

142 FERC ¶ 61,137
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.

Cheniere Creole Trail Pipeline, L.P.

Docket No. CP12-351-000

ORDER ISSUING CERTIFICATE

(Issued February 21, 2013)

1. On April 30, 2012, Cheniere Creole Trail Pipeline, L.P. (Creole Trail) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) for certificate authorization to construct and operate new interstate natural gas pipeline, compression and related facilities in Cameron and Beauregard Parishes, Louisiana to enable bi-directional natural gas flow on Creole Trail's pipeline system for the delivery of domestic gas to the Sabine Pass Liquefaction Project authorized by the Commission on April 16, 2012.¹ As part of its application, Creole Trail also requests that the Commission make a finding supporting a presumption that Creole Trail should be allowed to roll the costs of the expansion project's facilities into its systemwide rates in its next NGA section 4 rate case. As discussed below, the Commission will grant the requested authorizations, subject to conditions.

I. Background

2. Creole Trail is a natural gas company, as defined by section 2(6) of the NGA, engaged in the transportation of natural gas in interstate commerce. Creole Trail is a limited partnership formed and existing under Delaware law. Creole Trail is a wholly-owned subsidiary of Cheniere Pipeline Company. Cheniere Pipeline Company is wholly owned by Cheniere LNG, Inc., which is wholly owned by Cheniere Energy, Inc. Cheniere Energy, Inc. also owns Sabine Pass LNG, L.P., which owns and operates the

¹ See *Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P. (Sabine Pass LNG)*, 139 FERC ¶ 61,039, *reh'g denied, reh'g denied*, 140 FERC ¶ 61,076 (2012).

liquefied natural gas (LNG) terminal in southwestern Louisiana on the eastern shore of the Sabine Pass Channel dividing Louisiana and Texas.

3. The Commission originally granted Creole Trail a certificate in 2006 to construct a pipeline system to transport regasified LNG from a terminal proposed by an affiliate, Creole Trail LNG, to downstream domestic markets. The Creole Trail LNG terminal was never constructed, and Creole Trail's authorized pipeline facilities were modified several times.² Thus, as constructed, Creole Trail's existing natural gas transmission system originates at its interconnection with its affiliate's Sabine Pass LNG's terminal in Cameron Parish, Louisiana, and extends northeastward approximately 94.8 miles to its terminus at an interconnection with Texas Eastern Transmission Corporation (Texas Eastern) in Beauregard Parish near Gillis, Louisiana. Creole Trail also has interconnections with Natural Gas Pipeline Company of America, Transcontinental Gas Pipe Line Company (Transco), Tennessee Gas Pipeline Company, Florida Gas Transmission Company, Trunkline Gas Company (Trunkline), and Bridgeline Holdings, LP.

4. As of May 20, 2011, the Department of Energy/Office of Fossil Energy (DOE/FE) had granted Sabine Pass Liquefaction, LLC (Sabine Liquefaction) authorizations to export up to 2.2 Bcf per day of domestically-produced natural gas by vessel to Free Trade Agreement, as well as non-Free Trade Agreement, nations.³ Pursuant to the Commission's April 16, 2012 order approving the Sabine Pass Liquefaction Project, Sabine Pass LNG's authorized terminal operations under section 3 of the NGA now include the storage of domestic gas to be exported.⁴ For that purpose, the order authorized Sabine Pass LNG and its affiliate Sabine Liquefaction construct and operate the necessary facilities for the terminal to operate as a bi-directional facility for the importation of foreign gas supplies and the exportation of domestic gas.

² See *Creole Trail LNG, L.P. and Cheniere Creole Trail Pipeline, L.P.*, 115 FERC ¶ 61,331 (2006); *Creole Trail*, 117 FERC ¶ 61,341 (2006); *Creole Trail*, 118 FERC ¶ 61,125 (2007); and *Cheniere Creole Trail Pipeline, L.P. and Cheniere Sabine Pass Pipeline, L.P.*, 121 FERC ¶ 61,071 (2007) (authorizing Cheniere Sabine Pass Pipeline to merge into Creole Trail).

³ *Sabine Pass LNG*, 139 FERC ¶ 61,039 at P 27.

⁴ Sabine Pass LNG's terminal was originally authorized in 2004 as an import terminal. *Sabine Pass LNG, L.P.*, 109 FERC ¶ 61,324 (2004). The terminal currently has 16.9 Bcf of storage capacity. See *Sabine Pass LNG, L.P.*, 115 FERC ¶ 61,330 (2006) (order authorizing expansion). In 2009, the Commission authorized Sabine Pass LNG to allow use of the terminal to import, store and re-export foreign-sourced LNG.

5. By the instant application, Creole Trail is requesting authorization to make modifications to its system to enable the bi-directional flow of gas in order to transport and deliver domestic feed gas for the Liquefaction Project at the Sabine Pass LNG terminal for eventual export.

II. Proposal

A. Facilities

6. Creole Trail proposes to construct a new compressor station near Gillis, Louisiana, at its interconnection with Texas Eastern's system (Gillis Compressor Station), reconfigure three existing meter and regulation (M&R) stations, and install approximately 200 feet of pipeline and related facilities. Creole Trail proposes to construct and place the project facilities into service in two phases. As detailed below, most of the project facilities will be constructed during Phase 1; only certain of the new compressor station facilities will be added during Phase 2. Phase 1 construction will commence during the fourth quarter of 2013 and be completed by the fourth quarter of 2014. Phase 2 construction will commence during the first quarter of 2016 and be completed by the second quarter of 2016.

1. Gillis Compressor Station

7. The Gillis Compressor Station will be located at milepost (MP) 94 on the Creole Trail Pipeline system, approximately 6.5 miles southeast of Ragley, Louisiana, in Beauregard Parish, on a 30-acre parcel of land leased by Creole Trail. Creole Trail will install the compression needed to achieve the total flow capacity in two phases in order to meet the demands of the phased in-service of the Liquefaction Project at Sabine Pass LNG's terminal.

8. The compressor station facilities that Creole Trail proposes to complete during Phase 1 will enable Creole Trail to provide 765,000 dekatherms per day (Dth per day) of firm reverse flow service to transport domestic gas to Sabine Pass LNG's terminal. The Phase 1 facilities will include:

- Three 10,836-horsepower (hp) Taurus 70 turbine compressor units;
- One new compressor building containing lighting, overhead hoists, fire and gas detectors, vent fans, and required accessories to house the three Taurus 70 units;
- One new auxiliary building with all required ancillary equipment;
- Discharge gas coolers for the three Taurus 70 units;

- One standby generator package with all required ancillary equipment to run Phase 1 facilities;
- Two suction headers connecting with existing metering and regulation (M&R) stations and the Creole Trail Pipeline; and
- One discharge header connecting with existing M&R stations and the Creole Trail Pipeline.

9. The Gillis Compressor Station facilities that Creole Trail proposes to construct during Phase 2 of the project will enable Creole Trail to provide an additional 765,000 Dth per day of firm reverse flow service, for a total of 1,530,000 Dth per day.⁵ The Phase 2 facilities include:

- One 20,617-hp Titan 130 turbine compressor unit;
- One new compressor building containing lighting, overhead hoists, fire and gas detectors, vent fans, and required accessories to house the Titan 130 unit;
- Discharge gas coolers for the Titan 130 unit;
- One standby generator package with all required ancillary equipment to run Phase 2 facilities; and

⁵ Upon completion of Phase 2 work, the Gillis Compressor Station's gas turbine driven compressor units will have a total of 53,125 hp. Creole Trail states in its November 13, 2012 data response that it considered the potential for recovery of waste heat energy at the Gillis Compressor Station as discussed in the Interstate Natural Gas Association of America's White Paper entitled "*Waste Energy Opportunities for Interstate Natural Gas Pipelines*" (February 2008). However, Creole Trail decided not to conduct a feasibility analysis for waste heat recovery for this site at this time. Creole Trail cites, among other things, uncertainty regarding the availability of land that would be required for a waste heat recovery plant as well as uncertainty regarding the estimated load factor at which the Gillis Compressor Station would operate once it and the Sabine Pass Liquefaction Project is in full production. We will instruct Creole Trail to accumulate data reflecting one full year of operational history for the station and evaluate the potential for adding waste heat generation to the facilities at that time and file a report describing its analysis.

- Interconnecting piping between Phase 1 headers and the new compressor unit.

2. M&R Stations

10. During Phase 1, Creole Trail proposes to modify the existing M&R stations at its interconnections with Transco, Trunkline, and Texas Eastern. The Transco and Trunkline M&R Stations are located within the 30-acre leased site for the proposed Gillis Compressor Station, approximately six miles southeast of Ragley, Louisiana in Beauregard Parish. The Texas Eastern M&R Station is located approximately one mile north of the proposed Gillis Compressor Station. Creole Trail proposes to modify these M&R stations by:

- Reconfiguring the stations to accommodate bi-directional operation;
- Installing reverse flow valves and pipeline to allow for bi-directional measurement;
- Installing one additional 16-inch meter at the Trunkline M&R Station;
- Installing filter separators at each station;
- Installing liquid handling tanks at each station; and
- Interconnecting piping between Phase 1 headers and the new compressor unit.

3. Tie-In Facilities

11. Creole Trail proposes to install tie-in facilities within the existing Sabine Pass LNG Terminal. Creole Trail would install these facilities during Phase 1 to connect its pipeline to the liquefaction facilities being added at Sabine Pass LNG's terminal:

- Approximately 200 feet of 42-inch-diameter lateral piping to the Liquefaction Project area;
- One new pig trap station and associated valves on Creole Trail's existing pipeline; and
- One 42-inch-diameter tee on the existing Creole Trail pipeline.

B. Estimated Construction Costs

12. Creole Trail estimates that the total capital cost of constructing its proposed expansion project will be approximately \$104,305,155, including \$99,766,536 for compression facilities and \$4,538,619 for M&R facilities, inclusive of Allowance for Funds Used During Construction (AFUDC).⁶ Creole Trail expects to finance the expansion project through funds on hand or borrowings under short-term financing arrangements.

C. Market

13. Creole Trail's expansion project is being developed to allow for the delivery of domestic feed gas to Sabine Pass LNG's terminal, and Sabine Liquefaction will be the anchor shipper on the project. Creole Trail plans to execute a binding precedent agreement with Sabine Liquefaction for firm reverse flow transportation service upon Sabine Liquefaction reaching a final investment decision with respect to Phase I of the Sabine Pass Liquefaction Project.⁷ The precedent agreement will provide for Sabine Liquefaction's reservation of 100 percent of the firm Phase 1 capacity for reverse flow transportation (765,000 Dth per day) and 100 percent of the firm Phase 2 capacity from Creole Trail's expansion for reverse flow service (an additional 765,000 Dth per day) at a negotiated rate for a 20-year term.

14. Creole Trail conducted an open season from October 29, 2012 to November 12, 2012 for firm reverse flow transportation service. Creole Trail received no bids from other potential shippers.

D. Services and Rates

15. As recourse rates for its firm and interruptible transportation services using the incremental reverse flow capacity to be created by the expansion project, Creole Trail proposes to use its existing firm and interruptible Zone 1 recourse transportation rates.⁸

⁶ Application at 12 and Exhibit K.

⁷ Application at 10.

⁸ As originally planned, Creole Trail's pipeline system would have included a Zone 2, which would have included an additional 58.8 miles of pipeline to interconnect with Columbia Gulf's system. Therefore, Creole Trail's cost of service was allocated between Zone 1 and Zone 2. However, the authorized Zone 2 facilities were not constructed.

Creole Trail states its currently-effective Zone 1 recourse are the revised initial rates that were approved by the Commission's March 31, 2008 order issued prior to Creole Trail placing its pipeline into service.⁹

16. Creole Trail states that Sabine Pass Liquefaction has elected to pay negotiated rates for the new reverse flow transportation on the Creole Trail Pipeline.

17. Creole Trail requests the Commission make a finding supporting a presumption that it will be appropriate to roll the costs associated with the proposed facilities into its system rates in its next NGA section 4 rate case. Creole Trail maintains that rolling the costs of the proposed facilities into its systemwide rates will be appropriate because incremental rates for expansion services based on expansion costs would be \$1.1418/Dth per month, less than Creole Trail's currently effective general system rates of \$4.4477/Dth per month.¹⁰ Creole Trail also asserts that rolled-in treatment for the expansion project's costs will be appropriate because the purpose of the project is to provide operational benefits to existing customers and Creole Trail is not proposing to offer any new services using the new facilities.

⁹ Creole Trail's initial Zone 1 rates approved by the June 15, 2006 order granting a certificate authorizing construction of its pipeline were revised several times before the Zone 1 facilities were placed in service. See *Cheniere Creole Trail Pipeline, L.P.*, 121 FERC ¶ 61,071 (2007) (revising initial Zone 1 rates to account for costs of 16-mile long pipeline segment that became part of Creole Trail's system when it merged with Cheniere Sabine Pass Pipeline, L.P.); 122 FERC ¶ 61,116 (2008) (revising initial Zone 1 rates to reflect available actual capital costs expended to date and updated estimates of the remaining capital costs to be expended); and 122 FERC ¶ 61,301 (2008) (revising initial Zone 1 rates to account mainly for an increase in estimated *ad valorem* taxes resulting from an overall increase in pipeline valuation imposed by Louisiana parishes and increases in estimated operation and maintenance and administrative and general expenses).

¹⁰ Exhibit Z to Creole Trail's application compares its currently-effective firm and interruptible Zone 1 recourse rates to incremental rates for expansion services. Creole Trail states that the derivation of its currently-effective firm and interruptible Zone 1 recourse rates were included in Exhibit P to the application that Creole Trail filed on February 26, 2008 in Docket No. CP05-357-008 prior to commencing service to further revise its initial rates.

III. Public Notice and Interventions

18. Notice of Creole Trail's application was published in the *Federal Register* on May 18, 2012 (77 Fed. Reg. 29,624). Timely, unopposed motions to intervene were filed by BG Energy Merchants, LLC and Golden Pass Pipeline LLC jointly with Golden Pass LNG Terminal LLC. These timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹¹

19. On September 21, 2012, Transco filed a motion to intervene out of time. Transco states that, as Creole Trail proposes to construct a new compressor station on the 30-acre site where Transco's M&R Station is located, Transco has a direct and substantial interest in the proceeding that will not be adequately represented by any other party. Transco further states that when it became aware of the proceeding it promptly prepared and submitted its motion to intervene out of time.

20. On October 18, 2012, Sierra Club filed a motion to intervene out of time, protest and submit comments on Creole Trail's application and the environmental assessment (EA) prepared by the Commission's staff in this proceeding. Sierra Club states that its interest in seeking intervention is to protect its members' interests in protecting the environment. Sierra Club argues adverse impacts on the environment would be caused by the increased gas production, particularly from shale, if the Commission approves Creole Trail's project to facilitate the transportation of gas to Sabine Pass LNG's terminal for export. Sierra Club asserts the Commission's environmental review failed to adequately consider and address these potential adverse impacts on the environment. Sierra Club also states that its members have an interest in ensuring that the proposed compressor station, if constructed, be designed to minimize adverse impacts on air quality.

21. On November 1, 2012, Creole Trail filed an answer opposing Sierra Club's late intervention and responding to Sierra Club's comments. Creole Trail argues that Sierra Club failed to show good cause for not filing a motion to intervene in a timely manner and that allowing Sierra Club to intervene now would cause undue delay and disruption. On November 16, 2012, Sierra Club filed a motion for leave to reply to Creole Trail's answer.

22. The Commission's regulations provide that timely motions to intervene in Commission proceedings are those filed within the time period prescribed by the Commission's notice of the proceeding for filing interventions and protests.¹² In this

¹¹ 18 C.F.R. § 385.214 (2012).

¹² 18 C.F.R. § 385.210(b) (2012).

case, the *Federal Register* notice of Creole Trail's application provided that motions to intervene were due by June 1, 2012. However, the Commission's regulations also provide that any person may file to intervene on environmental grounds based on a draft environmental impact statement, and that such intervention will be deemed timely as long as it is filed within the comment period for the draft environmental impact statement.¹³ In this case, the Commission issued an EA, rather than a draft environmental impact statement.

23. However, the Commission has a liberal intervention policy in applications for authorization of natural gas projects before an order on the merits has been issued.¹⁴ Sierra Club filed its motion to intervene on October 18, 2012, the due date for comments on the EA.¹⁵ Notwithstanding the fact that Sierra Club's and Transco's motions to intervene were filed late, the Commission finds they have demonstrated an interest in the proceeding and that granting them intervention at this stage of the proceeding will not cause undue delay or disruption or otherwise prejudice the applicant or other parties. Therefore, the Commission will exercise its discretion under section 385.214(d) to grant Sierra Club's and Transco's motions for late intervention.¹⁶

24. Although Rule 385.213(a) prohibits certain types of answers, it does not prohibit Creole Trail's November 1, 2012 answer to Sierra Club's motion to intervene out of

¹³ 18 C.F.R. § 157.10(a)(2) (2012) and 18 C.F.R. § 380.10(a)(1)(i) (2012).

¹⁴ See *Sabine Pass LNG*, 139 FERC ¶ 61,039, at PP 14-15.

¹⁵ A notice of the EA's availability and October 18, 2012 due date for comments was published in the *Federal Register* on September 24, 2012, 77 Fed. Reg. 55,826 (September 24, 2012).

¹⁶ 18 C.F.R. § 385.214(d) (2012). The courts have long recognized that the NGA "vests broad discretion in the Commission to permit intervention in its administrative proceedings." See, e.g., *Amoco Production Co. v. FPC*, 465 F.2d 1350 at 1355 (10th Cir. 1972). Thus, Rule 214(d) provides that in determining whether good cause exists to grant a motion to intervene out of time, the Commission "may consider" (1) whether the movant's interest is adequately represented by other parties to the proceeding; (2) whether the movant had good cause for failing to file a timely motion to intervene; (3) whether any disruption of the proceeding might result from permitting the late intervention; and (4) whether late intervention would cause any prejudice to or additional burdens upon existing parties.

time.¹⁷ However, Rule 385.213(a) does prohibit the answer to Sierra Club's protest that Creole Trail included in its November 1, 2012 filing and Sierra Club's November 16, 2012 answer to Creole Trail's answer. We will nevertheless admit these answers as doing so will not cause undue delay and they may provide information that assists in our decision making.

IV. Discussion

25. Since Creole Trails seeks to construct and operate facilities to be used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Certificate Policy Statement

26. The Commission's Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁸ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new construction.

27. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the

¹⁷ 18 C.F.R. § 385.213 (2012).

¹⁸ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

28. When a pipeline supports a certificate application with negotiated rate agreements, the Commission calculates project revenue using the pipeline's applicable maximum recourse rate in order to determine whether existing customers might be required to subsidize the project. If charging the pipeline's applicable maximum recourse rate for the capacity to be created by a project would result in revenues exceeding the projected cost of service, the pipeline is responsible in future rate proceedings for any shortfall resulting from agreements for service at negotiated rates less than the pipeline's applicable maximum recourse rates.¹⁹ As discussed below, calculating revenues for Creole Trail's project using its applicable maximum recourse rate results in revenues exceeding the projected cost of service and, thus, would protect any existing firm shippers from subsidizing the proposed expansion. Accordingly, we find that Creole Trail's proposal satisfies the Certificate Policy Statement's threshold requirement that pipelines not rely on existing customers' paying higher rates to subsidize the costs of new construction projects that are not needed to maintain the quality of their existing services.

29. Creole Trail has also met the remaining criteria for certification of new facilities set forth in the Policy Statement. Creole Trail has no existing firm shippers whose quality of service could be adversely affected. Nor have any interruptible shippers commented that the quality of their services could be adversely affected. Further, as Creole Trail emphasizes, customers will benefit from the flexibility in system operations that will result from the additional compression and bi-directionality that will result from the project. In addition no pipeline company or captive customers on other pipeline systems have protested Creole Trail's application.

30. As discussed above, Creole Trail states it has plans to execute a binding precedent agreement with Sabine Pass Liquefaction as the anchor shipper for 100 percent of the firm Phase 1 and Phase 2 reverse flow transportation capacity created by the project at a negotiated rate for a 20-year term.²⁰ The fact that Creole Trail did not receive any bids

¹⁹ See, e.g., *Cheyenne Plains Gas Pipeline Company, LLC*, 121 FERC ¶ 61,273, at P 43 (2007).

²⁰ At the time the Commission issued the April 16, 2012 order approving the Sabine Pass Liquefaction Project, Sabine Pass Liquefaction had agreements to sell domestic gas for export to four customers: BG Gulf Coast LNG, LLC (Great Britain), Gas Natural Aproveisionamientos SDG S.A. (Spain), GAIL (India), and Kogas (Korea).

(continued...)

from other potential shippers during the open season indicates that it has appropriately sized its expansion project to create reverse flow capacity to transport domestic gas to Sabine Pass LNG's terminal.

31. In addition, Creole Trail's project will have minimal adverse impact on landowners. Creole Trail has already entered into a lease for the 30-acre site for the new compressor station. It does not need new right-of-way or easements for the project. Thus, Creole Trail will not need to rely on its certificate authority for the project to seek eminent domain to acquire any property.

32. In view of the above considerations, we find that Creole Trail's project will provide a reverse flow capability on its system to provide domestic gas as feedstock for the Sabine Pass Liquefaction Project without adverse impacts on existing customers, existing pipelines or their customers, landowners or neighboring communities. Based on these findings and our environmental review of Creole Trail's proposed project, discussed below, we find our approval of Creole Trail's proposal is consistent with the Certificate Policy Statement and required by the public convenience and necessity under section 7(c) of the NGA, subject to this order's environmental and other conditions discussion.

B. Rates

33. Creole Trail proposes to use its generally applicable Zone 1 recourse rates as the initial recourse rates for firm and interruptible transportation services using the reverse flow capacity that will be created by the project. Creole Trail's currently effective Zone 1 recourse reservation rate under Rate Schedule FTS is \$4.4477/Dth per month. The currently effective rate for interruptible transportation service under Rate Schedule ITS is \$0.1462/Dth. For all services, a surcharge of \$0.0018/Dth also applies.

34. Creole Trail also proposes to charge its existing system fuel retention percentage (currently 0.35 percent), revised to account for the additional fuel costs incurred in the expansion.²¹ Creole Trail currently adjusts its fuel retention percentage on a semi-annual basis and, prior to placing the expansion project in service, will request authorization as

The agreement with each customer is for approximately 0.5 Bcf of LNG per day for 20 years. 139 FERC ¶ 61,039 at P 9. As noted above, DOE/FE had already authorized Sabine Pass Liquefaction to export up to 2.2 Bcf per day of domestically-produced natural gas. *Id.* P 27.

²¹ Creole Trail's effective fuel retention percentage was 0.56 percent, as stated in its application at p. 14 when the application was filed on April 30, 2012.

part of the relevant semi-annual fuel adjustment filing to put into effect the then-applicable fuel retention percentage for the Creole Trail Pipeline, which its estimates will be approximately 0.70 percent.

35. Creole Trail requests the Commission make findings supporting presumptions that Creole Trail will be allowed in future section 4 proceedings to roll all costs associated with the proposed project into its system rates and increase its fuel retention percentage to account for fuel used at the Gillis Compressor Station.

36. Creole Trail states that its service agreement with Sabine Pass Liquefaction will reserve 100 percent of both Phase 1 capacity (765,000 Dth per day) and Phase 2 capacity (an additional 765,000 Dth per day) for service at a negotiated rate. As shown in Exhibit N to its application, Creole Trail has calculated the transportation revenues that would result from firm contracts for all of the reverse flow capacity to be created by the project (1,530,000 Dth per day) at the maximum Zone 1 recourse rate for firm service to be \$81,659,772 for each of the first three years of service following placing the Phase 2 facilities in service.²² In addition, while the reverse flow capacity will be limited to 765,000 Dth per day until the Phase 2 facilities are completed,²³ the annual transportation revenues that would result from firm contracts for all of the Phase 1 reverse flow capacity at the maximum Zone 1 recourse rate would be over \$41,000,000, exceeding the project's associated annual cost of service during the first three years, which will range from \$20,964,029 the first year to \$19,413,947 in the third year.²⁴

37. In view of the above considerations, we will approve Creole Trail's proposal to charge its system-wide Zone 1 recourse rates as initial recourse rates for services using the reverse flow capacity created by the project's facilities and grant Creole Trail's request for a predetermination supporting a presumption that it should be allowed to roll

²² As discussed above, in determining the potential impact on a pipeline's existing customers of a proposed project priced at a negotiated rate, the Commission calculates the project revenue using the pipeline's applicable maximum recourse rate. If the negotiated rate is lower than the maximum recourse rate, the pipeline will be responsible for any revenue shortfall, thus protecting existing customers from potentially subsidizing the expansion project. *See, e.g., Cheyenne Plains Gas Pipeline Company, LLC*, 121 FERC ¶ 61,273, at P 43 (2007).

²³ As stated above, Creole Trail expects to complete the Phase 1 facilities during the fourth quarter of 2013 and the Phase 2 facilities by the second quarter of 2016.

²⁴ As stated above, Creole Trail estimates total capital construction costs of approximately \$104,305,155.

the project's costs into its system rates in a future section 4 general rate case, absent a significant change in circumstances.

38. Creole Trail states the current fuel retention percentage (0.35 percent) on its system will increase to approximately 0.70 percent once the Gillis Compressor Station is in service to account for fuel use at the station. Creole Trail states a rolled-in fuel rate is appropriate because the addition of compression will benefit all potential Creole Trail shippers, regardless of the direction of flow of their service, by providing increased flexibility for use of receipt and delivery points and the potential for displacement of gas at receipt and delivery points which has the potential for lower fuel usage. Creole Trail further emphasizes there are no firm transportation shippers on the system now that would potentially subsidize fuel usage to provide service for Sabine Pass Liquefaction or other new shippers using the expansion capacity that will be created by this project. We will also approve Creole Trail's request for a finding supporting rolling the increased fuel requirements resulting from its expansion project into its existing system-wide fuel rate, absent a significant change in circumstances.

39. Creole Trail states that it will provide service for Sabine Pass Liquefaction at a negotiated rate. Creole Trail must file any negotiated rate agreement associated with this project, or a tariff record describing the negotiated rate agreement, in accordance with our policies regarding the treatment of negotiated rates²⁵ and our statement of policy on alternative rates.²⁶

²⁵ See, e.g., *Texas Eastern Transmission, LP*, 133 FERC ¶ 61,220, at PP 17-18 (2010). When an interstate pipeline files a service agreement specifying a negotiated rate or a tariff record describing such an agreement or a service agreement containing non-conforming provisions, interested parties may protest if they believe the rates or non-conforming provisions are unduly discriminatory or preferential. Further, pipelines are required to maintain separate and identifiable accounts for transportation volumes, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates in sufficient detail that they can be identified in future rate proceedings under section 4 or 5 of the NGA. *Id.* P 19. See also *Alliance Pipeline L.P.*, 140 FERC ¶ 61,212, at P 23 (2012).

²⁶ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,231, *order granting clarification*, 74 FERC ¶ 61,194, *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996), *aff'd sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d (D.C. Cir. 1998); *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006).

C. Environment

40. On June 13, 2012, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Creole Trail Expansion Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the Federal Register²⁷ and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. The NOI stated that the matters to be addressed in the environmental analysis of Creole Trail's proposed project would include geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, and alternatives. The NOI also stated that comments regarding the potential environmental effects of Creole Trail's proposed project, reasonable alternatives, and measures to avoid or lessen environmental impacts should be submitted on or before July 13, 2012.

41. We received comments in response to the NOI from the U.S. Environmental Protection Agency (EPA) and the Louisiana Department of Wildlife and Fisheries (Louisiana DWF). The comments in response to the NOI were addressed in the EA prepared to satisfy the requirements of the National Environmental Policy Act (NEPA).²⁸ The EA was issued and placed in the public record on September 18, 2012.²⁹

42. As discussed in the EA, the EPA's concerns raised in response to the NOI included potential impacts of Creole Trail's project on the Chicot Aquifer (sole source aquifer) and wetlands. However, as described in section B.3.1 of the EA, construction of the project is not expected to impact the Chicot Aquifer. Creole Trail will implement its *Spill Prevention, Containment, and Countermeasure Plan (SPCC Plan)* which contains procedures for proper storage, handling, and cleanup of fuels and other hazardous materials during construction. Section B.3.3 of the EA states that no wetlands were identified at the three existing M&R station sites where Creole Trail proposes facility modifications. Approximately 0.03 acre of palustrine emergent wetland is located at the proposed Gillis Compressor Station site; however, Creole Trail will avoid this wetland area during construction.

²⁷ 77 Fed. Reg. 36,525 (June 19, 2012).

²⁸ 42 U.S.C. §§ 4321 - 4347 (2012).

²⁹ A notice of the availability of the EA was published in the *Federal Register* on September 24, 2012, 77 Fed. Reg. 55,826 (September 24, 2012).

43. The EPA in its response to the NOI also stated concerns regarding ozone maintenance areas and greenhouse gas emissions. As described in section B.7.1 of the EA, the Louisiana Department of Environmental Quality (Louisiana LDEQ) will enforce the National Ambient Air Quality Standards for the project through its State Implementation Plan, which takes into account Beauregard Parish's 1-hour ozone maintenance plan. Although construction and operation of the project will emit greenhouse gas emissions, these impacts are thoroughly described in the EA, which concluded operation of the facility is not anticipated to result in any significant air quality impacts.

44. The Louisiana DWF stated in its comments in response to the NOI that the project would have minimal or no long-term adverse impacts on wetland functions. The Louisiana DWF also stated that it has no objection to the project provided that adequate erosion and sediment control measures are implemented. As described in section A.7 of our EA, Creole Trail will implement the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* during construction and restoration of the project, which includes substantial erosion and sedimentation control measures.

45. In its notice of availability of the EA, the Commission provided for a 30-day comment period on the EA's findings with comments due by October 18, 2012. We received comments on the EA from the EPA, the U. S. Department of Agriculture's Natural Resources Conservation Service for Louisiana (Louisiana Conservation Service), the U.S. Fish and Wildlife Service and the Sierra Club. The Louisiana DWF, National Oceanic and Atmospheric Administration National Marine Fisheries Service, and U.S. National Park Service submitted letters stating they had no comments on the project. The Coshatta Tribe of Louisiana submitted a letter stating that they concurred with the Commission's determination in the EA that Creole Trail's project would have no impact on cultural resources.

46. The EPA stated in its comments on the EA that letters of coordination, authorization, and/or concurrence with pertinent regulatory agencies should be included in the final EA. We clarify that the EA issued on September 18, 2012, was the final EA, as all comments on the EA are being addressed in this order. However, the letters of coordination, authorization, and/or concurrence with pertinent regulatory agencies can be viewed in the Commission's eLibrary in the public record for this proceeding on Creole Trail's proposal in Docket No. CP12-351-000.

47. The EPA also recommended in its comments on the EA that other non-LNG related projects be included in the cumulative impacts analysis. As described in section B.9 of the EA, the cumulative impact analysis evaluated the four projects that could contribute to cumulative impacts, three of which were LNG projects. The Commission staff did not identify any other projects that could contribute to cumulative impacts nor were any identified by commentors during the scoping period.

48. The Louisiana Conservation Service's comments on the EA questioned the land use of the project area and whether the *SPCC Plan* submitted by Creole Trail is accessible on the FERC website. As described in section B.5 of the EA, the land uses in the project areas are open land/pasture (historically farmed lands, hay fields, and pasture lands) and industrial land (where Creole Trail's existing meter and regulation stations and Sabine Pass LNG's terminal are located). The *SPCC Plan* is accessible on the FERC website in eLibrary. It is Appendix 2C to Creole Trail's application. The Louisiana Conservation Service also questioned whether the best management practices for construction near residences are described in the Commission's plan. General erosion control practices for construction near residences are described in the Commission's plan; however, the project would not impact any residential areas.

49. The Louisiana Conservation Service also asked about the number of non-road equipment engines and on-road vehicles that would be used during construction and requested clarification regarding Beauregard Parish's noise regulation or ordinance and the approximate distance from the construction activities and the Gillis Compressor Station to the nearest residences. Appendix 9B in Creole Trail's application estimates that 38 non-road construction equipment vehicles and 14 on-site on-road vehicles would be used during construction. The EA indicated that no state noise ordinances are applicable to the project; Creole Trail stated in Resource Report 9 of its application that no state or local noise regulations or ordinances were identified that are applicable to the Gillis Compressor Station. As described in the EA, the nearest residence is approximately 670 feet from the property boundary of the 30-acre site for the Gillis Compressor Station (EA, section B.5, p. 16) and 1,400 feet from the compressor units (EA, section B.7.2, Table 11, p. 30).

50. The U.S. Fish and Wildlife Service's comments on the EA stated that the proposed project would have no effect on Federal trust resources, and they have no comment in regard to jurisdictional wetland impacts. However, they stated that the Sprague's Pipit, a candidate species, may occur in Cameron Parish, and indicated that Creole Trail should avoid project activities that would adversely affect this species or its habitat. As described in section B.4.3 of the EA, the project would not affect suitable habitat for Sprague's Pipit, and the EA concluded that the project will have no effect on the species.

51. In its comments on the EA, Sierra Club asserts that Creole Trail's proposed project warrants preparation of an environmental impact statement (EIS), that the range of alternatives analyzed in the EA is insufficient, and that the scope of the EA should have included an examination of the indirect effects of exporting LNG from Sabine Pass LNG's terminal and the additional natural gas production that Sierra Club argues will be induced by Creole Trail's project to enable delivery of gas to Sabine Pass LNG's terminal. Sierra Club argues an EIS is required because the Commission's EA is inconclusive as to whether the direct and indirect impacts of Creole Trail's project will significantly affect the environment.

52. The Council on Environmental Quality's (CEQ) regulations clarify that where an EA concludes with a finding of no significant impact, an agency may proceed without preparing an EIS (40 C.F.R. §§ 1501.4(e), 1508.13 (2011)). Consistent with CEQ's regulations, the Commission's policy is to prepare an EA, rather than an EIS, if our initial review indicates that a project is not likely to be a major federal action significantly affecting the quality of the human environment. If, during the course of the environmental analysis, it appears that our initial conclusion that approval of a proposal will not have significant adverse impacts on the quality of the human environment may not be valid, our regulations provide that an EIS will be undertaken.³⁰ Creole Trail's project was thoroughly analyzed in the EA, and no significant direct or indirect impacts were identified. Therefore, the EA concludes that the Commission's approval of the project will not constitute a major federal action significantly affecting the quality of the human environment. We affirm the EA's finding and therefore reject Sierra Club's assertion that an EIS is required.

53. The environmental impacts associated with Sabine Pass LNG's and Sabine Pass Liquefaction's construction of facilities to facilitate the export of domestic gas from Sabine Pass LNG's terminal were fully addressed in the Commission's EA issued on December 28, 2011, in Docket No. CP11-72-000 and in the Commission order in that proceeding approving the Sabine Pass Liquefaction Project.³¹ The cumulative impacts of the Creole Trail project proposed in this proceeding along with other projects in the area, including the Liquefaction Project at Sabine Pass LNG's terminal, are described in section B.9 of the EA.

54. However, Sierra Club argues that because Creole Trail's proposed project will enable the delivery of domestic gas to Sabine Pass LNG's terminal for export, Creole Trail's project will induce additional natural gas production and that the resulting increase in gas production activities will be an indirect effect of the proposed project that the environmental assessment should have addressed. We disagree.

55. The CEQ regulations require agencies to consider the environmental effects of their proposed actions, including: (1) direct effects, which are caused by the action and occur at the same time and place; and (2) indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.³²

³⁰ 18 C.F.R. § 380.6(b) (2012).

³¹ *Sabine Pass LNG*, 139 FERC ¶ 61,039 at P 31 *et seq.*

³² 40 C.F.R. § 1508.8 (2012).

As explained by the court in *City of Shoreacres v. Waterworth*, an impact is “reasonably foreseeable” if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”³³ As discussed below, impacts which may result from additional gas production are not “reasonably foreseeable” under this judicial standard or as defined by the CEQ regulations. The project does not depend on additional gas production, and additional gas production may occur for reasons unrelated to the project and over which the Commission has no control, such as state permitting for additional gas wells. An overall increase in nationwide gas production may occur for a variety of reasons, but projections of the locations and amounts of future production would be very speculative if attempted on the basis of Creole Trail’s interconnections with other pipelines and its proposal to make its pipeline bi-directional in order to transport gas to Sabine Pass LNG’s terminal.

56. Sierra Club argues the Commission should consider the study published by the Energy Information Administration (EIA) in January 2012, *Effect of Increased Natural Gas Exports on Domestic Energy Markets*,³⁴ which predicts the additional volumes of domestic gas that will be produced for export and states that 72 percent of this additional production will be shale gas. Sierra Club asserts the Commission should also consider a 2011 report by the Deloitte Center for Energy Solutions (Deloitte), *Made in America: The Economic Impact of LNG Exports from the United States*,³⁵ which also predicts that additional gas production will be induced by exports. Sierra Club argues that even if the Commission cannot predict specific areas where induced natural gas production will occur, it should still include a meaningful discussion of aggregate environmental impacts.

57. Sierra Club's reliance on the EIA and Deloitte reports is misplaced. As we explained on rehearing in the proceeding on the Liquefaction Project at Sabine Pass LNG’s terminal, EIA prepared its report in response to a request from the U.S. Department of Energy’s Office of Fossil Energy (DOE/FE) as one input to DOE/FE's assessment of the potential impact of current and possible applications to export domestically produced natural gas.³⁶ The EIA report is a general economic forecast over twenty-five years with four export demand scenarios, none of which is specific to the Liquefaction Project to export domestic gas from Sabine Pass LNG’s terminal. The

³³ 420 F.3d 440, 453 (5th Cir. 2005).

³⁴ Sierra Club’s October 18, 2012 Filing included EIA’s study as Exhibit 6.

³⁵ Sierra Club’s October 18, 2012 Filing included the Deloitte report as Exhibit 7.

³⁶ *Sabine Pass LNG*, 140 FERC ¶ 61,076 at P 14.

report cautions that projections of energy markets over the long term are “highly uncertain and subject to many events that cannot be foreseen, such as supply disruptions, policy changes, and technological breakthroughs.”³⁷ In any event, as we further explained in the proceeding on the Liquefaction Project, EIA’s report provides no assistance for us to reasonably estimate how much of the gas transported by Creole Trail’s pipeline to Sabine Pass LNG’s terminal for export will come from current versus future shale gas production, or when and where gas transported by Creole Trail to the terminal will be produced, much less any associated environmental impacts of any new gas production from shale.³⁸

58. The Deloitte report focused primarily on the price impacts that exports of LNG may have on the U.S. gas market. The Deloitte report also forecasts that the exportation of domestic gas will lead to increased production and that shale gas production, particularly in the Marcellus Shale in Appalachia and the Haynesville Shale in Texas and Louisiana, will grow and could eventually become the largest component of domestic gas supply.³⁹ However, the Deloitte report, like the EIA report, does not attempt to identify specific locations where the additional gas production induced by exports will occur or otherwise assist us in reasonably assessing the potential environmental impacts from the production of the gas that will be both induced by the export of domestic gas and transported by Creole Trail’s pipeline to Sabine Pass LNG’s terminal.

59. The factors necessary for a meaningful analysis of when, where, and how gas development will occur simply are unknown at this time. As we explained in our order approving the Liquefaction Project, it is impractical for the Commission to identify and assess impacts associated with the production of additional gas supplies that may be transported by pipelines, including Creole Trail’s pipeline, for export from Sabine Pass LNG’s terminal. Any such impacts will not be direct impacts of Creole Trail’s construction activities to make its pipeline bi-directional. Further, since any environmental impacts from the additional gas production induced by gas export cannot be meaningfully analyzed by the Commission, CEQ regulations do not require that the Commission consider such impacts as indirect impacts of Creole Trail’s project. Since impacts from the production of additional gas supplies for export do not have to be considered as either direct impacts or indirect impacts of Creole Trail’s project, CEQ regulations do not require that the Commission consider such impacts as incremental

³⁷ EIA Report at 3.

³⁸ *Sabine Pass LNG*, 139 FERC ¶ 61,039 at P 98.

³⁹ Deloitte Report at p. 6.

impacts and consider them as part of the cumulative impact of past, present and reasonably foreseeable future actions by federal and non-federal agencies.

60. Thus, the EA's consideration of cumulative impacts was appropriately limited to consideration of the incremental impact Creole Trail's construction project could have in the areas where its construction activities will occur.⁴⁰ The EA's analysis of the potential impacts of the project on geology and soils, water resources, wetlands, vegetation, fisheries, wildlife, land use, recreation, visual resources, cultural resources, as well as on air quality and noise, indicates that the project will result in little to no incremental contribution to impacts on resources in the project area.

⁴⁰ As discussed in the EA at section B.9.0, gas facilities already exist in the areas in which Creole Trail's construction activities will occur. Within the 30-acre leased site where Creole Trail's new Gillis Compressor Station will be located there are two existing M&R stations at Creole Trail's interconnections with Transco's and Trunkline's systems. Creole Trail's project to make its pipeline bi-directional will necessitate modifications at these existing meter stations as well as at the existing meter station at Creole Trail's interconnection with Texas Eastern's system. The 200 feet of lateral piping that Creole Trail will construct off its existing pipeline to transport gas to the facilities authorized in Docket No. CP11-72-000 for the Liquefaction Project at Sabine Pass LNG's terminal will be located within the footprint of the terminal. In addition, there are two existing wells producing oil, gas and condensates approximately 3,000 feet southeast of Sabine Pass LNG's terminal, which lies within the West Johnsons Bayou Gas Field.

In addition to the Liquefaction Project at Sabine Pass's LNG terminal, there are three other projects which could contribute to cumulative impacts in the areas affected by Creole Trail's project: the Cameron Pipeline Expansion Project, Docket No. CP13-27-000; the Cameron LNG Liquefaction Project, Docket No. CP13-25-000; and the Lake Charles Liquefaction Project at the Trunkline LNG Terminal (presently in the pre-filing stage). The Cameron and Trunkline LNG terminals are located approximately 38 miles northeast of Sabine Pass LNG's terminal and approximately 20 miles southwest of the proposed location for Creole Trail's new Gillis Compressor Station. Cameron LNG and Trunkline LNG plan to install the liquefaction facilities adjacent to their existing LNG terminals. The EA states the impacts of these projects and Creole Trail's project on air quality would be localized and primarily confined to the airsheds in the areas of their respective projects. The EA therefore concludes that it is unlikely that cumulative impacts would result from construction of these projects. (EA, section B.9.0, p. 34).

61. Sierra Club also asserts the Commission should not approve Creole Trail's project until the Commission has considered alternative technologies for its proposed Gillis Compressor Station to ensure lower air emissions. The alternatives Sierra Club asserts the EA should have considered are (1) electrically-driven compression powered by the grid; (2) fewer, larger, more efficient turbines rather than the four proposed turbines; (3) selective catalytic reduction to reduce nitrogen oxides emissions from the turbines; and (4) oxidation catalyst to reduce carbon monoxide emissions. In its additional comments filed on November 16, 2012, Sierra Club emphasizes that the EA acknowledges that the compressor station, if constructed in accordance with Creole Trail's proposed design, may produce certain harmful emissions exceeding the Significant Impact Levels established by the Louisiana DEQ,⁴¹ and that further refined modeling and an area-of-impact analysis will be necessary. In view of these statements in the EA, Sierra Club argues the Commission cannot support a finding that Creole Trail's project will not result in violations of local air quality standards.

62. As described in the EA, Creole Trail's compressor station design incorporates Best Available Control Technology for both the turbine units and the stand-alone generators to be operated at the compressor station to ensure air emissions are lessened to the extent practicable. Further, Environmental Condition No. 9 in the Appendix to this order provides that the Director of the Commission's Office of Energy Projects will not provide written authorization for Creole Trail to commence construction of project facilities until Creole Trail has filed documentation that it has received all necessary authorizations required under federal law. Thus, prior to receiving approval from the Commission to commence construction of the compressor station, Creole Trail must demonstrate to the Louisiana DEQ that emissions from the compressor station will not exceed acceptable levels and obtain the requisite air quality permit. The Louisiana DEQ is responsible for enforcing the State Implementation Plan to comply with air quality standards according to the Federal Clean Air Act. Creole Trail's compliance with the permitting process will ensure that the compressor station minimizes air quality impacts. Thus, we do not

⁴¹ The EA states at p. 25:

[T]he modeled 1-hour and annual NO₂ [nitrous oxide] concentrations, the 24-hour and annual PM_{2.5} [particulate matter with aerodynamic diameter less than or equal to 2.5 microns] concentrations, the 24-hour PM₁₀ [particulate matter with aerodynamic diameter less than or equal to 10 microns] concentrations, and the 1-hour and 8-hour CO [carbon dioxide] concentrations exceeded their respective SILs [Significant Impact Levels] and would therefore require further refined modeling and area-of-impact analysis.

believe analyses of Sierra Club's recommended technology alternatives for the Gillis Compressor Station are warranted.

63. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Creole Trail's application and supplements, and in compliance with the environmental conditions in the Appendix to this order, our approval of Creole Trail's proposal will not constitute a major federal action significantly affecting the quality of the human environment.

64. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of the certificate issued by this order. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁴²

65. At a hearing held on February 21, 2013, the Commission on its own motion, received and made a part of the record all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Creole Trail authorizing construction and operation of the Gillis Compressor Station and other facilities as described and conditioned herein and as more fully described in Creole Trail's application and supplements.

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

(1) Creole Trail's Phase 1 facilities being made available for service within 2 years of the date of this order and the Phase 2 facilities being made available for service within 4 years of the date of this order, as required by section 157.20(b) of the Commission's regulations;

⁴² See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988). *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990), *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091, at 61,404 (1990), and *Iroquois Gas Transmission System, L.P.*, 59 FERC ¶ 61,094, at 61,360 (1992).

(2) Creole Trail's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations; and

(3) Creole Trail's compliance with the environmental conditions listed in the Appendix to this order.

(C) Creole Trail is granted approval to provide transportation services using the reverse flow capacity to be created by the facilities authorized herein under its existing Zone 1 rate schedules and to use its existing Zone 1 firm and interruptible recourse rates as the recourse rates for such transportation services.

(D) Creole Trail's requests for findings supporting presumptions that it should be allowed in future section 4 proceeding to roll the costs associated with the facilities authorized herein into its system rates and to increase its fuel retention rate to account for increased fuel usage resulting from the project are granted, absent any significant change in circumstances.

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

(F) Creole Trail shall file, at least 30 days but not more than 60 days prior to the commencement of service, any agreements specifying negotiated rates or a tariff record of such agreements and any agreements containing non-conforming provisions for services using the reverse flow capacity created by the project.

(G) Creole Trail shall file a report describing its analysis of the feasibility of recovering waste heat energy at the Gillis Compressor Station within 90 days after completing one full year of operations at the station.

(H) Transco's and Sierra Club's motions to intervene out of time are granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions Docket No. CP12-351-000

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

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

environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

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

This requirement does not apply to extra workspace allowed by our *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **At least 60 days before construction begins**, Creole Trail shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Creole Trail must file revisions to the plan as schedules change. The plan shall identify:

- a. how Creole Trail will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Creole Trail will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Creole Trail will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Creole Trail's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Creole Trail will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (i) the completion of all required surveys and reports;
 - (ii) the environmental compliance training of onsite personnel;
 - (iii) the start of construction; and
 - (iv) the start and completion of restoration.
7. Creole Trail shall employ at least one EI per construction spread. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.

8. Beginning with the filing of its Implementation Plan, Creole Trail shall file updated status reports with the Secretary on a **biweekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Creole Trail's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Creole Trail from other federal, state, or local permitting agencies concerning instances of noncompliance, and Creole Trail's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Creole Trail shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Creole Trail must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Creole Trail shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Creole Trail has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly

implemented, if not previously identified in filed status reports, and the reason for noncompliance.

12. Creole Trail shall file a noise survey with the Secretary **no later than 60 days** after placing Phase 1 of the Gillis Compressor Station in service and **no later than 60 days** after placing Phase 2 of the Gillis Compressor Station in service. If the noise attributable to the operation of the Gillis Compressor Station at full load from either Phase 1 or Phase 2 equipment exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby noise-sensitive areas, Creole Trail shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Creole Trail shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

13. Creole Trail shall file a vibration survey with the Secretary **prior to** placing the Gillis Compressor Station in service. Creole Trail shall also file vibration surveys **no later than 60 days** after placing Phase 1 of the Gillis Compressor Station in service and **no later than 60 days** after placing Phase II in service. If the change in peak vibration attributable to the operation of the Gillis Compressor Station from either Phase 1 or Phase 2 equipment is perceptible at any nearby noise-sensitive areas, Creole Trail shall install/implement additional vibration control mitigation measures **within 1 year** of the in-service date. Creole Trail shall confirm compliance with this requirement by filing a second vibration survey with the Secretary **no later than 60 days** after it installs the additional vibration controls.