platform are: (1) the Mississippi Canyon Block 194 Facilities;[85] (2) the Main Pass Block 298 Facility; (3) the Main Pass Block 48 Field to Olga Facility; and (4) the Breton Island Field Facility.

89. The combined average daily volumes delivered to the Olga Platform by the Mississippi Canyon Block 194 Facilities and the Main Pass Block 298 Facility is 153,390 Mcf per day, which is nearly 85 percent of the 2010 average daily volume of all

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[84] The total length of Line Nos. 104D, 104D-L1, and 104D-L2 is approximately 46 miles from the Toca Compressor Station to the Olga Platform.

[85] The Mississippi Canyon Block 194 Facilities consist of Line Nos. 104E, 112, 1165, and 1166.

the Southeast Branch Facilities that move gas to the Gate 6 Platform, from which the gas makes the final trek to shore and processing.

a. Mississippi Canyon Block 194 Facilities

90. The pipeline that is part of the spine-like Mississippi Canyon Block 194 Facility and delivers directly to the Olga Platform is the Main Pass-Franklinton Main (Line No. 104E), a 16-inch-diameter, 10.12-mile-long line.[86] Line No. 104E's design capacity is 207,000 Mcf per day. Gas is delivered into Line No. 104E from two pipelines: (1) the Romere Pass Field Line (Line No. 112); and (2) Line No. 104F. The Romere Pass Field Line is a 1.98 mile-long, 14-inch-diameter pipeline.[87] Two additional lines connect to the Romere Pass Field Line: Line No. 1166, a 14.61-mile-long, 18-inch-diameter pipeline segment, and Line No. 1165, a 25.09-mile-long, 16-inch-diameter pipeline segment. Line No. 104F is the remaining line that delivers gas to the 16-inch-diameter Line No. 104E, which moves gas to the Olga Platform. Line No. 104F also is 16 inches in diameter, and it is 12.56 miles long. The design capacity of Line No. 104F is 207,000 Mcf per day.

91. The Commission finds that the Mississippi Canyon Block 194 Facilities, with the exception of Line No. 104F, are transmission facilities. The facilities were constructed to move gas to the Olga Platform, as they funnel gas to Line No. 104E, which has a design capacity of 207,000 Mcf per day. Moreover, the applicants acknowledge that some of the gas coming into this subsystem is transported upstream by pipeline companies providing service subject to the Commission's jurisdiction.[88] Specifically, one receipt point at the interconnection between Line No. 104E and the Romere Pass Field Line moves gas from American Midstream, an intrastate pipeline that transports under section 311 of the Natural Gas Policy Act (NGPA), and three other receipt points on Line No. 1165 receive gas at interconnections with Transco.

92. The Commission finds that Line No. 104F is a gathering facility because it is a relatively short, small diameter line that receives gas from three third-party producers at various locations along its length, and has at least three receipt points that deliver production volumes through the line to the spine-like Mississippi Canyon Block 194

[86] The Main Pass-Franklinton Main Line (Line No. 104E), which moves gas to the Olga Platform, is an upstream extension of Line No. 104D that moves gas from the Olga Platform to the Gate 6 platform.

[87] The design capacity is 152,000 Mcf per day.

[88] Southern March 9, 2012 Response to Data Request at No. 1.

Facilities. Generally, this facility was designed to gather gas from producers and deliver it to the nearest interconnect with Southern's mainline transmission facilities.

b. Main Pass Block 298 Facilities

93. The pipeline that is part of the Main Pass Block 298 Facility and directly connects to the Olga Platform is Line No. 191, which consists of two pipeline segments, which form the mainline spine that transports gas from the various laterals to the Olga Platform. The downstream segment that connects directly to the Olga Platform is a 41.43-mile-long, 26-inch-diameter pipeline with a design capacity of 580,000 Mcf per day. The upstream segment of Line No. 191 is a 17.19-mile-long, 24-inch-diameter pipeline with a design capacity of 495,000 Mcf per day. Near the upstream end of the upstream segment of Line No. 191 is a 1.91-mile-long, 18-inch-diameter "extension" line.[89] The Line No. 191 extension has a design capacity of 267,000 Mcf per day but has not flowed gas since 2009. In addition to this extension, seven South of Toca Facilities' pipeline segments and two third-party non-jurisdictional pipelines deliver gas to Line No. 191 along its length. Eight other South of Toca Facilities deliver gas upstream of and into the seven South of Toca Facilities' segments that directly interconnect with Line No. 191.

94. The physical characteristics and design capacity of the seven individual upstream segments delivering gas directly to Line No. 191 are as follows: (1) Line No. 1185, a 3.66-mile-long, 8-inch-diameter pipeline with a design capacity of 52,000 Mcf per day and one receipt point at its upstream end;[90] (2) Line No. 1188, a 12.84-mile-long, 12-inch-diameter pipeline with a design capacity of 125,000 Mcf per day and one receipt point at its upstream end; (3) Line No. 1112, a 10.92-mile-long, 18-inch-diameter pipeline with a design capacity of 267,000 Mcf per day and five receipt points receiving gas from four producer-operated, non-jurisdictional pipelines; (4) two connected lines – Line No. 1197 (the upstream segment), a 4.26-mile-long, 12-inch-diameter pipeline with a design capacity of 125,000 Mcf per day, and Line No. 1103 (the downstream segment), a 17.23-mile-long, 14-inch-diameter pipeline with a design capacity of 154,000 Mcf per day, a receipt point at the upstream end of Line No. 1197 that receives gas from a producer-operated, non-jurisdictional pipeline; (5) Line No. 197, a 1.58-mile-long, 12-inch-diameter pipeline with a design capacity 125,000 Mcf per day and one receipt point; (6) three connected linear lines – Line No. 1130, a 1.23-mile-long, 10-inch-diameter segment with a design capacity of 87,000 Mcf per day, Line No. 1105, a 7.61-mile-long, 12-inch-diameter segment with a design capacity of 125,000 Mcf per day, and Line No. 198, a 2.27-mile-long, 12-inch-diameter segment with a design

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[89] The two segments and the extension are all identified as Line No. 191.

[90] Gas last flowed on this facility on January 1, 2010.

capacity of 125,000 (the downstream segment), these lines receive gas from two producer-operated non-jurisdictional pipelines, and two additional points moving production gas to Line No. 198; and (7) Line No. 192, a 11.49-mile-long, 20-inch-diameter pipeline with a design capacity of 335,000 that receives gas from five other South of Toca facilities.[91] Additionally, four other producer-operated, non-jurisdictional pipelines ultimately deliver gas to Line No. 192.

95. Line No. 191 is a 24- and 26-inch-diameter, approximately 60-mile-long, spine-like configured line that receives gas from multiple interconnected lateral lines and delivers gas to the mainline Olga Platform. Based on these factors, we find that Line No. 191 is a transmission facility. However, the 1.91-mile-long extension has not been used since it last flowed gas on May 21, 2009, and none of Southern's firm service customer agreements included a receipt point on this extension as of December 31, 2011. Further, High Point has not provided any information to indicate that it plans to use the line again. Therefore, while High Point can acquire the line, we will not certificate it.

96. The seven South of Toca Facilities' lateral pipelines that bring gas to the mainline spine Line No. 191 range in length from Line No. 197's 1.58 miles to the combined linear length of Line Nos. 1197 and 1103 of 21.49 miles. None of these pipelines is more than 20 inches in diameter, which is consistent with an offshore gathering function. Further, the seven facilities are geographically situated to provide production volumes to the upstream portion of Line No. 191. The purpose of these offshore facilities is to collect and measure volumes of gas from producers and move it to Southern's mainline for transportation downstream, in this case via Line No. 191. Based on these physical characteristics and geographic configuration together with the general nature of the offshore regime, the Commission finds that the seven South of Toca pipelines delivering gas into Line No. 191, as well as all of the South of Toca lines that supply these seven facilities, are gathering facilities.[92] While six of the seven pipeline segments are still in

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[91] The five facilities delivering into Line No. 192 are: (1) Line No. 1183, 6-inch-diameter, 2.47-mile-long pipeline; (2) Line No. 1102, a 14-inch-diameter, 7.91-mile-long pipeline; (3) Line No. 1156, a 6-inch-diameter, 1.70-mile-long pipeline; (4) Line No. 1203, an 8-inch-diameter, 3.98-mile-long pipeline; and (5) Line No. 1162, a 6-inch-diameter, 1.24-mile-long pipeline.

[92] Two of these pipelines – Line Nos. 1162 and 1156 – are jointly-owned by Southern and Tennessee Gas Pipeline Company (Tennessee). To the extent that Tennessee currently functionalizes its interest in these facilities as transmission, in conflict with the findings in this proceeding, Tennessee will need to refunctionalize the

(continued…)

use, one line has not been used since 2010 and, as discussed above, we cannot certificate this facility.

c. Main Pass Block 48 Field to Olga Facility

97. Also upstream of the Olga Platform are three linked pipeline segments called the Main Pass Block 48 Field to Olga Facility (Line Nos. 156, 128, 129). This facility moves gas to the Olga Platform for further downstream transportation. The total length of the facility is 10.39 miles and all three of its segments are 12 inches in diameter, with a design capacity of 127,000 Mcf per day. The facility has three receipt points along its length.

98. Because it is a relatively short, small diameter lateral line collecting gas directly from producer facilities at the receipt points along its length and feeding that gas into the mainline spine, the Commission finds that the Main Pass Block 48 Field to Olga line is a gathering facility.

d. Breton Island Field Facility

99. Another upstream pipeline moves gas to the Olga Platform, the Breton Island Field Facility (Line No. 105). This pipeline is a 13.67-mile-long, 12-inch-diameter pipeline with a design capacity of 127,000 that receives gas from two producer-operated, non-jurisdictional pipelines and two additional upstream South of Toca Facilities. The first upstream South of Toca Facility that moves gas to Line No. 105 is Line No. 1122, which has two segments: (1) an upstream, 5.35-mile-long, 14-inch-diameter segment with two receipt points, one of which moves gas received from a third-party gathering line; and (2) a downstream, 3.27-mile-long, 14-inch-diameter segment with one receipt point. The total design capacity of Line No. 1122 is 152,000. The second upstream South of Toca Facility that moves gas to Line No. 105 also has two linked segments: (1) the upstream Line No. 1126 segment is a 3.58-mile-long, 6-inch-diameter line that moves gas into the downstream segment, Line No. 1107, a 3.26-mile-long, 6-inch-diameter pipeline. The total design capacity of Line Nos. 1126 and 1107 is 30,000 Mcf per day.

100. The relatively small diameter and short lengths, multiple receipt points and geographic configuration of these lateral lines upstream of the Olga Platform support a gathering function for the Breton Island Field Facilities. This determination is further supported by the fact that these facilities were designed to gather gas from offshore

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facilities as gathering for rate and accounting purposes in its next NGA section 4 general rate proceeding. *See, e.g.*, *Natural Gas Pipeline Co. of America*, 95 FERC ¶ 61,317, at 62,092 (2001).

production and deliver it to the nearest interconnect with Southern's mainline system, in this case the Olga Platform. For these reasons, the Commission finds that all of the Breton Island Facilities (Line Nos. 105, 1122, 1126, and 1107) are gathering facilities.

2. <u>Southwest Branch Facilities</u>

a. <u>Lake Washington Field Facility</u>

101. The Southwest Branch Facilities accumulate gas produced in the Mississippi Canyon and West Delta offshore areas and move the gas to the Gate 6 Platform. Two of the pipelines upstream are parallel lines that move gas approximately 18 miles from the upstream Lake Washington Platform to the Gate 6 Platform: (1) Line No. 137 (Lake Washington Field Facility), a 17.96-mile-long, 20-inch-diameter line with a design capacity of 314,000 Mcf per day; and (2) Line No. 137-L1/L2 (Lake Washington Field Loop Line) is a 17.96-mile-long, 26-inch-diameter pipeline with a design capacity of 537,000 Mcf per day. Each pipeline has one receipt point. In addition, Line No. 137-L1/L2 interconnects with the Ladd Petroleum Field Line (Line No. 1133), a 2.32-mile-long, 4-inch-diameter line with a design capacity of 12,000 Mcf per day, and one receipt point at its upstream end.

102. Parallel Line Nos. 137 and 137-L1/L2 are spines that transport gas from the Lake Washington Platform to a downstream interconnection with Southern's Gate 6 Platform. Their relatively long lengths and large diameters, and spine-like parallel configuration leads to a finding that their primary function is transmission. Line No. 1133 is a short, small diameter lateral line feeding gas it collects from upstream production into the parallel Line Nos. 137 and 137-L1/L2. These factors support a finding that Line No. 1133 is a gathering facility.

103. Two remaining upstream pipelines that are components of the Southwest Branch Facilities deliver gas to the Lake Washington Platform, from which it is transported by other pipelines (discussed below) to the Gate 6 Platform. These last two Southwest Branch lines are: (1) the Venice-Lake Washington Facility, which extends upstream from the Lake Washington Platform in a southeasterly direction for approximately 27 miles and then bends and extends for another 60 miles in a southwesterly direction through West Delta and Mississippi Canyon production areas; and (2) the West Delta Block 30 Field Loop facility, which extends in a southerly direction from the Lake Washington Platform for approximately 7.92 miles to the Huertes Gate Platform, which receives gas from two additional upstream pipelines. These pipelines are discussed further below.

b. <u>Venice-Lake Washington Facility</u>

104. The Venice-Lake Washington Facility (Line No. 164), moving gas to the Lake Washington Platform, is a 27-mile-long, 22-inch-diameter pipeline with a design capacity

of 380,000 Mcf per day. Five upstream South of Toca Facilities connect to or supply gas going to Line No. 164: (1) the Mississippi Canyon Block 397 Facility (Line No. 1201), a 59.40-mile-long, 20-inch-diameter pipeline with a design capacity of 374,000 Mcf per day and one receipt point at its upstream end; (2) the West Bastian Bay Line (Line No. 121), a 7.64-mile-long, 8-inch-diameter pipeline with a design capacity of 52,000 Mcf per day that last flowed gas on September 20, 2000; (3) the Bastian Bay-Ft. Jackson Gathering Line (Line No. 120), a 0.01-mile-long, 8-inch-diameter pipeline with a design capacity of 52,000 Mcf per day that last flowed gas on January 1, 1988; (4) the Tantine Field Line (Line No. 144), a 13.08-mile-long, 10-inch diameter pipeline with a design capacity of 83,000 Mcf per day and a receipt point at its upstream end; and (5) the Bayou Felice Line (Line No. 145) is a 7.85-mile-long, 6-inch-diameter pipeline with a design capacity of 29,000 Mcf per day and a receipt point at its upstream end.

105. In addition to the above South of Toca Facilities, Line No. 164 also receives gas from a line owned and operated by Mississippi Canyon Gas Pipeline, L.L.C., an interstate pipeline regulated by the Commission.[93]

106. Based on the lengths of Line No. 164 and upstream Line No. 1201 (27 miles and 59.4 miles, respectively), their diameters (22 inches and 20 inches, respectively), spine-like configuration, and the presence of only one receipt point on Line No. 1201, which is at its upstream end, the Commission finds that both Line No. 164 and Line No. 1201 are transmission facilities.

107. Line Nos. 144 and 145, however, were designed to gather gas from offshore production and deliver it to the nearest interconnection with Southern's mainline facilities, in this case, Line No. 164. Additionally, these are short, small diameter lateral lines feeding the gas gathered from upstream production into the downstream transmission lines. These factors support a finding that the Tantine Field Line (Line No. 144) and the Bayou Felice Field Line (Line No. 145) are gathering facilities.

108. West Bastian Bay Line No. 121 and Bastion Bay-Ft. Jackson Gathering Line No. 120 have not been used since 2000 and 1988, respectively. Further, High Point has not provided any information to indicate that it plans to use the lines again. Therefore, while we will grant authority for Southern to abandon these certificated lines and High Point thus may acquire them, we will not certificate them.

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[93] *Shell Gas Pipeline Co.*, 74 FERC ¶ 61,219 (1996) (granting a certificate authorizing the construction and operation of jurisdictional transportation facilities known as the Mississippi Canyon Gathering System). On June 4, 1998, Shell Gas Pipeline Co. notified the Commission that it had changed its name to Mississippi Canyon Gas Pipeline, LLC.

c. West Delta Block 30 Field Loop Facility

109. The other upstream facility moving gas to the Lake Washington Platform is the West Delta Block 30 Field Loop Facility (Line No. 138-L1), which is a 7.92-mile-long, 18-inch-diameter pipeline with a design capacity of 254,000 Mcf per day. This facility is a further conduit between transmission facilities, the upstream Huertes Gas Platform to the downstream Lake Washington Platform. The large diameter, length, and lack of receipt points are factors that are consistent with a transmission function.

110. The Huertes Gate Platform collects gas from two upstream facilities. The first is the West Delta Block 30 Field Line (Line No. 138), a 13.9-mile-long, 12-inch-diameter pipeline with a design capacity of 118,000 Mcf per day and one receipt point at its upstream end. This facility is a relatively short, small diameter lateral line that feeds gas it gathers from third parties into the mainline Huertes Gate Platform. These factors support a finding that it is a gathering facility.

111. The other upstream facility that moves gas to the Huertes Gate Platform is Line No. 169 (West Delta 104D to West Delta 18), a 32.10-mile-long, 18-inch-diameter pipeline with a design capacity of 292,000 Mcf per day. Line No. 169 has a receipt point at its upstream end and interconnects along its length with two third-party gathering pipelines owned by other companies. In addition, Line No. 169 receives gas from three other lines that are part of the South of Toca Facilities: Line No. 179 (West Delta 75A to West Delta 75), a 0.38-mile-long, 8-inch-diameter pipeline with a design capacity of 55,000 Mcf per day; Line No. 1199 (West Delta 89A to West Delta 89), a 0.45-mile-long, 8-inch-diameter line, which also has a design capacity of 55,000 Mcf per day; and the Mississippi Canyon Block 311 Facility (Line No. 1155), a 23.15-mile-long, 16-inch-diameter line with a design capacity of 225,000 Mcf per day and one receipt point that receives gas from a non-jurisdictional third-party gathering pipeline.

112. Line Nos. 169 and 1155 are relatively long, large diameter, spine-like facilities with minimal interconnects along the lengths that function to move gas collected from third-party gatherers to the mainline Huertes Gate Platform. Thus, we confirm that the primary function of the facilities is transmission.

113. Line Nos. 179 and 1199 that move gas to Line No. 169 are relatively short, small diameter lateral lines that gather gas for delivery into downstream transmission spines. Based on these physical characteristics, we find that Line No. 179 and Line No. 1199 are gathering facilities.

3. Platforms

114. Southern also owns and operates the Huertes Gate, Lake Washington, Olga, and Gate 6 Platforms that are part of the South of Toca Facilities. Equipment at the platforms includes valves used to isolate or direct flow into or out of pipelines as needed for

operations, pigging, and maintenance activities. At each of the platforms, gas is collected from multiple upstream facilities and then delivered as a co-mingled stream into downstream mainlines for ultimate delivery to Enterprise's Toca Processing Plant and the Toca Compressor Station. Based on these factors, the Commission finds that each of these platforms are jurisdictional transmission facilities.

4. **Summary**

115. In sum, the Commission finds that the following are jurisdictional transmission facilities: the three pipelines between the Toca Compressor Station and the Gate 6 Platform (Line Nos. 104D, 104D-L1, 104D-2L1); the Gate 6 Platform; the two pipelines between the Gate 6 Platform and the Olga Platform (Line Nos. 104D, 104D-L2); the Olga Platform; seven pipelines upstream of the Olga Platform (Line Nos. 104E, 112, 1165, 1166, the three segments of Line No. 191); the two pipelines between the Gate 6 Platform and the Lake Washington Platform (Line No. 137 and 137-L1/L2); the Lake Washington Platform; the two pipelines upstream of the Lake Washington Platform (Line Nos. 164 and 1201); the pipeline between the Lake Washington Platform and the Huertes Gate Platform (Line No. 138-L1); the Huertes Gate Platform; and the two pipelines upstream of the Huertes Gate Platform (Line Nos. 169, 1155). All other South of Toca Facilities identified in the applications are gathering facilities.

116. The Commission also finds that five facilities (Line Nos. 107, 1185, 120, and 121, and the Line No. 191 "extension") have not been used for more than one year, with some not used for more than a decade. As we have noted, High Point has not provided any information to indicate that it plans to use the lines again. Therefore, while we will grant authority for Southern to abandon these certificated lines and High Point thus may acquire them, we will not certificate them.

B. **Certificate Review**

117. The Certificate Policy Statement provides guidance as to how the Commission will evaluate proposals for certificating new construction by establishing criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest.[94] While High Point does not contemplate any construction of new facilities, the Commission has found it appropriate to apply its

[94] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *orders on clarification*, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000).

Certificate Policy Statement in cases where a company seeks to acquire significant existing facilities.[95]

118. A proposal to acquire facilities with no related construction of facilities, such as in this proceeding, does not invoke the Certificate Policy Statement's concerns with overbuilding, disruptions of the environment, and the exercise of eminent domain. While the acquisition of existing facilities by an existing company can present issues regarding the potential that service to its existing customers will be adversely affected or that their rates will be subsidizing the rates paid by the new customers using the acquired facilities, High Point will be a new company with no existing customers. Thus, High Point's proposal does not raise issues regarding existing customers and services.

119. High Point proposes cost-based rates for service after the transfer. High Point asserts that all shippers that currently rely on the facilities will be able to receive service from High Point to have their supplies brought to shore and Enterprise's processing plant and the new point of interconnection to be constructed by Southern in its Toca Compressor Station yard. None of Southern's current firm customers on the South of Toca Facilities protest the applications, and most support or do not oppose the transfer of the Facilities to High Point. Further, the South of Toca Facilities will continue to be available to transport producers and other shippers that have their gas transported to receipt points on the South of Toca Facilities by gathering companies and intrastate pipelines providing jurisdictional service under NGPA section 311.

120. As discussed above, none of the protestors has a firm service agreement with Southern that specifies receipt points on the South of Toca Facilities. Only one of the protestors, Indicated Shippers, has relied on the Facilities for transportation under a service agreement for interruptible service and none of the producers that comprise Indicated Shippers have shipped gas on the Facilities in the last three years. However, the protestors argue that the producers whose gas is accessed by the South of Toca Facilities will be negatively affected because purchasers will be unwilling to pay as much for their gas when they take into account the higher total transportation costs which may result from the costs of service on the South of Toca Facilities being allocated directly to shippers using those facilities. As discussed herein, we do not find it inappropriate that costs related to service on the South of Toca Facilities be recovered directly from shippers using those facilities. High Point's rates for jurisdictional service will be cost-based and subject to regulation by this Commission. No shipper or producer will be subject to undue or discriminatory rates or terms and conditions of service.

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[95] *See, e.g., Trunkline Gas Co., LLC and Gulf South Pipeline Co., LP*, 132 FERC ¶ 61,069 (2010); *BGS Kimball Gas Storage, LLC*, 117 FERC ¶ 61,122, at PP 19-23 (2006).

121. In view of the above considerations, we find in accordance with the Certificate Policy Statement that our approval of the proposed sale and purchase of the South of Toca Facilities will not result in unwarranted adverse operational or economic impacts on Southern's customers or American Midstream's customers receiving jurisdictional service under section 311 of the NGPA. No other pipeline claims that it or its customers will be adversely affected.

122. The service agreements of Southern's shippers that include flexible receipt points located on the South of Toca Facilities will have these receipt points removed and replaced with the single new receipt point to be constructed by Southern at the interconnection of the Facilities with the rest of Southern's system. Southern's shippers that currently obtain supplies from the existing pooling point on the South of Toca Facilities will be able to continue pooling their gas on High Point's system under High Point's pooling service. High Point's shippers will be able to continue receiving the same level of service they have received from Southern. Customers representing 72 percent of Southern's current firm transportation revenues from services on the South of Toca Facilities have signed a Customer Letter Agreement with Southern. Customers representing another 19 percent of such revenue either support or do not oppose the abandonment by sale to High Point. No existing firm shippers have protested the rates that High Point proposes to charge following its acquisition of the Facilities. On balance, we find the potential negative impact of the proposed acquisition of the South of Toca Facilities on producers in the area or others will not be so significant as to warrant a finding that the overall proposal is not in the public interest.

123. Protestors argue that High Point's statement that it will consider investing additional capital as needed to assist producers to bring new supplies to market indicates that the future operation of the South of Toca Facilities is uncertain. Protestors are concerned that High Point's statement that it will focus on maximizing the efficiency and usage of the Facilities is not the same as a guarantee that the future services to be provided by High Point will, in fact, be producer-oriented and responsive to the particular needs of producers. Protestors assert that the only evidence High Point has presented regarding the future quality of service to be provided is an increase in rates to be paid to access the South of Toca Facilities. Protestors argue that higher transportation rates will be an economic disincentive in evaluating whether to drill and develop additional gas reserves from leases within the vicinity of the South of Toca Facilities.

124. High Point will operate the South of Toca Facilities as an interstate pipeline system subject to the jurisdiction of the Commission; thus, High Point will be required to operate the facilities in an open-access, non-discriminatory manner that is consistent with the public interest. Further, while there is no requirement that such operation be "producer-oriented" or responsive to the "particular needs" of producers, to the extent that producers and/or the purchasers of their production will be High Point's sole

customer base, there is reason to expect that High Point will be as responsive to their needs as economically feasible.

C. Rates

1. Proposed Rates and Services

125. High Point proposes to offer natural gas transportation and pooling services on the South of Toca Facilities to the interconnection with Southern's remaining system. High Point proposes to offer the following services: Firm Transportation (Rate Schedule FT); Interruptible Transportation (Rate Schedule IT); Title Transfer (Rate Schedule TTS); Pooling (Rate Schedule PS); and Park and Loan (Rate Schedule PAL) on an open-access, non-discriminatory basis under Part 284 of the Commission's regulations. High Point proposes an initial firm monthly reservation rate under Rate Schedule FT of $10.0216 per Dth with no usage charge; an interruptible service rate under Rate Schedule ITS of $0.3295 per Dth; a park and loan service rate under Rate Schedule PAL of $0.3295 per Dth, which is based on the 100 percent load factor of the firm transportation rate; and a usage rate for title transfer service under Rate Schedule TTS of $0.0050 per Dth.

126. The proposed transportation rates are derived using a first year cost of service of $31,401,197,[96] reflecting a rate base of $57,812,896,[97] an overall rate of return of 11.87 percent,[98] and a four percent straight line depreciation and negative salvage rate.[99] High Point designed its initial firm FT rates using a throughput of 261,115 Dth per day, which reflects the average daily throughput for the 36-month period ending September 2011 for the South of Toca Facilities. High Point contends that the projected volume is the anticipated throughput based on actual capacity usage. High Point

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[96] The cost of service is composed of: (1) Operation and Maintenance expenses of $16,101,418; (2) Depreciation Expense of $2,239,425; (3) Negative Salvage of $2,035,715; (4) Other Taxes of $875,629; (5) Return on Rate Base of $6,861,234; (6) State Income Taxes of $457,124; and (7) Federal Income Taxes of $2,830,653.

[97] The estimated rate base includes: (1) $53,270,328 for the acquisition of the South of Toca Facilities; (2) $827,870 for additions to plant in service; (3) $187,125 for deferred taxes; and (4) $3,901,823 for working capital allowance.

[98] The return allowance is based on an estimated capital structure of 70 percent equity and 30 percent debt with an equity cost of 12.99 percent and a debt cost of 9.25 percent resulting in an overall rate of return of 11.87 percent.

[99] High Point states that the facilities have a remaining useful life of 25 years and will be completely abandoned with no salvage value.

excluded volumes at meter stations that were either: (1) from third-party pipelines that have existing alternate options in place or are flowing less than historical volumes; or (2) subject to diversion with relatively small capital expenditures. High Point explained that the production associated with the South of Toca Facilities has decreased by approximately 69 percent between 2003 and 2010, and it designed its rates based on the throughput expected for ongoing operations.

2. Mileage versus Postage Stamp Rates

127. High Point is proposing recourse rates of $0.3295 per Dth designed on a postage stamp basis using the straight fixed variable methodology. High Point states that the proposed rates reflect the cost of service for the South of Toca Facilities and the value and services that the shippers will receive. The same postage stamp recourse rate will apply regardless of the length of haul or geographic location.

128. American Midstream, an intrastate pipeline that provides service under section 311 of the NGPA, currently delivers gas to Southern approximately 100 feet upstream of Enterprise's Toca Processing Plant. Southern transports the gas to Enterprise's Toca Processing Plant for processing and then redelivers the gas to the Southern system. American Midstream asserts that it is not currently charged for such transportation, and argues that High Point should be denied a certificate to acquire the facilities immediately upstream of the Toca Processing Plant because American Midstream will be charged the full $0.3295 per Dth rate for 100 feet of service.

129. As an alternative, American Midstream proposes that High Point be required to either determine a recourse rate or negotiate a discount rate of not more than $0.001 per Dth for service over the 100 feet of the Facilities, and that High Point not be permitted to impose any responsibility on American Midstream or its shippers for system-wide lost and unaccounted for (LAUF) gas for transporting gas coming from American Midstream through the 100 feet of pipeline to the Toca Processing Plant.

130. American Midstream states that it purchases some of the gas that it transports on its system, retains the rights to liquefiables extracted when the gas is processed, and sells the "residue" gas to the purchaser. Currently, American Midstream purchases and delivers gas to its delivery point on the South of Toca Facilities, from which Southern transports the gas the remaining 100 feet to the Toca Processing Plant for no charge. American Midstream states that High Point's proposed rate for transportation service on 100 feet of pipe will have a direct and adverse impact on the price it and the shippers on its system receive for both the residue gas that is sold into Southern's pool, as well as the net-back price that American Midstream and its shippers receive for the natural gas liquids recovered at the Toca Processing Plant.

131. Manti, a producer and shipper on American Midstream's intrastate pipeline, argues that its production will be adversely affected because it also will be required to

pay over $0.3295 per Dth for 100 feet of transportation by High Point, plus the $0.21 per Dth (plus fuel) that it pays American Midstream for transportation service to the South of Toca Facilities. Manti alleges that High Point has included none of the substantial volumes delivered by American Midstream to the South of Toca Facilities in High Point's projected system throughput it used to calculate its proposed rates. Manti argues that High Point cannot have it both ways, proposing to charge the same system-wide rate for 100 feet of transportation while excluding American Midstream's deliveries from projected throughput. Manti requests that the Commission require High Point to design a rate or offer Manti a discount rate of no more than $0.001 per Dth for transporting its gas through approximately 100 feet of pipeline. Manti suggests that a possible solution could be joint ownership by Southern and High Point of the pipe between American Midstream's delivery point and the Toca Processing Plant to enable the gas coming from American Midstream's system to avoid High Point's transportation charge.

132. High Point responds that the proposed postage-stamp rate structure is consistent with existing Commission precedent and is the proper rate structure for the South of Toca Facilities. High Point further contends that its postage-stamp rate design will benefit all shippers on the South of Toca Facilities by enhancing High Point's ability to market its transportation service by offering shippers the same postage-stamp rate to transport production from a large area to help maintain the various South of Toca Facilities' current upstream throughput levels. In addition, High Point argues that American Midstream has no entitlement to an individually-tailored rate that would be less than the generally applicable postage-stamp rate.

133. High Point's acquisition of the South of Toca Facilities will result in a new system for which initial NGA section 7 rates must be established. We will allow High Point flexibility in the design of its initial proposed rate structure, and will not dictate that it charge a mileage-based or a postage-stamp rate.[100] High Point's initial rates will appropriately reflect the cost of service for operating the South of Toca Facilities. Moreover, we note that High Point's charging a postage-stamp rate for service on its

[100] *Entrega Gas Pipeline Inc*., 112 FERC ¶ 61,177, at P 41 (2005) (certificating construction of proposed 328-mile-long pipeline, approving postage stamp rate design, and stating "there are no hard and fast rules regarding the minimum length of a unidirectional pipeline that would justify distance rates.").

entire system is not functionally different from larger pipelines charging production zone rates covering their entire offshore production zones.[101]

134. High Point's proposal will subject American Midstream and Manti to the same transportation rate applicable to all its shippers, as well as to charges for LAUF volumes, if an LAUF mechanism is established in the future as provided for in High Point's *pro forma* tariff.[102] We note that High Point may discount its transportation rate, provided it does so on a non-discriminatory basis. However, American Midstream's insistence that it should be exempted from any LAUF volumes would violate Commission policy which dictates that LAUF cannot be discounted.[103] The Commission finds that High Point's postage stamp rate design is consistent with Commission policy and comparable to the rate structures approved for other offshore pipelines.[104]

3. **Plant In Service**

135. High Point's proposed plant in service of $54,098,198 includes the $50,000,000 purchase price, $3,270,328 of due diligence and closing costs,[105] and $827,870 of additions to plant, including office furniture, transportation, and communication equipment. However, Commission accounting and ratemaking regulations require that

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[101] *See, e.g.*, Sea Robin Pipeline Company, LLC, FERC NGA Gas Tariff, Third Revised Volume No. 1, 1. Rate Schedule FTS, Currently Effective Rates, 0.0.0, and 2. Rate Schedule FTS-2, Currently Effective Rates, 0.0.0; Stingray Pipeline Company, L.L.C., FERC NGA Gas Tariff, Fourth Revised Volume No. 1, Sheet No. 5, Currently Effective Rates, 5.0.0; Garden Banks Gas Pipeline, LLC, FERC NGA Gas Tariff, First Revised Volume No. 1, Sheet No. 6, Statement of Rates, 0.1.0.

[102] We note that American Midstream may have the option, if it proved to be cost-effective, of bypassing High Point's facilities by constructing the necessary pipeline to interconnect directly with Enterprise's processing plant.

[103] *See Texas Eastern Transmission LP*, 129 FERC ¶ 61,031, at P 6 (2009); *Wyoming Interstate Co., Ltd.*, 122 FERC ¶ 61,303, at P 35 (2008); *Mississippi River Transmission Corp*., 98 FERC ¶ 61,119, at 61,353 (2002).

[104] *See* tariffs cited *supra* note 102.

[105] High Point included the following in the due diligence and closing costs: (1) $146,436 for engineering; (2) $73,729 for market analysis; (3) $39,000 for general and administrative; (4) $763,163 for legal and regulatory; and (5) $2,250,000 for closing costs.

gas plant acquired as an operating unit or system be recorded at its original cost, which, as applied to gas plant, means the cost of such property to the first person devoting it to public service. Because Southern previously devoted these facilities to public service, High Point must reflect in its gas plant accounts the original cost of the South of Toca Facilities as reflected on Southern's books and records. High Point is directed to refile rates and supporting cost data to reflect utilization of the original cost of the South of Toca Facilities in its rate determination.

136. In examining the function of the South of Toca Facilities, the Commission found that certain facilities perform a gathering function.[106] High Point must refunctionalize the cost of those facilities from transmission to gathering accounts, effective upon transfer of the Facilities to High Point. In addition, High Point must transfer the accumulated provision for depreciation carried in the account for the refunctionalized property between functions in accordance with GPI No. 12 of the Commission's USofA. The amount of accumulated depreciation associated with the refunctionalized gas plant to transfer between functions must be determined by using the actual recorded amount of accumulated depreciation on a vintage basis.[107]

137. The Commission also finds that five segments of the South of Toca Facilities are unutilized. High Point may acquire these facilities; however, the costs attributable to these facilities are not recoverable through High Point's initial transportation rates, nor through any separately-stated gathering rates it may develop for gathering services provided in connection with its interstate services. High Point is therefore required, as part of its initial rate compliance filing, to remove from its rate base for jurisdictional services the facilities identified as unutilized in Appendix B. For accounting purposes, these facilities are to be classified in Account 121, Nonutility Property, because they are not currently used to provide gathering or transmission services.

4. **Cost of Service**

138. As indicated above, High Point's proposed initial recourse rates are designed on a postage stamp basis using the straight fixed-variable methodology. The proposed rates are based on a projected throughput of 261,115 Dth per day and are derived from an annual cost of service of $31,401,197. The proposed cost of service includes the following components: (1) operation and maintenance expenses of $16,101,418; (2) a depreciation expense of $2,239,425; (3) a negative salvage rate of 4.00 percent and an

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[106] *See* discussion of primary function test *supra* Part IV.A., and Appendix B *infra* for the classification of gathering facilities.

[107] *See Transwestern Pipeline Co.*, 72 FERC ¶ 61,085 at n.17.

annual negative salvage expense of $2,035,715 to be recovered over a period not to exceed 25 years;[108] (4) other taxes expense of $875,629; (5) return on rate base expense of $6,861,245 based on a rate of return of 11.87 percent, which consists of 30 percent debt at a cost of 9.25 percent and 70 percent equity at a cost of 12.99 percent; and (6) state and federal income taxes of $467,124 and $2,830,853, respectively.

139. We have reviewed the nature of the service rendered by the facilities High Point proposes to acquire and found, as shown in Appendix B that several of the facilities formerly functionalized by Southern as transmission perform a gathering function. We will require High Point, as part of its initial rate compliance filing, to functionalize the costs of service related to the facilities identified as gathering facilities in Appendix B and to remove the costs of service related to these facilities from its cost of service recoverable through its transmission service rates. However, this finding does not preclude High Point from recovering the costs associated with providing service (such as gathering service) over these non-jurisdictional facilities. To the extent High Point seeks to assess charges for service utilizing these facilities, the rates must be clearly identified in its statement of rates in its tariff.[109] In addition, in calculating such rates, High Point must adjust its non-jurisdictional rate base and related plant costs downward to reflect the removal of acquisition costs as discussed above.

140. Further, to the extent we have found that certain of the South of Toca Facilities are currently not used in the provision of any service, High Point must remove all costs associated with those facilities from the initial transmission and gathering rates set forth in the compliance filing required by this order.

a. <u>Operation and Maintenance Expenses</u>

141. Protestors contend that High Point's proposed operation and maintenance (O&M) expenses of $16,101,418 are unsupported and that the Commission must require High Point to provide greater detail as to how these expenses were calculated and from where

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[108] High Point explains that this amount is based on an estimated retirement cost of $50,892,866 for both the onshore and offshore portions of the South of Toca Facilities, which was determined through an abandonment cost study conducted by a third-party engineering company.

[109] *See, e.g., Sea Robin Pipeline Co.*, 87 FERC ¶ 61,384, at ordering para. (C) (1999) (after reapplying its primary function test in accordance with the court's directions on remand, the Commission required Sea Robin to file within 30 days tariff sheets specifying separately-stated gathering rates for gathering services performed through facilities located upstream of Sea Robin's Vermilion 149 compressor station).

the underlying data for each account was calculated. High Point responded that O&M expenses are based on the historical data for field operations for the South of Toca Facilities provided by Southern, as well as the estimated surety, signage and moving expenses, insurance, aviation, right-of-way lease fees, and administrative and general expenses. High Point also provided an explanation and documentation of each O&M expense over $250,000.[110]

142. Because the majority of the High Point's estimated O&M expenses are based on Southern's actual costs for these Facilities and High Point has provided a detailed description of the expenses, the Commission finds that High Point's projection of its anticipated O&M expenses is reasonable. Therefore, the Commission will accept High Point's proposed $16,101,418 O&M expenses, as adjusted to remove the O&M expenses associated with the facilities to be removed from the rate base and refunctionalized in accordance with the functionalization findings reflected in Appendix B of this order.

b. Depreciation

143. Protestors argue that because Southern's current onshore transmission depreciation rate is 1.55 percent and its offshore transmission depreciation rate is 0.90 percent, High Point has not provided any justification for its proposed four percent transmission depreciation rate.

144. The Commission is establishing initial rates for High Point upon acquisition of the South of Toca Facilities; we are not bound by Southern's depreciation rate. High Point's system will be much smaller than Southern's and the facilities acquired by High Point are not as interconnected with other sources of supply as was Southern's system. In approving initial depreciation rates, the Commission may take into consideration the useful life of the facilities.[111] Some of the facilities have been in service for up to 59 years.[112] High Point's abandonment cost study shows that the remaining useful life of the Facilities is 25 years. High Point's proposed 25-year depreciation life is consistent

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[110] High Point January 11, 2012 Response to Data Request at No. 27 and Attachment 27.

[111] 18 C.F.R. Part 201, USofA Definitions 12.B. *See, e.g., Texas Eastern Transmission, LP*, 133 FERC ¶ 61,220, at P 15 (2010); *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224, at P 45 (2007); *AES Ocean Express, LLC*, 103 FERC ¶ 61,030, at P 42 (2003).

[112] The initial section of the South of Toca Facilities was authorized on October 31, 1952, in Docket No. G-1909. 11 FPC 1405 (1952).

with Southern's current onshore and offshore depreciation rates.[113] We find that High Point's estimated useful life for the Facilities of 25 years is appropriate for designing the depreciation expense for the remaining life of the South of Toca Facilities.

145. Nevertheless, High Point is required to revise the depreciation expense of $2,239,425 by removing the depreciation expense related to the unutilized facilities and refunctionalizing the remaining depreciation expense consistent with the findings in Appendix B of this order. Further, we deny High Point's requested waiver of the USofA to reflect the purchase price of the South of Toca Facilities, rather than the original cost of the facilities, as gas plant in service in Account 101. As a result of that finding, High Point must record the original cost of the Facilities in Account 101. As noted above, the Commission approves this figure, as adjusted to reflect the Commission's findings in this order and to reflect actual acquisition costs as of the date of acquisition. Therefore, when High Point files its recalculated rates in compliance with this order, it may continue to recover its transmission and, if it chooses, gathering plant depreciation expense as adjusted. However, the depreciation rate must be revised to reflect the fact that the original cost of the facilities will be recorded in Account 101, rather than the purchase price of the facilities as proposed by High Point.

c. <u>Negative Salvage</u>

146. High Point contends that when the South of Toca Facilities are ultimately taken out of service, there will be no salvage value. To account for the abandonment and disposal of the South of Toca Facilities, High Point commissioned an abandonment cost study,[114] and established an abandonment liability for the cost to remove and retire the Facilities. High Point is proposing an initial abandonment liability amount of $50,892,866, with an annual negative salvage expense of $2,035,715.

147. Protestors argue that High Point's shippers will absorb the entire cost and expense of abandoning the South of Toca Facilities, despite the fact that Southern has been accounting for and collecting a negative salvage rate for these facilities over the years through Southern's rates. Protestors argue that it is inequitable and a violation of the principle of intergenerational equity for the entire burden of the abandonment costs and other potential liabilities to be transferred to High Point's shippers without some

[113] Southern's net book value for the South of Toca facilities is $84,031.87, with an annual depreciation expense of approximately $3.7 million, results in a remaining depreciable life of approximately 23 years, which is similar to High Point's proposal. *See* Southern October 7, 2011 Application at Exhibit Y.

[114] High Point October 13, 2011 Application at Exhibit Z-1.

contribution from Southern in the form of a transfer of accumulated negative salvage balances attributable to the South of Toca Facilities that had been collected by Southern.

148. Negative salvage refers to the cost of removal of an asset at the time of its retirement from service over the revenue realized from the sale of the retired asset. Pipelines are allowed to include in their cost of service a charge for negative salvage to compensate for costs to be incurred in the future retirement of the facilities in excess of its salvage amounts. The applicant must demonstrate the accuracy of the projected negative salvage amount and the prospective negative salvage rates. Negative salvage costs need to be recovered consistent with the expected plant retirement date. The abandonment cost study details the Facilities and the cost of retiring the Facilities, providing for the 25 year useful life. The study demonstrates the prospective amount necessary to abandon the Facilities and the negative salvage rate to accrue that expense. The abandonment cost study reflects a known and measurable event, and none of the protestors objected to the study.

149. Given the findings of the study, requiring High Point to use Southern's negative salvage value of 0.12 percent for the Facilities would be inappropriate because it would result in High Point's Abandonment Account being underfunded at the time of abandonment. The Commission finds that High Point's proposed negative salvage amortization period is reasonable based on the remaining useful life of the facilities without any salvage value.[115] The protestors argue that Southern's negative salvage accruals have not been reflected in High Point's cost of plant or rate base. This is true for High Point. However, as explained above, Southern's negative salvage accruals will reduce the amount of unrecovered plant costs to which Southern's customers may be exposed. High Point's customers benefit from the fact that High Point was able to acquire the South of Toca Facilities at significantly below Southern's book costs, even taking into account Southern's negative salvage accruals.

d. <u>Capital Structure</u>

150. Protestors contend that the proposed capital structure of 70 percent equity and 30 percent debt is unsupported and therefore the Commission should deny the certificate application.

151. In general, the Commission must determine that the rates based on a reasonably balanced capital structure that reflects the risk of the regulated entity.[116] The aim is to

[115] *See, e.g., High Island Offshore Sys., L.L.C.*, 110 FERC ¶ 61,043, at P 61 (2005).

[116] *Consolidated Gas Supply Corp*., 24 FERC ¶ 61,046, at 61,133 (1983).

protect the ratepayer from excessive rates resulting from a capital structure with an unduly high equity ratio.[117] The Commission generally prefers the use of a pipeline's own capital structure instead of a hypothetical capital structure derived from its parent or other entities if the pipeline (1) issues its own debt, (2) has its own separate bond rating, and (3) has an equity ratio that is not excessive in light of other equity ratios approved by the Commission and in comparison with the equity ratios of the proxy companies.[118] Commission policy is to adopt a hypothetical capital structure only in extreme circumstances. Those circumstances are not present here because High Point is proposing the use of its anticipated actual capital structure. High Point's proposed capital structure of 70 percent equity and 30 percent debt reflects its anticipated capital structure based on debt financing capacity available in the marketplace. Because High Point is without firm customers and operating in the Gulf of Mexico with declining supplies, High Point is assuming greater risk, which will make it difficult to finance the project, resulting in the greater use of its own equity. Accordingly, we will use High Point's proposed capital structure in the design of High Point's initial rates.

e. <u>Return on Equity</u>

152. Protestors contend that the Commission should deny the proposed return on equity (ROE) of 12.99 percent, as it has done in other section 7(c) cases[119] because the ROE is excessive and without support or merit. Protestors question High Point's reliance upon *Portland Natural Gas Transmission Sys.*,[120] which they claim was strictly limited by the

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[117] *Transcontinental Gas Pipe Line Corp.*, Opinion No. 414, 80 FERC ¶ 61,157, at 61,665 (1997); *order on reh'g*, Opinion No. 414-A, 84 FERC ¶ 61,084, at 61,665; *reh'g denied*, Opinion No. 414-B, 85 FERC ¶ 61,323 (1998); *aff'd sub nom. North Carolina Utils. Comm'n v. FERC*, 203 F.3d 53 (D.C. Cir. 2000) (unpublished opinion).

[118] *See Enbridge Pipelines (KPC)*, 100 FERC ¶ 61,260, at P 185 (2002) (to the maximum extent possible, the Commission bases capital structure on real entities, i.e., the pipeline or a company associated with the pipeline that obtains financing for the pipeline); Opinion No. 414, 80 FERC at 61,665 (rejecting suggestion that the Commission need only ascertain whether a pipeline issues its own debt); Opinion No. 414-B, 85 FERC at 62,266 (the focus of the Commission's analysis in all cases continues to be the reasonableness of the pipeline's equity ratio).

[119] *See, e.g.*, *Crossroads Pipeline Co*., 71 FERC ¶ 61,076, at 61,263 (1995) (adjusting the pipeline's proposed ROE downward by 150 basis points).

[120] 134 FERC ¶ 61,129 (2011) (*Portland Natural).*

Commission to a limited period of time coinciding with the economic downturn of November 2008 through April 2009.

153. Although High Point's facilities will be newly acquired by High Point, the facilities have been in service for many years. In approving an ROE for a new company that will be providing service using facilities already long in service, the Commission has found it generally appropriate to use the most recent ROE approved in a litigated NGA section 4 general rate case.[121] Our approval of High Point's proposed 12.99 percent ROE is consistent with the ROE approved in the most recent litigated NGA section 4 general rate case.[122]

154. In addition, the facilities that High Point is acquiring are underutilized. In view of the assured availability of capacity on an interruptible basis, High Point may not have any firm customers, and its cash flow may be entirely dependent on its interruptible transportation throughput. High Point's proposed ROE reflects investors' expectations for the substantial operational and commercial risks associated with its Gulf of Mexico operations. The potential of storms and declining production result in greater risk for High Point. These risk factors provide additional support for High Point's proposed return on equity. The Commission accepts High Point's ROE proposal in the design of its initial rates.

f. **Cost of Debt**

155. Protestors argue that High Point's proposed debt financing cost of 9.25 percent is high, and that High Point's assertions to support this debt financing cost are unsupported and inaccurate given that the Facilities are not a new operating system.[123] The Protestors contend that High Point should be required to provide evidence to support this assertion,

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[121] *See, e.g.*, *Missouri Interstate Gas, LLC*, 119 FERC ¶ 61,074, at P 69 (2007) and *Northern Natural Gas Co.*, 119 FERC ¶ 61,035, at P 37 (2007) (both approving an ROE of 11.20 percent for acquisition of existing facilities because this was the ROE established in *Kern River Transmission Co.*, Opinion No. 486, 117 FERC ¶ 61,007 (2006), which was the most recent litigated NGA section 4 general rate case).

[122] *Portland Natural Gas Transmission Sys.*, 134 FERC ¶ 61,129, at P 162 (2011) (approving an ROE of 12.99 percent).

[123] High Point asserts that its projections are based on prevailing trends and projects in the financial markets are well in excess of 9.25 percent for a newly-operating offshore jurisdictional system.

rather than rely on the rationale that High Point is engaging in ongoing discussion with lenders.

156. High Point will be an offshore pipeline without firm customers. As such, High Point's proposed cost of debt reflects the response by the financial markets. High Point explains that it will likely use a blend of bank financing and high-yield financing. With respect to potential bank financing, High Point states that it has received preliminary, non-binding quotes of approximately six to seven percent from three of the eleven lenders it had contacted prior to filing its application. High Point provided data indicating that high-yield debt structures range from 8.25 percent to 15.00 percent with an average yield of 12.36 percent. An even blend of bank debt financing at a seven percent annualized interest rate and high-yield debt financing at 12.36 percent results in a total cost of debt of approximately 9.68 percent, which is higher than High Point's proposed 9.25 percent cost of debt. The Commission finds that High Point has provided adequate evidence to support its proposed 9.25 percent cost of debt. Therefore, the Commission will accept High Point's proposed cost of debt as supported in the design of its initial rates.

5. <u>Rate Design – Billing Determinants</u>

157. High Point's billing determinants are based on a projected throughput of 261,115 Dth per day, which reflects Southern's average daily throughput on the Facilities for the 36-month period ending September 2011. The throughput includes all volumes except for volumes received at four meters which are either: (1) from third-party pipelines (not producers) that have an existing alternative option in place or are currently flowing less than historical volumes; or (2) subject to diversion with relatively small capital expenditures. High Point argues that such adjustments will allow the recovery of its cost of service without the risk of potential cross-subsidization among shippers.

158. Protestors contend that High Point's three-year throughput study is inaccurate because it excludes volumes from four meter stations, ignores events such as producer shut-ins, excludes additional reserves planned to be connected to the South of Toca Facilities, and bases the throughput on actual throughput rather than system capacity. Protestors argue these flaws in the throughput study result in the entire burden and risk of unsubscribed capacity being placed on High Point's shippers.

159. High Point designed its rates based on the average throughput for the past three years, which it believes accurately represents the future operation of the Facilities. The production on the South of Toca Facilities has decreased from 904,790 Mcf per day in 2003[124] to approximately 217,000 Mcf per day in 2011.[125] Therefore, we find that billing

[124] Southern October 7, 2011, Application at 8.

determinants based on the three-year average throughput are a reasonable projection of future use of the facilities.

160. Requiring rates to be designed on actual capacity is intended to deter pipelines from oversizing facilities that may result in unnecessary environmental impact or shift in the costs of unsubscribed new capacity to shippers. Because the facilities in question are already built, there is no possibility of overbuilding. We have permitted other pipelines in similar circumstances to base their rates on projected demand for capacity rather than actual physical capacity of the facilities. High Point's use of projected throughput based on actual historical information is similar to the data required of pipeline companies in an NGA section 4 general rate case.[126] The benefits of High Point's acquisition costs will flow through to its customers in the form of lower plant costs. As such, there is no need to make a second adjustment to billing determinants because of unutilized capacity. The proposed throughput data is sufficient for High Point to use in determining its initial rate design volumes.

161. Consistent with the Commission's functionalization findings in this order, High Point must reconcile billing determinants used to recalculate its initial rates consistent when it files its actual tariff.

6. Cost and Revenue Study

162. Protestors argue that High Point should be required to file a cost and revenue study following one full year of service, in order to justify the rates it ultimately charges for service on the South of Toca Facilities. The Commission finds no justification for departure from its usual policy, which is to require that a new pipeline company, like High Point, file a cost and revenue study to justify its rates three years after it commences operations.[127] We are not persuaded to depart from this policy. A three-year cost and revenue study provides High Point and its shippers with a sufficient operating history so that High Point can generate more representative costs and operations data that will include more than the costs associated with the start-up of a new interstate pipeline company. Therefore, the Commission requires High Point to file a cost and revenue

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[125] Southern January 11, 2012 Response to Data Request at No. 21.

[126] 18 C.F.R. § 154.312(j) (Statement G requires the use of 12-month actual contract and throughput data as the base period, adjusted for nine months of known and measurable changes in the test period.).

[127] *See, e.g.*, *Cimarron River Pipeline, LLC*, 124 FERC ¶ 61,069 at P 58; *Northern Natural Gas Co.*, 119 FERC ¶ 61,035 at P 49.

study at the end of its first three years of actual operation to justify its approved cost-based recourse rates. In the report, High Point will be required to project units of service for the South of Toca Facilities, which should be no lower than those upon which High Point's approved initial rates are based. The cost and revenue study must be in the form specified in section 154.313 of the Commission's regulations to update cost-of-service data.[128] After reviewing the data, the Commission will determine whether there is any need to exercise its authority under NGA section 5 to establish just and reasonable rates.[129] In the alternative, in lieu of filing the cost and revenue study, High Point may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the date it commences service with the facilities it is being authorized to acquire.

163. High Point's cost and revenue study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, High Point is advised to include as part of the eFiling description a reference to Docket No. CP12-9-000 and the cost and revenue study.[130]

D. *Pro Forma* Tariff Provisions

164. High Point proposes to offer firm and interruptible transportation services under Rate Schedules FTS and ITS, respectively, park and loan service under Rate Schedule PAL, title tracking service under Rate Schedule TTS, and pooling service under Rate Schedule PS. High Point filed *pro forma* service agreements for each of its proposed services. High Point requests negotiated rate authority for all of its services.[131] High Point will provide service on an open-access basis, pursuant to Part 284 of the Commission's regulations, under the terms and conditions set forth in the *pro forma* tariff attached as Exhibit P to its application.

165. High Point is directed to file actual tariff records consistent with the directives in this order at least thirty and not more than sixty days prior to the commencement of service, making specific tariff modifications as discussed below. To the extent that High Point needs to make tariff revisions because the Commission has found that certain

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[128] *See* 18 C.F.R. § 154.313 (2011).

[129] 16 U.S.C. § 717d (2006).

[130] *Order Establishing Procedures Relating to Tariffs Filed Electronically*, 130 FERC ¶ 61,047, at P 17 (2010).

[131] High Point October 13, 2011 Application at Exhibit P, *Pro Forma* Tariff Section 6.30 of GT&C.

facilities are unutilized or perform a gathering function, High Point should make such changes in its compliance filing.[132]

1. Hurricane Surcharge

166. In its *pro forma* tariff High Point proposes a hurricane surcharge in the event it incurs any hurricane-related expenses. High Point proposes an initial Hurricane Surcharge of zero since it is not yet operational and has not incurred any hurricane-related damage. If High Point wishes to change the hurricane surcharge rate, it will need to do so in an NGA section 4 proceeding.

167. Protestors argue that High Point's Hurricane Surcharge proposal should either be rejected or modified to limit the scope of the costs to be recovered and the time frame during which such costs would be recovered. Protestors contend that High Point's proposed definition of "eligible costs" is overly broad and includes, among other things, costs related to the "prevention of such damage" and "costs to maintain System reliability,"[133] which should not be recovered through a hurricane surcharge. Protestors also argue that High Point's proposal to recover Hurricane Surcharge costs over a 36-month period[134] provides for too short of an amortization period that would unfairly burden shippers.

168. Protestors also argue that the tariff language for the Hurricane Surcharge allows that any balance in the Hurricane Surcharge account to be eligible for recovery by High Point in its base rates should High Point seek to recover such costs in an NGA section 4 or section 5 proceeding.[135] Protestors contend that this language could be interpreted to allow the double recovery of hurricane-related costs and suggest a revision to the proposed tariff language to state that any *outstanding* balances in the Hurricane Surcharge account *will be recovered* through High Point's base tariff rates.

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[132] High Point will need to comply with the Commission's electronic filing requirements set forth in *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008), and Part 154 of the Commission's regulations, 18 C.F.R. § 154.4 (2011).

[133] High Point October 13, 2011 Application at Exhibit P, *Pro Forma* Tariff Section 6.27.3 of GT&C.

[134] *Id.* at Section 6.27.6(b).

[135] *Id.* at Section 6.27.7.

169. In addition, protestors contend that the Hurricane Surcharge tariff language allows High Point to selectively discount the surcharge.[136] Protestors argue that the Commission should require High Point to bear the risk of cost under recovery, and disallow the recovery of such cost shortfalls in its transportation rates. Protestors further question whether High Point will have the financial resources to make timely repairs in the event of a hurricane since it is also required by its purchase and sale agreement with Southern to post a $15 million bond to backstop any future abandonment liability. Similarly, Chevron comments that High Point should be required to act with the utmost urgency to fully restore any storm-damaged facilities and to timely restore service. American Midstream argues that it should not be required to pay the Hurricane Surcharge because even after the most severe hurricane, the 100 feet of gas line between American Midstream's point of delivery into the South of Toca Facilities and Enterprise's Toca Processing Plant, has not been damaged.

170. High Point responds that the Commission has approved the use of hurricane surcharges prior to the incurrence of hurricane-related costs, and rejected shippers' assertion that a proposed storm surcharge should be summarily rejected because the surcharge is "designed to recover speculative future costs" and is premature.[137] High Point contends that the 36-month amortization period strikes a fair and equitable balance between the customers' needs to resume full system operation as soon as possible and High Point's need to be reimbursed for and recover the costs within a reasonable timeframe.[138]

171. High Point suggests that the eligible costs considered for cost recovery in Section 6.27.3 of its proposed Hurricane Surcharge are consistent with other, similar Commission approved-surcharge mechanisms[139] and that High Point's surcharge should not be limited to the recovery of capital and O&M costs related to storm repairs. Further, High Point argues that its proposed tariff provision regarding the outstanding balances in

[136] *Id.* at Section 6.27.6.

[137] Citing *Enbridge Offshore Pipelines (UTOS) LLC*, 133 FERC ¶ 61,106, at P 30 (2010); *Sea Robin Pipeline Co., LLC*, 130 FERC ¶ 61,191, at P 21 (2010) (*Sea Robin*).

[138] *Sea Robin*, 130 FERC ¶ 61,191 at P 21.

[139] Citing Discovery Gas Transmission LLC's tariff which provides at Section 27.1 that Discovery can recover costs "to mitigate the cost of damage to facilities caused by hurricanes" and "to enhance overall system reliability."

the Hurricane Surcharge account is consistent with Commission-approved surcharges, and requires no modifications.[140]

172. In response to American Midstream, High Point asserts that hurricane damage could potentially affect all customers, even-short haul shippers, so the surcharge should be applied to all shippers.[141]

173. The Commission conditionally accepts High Point's proposed Hurricane Surcharge mechanism. The costs that would be recovered by the surcharge are not speculative, and the Commission has approved such mechanisms by pipelines for storm-related costs.[142] High Point has not incurred any hurricane-related costs at this time, and its proposed Hurricane Surcharge of zero is appropriate. High Point's *pro forma* tariff sets forth the mechanism by which it intends to recover hurricane-related costs, if such costs are incurred, by specifying the methodology of cost calculation and the recovery mechanism to be applied to its shippers. The Commission finds value in such transparency because all interested parties are made aware prior to the incurrence and subsequent request for recovery of such costs.

174. We also find that High Point's proposal to apply the Hurricane Surcharge to all shippers on its system, regardless of the length of the haul, is reasonable. We find this to be a fair and equitable method for pipelines to recover hurricane-related costs consistent with Commission policy.[143] Allowing short-haul shippers, such as American Midstream, to be exempt from the Hurricane Surcharge because they use only a small part of the system ignores the fact that High Point will be operating an integrated system that, to

[140] Citing Stingray Pipeline Company, LLC's Section 36.6(b) which states that "all Eligible Cost (or portions thereof) that have not been reimbursed through collection of the Event Surcharge may be included in the cost-of-service used to calculate Stingray's base rates."

[141] High Point's January 25, 2011 Answer at 5.

[142] *See, e.g.*, *High Island Offshore System, LLC*, 135 FERC ¶ 61,105 (2011); *Stingray Pipeline Co., LLC*, 127 FERC ¶ 61,308 (2009) (*Stingray*); *Discovery Gas Transmission LLC*, 122 FERC ¶ 61,099 (2008) (*Discovery*); *Colonial Pipeline Co.*, Oil Tariff Filing, Docket No. IS02-313-008 (July 2, 2008) (*Colonial*); *Chandeleur Pipe Line Co.*, 117 FERC ¶ 61,250 (2006) (*Chandeleur*); *ExxonMobil Pipeline Co.*, FERC Tariff 255-273, Docket No. IS06-344-000 (May 31, 2006).

[143] *Id.*

maintain operational and economic viability, requires the participation of many shippers and many sources of supply from different locations.

175. With respect to the duration of the surcharge, the Commission has approved various amortization periods for the recovery of Hurricane Surcharges ranging from 12 to 48 months.[144] High Point's 36-month amortization period provides a reasonable timeframe to recover the amount expended on hurricane damages since longer time periods may cause intergenerational inequities.[145] We find that the proposed 36-month time period strikes a reasonable balance between affording protection to future shippers that come onto the High Point system, and allowing a sufficient distribution of costs so as not to deter prospective shippers who would not want to pay a long-term surcharge for previously-incurred costs. Therefore, the Commission finds that High Point's proposed 36-month amortization period for the proposed Hurricane Surcharge is reasonable and consistent with Commission policy.

176. While the Commission recognizes that risk of an increase in rates as a result of the Hurricane Surcharge is not insignificant for offshore pipelines, we find that High Point's recovery proposal is reasonable given that over the long term High Point's potential maximum rate customers will pay significantly less for the hurricane repair costs than they would have paid under longer amortization periods. The types of costs High Point proposes to include in the Hurricane Surcharge are extraordinary costs outside its control. High Point's ability to recover these types of costs benefits its customers by improving

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[144] *Sea Robin Pipeline Co.*, 137 FERC ¶ 61,201, at P 51 (2011) (approving 4-year recovery period for hurricane surcharge finding such surcharge to be just and reasonable); *High Island Offshore System, L.L.C.*, 131 FERC ¶ 63,007, at P 17 n.6 (2010) (Administrative Law Judge certified a settlement that provided for a 36-month storm damage recovery period); *Stingray*, 127 FERC ¶ 61,308 (approving tariff provisions that allowed up to 36 months to amortize hurricane-related costs); *Discovery*, 122 FERC ¶ 61,099 (approving a 12-month recovery period for a hurricane surcharge with any uncollected amounts recovered in a subsequent period); *Colonial*, Oil Tariff Filing, Docket No. ISO2-313-008 (July 2, 2008) (24-month recovery period for a hurricane surcharge); *Chandeleur*, 117 FERC ¶ 61,250 (approving 12-month hurricane surcharge recovery period that was subsequently extended to 24 months); *ExxonMobil Pipeline Co.*, FERC Tariff 255-273, Docket No. IS06-344-000 (May 31, 2006) (12-month recovery period for a hurricane surcharge).

[145] *See Sea Robin Pipeline Co.*, 137 FERC ¶ 61,201.

the prospect that it may resume full service as quickly as possible following a catastrophic event.[146]

177. The Commission finds the proposed eligible costs to be recovered through the Hurricane Surcharge are consistent with Commission policy and precedent.[147] In any event, to the extent protestors question the potential inclusion of particular costs, such concerns are premature. High Point may not seek recovery of any costs through the Hurricane Surcharge prior to the incurrence of actual hurricane-related costs. High Point then must seek approval of the costs in a section 4 proceeding, which will include documentation supporting the costs. Parties will then have the opportunity to review those costs to determine whether they were prudently incurred. Accordingly, we find these reporting and filing requirements address the concerns raised by protestors and provide sufficient protection from the recovery of unsupported costs.

178. Similarly, protestors' claim that the Hurricane Surcharge *pro forma* tariff language allows double recovery for hurricane-related costs is premature.[148] While Protestors request that the Commission require High Point to bear the risk of cost under recovery for any discounts applied, the issue of how the cost recovery for any under-recovered hurricane-related costs and corresponding discount adjustments will be made in a future section 4 rate proceeding are beyond the scope of this proceeding.

179. Proposed section 6.27.7(b) of High Point's tariff states in part that "any rate discount agreed to by High Point shall not be considered a discount of the Hurricane Surcharge." The Commission interprets this section differently than the protestors. Protestors believe this language permits High Point to discount the Hurricane Surcharge, whereas we read the proposal as not allowing the Hurricane Surcharge to be discounted. The Commission finds that High Point's proposal to disallow discounting is contrary to the Commission's regulations.[149] Section 284.10(c)(5) of the Commission's regulations requires pipelines to file maximum and minimum transportation rates for both firm and interruptible service.[150] Section 284.10(c)(4) of the Commission's regulations requires

[146] *See, e.g.*, *Sea Robin*, 130 FERC ¶ 61,191 at P 12.

[147] *See Sea Robin Pipeline Co*., 137 FERC ¶ 61,201.

[148] High Point October 13, 2011 Application at Exhibit P, *Pro Forma* Tariff Section 6.27.6 of GT&C.

[149] 18 C.F.R. § 284.10(c) (2011).

[150] 18 C.F.R. § 284.10(c)(5)(i) (2011).

that the pipeline's minimum rate reflect only variable costs (i.e., costs that vary with the volume of throughput) and the maximum rate reflect both fixed (i.e., costs that remain constant regardless of the volume of throughput and are predominantly associated with capital investment in the pipeline system) and variable costs.[151] For discounting purposes, the pipeline is permitted to charge "an individual customer any rate that is neither greater than the maximum rate nor less than the minimum rate."[152] Therefore, High Point must file revised tariff records that provide for a maximum and minimum Hurricane Surcharge and remove any language from its tariff records indicating that the Hurricane Surcharge is not discountable. Of course, High Point may elect not to discount the Hurricane Surcharge with respect to future discount and negotiated rate agreements, provided it does so on a non-discriminatory basis.[153] The Commission's regulations also require that High Point's General Terms and Conditions (GT&C) include a statement of the order in which High Point discounts its rates and charges.[154] High Point is directed to include such a statement in its GT&C when its files actual tariff records in this proceeding consistent with current Commission regulations.

2. Liquefiables Transportation

180. The South of Toca Facilities operate as a "wet" system, i.e., a system that transports both liquids and natural gas, often in a dual phase. Liquids are removed at Enterprise's Toca Processing Plant, and dry gas is delivered at the tail of the plant into Southern's facilities. Southern currently offers two transportation services on the South of Toca Facilities: (1) natural gas and liquids transportation under Rate Schedules FT and IT;[155] and (2) liquids-only transportation under Rate Schedule LTA. All Rate Schedule LTA services on the Facilities will terminate upon Southern's abandonment.

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[151] 18 C.F.R. § 284.10(c)(4) (2011).

[152] 18 C.F.R. § 284.10(c)(5)(ii) (2011).

[153] *Sea Robin*, 137 FERC ¶ 61,201 at PP 91-96.

[154] 18 C.F.R. § 154.109(c) (2011). This requirement addresses the protestors' concerns with regard to discounted revenue recognition. Whether such discounts should result in a discount adjustment to the rate calculation is an issue to be addressed when and if High Point makes such a proposal in an NGA section 4 tariff filing.

[155] Southern's FERC NGA Gas Tariff, Southern FERC Tariff Volume 1, Rate Schedule, FT, 5.0.0 and Rate Schedule, IT, 3.0.0 both have Article 5: Transportation Of Liquids And Liquefiables, which address the ownership and shipping of liquids and liquefiables under these two rate schedules.

181. High Point does not propose to offer different or separate transportation services based on the product to be transported (i.e., natural gas or liquids). Rather, High Point proposes to provide liquids and liquefiables transportation only as part of its service under Rate Schedule FTS or ITS. High Point proposes that the shipper may transport and retain ownership of liquids and liquefiables provided the shipper has made arrangements to remove and replace thermally-equivalent quantities of gas reductions from processing. High Point proposes to treat the difference between the transportation of liquids and liquifiables on the basis of delivery point volumes as opposed to receipt point volumes as LAUF.

182. Protestors object to High Point's proposal to account for the transportation of liquefiables based on delivery rather than receipt volumes. Because delivered volumes are less than receipt volumes as a result of reductions attributable to LAUF, protestors contend that until High Point begins tracking LAUF volumes on its system, it should continue to account for the transportation of liquefiables based on receipt volumes to ensure that a liquefiables shipper is not overbilled.

183. We reject the protestors' request. High Point has proposed an initial LAUF rate of zero percent retention. Thus, when operations start, there will be no difference between receipt and delivery point volumes. Protestors' request would require separate measurement and accounting for gas as compared to liquids and liquefiables with no apparent purpose.

184. While the protestors suggest that High Point's proposed billing arrangement will result in higher costs to shippers, High Point proposes to bill shippers on a dekatherm basis, regardless whether the product shipped is gas, liquids or liquefiables. High Point has included liquids and liquefiable quantities in its Rate Schedule FTS and ITS billing determinants. High Point states it based these billing determinants on Southern's historical throughput data, which are measured in delivered quantities. If High Point were to bill liquids and liquefiables on a receipt basis in conjunction with transportation and LAUF retention rates based on delivery throughput, High Point would then receive revenue on LAUF volumes which it already proposed to recover through the separate LAUF fuel retention rate. That is not what High Point is proposing, and its proposed use of delivery billing determinants to base its receipt point billing determinants will not result in cost over-recovery.

185. Protestors question the meaning of a clause in High Point's *pro forma* tariff in which High Point would retain ownership of the liquid hydrocarbons it recovers in the course of transporting gas under Rate Schedules FTS and ITS, "unless otherwise

provided."[156] The Commission finds that this clause is clear that High Point will own and have the right to dispose of liquids and liquefiables delivered to High Point's system in the absence of a transportation agreement, unless specifically provided otherwise.

3. Waiver of Shipper Obligations

186. High Point's *pro forma* tariff sets forth the liabilities of High Point and its shippers in the event a waiver or default of any provisions of a shipper's service agreements occurs.[157] American Midstream contends that this provision is deficient because it does not allow High Point to waive, on a not unduly discriminatory basis, obligations for shippers, as most other pipelines provide. High Point responds that it has agreed to address American Midstream's concerns by revising its tariff to provide that it will waive shippers' obligations on a not unduly discriminatory basis. The Commission accepts High Point's proposal to revise its *pro forma* tariff to provide for waiver of the obligations of shippers on a not unduly discriminatory basis. As such, High Point is required to file the revised tariff language at the time it files actual tariff records.

4. Penalty Revenue Crediting

187. High Point's tariff does not contain a methodology for disposition of penalty revenue. While penalties are not required, to the extent that a pipeline assesses penalties, they must be limited to only those transportation situations in which they are necessary and appropriate to protect system reliability.[158] The Commission considers a penalty to be any charge imposed by the pipeline that is designed to deter shippers from engaging in

[156] High Point October 13, 2011 Application at Exhibit P, Miscellaneous tariff provision 8.1 at Article VIII of the Form of Service Agreement FTS and ITS at Section 7.1 and 7.2 which provides that: "Unless otherwise provided, all substances, whether or not of commercial value, including all liquid hydrocarbons of whatever nature, that High Point recovers in the course of transporting the quantities of gas tendered by Shipper shall be High Point's sole property and High Point shall not be obligated to account to Shipper for any value, whether or not realized by High Point, that my attach or be said to attach to such substances."

[157] High Point October 13, 2011 Application at Exhibit P, Section 6.24 of GT&C.

[158] *See Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,314 (2000). The Commission regulations direct that pipelines may not retain net penalty revenues, but must credit them to shippers in a manner to be prescribed in the pipeline's tariff. 18 C.F.R. § 284.12(b)(2)(v) (2011).

certain conduct and reflects more than simply the costs incurred as a result of the conduct.[159] Because High Point's tariff does not contain a methodology for disposition of penalty revenue, High Point is directed, at the time it files actual tariff records, to develop and specify in its tariff a penalty revenue crediting mechanism as well as identify in its tariff the penalty revenues which will be subject to crediting.

5. Reservation Charge Credits

188. High Point's *pro forma tariff* proposes to establish a formula for calculating reservation charge credits when a curtailment is due to *force majeure* and non-*force majeure* events.[160] When there is an interruption of service on a pipeline and the firm shipper cannot use the capacity it reserved through the reservation charge, the Commission requires pipelines to provide credits to shippers against their reservation charges. Commission policy distinguishes between *force majeure* and non-*force majeure* outages for determining the level of the credits during such outages.[161] The amount of reservation charge credits a pipeline must provide in a non-*force majeure* situation is measured by the amount of service the shipper nominated for scheduling but the pipeline was unable to deliver. The reservation charge credit is not measured by a shipper's contractual entitlement for service if the shipper nominated less than its contractual entitlement. When the pipeline gives notice of the non-*force majeure* service interruption at any time after the shipper's first opportunity to submit a scheduling nomination for the day in question, the amount of service which the shipper nominated, but the pipeline was unable to perform, is easily measured. Accordingly, in that situation, the reservation charge should be based on the volume the shipper nominated for scheduling but the pipeline was unable to deliver.[162]

189. High Point's tariff appears to condition the amount of reservation charge credits it will give in situations where shippers were not given advance notice of pipeline constraints or capacity unavailability as to the amount of gas a shipper has nominated and

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[159] *See Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services,* Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, at 31,610 (2000).

[160] High Point October 13, 2011 Application at Exhibit P, Rate Schedule FTS, Section 3.4.

[161] *Southern Natural Gas Co.,* 135 FERC ¶ 61,056, at P 32 (2011) (*Southern*).

[162] *Id*.

High Point has scheduled.[163] This additional restriction is at odds with the Commission's policy on reservation charge credits. Accordingly, High Point may not condition the amount of reservation charge credits it will give on volumes of confirmed or scheduled gas and is directed to revise its tariff to remove the identified clause when its files actual tariff records in this preceding.

190. In situations where the pipeline has provided advance notice of the unavailability of service, e.g., due to a planned outage or scheduled maintenance, before shippers' first opportunity to submit scheduling nominations for the day (or days) of the outage,[164] the Commission has found that it is reasonable for the pipeline to use an appropriate historical average of usage as a substitute for the use of actual nominated amounts to determine the level of the shipper's reservation charge credits. This approach minimizes the potential for gaming, where shippers would submit scheduling nominations for high amounts knowing that the scheduling nomination will be rejected, while ensuring that shippers who do not nominate will receive credits based on their recent usage of the system.[165]

191. High Point's Rate Schedule FTS is consistent with this policy with regard to the first day of a non-*force majeure* outage.[166] However, Rate Schedule FTS also requires use of either the lesser of *confirmable nominated* volumes that High Point fails to deliver or the daily average volumes nominated by a shipper for firm delivery at the shipper's primary delivery points during the seven day period prior to the beginning of such pre-scheduled service outage.[167] This emphasized language is vague and appears to place additional restrictions on the amount of reservation charge credits High Point will provide. High Point may not condition the amount of reservation charge credits it will

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[163] High Point October 13, 2011 Application at Exhibit P, Rate Schedule FTS Section 3.4(b).

[164] The North American Energy Standards Board (NAESB) standards currently provide shippers four nomination opportunities: (1) the Timely Nomination Cycle (11:30 a.m. Central Clock Time (CCT) the day prior to gas flow); (2) the Evening Nomination Cycle (6 p.m. CCT the day before gas flow); (3) Intra-Day Cycle 1 (10 a.m. CCT the day of gas flow); and (4) Intra-Day Cycle 2 (5 p.m. CCT the day of gas flow).

[165] *Southern*, 135 FERC ¶ 61,056 at P 33.

[166] High Point October 13, 2011 Application at Exhibit P, Rate Schedule FTS section 3.2(b).

[167] *Id*. at Section 3.4(b).

give on volumes of confirmed gas and is directed to revise its tariff by revising the identified clause when it files actual tariff records in this proceeding.

192. High Point also proposes to provide partial reservation charge credits during *force majeure* outages. *Force majeure* outages are no-fault occurrences because they are unexpected and uncontrollable events. Since no blame can be ascribed to either party, the Commission's policy is that both the pipeline and its customers should share the risk of such outages. Accordingly, after Order No. 636, the Commission held that pipelines using the straight fixed variable rate design method must provide partial reservation charge credits in order to share the risk of *force majeure* interruptions of service.

193. The Commission has permitted pipelines to use two different methods to determine the partial credit and permits the pipeline to choose which one to adopt.[168] The first method is the No-Profit method, where the pipeline provides for partial refunds starting on the first day of the interruption in service, covering the portion of the pipeline's reservation charge that represents the pipeline's return on equity and associated income taxes.[169] The second method is the Safe Harbor method where reservation charges must be credited in full to the shippers after a short grace period when no credit is due the shipper (i.e., 10 days or less).[170] High Point's proposal adopts the Safe Harbor method by providing reservation charge credits in *force majeure* situations after the first ten days of the curtailment. After the first ten days, High Point will provide reservation charge credits for any volumes it does not deliver because of the *force majeure* situation, but the tariff is silent as to how High Point will calculate the amount it does not deliver in *force majeure* situations.

194. Under the Safe Harbor partial crediting method High Point proposes to use, the Commission requires the pipeline to provide full reservation charge credits beginning on the eleventh day of the outage. High Point's proposed language is unclear whether those full credits would be measured by a shipper's contractual entitlement for service, without regard to the amount of service the shipper would have scheduled that day if the *force*

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[168] The Commission has stated that it is open to any other method, provided it results in the same type of risk-sharing.

[169] *Natural Gas Pipeline Co. of America*, 106 FERC ¶ 61,310, at PP 20-24, *reh'g denied*, 108 FERC ¶ 61,170, at PP 10-11 (2004); *Texas Eastern Transmission Co*., 62 FERC ¶ 61,015 (1993).

[170] *Natural Gas Supply Association*, 135 FERC ¶ 61,055, at P 17 (2011).

majeure outage had not occurred.[171] Accordingly, High Point must specify in its tariff a reasonable measure of the credit the shipper should receive under a *force majeure* situation.

6. Intraday Nominations – Service Priority (Bumping)

195. High Point's *pro forma* tariff sets forth the process by which High Point will confirm and schedule intra-day nominations seeking to replace, or bump, lower priority service.[172] The Commission's regulations provide that nominations by shippers with firm transportation service have priority over nominations by shippers with interruptible service.[173] The Commission's policy on bumping is that firm service is equal in priority to all other firm services, without distinction as to whether the firm service uses primary or secondary receipt and delivery points.[174]

196. High Point's *pro forma* tariff states that "High Point will not schedule an Intra-Day Nomination under any firm rate schedule if such change will bump scheduled and flowing services of an equal priority."[175] This provision sets forth uniform service priorities for allocations of available capacity, nominations, and service curtailments by delineating classes of services as primary firm under Rate Schedule FTS, secondary firm under Rate Schedule FTS, interruptible service (including authorized overrun) under Rate

[171] The Commission policy is that the full credits to be provided after the tenth day of a *force majeure* outage are measured in the same manner as the full credits provided throughout a non-*force majeure* outage. *See, e.g.*, Natural Gas Pipeline Company of America LLC, FERC NGA Gas Tariff, FERC Gas Tariff, Part 4.65, , 0.0.0; Texas Eastern Transmission, LP, FERC NGA Gas Tariff, Texas Eastern Database 1, 2., Rate Schedule FT-1, 0.0.0.

[172] High Point October 13, 2011 Application at Exhibit P, Section 6.6.10 of the GT&C.

[173] 18 C.F.R. § 284.12(b)(1)(i) (2012). However, pipelines with three intra-day nomination opportunities may exempt the last intra-day opportunity from bumping. *See Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-G, FERC Stats. & Regs. ¶ 31,062, at 30,672 (1998).

[174] *See, e.g.*, *Transwestern Pipeline Co.*, 99 FERC ¶ 61,380, at P 9 (2002) (reaffirming the Commission's long-held proposition that once scheduled, secondary firm service can not be bumped by primary firm).

[175] High Point October 13, 2011 Application at Exhibit P, Section 6.6.10(e).

Schedule ITS, and all other services provided by High Point.[176] This provision is acceptable with respect to service priorities for curtailments or the allocation of a pipeline's available capacity. However, this provision is inconsistent with our policy that nominations under firm service, and the subsequent scheduling of nominated capacities, must be equal in priority to all other firm services. For example, the provision could be interpreted to allow a firm shipper using primary receipt and delivery points to bump a firm shipper using secondary points. Accordingly, the Commission directs High Point to revise its service priorities for nominations and scheduling of transportation capacity such that all firm service is of equal priority.

197. Finally, High Point's proposed Section 6.6.10 of its GT&C is only applicable to intraday nominations, e.g., nominations submitted during the day of gas flow. High Point's tariff is too vague as to what service priorities it applies to when evaluating day-ahead nominations, e.g., nominations submitted in either the timely or evening nomination cycles. The Commission directs High Point to specify the scheduling priority for day-ahead nominations in its tariff when it files actual tariff records in this proceeding.

7. Imbalance Cash-Out Provision

198. American Midstream argues that High Point's *pro forma* tariff is deficient because the proposed cash-out provision does not include allowance for netting and trading of imbalances, cash-out refunds, and language defining imbalance costs.[177] High Point responds that it has agreed to revise its proposed tariff language to accommodate American Midstream's concerns.

199. The Commission established the requirement to offer netting and trading of imbalances in Order No. 587-G.[178] The Commission stated that imbalance trading regulations were necessary to reduce the business and financial risks of imbalances and associated penalties.[179] Permitting shippers to trade imbalances in the same operational area enables shippers to avoid imbalance charges without jeopardizing system reliability.

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[176] High Point October 13, 2011 Application at Exhibit P, Rate Schedule FTS Section 6.7.1.

[177] High Point October 13, 2011 Application at Exhibit P, *Pro Forma* Section 6.10 of the GT&C.

[178] *See* Order No. 587-G, FERC Stats. & Regs. ¶ 31,062.

[179] *Id*. at 30,644.

The NAESB WGQ business practice standards, as incorporated into the Commission's regulations, required among other things, that pipelines: (1) define the largest possible areas on their systems in which imbalances have similar operational effect; (2) explain why imbalances crossing those lines are not sufficiently similar in operational effect; (3) notify shippers of their imbalances and post imbalances automatically without charging a fee; and (4) process, without charging a separate fee, imbalance trades submitted by shippers or third parties acting to facilitate imbalance trading.[180]

200. Accordingly, High Point must revise Section 6.10 of the GT&C, as it has agreed in response to American Midstream's objection, to provide that the cash-out provision will include allowance for netting and trading of imbalances, cash-out refunds, and language defining imbalance costs. High Point is required to file the proposed tariff language at the time it files actual tariff records. High Point is also reminded that any such provisions should comply with the North American Energy Standards Board (NAESB) Wholesale Gas Quadrant (WGQ) Standards,[181] in addition to the Commission's regulations,[182] and current prevailing policy.[183]

8. Uniform Hourly Flow

201. Section 6.2.8 of High Point's GT&C states that "[g]as shall be delivered and redelivered as nearly as practicable at uniform hourly and daily rates of flow, and High Point shall not be obligated to receive more than 1/24th of Shippers total [Maximum Daily Reservation Quantity] during any hour."

202. American Midstream contends that High Point's tariff is deficient because it imposes uniform hourly flow requirements at all times even when such a requirement is not realistic or necessary, such as during the pipeline's non-critical periods.[184] American Midstream states that it is not seeking a "firm right to hourly variations in service" but only that High Point not be required to impose the uniform hourly flow requirement when it is not necessary to protect the flows of other shippers or to protect pipeline system

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[180] *Id.* at 30,678-679.

[181] NAESB WGQ Version 1.9 data sets: 2.4.9, 2.4.10, 2.4.11, 2.4.12, 2.4.13, 2.4.14, 2.4.15, and 2.4.16.

[182] 18 C.F.R. § 284.12(b)(2) (2012).

[183] *See, e.g. East Cheyenne Gas Storage, LLC*, 137 FERC ¶ 61,096 (2011).

[184] High Point October 13, 2011 Application at Exhibit P, *Pro Forma* Section 6.2.8 of the GT&C.

integrity. American Midstream contends that since High Point's proposed hourly flow requirements are inconsistent with tariff provisions of other pipelines, it is deficient and therefore should be revised.[185]

203. High Point responds that its proposal is identical to other Commission-approved hourly flow tariff language and has been approved for both onshore and offshore pipelines.[186]

204. The Commission does not require pipelines to offer shippers a firm right to hourly variations in service and has accepted tariff language similar to that proposed by High Point.[187] High Point's proposed Uniform Hourly Flow provision limits its responsibility to honor hourly variations in service in a non-discriminatory manner, and is consistent with other Commission approved tariffs, and is therefore approved.

9. **<u>Annual Charge Adjustment</u>**

205. High Point's proposed Statement of Rates at Section 4 of its tariff provides for an annual charge adjustment (ACA) charge of $0.0019 per Dth, applicable to Rate Schedules FTS and ITS, and provides a provision for an ACA charge at Section 28 of its tariff's GT&C section. The Commission's regulations permit a pipeline to adjust its rates annually to recover from its customers the charges assessed under Part 382 of our regulations pursuant to an ACA clause.[188] The Commission's regulations also provide

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[185] American Midstream's December 22, 2011 answer at n.17 cites Southern's tariff at GT&C Section 10.1 ("All gas delivered to or by COMPANY under its transportation Rate Schedules shall be delivered at rates as constant as operationally feasible throughput the day, and …. COMPANY shall not be obligated to deliver gas under its transportation Rate Schedules in excess of uniform hourly rate").

[186] Citing Venice Gathering System, L.L.C., FERC NGA Gas Tariff, FERC Gas Tariffs, Sheet No. 40, GTC, Sec. 2.8: Available Capacity, 0.1.0.; Dauphin Island Gathering Partners, FERC NGA Gas Tariff, Dauphin Island FERC Gas Tariff, 7.8. GT&C, Warranty of Title & Flow Provisions, 0.1.0.; Garden Banks Gas Pipeline, LLC, FERC NGA Gas Tariff, First Revised Volume No. 1, Sheet No. 77, Section 9 Uniform Rates of Flow, 0.1.0..

[187] *See, e.g.*, *Southwest Gas Corp*., 111 FERC ¶ 61,511, at P 13 (2005).

[188] 18 C.F.R. Part 382 (2011). Part 382 provides that the adjusted costs of the administration of the natural gas regulatory program will be assessed against each pipeline in proportion to the amount of gas each pipeline transports during a year.

that the annual charge must be paid before the company applies an ACA unit charge.[189] The ACA charge may go into effect only if the company has paid the applicable annual charge in compliance with section 382.103 of our regulations.[190]

206. It is premature to include the ACA charge now because the ACA is based on the previous fiscal year's throughput, and High Point will not receive a bill for the ACA charge until it has been in operation for one year. Therefore, High Point must delete the ACA rate from its Statement of Rates and the applicable rate schedules. Once High Point has paid its applicable annual charge, it may file revised tariff sheets reflecting the applicable ACA charge at that time in accordance with Commission regulations. High Point should separately identify the ACA charge as a component of rates.

10. <u>Rate Schedule TTS</u>

207. High Point proposes under Rate Schedule TTS to offer its shippers the ability to transfer gas to another party at the same delivery point. To facilitate this service, High Point proposes to assess a title transfer fee based on the product of the total quantity of gas received by High Point for a TTS customer during the month and the proposed TTS Usage rate of $0.0050 per Dth.[191]

208. While pipelines are required to offer title transfer tracking service pursuant to NAESB Nomination Standards, they are not required to create a rate schedule to implement title transfer tracking. However, pipelines can choose to propose such a rate schedule to further define the service, as High Point has done here.

209. The Commission has several concerns with High Point's Rate Schedule TTS proposal. The Commission has addressed proposals to implement title transfer tracking fees on other pipelines. In *CNG Transmission Corp.* (*CNG*),[192] the Commission rejected a pipeline's proposal to impose a volumetric charge for title transfer tracking because the costs to track the title transfers bore little, if any, relationship to the volumes associated with each transfer. The Commission stated that if there are any costs associated with a title transfer, these costs should be a function of the total number of transactions, not the volumes transferred.

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[189] 18 C.F.R. § 154.402(a) (2011).

[190] 18 C.F.R. § 382.103 (2011).

[191] High Point October 13, 2011 Application at Exhibit P, *Pro Forma* Section 5.3 of Rate Schedule TTS.

[192] *CNG Gas Transmission Corp.*, 89 FERC ¶ 61,278 (1999).

210. Consistent with the decision in *CNG*, the Commission finds that High Point's proposed title transfer volumetric rate is not in the public interest because as proposed the level of the fee for a particular transaction would be based on the volumes transferred, rather than the costs of the service. In addition, the provision providing the shipper may transfer title of gas to a "Delivery Point" is ambiguous. Delivery points are not counterparties to a sale. Ultimately the shippers on High Point's system must have title to the gas transported. Furthermore, it is unclear from High Point's proposal whether the charge will be assessed once or several times. Because of the potential adverse impact on market centers, the potential for numerous title transfer charges to be applied to the same volumes of gas as they change hands, and the potential for undue discrimination and consumer harm, the Commission has determined that such multiple charges are not appropriate.[193]

211. Accordingly, High Point's proposed Section 5.3: Rate Schedule TTS, the accompanying Section 7.3: Form of Service Agreement – TTS,[194] and the TTS fee are rejected. If High Point proposes a title transfer fee in a separate NGA section 4 filing, the charge must be on a per-transaction basis and not on a volumetric basis, and High Point must fully support and provide justification for its proposed title transfer fee as required by the Commission's regulations.[195]

11. Pooling Rate Schedule PS

212. High Point proposes under Rate Schedule PS to offer its shippers the ability to aggregate the supply of gas (pooling) to any shipper that has entered into either a Rate Schedule FTS or ITS service agreement. High Point does not propose to assess a fee for providing this service.[196]

213. Protestors contend that the proposed pooling structure will violate the Commission's "one charge to use a pool" requirement because High Point proposes to

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[193] *Natural Gas Pipeline Co. of America*, 80 FERC ¶ 61,372, at 62,263, *reh'g denied*, 81 FERC ¶ 61,296 (1997), *order rejecting tariff sheets*, 84 FERC ¶ 61,336, at 62,483 (1998).

[194] This form of service agreement is also premised upon quantities, not transactions.

[195] 18 C.F.R. § 154.202 (2011).

[196] High Point October 13, 2011 Application at Exhibit P, *Pro Forma* Section 3.1 of Rate Schedule PS.

assess the transportation charge from the receipt point on its system to a pooling point. Protestors assert that the pooling point is the new Interconnection with the Southern system, and that Southern shippers will need to pay a transportation charge to move gas from the High Point pool to their ultimate delivery points on the Southern system, resulting in a charge both to enter and exit the pool.

214. We accept High Point's pooling service as it is consistent with Commission policy. High Point's proposed pool is a virtual pool. Under High Point's billing proposal, all shippers of gas, liquids and liquefiables under Rate Schedules FTS and ITS will be billed on net receipt point volumes. This billing practice equates to billing all shippers upstream of the pooling point. High Point states that it will not charge for transportation twice. Shippers seeking to transport natural gas volumes on both Southern's and High Point's systems should pay the applicable transportation charges for each system. High Point's Rate Schedule PS clearly indicates that the pooling service is for the aggregation of gas supply on its system. There is no proposal for Southern and High Point to share a pool or pooling point.

12. NAESB WGQ Standards

215. The Commission has adopted in its regulations various standards for conducting business practices and electronic communication with interstate pipelines as promulgated by the North American Energy Standards Board (NAESB) Wholesale Gas Quadrant (WGQ).[197] The standards are intended to govern nominations, allocations, balancing measurement, invoicing, capacity release, and mechanisms for electronic communication between pipelines and those with whom they do business. In its *pro forma* tariff, High Point proposes to comply with the NAESB WGQ standards. The Commission accepts High Point's proposal but directs High Point, at the time it files actual tariff records in this proceeding, to: (1) reflect the latest version of the NAESB standards adopted by the Commission; and (2) file in their transmittal letter a table of all the NAESB standards incorporated by reference and a cross-reference to the tariff provisions in which that standard is contained. For standards not incorporated by reference, the pipelines should identify the tariff provision that complies with that standard.[198]

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[197] *See Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-U, FERC Stats. & Regs. ¶ 31,307 (2010).

[198] *See* Order No. 587-U, FERC Stats. & Regs. ¶ 31,307, at P 39.

13. Waiver of Segmentation Tariff Requirements

216. The Commission's regulations provide that, to the extent it is operationally feasible, an interstate pipeline must permit a shipper to make use of the firm capacity for which the shipper has contracted by segmenting that capacity into separate parts for the shipper's own use or for the purpose of releasing that capacity to replacement shippers.[199] High Point requests waiver of this segmentation requirement because it is operationally infeasible on systems with a single delivery point.

217. The Commission has found in several proceedings that the segmentation requirement does not apply to pipelines that provide a single delivery point.[200] Because High Point is only providing transportation service to Southern at a single delivery point, the Interconnection, the Commission's segmentation requirement does not apply. However, should segmentation become feasible in the future due to a change in the configuration of High Point's facilities and addition of potential delivery points, High Point is required to revise its tariff at that time to address segmentation. Other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented releases and within-the-path scheduling, also do not apply to High Point.

E. Accounting

218. High Point requested waiver of the USofA to reflect the purchase price of the South of Toca Facilities, rather than the original cost of the facilities, as gas plant in service in Account 101. GPI No. 2 requires gas plant acquired as an operating unit or system to be recorded at the costs incurred by the person who first devoted the property to utility service (i.e., the original cost). The South of Toca Facilities were previously devoted to public service by Southern and have an original cost of $351,999,799. High Point has not provided any compelling reasons for departing from the Commission's original cost rules, which are fundamental to the Commission's USofA. Acquired gas plant previously devoted to public service must be recorded at original cost. As High Point states, it need only change its depreciation and negative salvage rates to comply with the requirements. Accordingly, High Point's request for waiver is denied.

219. High Point must account for the acquisition of the South of Toca Facilities in accordance with GPI No. 5 and the Commission's original cost rules. GPI No. 5, Gas

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[199] *See* 18 C.F.R. § 284.7(d) (2011).

[200] *See, e.g.*, *Natural Gas Pipeline Co. of America*, 120 FERC ¶ 61,050, at P 54 (2007); *Natural Gas Pipeline Co. of America*, 105 FERC ¶ 61,383, at P 25 (2003); *Gulf States Transmission Corp.,* 96 FERC ¶ 61,159, at 61,693-94 (2001).

Plant Purchased or Sold, requires that the original cost of the facilities acquired be debited to Account 101 and the depreciation applicable to the original cost of the properties purchased be credited to Account 108. In addition, the difference between the purchase price and the net book value of the facilities acquired should be recorded as an acquisition adjustment in Account 114, Gas Plant Acquisition Adjustments. Further, the Commission has held that when the net book value of an asset exceeds the purchase price, the resulting negative acquisition adjustment should be cleared from Account 114 to Account 108.[201] Since, High Point was able to acquire the South of Toca Facilities significantly below the facilities' net book value, High Point must clear the negative acquisition adjustment by debiting Account 114 and crediting Account 108.

F. Request for Blanket Certificates

220. High Point seeks a Part 157, Subpart F blanket construction certificate, which authorizes an interstate pipeline to engage in certain limited construction and operation activities and certain certificate amendments and abandonment under section 7 of the NGA under simplified procedures. High also requests a Part 284, Subpart G blanket transportation certificate, which authorizes interstate pipelines to engage in certain automatic NGA section 7 transportation authorizations for individual customers under the terms of its contract and tariff. Since High Point will become an interstate pipeline upon the issuance of a certificate of public convenience and necessity, we issue High Point the requested Part 157, Subpart F blanket construction certificate and the Part 284, Subpart G transportation certificate.

V. Environment

221. Upon Commission approval of the abandonment application, Southern will separate its downstream system from the South of Toca Facilities being sold to High Point by constructing a custody transfer meter station and rerouting a dehydration header. These activities would occur on industrial lands located entirely within the boundary of Southern's existing Toca Compressor Station. Southern would complete this work under its Part 157, subpart F, blanket certificate authority. High Point requests, and this order issues to High Point, a blanket construction certificate under Part 157, subpart F, of the Commission's regulations and an open-access transportation blanket certificate under Part 284, subpart G, of the Commission's regulations.[202] Commission staff conducted an

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[201] *Id*.

[202] Southern and High Point also explain that upon the Commission's approval of the proposed abandonment by sale, the companies will file with the Department of Interior's Bureau of Ocean Energy Management, Regulation, and Enforcement all

(continued…)

environmental review of the proposals and found that they qualify as categorical exclusions under the Commission's regulations implementing the National Environmental Policy Act.[203] Specifically, Southern's application for abandonment by sale qualifies as a categorical exclusion under sections 380.4(a)(24) and 380.4(a)(31) of the Commission's regulations, and High Point's application to acquire and operate the Facilities qualifies as a categorical exclusion under sections 380.4(a)(21), 380.4(a)(22), and 380.4(a)(31).[204]

VI. <u>Conclusion</u>

222. The Commission approves Southern's request to abandon the South of Toca Facilities. However, the Commission is not making a pre-determination with respect to Southern's proposed regulatory asset accounting or its request to recover residual and secondary liability in its future Part 284 rates.

223. The Commission has determined the functionalization status of the various South of Toca Facilities, and has found the function of each facility to be jurisdictional transmission, non-jurisdictional gathering, or unused. For those facilities that are currently used and operated as jurisdictional transmission facilities, a certificate is issued to High Point. High Point is required to make a compliance filing to establish the initial rates for transportation services over its acquired facilities, to remove the costs of the gathering facilities from its transmission rates, to file separately-stated gathering rates for any services provided over the gathering facilities, to remove the costs of unused facilities from rates for jurisdictional services, and to make other tariff revisions required by this order.[205]

224. At a hearing held on June 21, 2012, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the

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remaining required applications for the transfer of ownership of the South of Toca Facilities.

[203] Staff Environmental Assessment Report October 25, 2011.

[204] 18 C.F.R. § 380.4(a) (2012).

[205] In the event that Southern retains ownership of any of the South of Toca Facilities, it must functionalize the original cost of the gathering facilities from transmission to gathering accounts, effective the date of this order. *Tennessee Gas Pipeline Co.*, 138 FERC ¶ 61,179, at P 22 (2012).

application(s), as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

<u>The Commission orders:</u>

(A) In Docket No. CP12-4-000, permission for and approval is granted for Southern Natural Gas Company, L.L.C., to abandon the subject facilities, including the certificated facilities found to be providing gathering services, by sale to High Point.

(B) Southern shall notify the Commission within ten days of the date(s) of its abandonment(s) of facilities as authorized by this order. Southern shall complete authorized abandonments within one year from the date of this order.

(C) Southern shall file revised tariff records to remove references to the South of Toca Facilities and related services from its tariff at least thirty and not more than sixty days prior to the in-service date of the South of Toca Facilities.

(D) Southern shall adhere to the accounting requirements as discussed in the body of the order.

(E) Southern shall account for the transaction in accordance with Gas Plant Instruction No. 5 and Account 102, Gas Plant Purchased or Sold, of the Uniform System of Accounts. Southern shall submit its final accounting entries within six months of the date of that the transfer is consummated, and the accounting submissions shall provide all the accounting entries related to the transfer along with narrative explanations describing the basis for the entries.

(F) In Docket No. CP12-9-000, we issue High Point a certificate to acquire, own, and operate the South of Toca Facilities determined herein to be jurisdictional transmission facilities under the Natural Gas Act.

(G) In Docket No. CP12-9-000, a blanket construction certificate is issued to High Point under Subpart F of Part 157 of the Commission's regulations.

(H) In Docket No. CP12-9-000, a blanket certificate is issued to High Point under Subpart G of Part 284 of the Commission's regulations.

(I) High Point shall revise its initial recourse rates in accordance with the discussion in the body of this order and file the rates and work papers supporting the revised recourse rates in conjunction with the filing of tariff records to:

(1) Functionalize the costs of service related to the facilities as indentified in Appendix B.

(2) Remove the costs to service related to the facilities identified in Appendix B as not in use from its cost of service recoverable through its jurisdictional services.

(J) High Point must file actual revised tariff records incorporating the incremental firm and interruptible transportation rates at least thirty and not more than sixty days prior to the in-service date of the South of Toca Facilities as discussed above.

(K) High Point must submit revised tariff records referencing the latest NAESB Standards adopted by the Commission as discussed in the body of this order, at the time it files actual tariff records in this proceeding.

(L) Waiver is granted of the Commission's regulations that have been deemed inapplicable to shippers with one delivery point, as discussed in this order.

(M) At the end of its first three years of operation, High Point must make a filing to justify its existing cost-based firm and interruptible recourse rates. In its filing, the projected units of service should be no lower that those upon which High Point's approved initial rates are based. The cost and revenue study must be in the form specified in section 154.313 of the Commission's regulations to update cost-of-service data. In the alternative, in lieu of such filings, High Point may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

(N) High Point shall adhere to the accounting requirements as discussed in the body of the order.

(O) High Point shall account for the transaction in accordance with Gas Plant Instruction No. 5 and Account 102, Gas Plant Purchased or Sold, of the Uniform System of Accounts. High Point shall submit its final accounting entries within six months of the date of that the transfer is consummated, and the accounting submissions shall provide all the accounting entries related to the transfer along with narrative explanations describing the basis for the entries.

By the Commission. Commissioner Clark voting present.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A
Timely Interventions

CP12-4-000

Alabama Gas Corporation
Alabama Municipal Distributors Group, jointly and severally, on behalf of its members:
- Boaz Gas Board
- Brookside Gas System
- City of Childersburg
- Water Works & Gas Board
- City of Cordova
- Cullman-Jefferson Counties Gas District
- DeKalb-Cherokee Counties Gas District
- Gas Board of the Town of Dora
- Fultondale Water & Gas Board
- Utilities Board, Town of Gordo
- Huntsville Utilities
- City of Jacksonville
- Marshall County gas District
- Northwest Alabama Gas District
- Utilities Board of the City of Oneonta
- Pickens County Natural Gas District
- Piedmont Water and Gas Board
- Scottsboro Water, Sewer and Gas Board
- Southeast Alabama Gas District
- Gas Board of the Town of Sumiton
- Utilities Board, City of Sylacauga
- Wilcox County Gas District

American Midstream (American Midstream), LLC
Apache Corporation
Atlanta Gas Light Company
Atmos Energy Corporation
Austell Gas System
BG Energy Merchants, LLC
BP America Production Company and BP Energy Company
Century Exploration New Orleans, LLC
Chattanooga Gas Company
Chevron U.S.A. Inc.
Dynamic Offshore Resources, LLC
Energy XXI (Bermuda) Ltd.
Enterprise Gas Processing, LLC
Florida Cities, jointly and severally, on behalf of its members:
- Orlando Utilities Commission
- Lakeland Electric
- City of Gainesville d/b/a Gainesville Regional Utilities
- Florida Gas Utility

Florida Gas Transmission Company, LLC
Florida Power Corp. d/b/a Progress Energy Florida, Inc.
Hilcorp Energy Company, Inc.
McMoRan Oil & Gas LLC
Mississippi Canyon Gas Pipeline, LLC
Municipal Gas Authority of Georgia, jointly and severally, on behalf of its members municipalities:
- Adairsville, Georgia
- Adel, Georgia
- Americus, Georgia
- Ashburn, Georgia
- Bainbridge, Georgia
- Blakely, Georgia
- Byron Cairo, Georgia
- Camilla, Georgia
- Claxton, Georgia
- Cochran, Georgia
- Dawson, Georgia
- Doerun, Georgia
- Donalsonville, Georgia
- Douglas, Georgia

Eatonton, Georgia
Edison, Georgia
Fitzgerald, Georgia
Fort Valley, Georgia
Grantville, Georgia
Havana, Florida
Hogansville, Georgia
Jasper, Florida
LaFayette, Georgia
Lanett, Alabama
Louisville, Georgia
Lumpkin, Georgia
Manchester, Georgia
Millen, Georgia
Monticello, Georgia
Moultrie, Georgia
Nashville, Georgia
Pelham, Georgia
Perry, Georgia
Quincy, Florida
Quitman, Georgia
Sparta, Georgia
Statesboro, Georgia
Summerville, Georgia
Sylvania, Georgia
Sylvester, Georgia
Thomasville, Georgia
Thomson, Georgia
Tifton, Georgia
Trion, Georgia
Vienna, Georgia
Warner Robins, Georgia
Waynesboro, Georgia
West Point, Georgia
Wrens, Georgia

NJR Energy Services Company
PCS Nitrogen Fertilizer, L.P.
Peoples Gas System, a Division of Tampa Electric Company
PetroQuest Energy L.L.C.
Pisces Energy LLC
SCANA Energy Marketing, Inc.
Shell Offshore, Inc.
South Carolina Electric & Gas Company
Southeast Alabama Gas District
Southern Cities, jointly and severally, on behalf of its member cities:
- Tallahassee, Florida
- Cordele, Georgia
- Cartersville, Georgia
- La Grange, Georgia
- JEA

Southern Company Services, Inc.
W&T Offshore, Inc.

CP12-9-000

Alabama Gas Corporation
American Midstream (American Midstream), LLC
Apache Corporation
Atlanta Gas Light Company
Atmos Energy Corporation
BG Energy Merchants, LLC
BP America Production Company and BP Energy Company
Century Exploration New Orleans, LLC
Chattanooga Gas Company
Chevron U.S.A. Inc.
Dynamic Offshore Resources, LLC
Energy XXI (Bermuda) Ltd.
Enterprise Gas Processing, LLC
Florida Cities, jointly and severally, on behalf of its members:
- Orlando Utilities Commission
- Lakeland Electric
- City of Gainesville d/b/a Gainesville Regional Utilities

Florida Gas Utility
Florida Gas Transmission Company, LLC
Hilcorp Energy Company, Inc.
McMoRan Oil & Gas LLC

Mississippi Canyon Gas Pipeline, LLC
NJR Energy Services Company
Peoples Gas System, a Division of Tampa Electric Company
PetroQuest Energy, L.L.C.
Pisces Energy LLC
Shell Offshore, Inc.

Southern Cities, jointly and severally, on behalf of its member cities:

- Tallahassee, Florida
- Cordele, Georgia
- Cartersville, Georgia
- La Grange, Georgia
- JEA

Southern Company Services, Inc.
W&T Offshore, Inc.

Appendix B

Jurisdictional Determinations

Line Number[206]	Design Capacity (Mcf/d)	Determination
104E	207,000	Transmission
104D	305,000	Transmission
104D-L2	523,000	Transmission
104D-L1	305,000	Transmission
104D-2L1	510,000	Transmission
126	27,000	Gathering
156/128/129	127,000	Gathering
1122	152,000	Gathering
1122	152,000	Gathering
1126	30,000	Gathering
1107	30,000	Gathering
105	127,000	Gathering
107	55,000	No use
104F	207,000	Gathering
112	152,000	Transmission
1165	207,000	Transmission
1166	280,000	Transmission
191	495,000	Transmission
191	580,000	Transmission
1185	52,000	No use
1188	125,000	Gathering
1112	267,000	Gathering
1197	125,000	Gathering
1103	154,000	Gathering
197	125,000	Gathering
192	335,000	Gathering
1102	154,000	Gathering
1203	51,000	Gathering
1183	28,000	Gathering
1156	28,000	Gathering

[206] Line numbers are from Attachment 1 to Exhibit D – Attachment 1 Line No. in Southern’s October 7, 2011 Application.

1162	28,000	Gathering
1130	87,000	Gathering
1105	125,000	Gathering
198	125,000	Gathering
127	47,000	Gathering
137	314,000	Transmission
137-L1/L2	537,000	Transmission
1133	12,000	Gathering
164	380,000	Transmission
121	52,000	No use
120	52,000	No use
144	83,000	Gathering
145	29,000	Gathering
138	118,000	Gathering
138-L1	254,000	Transmission
169	292,000	Transmission
179	55,000	Gathering
1199	55,000	Gathering
1201	374,000	Transmission
1155	225,000	Transmission
191	267,000	No use