

142 FERC ¶ 61,133  
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.

Trunkline Gas Company, LLC;  
Sea Robin Pipeline Company, LLC

Docket No. CP12-5-001

ORDER DENYING AND DISMISSING REQUESTS FOR REHEARING AND  
DENYING MOTION TO INTERVENE OUT-OF-TIME

(Issued February 21, 2013)

1. On June 21, 2012, the Commission issued an order authorizing Trunkline Gas Company, LLC (Trunkline) to abandon by sale to Sea Robin Pipeline Company, LLC (Sea Robin) virtually all of Trunkline's facilities in the Gulf of Mexico, offshore Louisiana and Texas, and certain facilities onshore in Louisiana.<sup>1</sup> In the same order, the Commission authorized Sea Robin to acquire and operate the facilities abandoned by Trunkline, with the exception of those facilities that were unutilized and did not primarily function as jurisdictional facilities.
2. On July 23, 2012, the Producer Coalition,<sup>2</sup> LLOG Exploration Company, L.L.C. (LLOG), Arena Energy, LP (Arena)<sup>3</sup> (collectively, Offshore Producers), and Apache

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<sup>1</sup> *Trunkline Gas Co., LLC*, 139 FERC ¶ 61,239 (2012) (June 2012 Order).

<sup>2</sup> The Producer Coalition includes: Century Exploration New Orleans, LLC (Century), Dynamic Offshore Resources, LLC, Energy XXI (Bermuda) Ltd., Hilcorp Energy Company, Inc., McMoRan Oil & Gas LLC, Pisces Energy LLC, and W&T Offshore, Inc. (also hereinafter collectively referred to as the "Producer Coalition").

<sup>3</sup> The rehearing requests filed by the Producer Coalition, LLOG, and Arena are substantially similar. This order will collectively refer to these parties as the Offshore Producers.

Corporation (Apache) filed timely requests for rehearing of the June 2012 Order. Also on July 23, 2012, the Natural Gas Supply Association, the Independent Petroleum Association of America, the Process Gas Consumers Group, the American Public Gas Association, and the American Forest & Paper Association (collectively, Associations) filed a motion to intervene out-of-time along with a rehearing request.

3. As discussed below, the Commission will deny the rehearing requests filed by the Offshore Producers and Apache. The Commission will also deny the motion to intervene out-of-time and dismiss the accompanying rehearing requests filed by the Associations.

### **I. Background**

4. Trunkline is a natural gas company as defined by section 2(6) of the Natural Gas Act (NGA).<sup>4</sup> Trunkline's transmission system extends from its historical sources of supply in Texas, Louisiana, and the Gulf of Mexico, offshore Texas and Louisiana, to a principal terminus at the Indiana-Michigan state line near Elkhart, Indiana. Sea Robin, a natural gas company under section 2(6) of the NGA, owns and operates mainly offshore transportation and gathering pipeline facilities in the Gulf of Mexico. Sea Robin's facilities extend from East Cameron Block 335 and Eugene Island Block 205 to Vermilion Block 149, and then to Sea Robin's terminus at its onshore Erath, Louisiana compressor station, which is also its onshore interconnection with Trunkline.<sup>5</sup> Trunkline and Sea Robin are affiliates.

5. Prior to the June 2012 Order, Trunkline owned and operated, or had partial ownership in, approximately 533 miles of pipeline and related facilities in the Gulf of Mexico, offshore Louisiana and Texas. These facilities are divided into three discrete systems: (1) the Vermilion System; (2) the Terrebonne System; and (3) the Brazos Area Block A-47 System. The Vermilion and Terrebonne Systems extend onshore into Louisiana. The Brazos A-47 System is offshore Texas. There are no direct interconnections among the Vermilion, Terrebonne, Brazos Area Block A-47, and Sea Robin Systems.

6. On October 7, 2011, Trunkline and Sea Robin filed a joint application in which Trunkline proposed to abandon by sale to Sea Robin its Vermilion, Terrebonne, and

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<sup>4</sup> 15 U.S.C. § 717, *et seq.* (2006).

<sup>5</sup> In *Sea Robin Pipeline Co.*, 87 FERC ¶ 61,384 (1999), *reh'g denied*, 92 FERC ¶ 61,072 (2000), the Commission found that all of Sea Robin's facilities upstream of the Vermilion Block 149 platform, which houses 24,700 horsepower of compression, are gathering facilities.

Brazos Area Block A-47 Systems, and Sea Robin proposed to acquire and operate the facilities proposed to be abandoned. Sea Robin proposed to charge its existing transportation and gathering rates, including a lost and unaccounted for fuel charge and a hurricane surcharge, for service on the facilities proposed to be abandoned. Sea Robin estimated that revenues using its existing rates for service on the facilities proposed to be abandoned would be higher than Trunkline's claimed stand-alone cost of service. Sea Robin requested a predetermination that it may roll the costs of the abandoned facilities into its system rates in a future NGA section 4 rate case. Sea Robin's next rate case is due to be filed no later than January 1, 2014.

## II. The June 2012 Order

7. The June 2012 Order granted the joint application.<sup>6</sup> In its evaluation of the abandonment request, the Commission concluded that the present or future public convenience or necessity permitted Trunkline's abandonment. In making this finding, the Commission considered the lack of opposition to the proposed abandonment by Trunkline's firm downstream shippers, concluding that such lack of opposition indicated that the firm shippers believed that they would be unharmed by the proposed abandonment and potentially could benefit from the proposals.<sup>7</sup> Further, the June 2012 Order rejected rate stacking concerns, reasoning that a change in cost responsibility does not amount to rate stacking.<sup>8</sup> The June 2012 Order also held there was no continuity of service issue because jurisdictional service on the abandoned offshore facilities will continue to be offered without any termination of service to any of Trunkline's existing customers.<sup>9</sup>

8. In authorizing Sea Robin's proposals, the Commission stated that it will only authorize Sea Robin to acquire facilities over which the Commission has jurisdiction under the NGA.<sup>10</sup> Thus, the Commission declined to authorize Sea Robin to acquire the Brazos Area Block A-47 System and certain segments of the Vermillion and Terrebonne Systems because portions of those facilities were idle, and Sea Robin did not make the

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<sup>6</sup> June 2012 Order, 139 FERC ¶ 61,239.

<sup>7</sup> *Id.* P 33.

<sup>8</sup> *Id.* P 41.

<sup>9</sup> *Id.* P 40 n.31.

<sup>10</sup> *Id.* P 56.

case that it would use the facilities to provide jurisdictional service.<sup>11</sup> The Commission also examined and addressed the primary function of the facilities, concluding that, under NGA section 1(b),<sup>12</sup> a portion of the facilities functioned primarily as non-jurisdictional gathering facilities. The Commission, therefore, declined to grant certificate authority for those non-jurisdictional facilities.

9. The Commission denied Sea Robin's request to charge its existing rates for service on the transferred facilities. Instead, the Commission required Sea Robin to develop incremental initial rates based on the combined cost of service of both the Vermilion and Terrebonne Systems. The Commission instructed Sea Robin to adjust the plant costs to reflect the Commission's findings that certain facilities are unutilized or are non-jurisdictional gathering facilities. The Commission denied without prejudice Sea Robin's request for a predetermination that it may roll the costs of the facilities into its system rates in its next NGA section 4 general rate case.

10. In separate letters, dated September 5, 2012, Trunkline and Sea Robin notified the Commission that, pursuant to the authorizations granted in the June 2012 Order, the facilities were transferred on August 31, 2012, and Sea Robin began operating the facilities on September 1, 2012.

### **III. The Associations' Motion To Intervene Out-Of-Time And Request For Rehearing**

11. On July 23, 2012, more than eight months after the intervention deadline of November 10, 2011,<sup>13</sup> and one month after issuance of the Commission's June 2012 order on the merits, the Associations filed an untimely motion to intervene.<sup>14</sup> The

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<sup>11</sup> *Id.* P 59.

<sup>12</sup> 15 U.S.C. § 717 (2006).

<sup>13</sup> 76 Fed. Reg. 66,709 (2011).

<sup>14</sup> The Natural Gas Supply Association represents integrated and independent companies that produce and market natural gas on issues that broadly affect the natural gas industry. The Independent Petroleum Association of America represents independent oil and natural gas producers and associated service companies. The Process Gas Consumers Group is an association of industrial consumers of natural gas. The American Public Gas Association is an association for publicly owned natural gas distribution systems. The American Forest & Paper Association is a forest products trade association, representing pulp, paper, packing, and wood products manufacturers, and forest landowners.

Associations object to the fact that the facilities abandoned by Trunkline and acquired by Sea Robin will be in both Trunkline's and Sea Robin's rate bases, contending that it is almost axiomatic that such rates cannot be just and reasonable.

12. On July 31, 2012, Trunkline and Sea Robin filed an answer to the Associations' motion to intervene and request for rehearing, stating that the Commission should deny the Associations' out-of-time motion to intervene.

13. When considering a motion for late intervention, the Commission may apply the criteria set forth in Rule 214(d) of the Commission's Rules of Practice and Procedure and consider whether:

- (i) the movant had good cause for failing to file the motion within the time prescribed;
- (ii) any disruption of the proceeding might result from permitting intervention;
- (iii) the movant's interest is not adequately represented by other parties in the proceeding;
- (iv) any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention; and
- (v) the motion conforms to the requirements of paragraph (b) of this section.<sup>15</sup>

14. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and the burden upon the Commission of granting the late intervention may be substantial.<sup>16</sup> Thus, the Associations bear a higher burden to demonstrate good cause for granting such late intervention.

15. The Associations contend that they have an interest in the proceeding, that they could not have expected that the June 2012 Order would disregard protests concerning Sea Robin's over-recovery of costs, or that the interests of its members would be ignored, resulting in rates that are unjust and unreasonable. The Commission has previously explained that:

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<sup>15</sup> 18 C.F.R. § 385.214(d) (2012).

<sup>16</sup> *Bradwood Landing LLC*, 126 FERC ¶ 61,035, at P 14 (2009).

[a] key purpose of intervention deadlines is to determine, early in the proceeding, who the interested parties are and what information and arguments they can bring to bear. Interested parties are not entitled to hold back awaiting the outcome of the proceeding or relying on a particular outcome, only to intervene once events take a turn not to their liking.<sup>17</sup>

16. In addition, the Associations do not present any new information or arguments that have not been raised by other parties to this proceeding. The Commission concludes that the Associations have not shown good cause justifying late intervention. Accordingly, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, the Commission denies the Associations' motion to intervene out-of-time for failure to demonstrate good cause warranting late intervention. Further, allowing late intervention at this point in the proceeding brings very little benefit and potentially would create prejudice and additional burdens on the Commission, other parties, and the applicants.

17. Under section 19(a) of the NGA and Rule 713(b) of the regulations, only a party to a proceeding has standing to request rehearing of a Commission decision. Since the Associations are not a party to this proceeding, the Commission will dismiss the Associations' request for rehearing. In any event, the issues raised by the Associations were also raised by the Offshore Producers and Apache. These issues are discussed below.

#### **IV. Discussion**

##### **A. Public Interest Analysis**

18. Because the facilities are certificated facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the abandonment is subject to the requirements of section 7(b) of the NGA. Section 7(b) provides:

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that

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<sup>17</sup> *PJM Interconnection, LLC*, 132 FERC ¶ 61,265, at P 18 n.20 (2010).

the present or future public convenience or necessity permit such abandonment.<sup>18</sup>

19. When 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.<sup>19</sup>

20. The Commission examines abandonment applications on a case-by-case basis.<sup>20</sup> 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. Among the factors that the Commission has considered in reviewing a request for abandonment by sale are: (1) the needs of the two natural gas systems and the public markets they serve; (2) the economic effect on the pipelines and their customers; and (3) the presumption in favor of continued service.<sup>21</sup> The central focus of a NGA section 7(b) abandonment evaluation is not whether there is any harm to any narrow interest. Rather, the Commission takes a broad view in abandonment proceedings and evaluates proposed abandonment applications against the benefits to the market as a whole.<sup>22</sup>

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<sup>18</sup> 15 U.S.C. § 717f (2006).

<sup>19</sup> 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).

<sup>20</sup> *Transwestern Pipeline Co. L.L.C.*, 140 FERC ¶ 61,147, at P 12 (2012).

<sup>21</sup> *Southern Natural Gas Co.*, 126 FERC ¶ 61,246, at P 27 (2009) (*Southern*).

<sup>22</sup> 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) (*ConEd*) (“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).

## 1. The Needs Of The Two Natural Gas Systems

21. The Offshore Producers and Apache argue that the Commission failed to articulate any benefits to granting the proposals. Apache discounts reading any meaning into the lack of protests to the proposed abandonment by downstream firm shippers, and reasons that because Trunkline's rates were not reduced to reflect the removal of the abandoned facilities from Trunkline's rate base, there could be no benefits.

22. The Offshore Producers and Apache overlook the significant evidence of benefits in this record. Trunkline contends that the consolidation of offshore facilities in one corporate entity will help it respond to changes in the interstate pipeline industry and natural gas supply market. As Trunkline explains in the application, its "marketplace is shifting away from traditional offshore Gulf of Mexico supply sources to emerging onshore supplies driven by the growth of shale gas production."<sup>23</sup> In particular, Trunkline referred to substantial supply sources in the Barnett, Haynesville, and Fayetteville shale in Texas, Louisiana, and Arkansas.<sup>24</sup> Trunkline explains that it, along with its downstream customers, have made substantial investments to create new receipt points to accommodate these emerging supplies. Thus, Trunkline explains the consolidation of offshore facilities in Sea Robin will allow Trunkline to respond efficiently to its customers' evolving needs by focusing on operations to access the new and growing onshore shale formations. The Commission agrees that the consolidation of the offshore facilities into one entity, Sea Robin, presents substantial benefits, as explained by Trunkline and Sea Robin in their application.

23. Trunkline also points out that many of its customers have moved receipt points away from its offshore facilities to procure emerging new supplies of natural gas elsewhere. In addition, Trunkline's firm customers are not opposed to the proposal to consolidate offshore facilities in Sea Robin. Thus, it is reasonable for the Commission to conclude, as it did in the June 2012 Order, that approving the proposals in this proceeding furthers the goal of ensuring access to adequate supply and a reasonable price for natural gas.<sup>25</sup>

24. The Commission is justified in relying on the lack of opposition from firm, downstream customers as persuasive evidence that there will be affirmative benefits to

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<sup>23</sup> Trunkline's and Sea Robin's Joint Application at 5.

<sup>24</sup> *Id.*

<sup>25</sup> *See ConEd*, 823 F.2d at 632 n.2 ("The NGA was designed to ensure an adequate supply and reasonable price for natural gas.").

granting the abandonments.<sup>26</sup> Firm customers are important, as they pay most of a pipeline's fixed costs through reservation charges, regardless of whether the shipper uses their reserved capacity or not. In return, pipelines are under an obligation to give primary service to firm customers that may be abridged only in very limited circumstances. Interruptible customers, on the other hand, are under no obligation to pay a pipeline if they do not require service, and the pipeline's obligation to serve interruptible customers is secondary to firm shippers. Similar to the findings in previous Commission orders,<sup>27</sup> the lack of downstream firm customer protesters is evidence that they do not believe they will be harmed by the abandonment proposals. While it is true that Trunkline's downstream customers will not enjoy the rate benefits from the removal of the facilities from its rate base until Trunkline's next rate case—a point Apache and the Offshore Producers stress—these customers will nevertheless enjoy such benefit at that time. However, it is pure speculation that, if the costs of the Trunkline offshore facilities were to be removed from Trunkline's costs of service, that Trunkline's rates would also be reduced.<sup>28</sup> It is also true, as asserted by Apache and the Offshore Producers, that Trunkline is not required to file a NGA section 4 general rate case now and that the Commission cannot require a pipeline to file a rate case. Notwithstanding this fact and as noted by the June 2012 Order, as an NGA- jurisdictional company, Trunkline remains subject to the full scope of NGA ratemaking and regulations, in particular NGA section 5.<sup>29</sup> The Commission may, on its motion, institute a NGA section 5 proceeding if it has reason to believe that a pipeline's existing rates are not just and reasonable. Moreover, any interested entity may also file a properly supported complaint pursuant to NGA section 5 to review a pipeline company's rates. Customers filing a NGA section 5 complaint may rely on data and reports the Commission requires to be filed pursuant to its NGA section 10 authority.

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<sup>26</sup> See *Panhandle Eastern Pipe Line Co., LP*, 141 FERC ¶ 61,119, at P 23 (2012) (“Based [on] the absence of protests from any shippers bearing the costs of operating and maintaining the facilities proposed to be abandoned, it appears that downstream shippers do not place a high value on the service being provided by those facilities (i.e., assuring ready access to the production upstream of the facilities).”).

<sup>27</sup> *Id.*

<sup>28</sup> The Commission does not favor piecemeal ratemaking. *Trunkline Gas Co.*, 94 FERC ¶ 61,381, at 62,422 (2001) (“The Commission's policy is to avoid a piecemeal modification of a pipelines' rates in limited Section 4 filings, because there are many variables addressed in a general rate proceeding that can change overall rate levels.”).

<sup>29</sup> 15 U.S.C. § 717 (2006).

## 2. Economic Effect Of Abandonment On Offshore Producers

### a. Increased Rates

25. Apache and the Offshore Producers argue that granting the proposals will negatively impact the competitiveness of the gas connected to the abandoned facilities. The Offshore Producers state that the Commission cannot square its findings in this case with findings in recent cases,<sup>30</sup> asserting that the Commission should have placed greater emphasis on the “potential that shippers will be charged higher rates for the same service they are currently receiving.”<sup>31</sup>

26. The Offshore Producers contend that the Commission improperly gave interruptible service less protection than firm service. The Offshore Producers also state that the Commission failed to meaningfully examine and take into account the significant impacts on producers delivering gas into the facilities.

27. It is appropriate to consider rate impacts when evaluating whether abandonment is in the public interest,<sup>32</sup> and the Commission has not ignored the rate impacts of granting the abandonment in this case. As explained, the June 2012 Order acknowledged that granting the abandonment may result in higher rates for Apache and the Offshore Producers. The order justified this result, stating that the fact that Apache and the Offshore Producers were not paying for transportation service over Trunkline’s offshore facilities did not mean that the transportation service was free, i.e., other transportation customers, downstream of the pooling points, were paying for and subsidizing that transportation.<sup>33</sup> Granting the proposals will result in offshore shippers paying for the use of those facilities, an outcome that Trunkline could similarly achieve through an

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<sup>30</sup> *Citing Tennessee Gas Pipeline Co.*, 137 FERC ¶ 61,105 (2011) (*Tennessee*).

<sup>31</sup> *Id.* P 27.

<sup>32</sup> *Id.* P 27 n.24 (“The protestors’ concerns with respect to rate impacts which would result from such an abandonment are thus a significant consideration in our decision-making process.”).

<sup>33</sup> June 2012 Order, 139 FERC ¶ 61,239 at P 41.

NGA section 4 filing.<sup>34</sup> Further, granting the proposals levels the playing field on which the Offshore Producers and Apache compete to serve the downstream market.<sup>35</sup>

28. Prior to the abandonment of Trunkline's offshore facilities to Sea Robin, the gas sold by the Offshore Producers and Apache was transported on the facilities under Trunkline's Rate Schedule TABS-1 rate of \$0.0107 per dekatherm (Dth) if there was gathering, and no charge if there was no gathering. Thus, for the most part, the Offshore Producers' and Apache's contention that they were not subject to a transportation charge for service over Trunkline's offshore facilities is correct. As explained in the June 2012 Order, under the Commission's pooling policy, Trunkline charged the customers downstream of the pooling points for the transportation of gas both to and away from pooling points. Thus, Trunkline was not providing offshore transportation service to the Offshore Producers and Apache for free. Rather, Trunkline was collecting the transportation rate from shippers other than the Offshore Producers and Apache. The Commission does not agree with Offshore Producers' and Apache's claim that the Sea Robin transportation rate is an additional charge for the same service formerly rendered by Trunkline. Sea Robin's transportation rate simply changes who is responsible for paying for the offshore transportation service.

29. Apache and the Offshore Producers contend that their net-back prices for natural gas will be adversely affected by the abandonment. However, net-back prices are not subject to the Commission's jurisdiction.<sup>36</sup> Further, in the June 2012 Order, the Commission noted 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 market cannot be gauged precisely. As noted above, the cost of offshore transportation was paid by downstream customers, thus the service was never free but was rather subsidized by others. The Offshore Producers and Apache compete with other offshore

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<sup>34</sup> *Id.* PP 43, 46.

<sup>35</sup> The following are examples of Commission jurisdictional pipelines in the Gulf of Mexico charging a rate solely to transport gas from the wellhead to onshore processing plants: Black Marlin Pipeline Co. (\$0.9000 per Dth interruptible rate); Discovery Gas Transmission, LLC (\$0.2845 mainline plus expansion interruptible rate); High Island Offshore System, L.L.C. (\$0.3950 per Dth interruptible rate); Stingray Pipeline Co., L.L.C. (\$0.595 per Dth interruptible rate); Venice Gathering System, L.L.C. (\$0.3500 per Dth interruptible rate). Shippers transporting gas on each of these pipelines incur further transportation expense following delivery onshore.

<sup>36</sup> June 2012 Order, 139 FERC ¶ 61,239 at P 46.

producers. Not all offshore producers, however, enjoy the benefits of transportation service paid for by others such as was available to the Offshore Producers and Apache. There are many NGA jurisdictional pipelines that provide only offshore transportation service such as what Sea Robin provides. The Offshore Producers and Apache do not justify the perpetuation of their competitive advantage. As a result of the June 2012 Order and the contemporaneous orders for TC Offshore LLC<sup>37</sup> and High Point Gas Transmission, LLC,<sup>38</sup> most Gulf of Mexico offshore producers will face comparable service options to move their supply to market. Further, even if the Commission were to grant rehearing and deny the abandonment of Trunkline's offshore facilities to Sea Robin on the basis that increasing the pooling transportation rate from zero would adversely impact producer commodity price net-backs, that finding would not necessarily prevent the shift in cost responsibility to the offshore shippers. As the June 2012 Order noted, if Trunkline were to propose to create a new offshore rate zone, the end result would be the same.

30. The June 2012 Order squarely placed cost responsibility for the offshore facilities with those producers and shippers that actually use those facilities - an outcome that is consistent with basic cost-causation principles.<sup>39</sup> Nothing in the filings of either the Offshore Producers or Apache rebuts the finding that the rate imposed will be consistent with the cost-causation principle.

31. Citing to *Tennessee*, the Offshore Producers and Apache believe that the Commission should have placed greater emphasis on the "potential that shippers will be charged higher rates for the same service they are currently receiving."<sup>40</sup> Indeed, the Commission does review the impact abandonments may have on customers' revenue responsibility, but it is only one factor that the Commission uses when it evaluates such proposals on a case-by-case basis. *Tennessee* is a good example of the Commission's case-by-case approach. In that proceeding, rates were an issue. Notwithstanding, the Commission permitted the abandonment of Tennessee Gas Pipeline Company's (Tennessee) gathering facilities to a third party. As for the transmission facilities, the

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<sup>37</sup> *ANR Pipeline Co.*, 139 FERC ¶ 61,238 (2012).

<sup>38</sup> *Southern Natural Gas Co., L.L.C.*, 139 FERC ¶ 61,237 (2012).

<sup>39</sup> The U.S. Court of Appeals for the District of Columbia Circuit defined the cost-causation principle as follows: "[s]imply put, it has been traditionally required that all approved rates reflect to some degree the costs actually caused by the customer who must pay them." *KN Energy Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992).

<sup>40</sup> *Tennessee*, 137 FERC ¶ 61,105 at P 27.

Commission denied the requested abandonment, not because of rate issues, but because no interstate pipeline proposed to acquire the transmission facilities Tennessee proposed to abandon.<sup>41</sup> The June 2012 Order did evaluate whether potential shippers will be charged higher rates for the same service they are currently receiving on Trunkline's offshore facilities. While the June 2012 Order acknowledged that potential shippers might face higher revenue responsibility, the order found that a shift in responsibility for paying for the offshore transportation was not the same as a new rate. The Offshore Producers and Apache argue, in essence, that this factor should be a controlling factor in the Commission's abandonment decision, but they cite to no case to support their position. Even if they had shown that this factor should have been controlling, the June 2012 Order found that the proposed Sea Robin transportation rate was a change in customer revenue responsibility, that the change was consistent with cost-causation principles, and that the change in responsibility could have been achieved through other means. These findings mitigated the application of the factor in deciding the outcome. The Commission fully considered this factor in its evaluation of the proposed abandonment, and gave it all the weight it deserved.

32. Apache argues that the June 2012 Order improperly gave interruptible service less protection than firm service. Apache states that "traditional firm service is not necessary or practical on Trunkline's offshore facilities mainly due to capacity availability and/or changing production curves."<sup>42</sup> The Commission does not agree that interruptible customers require the same amount of protection as firm customers. Firm customers pay reservation charges to reserve capacity for the term of their contract even if they do not ship gas. Firm customers have taken on a financial obligation in return for an agreement from the pipeline to have capacity available for the life of the contract. Further, under the Commission's cost of service rate making principles, firm shippers are often required to pay for a pipeline's excess capacity and to return to the pipeline unrecovered rate base for plant removed from service prior to the end of its amortization life. Conversely, if interruptible customers do not want to ship gas, they do not have to pay for transportation. In addition, if the transportation rate goes up, interruptible customers are not obliged to pay the higher rate, as they can simply stop shipping gas. Further, interruptible customers do not pay reservation charges. As the Commission has noted elsewhere, investors "do not construct an interstate pipeline or continue it in operation to serve only interruptible customers at discounted rates."<sup>43</sup> The Offshore Producers and

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<sup>41</sup> *Id.* P 28, and *Tennessee Gas Pipeline Co.*, 138 FERC ¶ 61,179, at P 5 (2012).

<sup>42</sup> Apache July 23, 2012 Rehearing Request at 18.

<sup>43</sup> *Trunkline Gas Co.*, 94 FERC at 62,421.

Apache note that shippers on the offshore facilities will likely possess significant negotiating leverage to obtain interruptible capacity that would be the equivalent to firm capacity without having to pay a reservation charge. However, the two services are not comparable in terms of rights and obligations, and the Commission has not and does not treat firm and interruptible services as giving shippers equivalent rights.

33. Further, even if the Commission were to view interruptible and firm customers as equal for the purposes of evaluating abandonment, it is unlikely in this proceeding the outcome would be different. Here, there is no continuity of service issue, as the Commission explains below. Therefore, whether the service was firm or interruptible, shippers would still be receiving the firm or interruptible service, simply rendered by a different jurisdictional pipeline.

34. The Offshore Producers state that the *Tennessee* case addressed arguments made by shippers that were receiving no-fee service to Tennessee's pooling points, just like in the present case.<sup>44</sup> While the Commission in the *Tennessee* order considered the concerns that shippers using a no-fee pooling point rate might be subject to a non-jurisdictional rate, the Commission did not seek to shelter those shippers receiving no-fee service from a NGA just and reasonable rate based on the costs of those facilities. In finding harm with the proposal of Trunkline and Sea Robin, the Offshore Producers ignore the protections offered by their continued access to NGA jurisdictional service, i.e., just and reasonable rates.<sup>45</sup> As an NGA regulated company, Sea Robin will charge a just and reasonable, cost-based rate, approved by the Commission. The Offshore Producers are not correct to argue they are entitled to something more favorable.

**b. Rate Stacking**

35. Apache asserts the Commission erroneously disregarded harm to the customers that could be caused by rate increases and rate stacking. Apache claims in effect that "two different sets of shippers are both being required to pay for the same facilities," which Apache contends results in a double recovery. Apache criticizes the Commission's "split zones" analogy, stating that if Trunkline established a separate offshore zone, the onshore zones would experience an equal rate decrease. In addition, Apache states the Commission has rejected abandonment applications that would result

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<sup>44</sup> *Tennessee*, 137 FERC ¶ 61,105 at P 26 ("Indicated Shippers also argue that paying to have Kinetica transport their gas to Tennessee's onshore pooling points will raise commodity prices at the pooling areas and cause shut-in of Gulf of Mexico gas production.").

<sup>45</sup> See *UGI Storage Co.*, 134 FERC ¶ 61,239, at P 50 (2011).

in higher stacked rates. Apache states that the Commission acknowledged this in the June 2012 Order.<sup>46</sup>

36. Sea Robin will provide an offshore transportation service on the facilities that move offshore gas to onshore processing and treating facilities. Trunkline, for its part, will transport the processed gas to delivery points further onshore. Thus, Sea Robin and Trunkline will provide separate services. Moreover, as explained above, the rates Sea Robin will charge for the facilities will be based on the combined cost of service of both the Vermilion and Terrebonne facilities, and it is consistent with cost-causation principles for the offshore producers to pay those costs. As explained in the June 2012 Order, “[t]he Commission does not view a change in cost responsibility as rate stacking.”<sup>47</sup> The Commission acknowledges that it is concerned with the imposition of additional costs in abandonment proceedings, but it is satisfied that there is no impermissible rate stacking here.

37. Apache speculates that if Trunkline were to propose a separate offshore zone, downstream zone rates could decrease. Apache is correct – if Trunkline were to use the same base and test period costs underlying its currently effective rates. However, Trunkline’s currently effective rates are based on a settlement dated January 29, 2001,<sup>48</sup> and an underlying test period ending July 31, 1996.<sup>49</sup> Trunkline’s costs of service have likely changed significantly since 1996. Further, no party contests Trunkline’s statements that its customers’ demand for transportation services have changed significantly. With all these unknown costs and billing determinants, it is not possible to be sure Trunkline’s downstream rates would decrease as the result of the creation of an offshore zone. The point of the June 2012 Order was that a change in revenue responsibility could be effected by a change in rate design. As such, the argument that the change of revenue responsibility should be a determinative factor to deny the proposed abandonment is significantly diminished.

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<sup>46</sup> June 2012 Order, 139 FERC ¶ 61,239 at P 41 (“The Commission has indeed expressed concern in instances where a proposed transfer of facilities would result in the imposition of additional costs for the performance of the same transportation services.”).

<sup>47</sup> *Id.* P 41.

<sup>48</sup> *Trunkline Gas Co.*, 95 FERC ¶ 61,049 (2001).

<sup>49</sup> *Trunkline Gas Co.*, 74 FERC ¶ 61,227, at 61,768 (1996).

38. Trunkline will continue to collect rates based on those same costs agreed to in the 2001 settlement until it files a NGA section 4 general rate case or the Commission finds, pursuant to NGA section 5, that Trunkline must change its rates. Trunkline's downstream customers, i.e. the parties that stand to gain by removing the abandoned facilities from Trunkline's rate base, have not protested.<sup>50</sup> Their lack of protest is evidence that they do not value the offshore production and no longer want to continue subsidizing use of the abandoned facilities.

39. Apache states that in *Millennium Pipeline Co., L.L.C.*, the Commission authorized Columbia Gas Transmission Corporation (Columbia) to abandon certain pipeline facilities to Millennium Pipeline Company, L.L.C. (Millennium) and lease capacity on Millennium to continue providing service to its transmission customers.<sup>51</sup> Apache further states that in *Millennium*, the Commission found that "to avoid the potential for double recovery," Columbia could not include the costs of the leased capacity in its rates until it had "[submitted] a section 4 filing to remove the costs of the [abandoned] facilities from its base rates."<sup>52</sup> Apache thus argues that, at a minimum, consistent with *Millennium*, the Commission should not approve the abandonment proposals until Trunkline agrees to submit a NGA section 4 filing to remove the costs of the transferred facilities from its rates.

40. Apache misunderstands the procedural situation in *Millennium*. The Commission did not require Columbia to file a NGA section 4 general rate case to remove abandoned facilities from its base rates. In its application, Columbia recognized that the costs from the abandoned facilities were in its base rates. As a result of the abandonment and the replacement capacity Columbia acquired from Millennium through a lease, Columbia could have been in a double recovery cost position if it were to request to recover the lease costs as permitted in its periodic Account No. 858 tracker.<sup>53</sup> Columbia proposed not to double recover the costs, and the Commission simply affirmed that proposal.<sup>54</sup> Columbia did not promise when it would make a NGA section 4 general rate case filing

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<sup>50</sup> See June 2012 Order, 139 FERC ¶ 61,239 at P 41.

<sup>51</sup> *Millennium Pipeline Co. L.L.C.*, 117 FERC ¶ 61,319, at PP 8-9 (2006) (*Millennium*).

<sup>52</sup> *Id.* P 118.

<sup>53</sup> Account 858 includes costs incurred for the transmission and compression of gas by others.

<sup>54</sup> *Millennium*, 117 FERC ¶ 61,319 at P 118.

to remove the abandoned facility costs from its base rates, and the Commission did not require as a condition of abandonment, that Columbia file a NGA section 4 general rate case to remove the abandoned facilities.

41. The Commission finds Apache's request to condition the timing of the abandonment to the date when Trunkline would submit a NGA section 4 general rate case to remove the costs of the abandoned facilities from its base rates unreasonable. As the Commission explained above, the outcome of a comprehensive rate review for Trunkline may have uncertain results for revenue responsibility. While delaying the effective date of the abandonment would likely benefit Apache, the delay would not benefit Trunkline or necessarily its downstream customers. If Trunkline's customers determine Trunkline is over recovering as a result of continuing to recover costs of facilities that have been abandoned, these customers can file a NGA section 5 complaint.<sup>55</sup>

### 3. Continuity of Service

42. The Offshore Producers also state that continuity of service necessarily means continuity of service by the applicant, rather than merely continuity of service by an NGA jurisdictional company. In support, the Producer Coalition cites *Tennessee*<sup>56</sup> and *Transcontinental Gas Pipeline Corp. v. F.P.C.*<sup>57</sup>

43. The ownership of the facilities that Trunkline proposed to abandon and Sea Robin proposed to acquire is merely being transferred from one NGA jurisdictional entity to another NGA jurisdictional entity. The facilities will not be taken out of service and will continue to provide the same level of service to the same customers. Under Sea Robin's tariff, Sea Robin will offer both firm and interruptible transportation service at Commission-approved just and reasonable rates immediately available to shippers. While Sea Robin may offer service at a higher rate, the rate will be cost-based and permitted under the NGA. Therefore, the Commission finds that the consolidation of facilities subject to this proceeding in Sea Robin, an offshore, NGA-jurisdictional entity that will continue offering the same level of service, presents no continuity of service issue.

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<sup>55</sup> 18 C.F.R. § 385.206 (2012).

<sup>56</sup> 137 FERC ¶ 61,105.

<sup>57</sup> 488 F.2d 1325 (D.C. Cir. 1973) (*Transcontinental*).

44. The argument that permanent cessation of service under section 7(b) of the NGA necessarily means the permanent cessation of service by the applicant is flawed. In *Tennessee*, Tennessee requested NGA section 7(b) authority to abandon by sale to Kinetica Partners, LLC (Kinetica) offshore and onshore facilities located in the Gulf of Mexico and Louisiana.<sup>58</sup> At the same time, Kinetica filed a petition asking the Commission to find that the facilities it sought to acquire from Tennessee would perform a non-jurisdictional gathering function under NGA section 1(b). The Commission analyzed the facilities proposed to be abandoned under the primary function test and determined that some of the facilities performed a gathering function under NGA section 1(b) and that the remainder of the facilities performed a jurisdictional transmission function. Therefore, the Commission denied Tennessee's request to abandon those facilities that were performing a jurisdictional function because Kinetica had not sought a certificate to acquire and operate the jurisdictional facilities as a natural gas company.<sup>59</sup>

45. In denying Tennessee's abandonment proposal, however, the Commission contemplated that Tennessee could enter into an alternative abandonment arrangement when it stated that its denial was "without prejudice to Kinetica or another company seeking to acquire and operate the facilities as fully jurisdictional, open-access facilities under the NGA."<sup>60</sup> This is the arrangement Trunkline and Sea Robin propose in the instant proceeding. Thus, the Tennessee order is distinguishable from the Trunkline and Sea Robin proposal (*Tennessee* involves a transfer from an NGA jurisdictional company to a non-jurisdictional company, and the present case involves a transfer from one jurisdictional company to another). To the extent *Tennessee* stands for anything applicable to the proposals herein, *Tennessee* actually *supports* the Commission's view that there is no continuity of service issue when the abandonment involves the transfer of facilities from one NGA jurisdictional company to another.

46. In *Transcontinental*, an order that predates the unbundling of sales and transportation services, the Commission authorized producers from the La Gloria field area in Texas to abandon natural gas sales to Transcontinental Gas Pipe Line Corporation (Transco) and instead sell their gas to Natural Gas Pipeline Company of America (Natural) because Transco's contracts with the producers had expired, while Natural's had not. The court reversed the Commission's decision finding that the Commission, in

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<sup>58</sup> *Tennessee*, 137 FERC ¶ 61,105 at P 1.

<sup>59</sup> *Id.* P 3.

<sup>60</sup> *Id.* P 28.

basing its holding on the proposition that Transco's contract had expired, "abdicated its statutory responsibility to guarantee that the overall public interest 'will in no way be disserved' by abandonment."<sup>61</sup> The court further held that the Commission must examine all factors relevant to determining the public interest, including the presumption in favor of continued service. The *Transcontinental* case does not imply that continuity service means continuity of service from the existing certificate holder. The court did not require the La Gloria field area producers to continue selling gas to Transco but merely required the Commission to follow its statutory responsibilities and not limit its examination to private contracts in deciding if the abandonment was in the public convenience or necessity. The Commission here has followed its established criteria for examining an abandonment proposal and determined, among other things, that there are no continuity of service issues in the proposals herein. Thus, the Commission finds that the *Transcontinental* case is not relevant.

#### **4. Abandonment Conclusion**

47. Apache contends that the Commission erred by failing to apply properly the NGA section 7(b) public interest standard. Specifically, Apache argues that the Commission's statement – "Trunkline need only show that the public service would not be disserved by the proposed abandonment, not that the abandonment will have affirmative benefits"<sup>62</sup> – not only misstated the law but was also inconsistent with precedent. Apache asserts that Commission precedent requires weighing benefits against harms, and in a situation such as here where, according to Apache, there is only evidence of harms the abandonment application must, by definition, be denied. Apache emphasizes that while the Commission acknowledged harm to producers, the Commission failed to articulate any benefits that would result from the proposals.

48. The Commission's role, however, is clear. "An applicant under NGA section 7(b) has the burden of making a factual showing that the public interest will not be disserved by the abandonment and need not show actual benefit."<sup>63</sup> The section 7(b) public convenience or necessity standard does not allow the Commission to approve any

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<sup>61</sup> 488 F.2d at 1328.

<sup>62</sup> See June 2012 Order, 139 FERC ¶ 61,239 at P 32.

<sup>63</sup> *Trunkline*, 94 FERC at 62,419. See *Pennsylvania Public Utility Commission v. FERC*, 881 F.2d 1123, 1127 (D.C. Cir. 1989) (observing that "affirmative proof of benefit to the public interest is not necessary to justify an abandonment").

abandonment that will cause the public interest to be disserved by the abandonment.<sup>64</sup> The Commission stands by the observation in the June 2012 Order that the public interest evaluation is not a myopic one that focuses on the interest of a particular group. The Offshore Producers and Apache are but one segment of an overall natural gas market that is continuously evolving.

49. Consistent with the analytical framework set forth by the Commission's precedents, the Commission has analyzed the benefits, harms, and continuity of service factors in the context of the Trunkline and Sea Robin proposal. Nothing cited by Apache and the Offshore Producers calls into question the calls made in the June 2012 Order. Service will continue at Commission approved just and reasonable rates and the shift in cost responsibility does not amount to rate stacking. Significantly, the Commission rejected Sea Robin's rate proposal and ordered Sea Robin to develop rates based on the costs of these facilities. Thus, the Commission determines the public interest will not be disserved by the abandonment.

**B. Sua Sponte Decision To Apply Primary Function Test**

50. The Offshore Producers take issue with the Commission's application of the primary function test to determine the jurisdictional status of the facilities. The Commission applied the primary function test in connection with the overall evaluation of Sea Robin's request for a NGA section 7 certificate to acquire and operate the facilities to be abandoned. Specifically, they assert that the Commission arbitrarily and capriciously deprived them of their procedural and substantive due process rights and violated the Administrative Procedure Act (APA) because the Commission reviewed the jurisdictional status of the facilities Trunkline proposed to abandon without providing

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<sup>64</sup> *Transcontinental Gas Pipe Line Corp. v. F.P.C.*, 488 F.2d 1325, 1328 (D.C. Cir. 1973) (citing *Michigan Consolidated Gas Co. v. F.P.C.*, 283 F.2d 204, 214 (D.C. Cir. 1960), summarized the following principles:

- (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 service," and (2) the burden of proof is on the applicant for abandonment to show that the "public convenience and necessity" permits abandonment, that is, that the public interest "will in no way be disserved" by abandonment.

interested parties with notice and an opportunity for comment.<sup>65</sup> The Offshore Producers state that the Commission's record for its jurisdictional finding "consisted entirely of the Commission's own findings based on a review of data responses provided by the applicants . . . ."<sup>66</sup>

51. The Supreme Court has explained that "the touchstone of due process is protection of the individual against arbitrary action of government."<sup>67</sup> Constitutional due process thus requires certain procedural safeguards, including the requirement that a party affected by government action be given "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action,"<sup>68</sup> and also "the opportunity to be heard at a meaningful time and in a meaningful manner."<sup>69</sup>

52. However, circumstances vary and the sufficiency of the procedures supplied must be decided in light of the circumstances of each case.<sup>70</sup> The Commission assesses due process claims case-by-case based on the totality of the circumstances.<sup>71</sup> In this case, on October 20, 2011, the Commission issued a notice of Trunkline and Sea Robin's application, pursuant to sections 7(b) and 7(c) of the NGA, "for permission and approval for Trunkline to abandon by sale to Sea Robin and for Sea Robin to acquire certain

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<sup>65</sup> The APA requires agencies to give interested parties an opportunity for "the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit . . . ." 5 U.S.C. § 554(c)(1) (2006).

<sup>66</sup> Producer Coalition, Arena, and LLOG's Rehearing Requests at 15.

<sup>67</sup> *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)).

<sup>68</sup> *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (citation and quotation omitted).

<sup>69</sup> *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citations and quotation omitted).

<sup>70</sup> *Id.* 334 ("[D]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.") (citation and quotation omitted).

<sup>71</sup> See *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands.").

natural gas facilities located offshore Louisiana and Texas in the Gulf of Mexico and onshore in the State of Louisiana . . . .”<sup>72</sup>

53. In Commission staff’s December 21, 2011 data request, Commission staff described 9 of the 28 questions as “necessary to assist the Commission in its determination of the appropriate functionalization of Trunkline’s Vermilion, Terrebonne and Brazos Systems for which transfer to Sea Robin is proposed.” This document included a request for applicants to “discuss whether any of the facilities [proposed to be abandoned] currently perform a gathering function under the Commission’s primary function test.”<sup>73</sup> The Offshore Producers were served with a copy of the data request, and they were served with a copy of the applicants’ January 11, 2012 responses providing information about the jurisdictional status of the facilities.<sup>74</sup> Thus, it is not the case that the Offshore Producers did not get notice that the Commission was considering the functionalization of the facilities. Although these requests for information and accompanying responses were public, were part of the record to this proceeding, and were served on the entities on the service list, including the Offshore Producers, no party commented on the jurisdictional status of the facilities.<sup>75</sup>

54. Given the circumstances here, the Commission’s application of the primary function test did not deprive the Offshore Producers of their opportunity to be heard, under either the Fifth Amendment’s Due Process Clause or the APA. The notice referenced NGA section 7(c), which contains the Commission’s statutory authority to issue certificates for NGA jurisdictional facilities. However, for purposes of determining what sort of facilities the Commission has statutory jurisdiction to certificate, the Commission must look to section 1(b) because the Commission cannot certificate facilities that are not performing a jurisdictional function. The Commission’s analysis under section 7(c) is inextricably bound to, and necessarily guided by, the jurisdictional limits of section 1(b). In other words, the Commission is not required to give notice that it is not going to do what it does not have statutory jurisdiction to do.

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<sup>72</sup> October 20, 2011 Commission Notice.

<sup>73</sup> December 21, 2011 Data Request.

<sup>74</sup> Applicant’s January 11, 2012 Data Response.

<sup>75</sup> See *Equitrans, L.P.*, 109 FERC ¶ 61,209, at P 31 (2004) (allowing a protestor’s answer to a data request response because doing so will ensure a complete and accurate record).

55. Under these circumstances, an additional comment period on the jurisdictional status of Trunkline's facilities would not have improved the Commission's decision-making. The Commission has wide discretion in selecting its procedures.<sup>76</sup> Furthermore, these proceedings are ongoing and this order on rehearing is part of that ongoing process. In their rehearing requests, the Offshore Producers presented no substantive argument related to the jurisdictional status of the facilities, identified no errors the Commission made in its jurisdictional analysis, and otherwise provided no reason to persuade the Commission to change its determination about the functionalization of the facilities to be abandoned.<sup>77</sup> The Commission thus rejects the Offshore Producers' claims that reviewing the jurisdictional status of Trunkline's facilities proposed to be abandoned violated due process or that the Commission's determination was arbitrary, capricious, or otherwise in error. The Commission fully considered all evidence contained in the record and all arguments made by the Offshore Producers, including in their rehearing requests. The Offshore Producers may wish they had presented more evidence, but they cannot claim they had no opportunity to do so.<sup>78</sup> Accordingly, the Commission denies the requests for rehearing on this issue.

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<sup>76</sup> *Pacific Gas and Electric Co. v. FERC*, 746 F.2d 1383, 1386 (9th Cir. 1984) (“We must allow the [Commission] wide discretion in selecting its own procedures . . . and must defer to the [Commission] interpretation of its own rules, unless the interpretation is plainly erroneous.”) (citations omitted).

<sup>77</sup> *See Blumenthal v. FERC*, 613 F.3d 1142, 1146 (D.C. Cir. 2010) (finding that, where Connecticut had the opportunity on rehearing to respond to ISO New England's filings and where the Commission considered Connecticut's arguments on rehearing, Connecticut was not denied due process); *State of California ex rel. Lockyer v. FERC*, 329 F.3d 700, 711 (9th Cir. 2003) (Commission provided “all the procedural protections required” when it considered the claims made in requests for rehearing); *accord CNG Transmission Corp. v. FERC*, 40 F.3d 1289, 1293 (D.C. Cir. 1994) (where petitioner had, among other things, opportunity to make its case on rehearing, it had “ample notice and opportunity to be heard”).

<sup>78</sup> *See Mkt St. Ry. Co., v. R.R. Comm'n of California*, 324 US 548, 559 (1945) (“[E]ven if a more convincing showing were made that the Company had relevant evidence to be heard, we find no adequate excuse for the failure to offer it in the proceeding.”).

The Commission orders:

(A) The Association's motions to intervene out-of-time are denied and their requests for rehearing are dismissed.

(B) The Producer Coalition's and Apache's rehearing requests are denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.