

145 FERC ¶ 61,236
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulf South Pipeline Company, LP

Docket Nos. CP13-91-000
CP13-92-000
CP13-93-000
(not consolidated)

ORDER DENYING APPLICATIONS
FOR ABANDONMENT AUTHORIZATION

(Issued December 19, 2013)

1. On March 1, 2013, Gulf South Pipeline Company, LP (Gulf South) filed applications in Docket Nos. CP13-91-000, CP13-92-000, and CP13-93-000, pursuant to section 7(b) of the Natural Gas Act (NGA), requesting approval to abandon pipeline facilities in three states by sale to Gulf South-affiliated companies. Specifically, Gulf South proposes to sell pipeline facilities in Louisiana (Louisiana Facilities) to Boardwalk Louisiana Intrastate Pipeline Company, LLC (Boardwalk Louisiana); facilities in Mississippi (Mississippi Facilities) to Boardwalk Mississippi Intrastate Pipeline Company, LLC (Boardwalk Mississippi); and facilities in Texas (Texas Facilities) to Boardwalk Texas Intrastate Pipeline Company, LLC (Boardwalk Texas).¹ Upon abandonment and sale to the respective Boardwalk Intrastates, Gulf South also requests that the Commission find that the facilities will be exempt from the Commission's jurisdiction pursuant to section 1(c) of the NGA as "Hinshaw" pipeline facilities.²

¹ This order refers to Boardwalk Louisiana, Boardwalk Mississippi, and Boardwalk Texas collectively as the "Boardwalk Intrastates."

² Pursuant to section 1(c) of the NGA, the provisions of the NGA do not apply to "any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such

(continued...)

2. Because of the similarity of issues, we address the three unconsolidated applications in one order. For the reasons discussed herein, this order denies the requested abandonment authorizations and dismisses the requested jurisdictional determinations as moot.

I. Background and Proposals

3. Gulf South is a natural gas company, as defined by section 2(6) of the NGA, engaged in the transportation and storage of natural gas in interstate commerce.³ It is a limited partnership formed and existing under the laws of the State of Delaware. Gulf South owns and operates approximately 7,241 miles of pipeline facilities that extend from Texas through Louisiana, Mississippi, Alabama, and Florida.

4. As described by Gulf South in its applications, its system includes both small-diameter, low pressure pipeline facilities constructed prior to the 1950s that serve distribution, municipal, and end-use customers in Texas, Louisiana, and Mississippi and high pressure, mainline facilities that transport gas to customers and other pipelines for further transportation to trading hubs and markets throughout the eastern United States. In the subject applications, Gulf South proposes to abandon facilities it alleges are distribution-type and gathering facilities, which comprise approximately 25 percent of Gulf South's overall pipeline mileage.

5. Gulf South explains that its proposals to abandon the subject facilities are in response to changes in the interstate pipeline market. First, it states that regulatory changes adopted by the Commission including, among other things, the unbundling of interstate pipeline transportation service from the purchase of natural gas, has resulted in increased competition from both interstate and intrastate pipelines. Consequently, Gulf South maintains that over 70 percent of its transportation contracts specify discounted or negotiated rates that are below its Commission-approved maximum rates. Second, Gulf South states that its competitive situation has intensified due to the shale gas revolution that has caused a significant shift in the way customers use the interstate pipeline system, resulting in a decrease in overall deliveries on its system, while the value of its transportation between pipelines has dropped sharply.

person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission.” 15 U.S.C. § 717(c) (2012).

³ 15 U.S.C. § 717a(6) (2012).

6. Given these market conditions, Gulf South contends that its proposed abandonment of its facilities in Louisiana, Mississippi, and Texas will enable it to rationalize its pipeline assets so that those facilities and its retained mainline facilities have the best opportunity to compete in their respective markets without relying on subsidies from other customers. Upon abandonment, Gulf South states that the subject facilities in each state will be transferred to an affiliate that will qualify for exempt status as a “Hinshaw” pipeline under section 1(c) of the NGA. According to Gulf South, customers in Texas, Louisiana, and Mississippi now served through the facilities will continue to receive the same quality of service at the same rates from the new owners of the facilities that they would have received from Gulf South for the remainder of the primary terms of their contracts with Gulf South.

A. Description of Facilities

7. As stated above, Gulf South requests authority to abandon by sale (1) its Louisiana Facilities to Boardwalk Louisiana in Docket No. CP13-91-000; (2) its Mississippi Facilities to Boardwalk Mississippi in Docket No. CP13-92-000; and (3) its Texas Facilities to Boardwalk Texas in Docket No. CP13-93-000. Gulf South does not propose any facility removal or construction in connection with the proposed abandonments.

1. Docket No. CP13-91-000: Louisiana Facilities

8. Gulf South proposes to abandon two discrete sections of its interstate pipeline facilities in Louisiana, referred to as the North Louisiana Facilities and the South Louisiana Facilities.⁴ Together they consist of approximately 950 miles of pipeline, associated meters, one compressor station, and appurtenant and auxiliary facilities.⁵

⁴ While Gulf South indicates in its application that some of the facilities included in its applications are gathering facilities, in some instances it does not identify which particular facilities it believes are gathering facilities and it does not provide sufficient information for us to determine whether any of the facilities are non-jurisdictional gathering facilities under the Commission’s “primary function test,” which includes consideration of a number of physical, geographical, and other factors. *See, e.g., Tennessee Gas Pipeline Company, L.L.C.*, 143 FERC ¶ 61,196, at PP 107-108 (2013).

⁵ *See* Gulf South CP13-91-000 Application at 1, 13-17 (describing the Louisiana Facilities). Exhibit Z of the Application contains a map of the facilities, a list of pipeline assets, a map showing nominal pipe diameter, and a map showing average operating pressure for each of the South and North Louisiana Facilities.

North Louisiana Facilities

9. The North Louisiana Facilities consist of approximately 390 miles of pipeline, in seven separate segments, ranging from one inch to 20 inches in diameter and extending from the Texas-Louisiana border near Waskom, Texas to the Louisiana-Mississippi border near Vicksburg, Mississippi. The North Louisiana Facilities also include the 3,700 horsepower (hp) Sterlington Compressor Station, and appurtenant and auxiliary facilities.

10. Gulf South describes the North Louisiana Facilities as being divided into west and east segments, with the Monroe producing field, south of Sterlington, as the dividing point. The pipeline facilities on the west segment primarily range from 18 to 20 inches in diameter and operate at pressures between 200 and 275 pounds per square inch gauge (psig). Gulf South contends that, although originally constructed to transport gas from the Monroe producing field to local and regional destinations, the west segment now primarily transports gas produced in northwest Louisiana east to serve various Louisiana towns and cities. Upon abandonment, Gulf South states that the western end of the Louisiana Facilities will be cut and capped inside the Louisiana border, preventing gas from flowing across the Texas-Louisiana border in either direction. Gulf South states that the pipeline facilities on the east segment primarily range from one inch to 18 inches in diameter and operate at pressures between 250 and 300 psig. Gulf South states the North Louisiana Facilities' east segment primarily serves small towns along its route, and that upon abandonment, the eastern end of the North Louisiana Facilities will be cut and capped on the Louisiana side of the Mississippi-Louisiana border, such that no gas will be able to flow from Louisiana into Mississippi.

11. Gulf South states that together, the North Louisiana Facilities constitute approximately five percent of Gulf South's total pipeline mileage and transport approximately 0.07 percent of its total throughput. Gulf South further states that the total contracted maximum daily quantity (MDQ) under service agreements that rely on the North Louisiana Facilities is approximately 15,000 million British thermal units per day (MMBtu/d), but that in 2012 the facilities transported only about 3,150 MMBtu/d, roughly 21 percent of the total contracted MDQ.⁶

12. Gulf South states that once abandoned, the North Louisiana Facilities will have three interconnections with interstate pipeline systems. One interconnect will be with a Gulf South high pressure pipeline that delivers gas to the Sterlington Compressor

⁶ Gulf South CP13-91-000 Application at 16 and Exhibit Z-2 at PP 12-13.

Station.⁷ Both of the other two interconnections will be on the east segment: one with Texas Eastern Transmission LP near Epps, Louisiana, and the other with Mid-Louisiana Gas Transmission LLC near Winnsboro, Louisiana.

South Louisiana Facilities

13. The South Louisiana Facilities consist of approximately 560 miles of pipeline, extending from the Texas-Louisiana border near the Sabine River to Lafayette, Louisiana. The pipelines in this section range in size from one inch to 16 inches in diameter and operate at pressures between 300 and 525 psig, with a majority of the pipeline facilities operating at pressures below 500 psig.

14. Although originally designed to move gas from Texas to southern Louisiana, Gulf South states that the South Louisiana Facilities no longer flow gas across the Texas-Louisiana border. Gulf South states that local Louisiana production serves much of the local demand, and that following the proposed abandonment, the additional supplies needed to meet local demand can be delivered through the six interconnections that the South Louisiana Facilities will still have with Gulf South's retained interstate system.⁸

15. Gulf South states that the South Louisiana Facilities constitute approximately eight percent of Gulf South's total pipeline mileage and transport approximately 0.42 percent of its total throughput. It further states that the total contracted MDQ under service agreements with customers that rely on the South Louisiana Facilities is approximately 89,700 MMBtu/d, but that in 2012 the facilities transported only about 17,940 MMBtu/d, about 20 percent of total contracted MDQ.⁹

⁷ As stated above, the Sterlington Compressor Station is included in the North Louisiana Facilities that Gulf South proposes to abandon by sale to Boardwalk Louisiana. Gulf South states that the Sterlington Compressor Station functions to draw gas from low-pressure gas fields in northwest Louisiana and that following the abandonment the compression facilities will continue to operate in much the same way as they do now to move this local supply to low-pressure markets in Louisiana.

⁸ Gulf South notes that gas will not be able to flow from the South Louisiana Facilities into the upstream facilities that Gulf South will retain because the operating pressures of the South Louisiana Facilities are significantly lower.

⁹ Gulf South CP13-91-000 Application at 17 and Exhibit Z-2 at PP 20-21.

2. Docket No. CP13-92-000: Mississippi Facilities

16. The Mississippi Facilities that Gulf South seeks to abandon consist of 511 total miles of pipeline, including 32 miles of pipeline that Gulf South indicates are gathering facilities, and appurtenant facilities located in central and southern Mississippi.¹⁰ Gulf South states that the Mississippi Facilities include three primary pipelines, lateral pipelines, and other pipeline facilities.¹¹ Gulf South states that these pipeline facilities range from two to 18 inches in diameter and operate at pressures between 150 and 400 psig.

17. Gulf South states the Mississippi Facilities are used primarily to serve local distribution companies (LDCs) and municipal customers in Mississippi. Gulf South explains that the gas transported by the Mississippi Facilities is primarily from local production fields. However, Gulf South acknowledges that local production is not sufficient to meet local demand during higher demand periods.

18. Gulf South states that the Mississippi Facilities represent approximately seven percent of Gulf South's total pipeline mileage and transport 0.55 percent of Gulf South's total throughput. Gulf South states that the total contracted MDQ under service agreements with customers that rely on the Mississippi Facilities is approximately 74,500 MMBtu/d, but that in 2012 the facilities transported only about 22,350 MMBtu/d, roughly 30 percent of total contracted MDQ.¹²

19. Following the proposed sale of Mississippi Facilities to Boardwalk Mississippi, Gulf South states that meters will be installed at interconnections with Gulf South's retained upstream facilities. Gulf South states that it will cap the pipeline between the Mississippi-Alabama border and close valves at the Mississippi-Louisiana border so that no gas flows from the Mississippi Facilities to Gulf South's retained upstream facilities.

¹⁰ See Gulf South CP13-92-000 Application at 14-17 (describing the Mississippi Facilities). Exhibit Z of the Application contains a map of the facilities, a list of pipeline assets, a map showing nominal pipe diameter, and a map showing average operating pressure.

¹¹ Gulf South states in its application that some of the Louisiana Facilities are gathering facilities, but it does not identify these particular facilities. See *supra* note 4.

¹² Gulf South's April 17, 2013 Answer in Docket No. CP13-92-000 at Supplemental Affidavit of Kerry Comeaux (Comeaux Affidavit) at P 15.

3. Docket No. CP13-93-000: Texas Facilities

20. Gulf South proposes to abandon its Texas Facilities, located in East Texas, by sale to Boardwalk Texas. The Texas Facilities include: (1) approximately 535 miles of pipeline facilities with diameters ranging from one inch to 18 inches and operating pressures ranging from 150 psig to 500 psig; (2) the Longview 1 Compressor Station with a total of 1,215 hp; (3) the Longview 2 Compressor Station with a total of 3,300 hp; (4) the Mineola Compressor Station with a total of 660 hp; (5) the White Oak Compressor Station with a total of 1,600 hp; and (6) appurtenant facilities.¹³

21. Gulf South states that the Texas Facilities include four main pipelines that primarily serve LDCs and municipal customers. Gulf South further states that during part of the year the demands of the local market are served primarily from local production delivered directly into the Texas Facilities.¹⁴ However, Gulf South acknowledges that during the winter local production is not sufficient to meet demand.

22. Following the proposed abandonment of the Texas Facilities by sale to Boardwalk Texas, Gulf South explains that the facilities would continue to receive gas supplies from Gulf South's retained upstream facilities. In addition, Gulf South claims that in the spring and summer, excess local production accessed by the Texas Facilities could be transported by Boardwalk Texas, as a Hinshaw pipeline, under a limited jurisdiction blanket certificate for which Boardwalk Texas will apply under section 284.224 of the Commission's regulations.¹⁵

¹³ See Gulf South CP13-93-000 Application at 13-14 (describing the Texas Facilities). Exhibit Z of the Application contains a map of the facilities, a list of pipeline assets, a map showing nominal pipe diameter, and a map showing average operating pressure.

¹⁴ Gulf South states in its application that some of the Texas Facilities are gathering facilities, but it does not identify these particular facilities. See *supra* notes 4 & 11.

¹⁵ 18 C.F.R. § 284.224 (2013). Section 284.224 of the Commission's regulations permits Hinshaw pipelines and local distribution companies to apply for limited jurisdiction blanket certificates to provide NGA-jurisdictional interstate transportation services subject to the same terms and conditions that intrastate pipelines are allowed to provide interstate transportation services under section 311 of the Natural Gas Policy Act (NGPA) and subpart C of Part 284 of the Commission's regulations.

23. Gulf South states that the Texas Facilities represent approximately seven percent of Gulf South's total pipeline mileage and transport 0.71 percent of its overall throughput. It further states that the total MDQ under service agreements with customers that rely on the Texas Facilities is approximately 53,000 MMBtu/d, but that in 2012 the facilities transported only about 29,680 MMBtu/d, roughly 56 percent of total contracted MDQ.¹⁶

B. Request for Declaration that Boardwalk Affiliates will Qualify for Hinshaw Exemption

24. Upon receiving abandonment authorization, Gulf South states it will sell its North Louisiana and South Louisiana Facilities to Boardwalk Louisiana,¹⁷ its Mississippi Facilities to Boardwalk Mississippi, and its Texas Facilities to Boardwalk Texas. Gulf South requests that the Commission declare that these entities will qualify as Hinshaw pipelines that are exempt from the Commission's jurisdiction under section 1(c) of the NGA.

25. Gulf South asserts that each of its affiliated companies will meet the three requirements necessary to receive exemption from Commission jurisdiction under section 1(c) of the NGA, i.e.: (1) it will receive the gas it transports within or at the boundary of its state; (2) all of the gas transported on its system will be consumed within its state; and (3) its rates and services will be subject to regulation by a state commission.

II. Notice, Interventions, Protests, and Other Pleadings

A. Notices and Interventions

26. Notice of Gulf South's application to abandon its Louisiana Facilities in Docket No. CP13-91-000 was issued on March 13, 2013, and published in the *Federal Register* on March 20, 2013 (78 Fed. Reg. 17,193). The parties listed in Appendix A filed timely, unopposed motions to intervene.¹⁸ Helis Oil & Gas Company, L.L.C.; Virginia Natural Gas, Inc. together with Elizabethtown Gas; QEP Energy Company

¹⁶ Gulf South CP13-93-000 Application Exhibit Z-2 at P 8.

¹⁷ Boardwalk Louisiana plans to operate the North Louisiana Facilities and the South Louisiana Facilities as separate Hinshaw pipelines.

¹⁸ The Louisiana Public Service Commission (LPSC) filed a timely motion to intervene. Section 385.214(a)(2) of the Commission's regulations provide that "[a]ny State Commission . . . is a party to any proceeding upon filing a notice of intervention."

(QEP Energy); and Sequent Energy Management, L.P. (Sequent), filed late, unopposed motions to intervene.

27. Notice of Gulf South's application to abandon its Mississippi Facilities in Docket No. CP13-92-000 was issued on March 12, 2013, and published in the *Federal Register* on March 19, 2013 (78 Fed. Reg. 16,845-01). The parties listed in Appendix A filed timely, unopposed motions to intervene. Town of Beaumont (Beaumont), Mississippi (Beaumont); Precoat Metals; Virginia Natural Gas, Inc. together with Elizabethtown Gas; and Sequent filed late, unopposed motions to intervene.

28. Notice of Gulf South's application to abandon its Texas Facilities in Docket No. CP13-93-000 was issued on March 13, 2013, and published in the *Federal Register* on March 20, 2013 (78 Fed. Reg. 17,194-01). The parties listed in Appendix A of this order have filed timely, unopposed motions to intervene. Exelon Corporation; Virginia Natural Gas, Inc. together with Elizabethtown Gas; QEP Energy; and Sequent, filed late, unopposed motions to intervene.

29. Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.¹⁹ We will also grant the late motions to intervene, finding that they have demonstrated an interest in these proceedings and granting intervention at this stage of these proceedings will not cause undue delay or undue burden for the existing parties.²⁰

B. Protests, Answers, and Comments

30. Indicated Shippers,²¹ CenterPoint Energy Resources Corp. (CenterPoint), United Municipal Distributors Group (UMDG),²² Trans Louisiana Gas Pipeline, Inc.

¹⁹ 18 C.F.R. § 385.214(c) (2013).

²⁰ 18 C.F.R. § 385.214(d) (2013).

²¹ Indicated Shippers is an *ad hoc* group of producers including Apache Corporation, BP America Production Company, BP Energy Company, and SWEPI LP.

²² UMDG is an *ad hoc* group comprised of the following municipal-distributor customers of Gulf South: City of Brewton, Alabama; Town of Century, Florida; Utilities Board of the Town of Citronelle, Alabama; City of Fairhope, Alabama; Utilities Board of the City of Foley, Alabama; North Baldwin Utilities, Alabama; Okaloosa Gas District, Florida; City of Pascagoula, Mississippi; City of Pensacola, Florida; and South Alabama Gas District, Alabama.

(Trans Louisiana), Atmos Energy Corporation (Atmos Corp.), and Atmos Energy Marketing (Atmos Marketing) each filed protests to Gulf South's abandonment application in all three dockets.

31. In addition, MeadWestvaco Corporation (MeadWestvaco) and Louisiana Municipal Gas Authority (Louisiana Municipal)²³ filed protests in Docket No. CP13-91-000 to oppose Gulf South's application for authorization to abandon its facilities in Louisiana. Mobile Gas Service Corporation, jointly with Willmut Gas Company and the City of Vicksburg, Mississippi (collectively Mobile Gas, *et al.*), and Beaumont filed protests in Docket No. CP13-92-000 to oppose Gulf South's application for authorization to abandon its facilities in Mississippi.

32. Protestors include shippers and marketers of natural gas and industrial, residential, municipal, and commercial users of natural gas. In general, protestors state the Boardwalk Intrastates' services and rates would not replicate Gulf South's existing services and rates.

33. Gulf South filed answers to the protests in all three dockets. Answers to Gulf South's answer were filed by CenterPoint, Indicated Shippers, and jointly by Atmos Corp., Atmos Marketing, and Trans Louisiana in all three dockets and by Mobile Gas, *et al.* in Docket No. CP13-92-000.

34. Gulf South filed an answer in all three dockets to the answers by Mobile Gas, *et al.* and CenterPoint. In response, Mobile Gas, *et al.* filed an answer in Docket No. CP13-92-000 and CenterPoint filed an answer in all three dockets.

35. Rule 213(a) of the Commission's Rules of Practice and Procedure does not permit answers to protests or answers to answers unless otherwise ordered by the decisional authority. We will accept the answers identified above because they clarify the concerns raised by the protestors in their initial filings and provide information that has assisted in

²³ Louisiana Municipal is comprised of sixty-nine municipal gas utilities, gas districts, and small industrials that provide service to homes and businesses in their respective defined service territories in Louisiana. Thirty-four members receive firm transportation (FT), firm no-notice service (NNS), or interruptible transportation (IT) from Gulf South, and twelve of those members are directly impacted by the subject filing to abandon and sell the Louisiana Facilities to Boardwalk Louisiana. Those twelve members are the municipal utilities companies for the following Louisiana towns: Carencro, Delcambre, Dequincy, Estherwood, Hornbeck, Kinder, Moreauville, Oberlin, Scott, Simmesport, Sunset, and Washington. All of these municipal utilities rely on Gulf South for transportation of their natural gas supplies.

our decision-making process. Admitting the answers will not cause undue delay or unfairly prejudice other parties.

C. Commission Data Request and Related Filings

36. On June 4, 2013, Gulf South filed a response to a Commission staff data request issued in all three dockets. In response to Gulf South's data response, Louisiana Municipal filed comments, and supplemental protests were filed by CenterPoint in Docket Nos. CP13-91-000 and CP13-93-000, and by Mobile Gas, *et al.*, jointly with CenterPoint, in Docket No. CP13-92-000. Gulf South filed answers to the protestors' supplemental protests in each docket.

37. On June 28, 2013, Gulf South filed a draft Statement of Operating Conditions on behalf of each Boardwalk Intrastate (Operating Conditions). Comments on Boardwalk Louisiana's draft Operating Conditions were filed by Louisiana Municipal in Docket No. CP13-91-000. Mobile Gas, *et al.*, jointly with CenterPoint, filed comments in all three dockets on the respective Boardwalk Intrastates' draft Operating Conditions. Gulf South filed answers to the comments and supplemental protests to which Mobile Gas, *et al.* filed an answer in Docket No. CP13-92-000 regarding Boardwalk Mississippi's draft Operating Conditions.

38. We will accept any pleadings identified above that otherwise would be inadmissible under Rule 385.213(a)(2) as answers to protests or answers to answers²⁴ because they clarify the concerns raised by the protestors in their initial filings, provide information that has assisted in our decision making, and admitting these pleadings will not cause undue delay or burden for any parties.

D. Requests for Consolidation

39. Indicated Shippers, CenterPoint, and UMDG request that the Commission consolidate the three proceedings because they are closely intertwined, they have common issues of law and fact, and consolidation would promote administrative efficiency.

40. Gulf South opposes consolidation. It argues that the Commission formally consolidates proceedings only when there is a trial-type evidentiary hearing and consolidation would improve efficiency. Gulf South states that the Commission may consider the three proceedings together in one order without formal consolidation.

²⁴ 18 C.F.R. § 385.213(a)(2) (2013).

41. Although the separate applications filed by Gulf South in the three proceedings raise similar issues, the existing records in the three dockets are sufficient for us to consider and address all three applications together in this order as related cases. Therefore, we find no need for formal consolidation.²⁵

E. Requests for Trial-type Evidentiary Hearing

42. Atmos Corp.; Atmos Marketing; Trans Louisiana; CenterPoint; and Mobile Gas, *et al.* request a formal evidentiary hearing administered by an administrative law judge rather than the Commission relying on the written record in these proceedings to consider Gulf South's applications for abandonment authority. Gulf South opposes the requests for a formal evidentiary hearing, asserting it has provided all the evidence necessary for the Commission to reach its determinations.

43. The parties have raised no issues of material fact and the existing records in these proceedings are sufficient to support our decision in this order to deny Gulf South's applications for abandonment authority.²⁶ Therefore, there is no need for a trial-type evidentiary hearing. In any event, as the protestors only request that we not approve Gulf South's abandonment proposals without first conducting a formal evidentiary hearing, this order's denial of Gulf South's applications moots the protestors' requests for a formal evidentiary hearing.

III. Discussion

44. Since the facilities Gulf South proposes to abandon by sale are certificated facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposed abandonments are subject to the requirements of section 7(b) of the NGA.²⁷

45. Section 7(b) allows an interstate pipeline company to abandon jurisdictional facilities or services only if the abandonment is permitted by the "present or future public convenience or necessity."²⁸ The courts have explained that, in considering the criteria

²⁵ See *Williams Natural Gas Company*, 67 FERC ¶ 61,252, at 61,826 (1994).

²⁶ See, e.g., *Florida Gas Transmission Company, LLC*, 143 FERC ¶ 61,215, at P 27 & n.22 (2013).

²⁷ 15 U.S.C. § 717f(b) (2012).

²⁸ *Id.*

for abandonment under section 7(b), two important principles apply: (1) a pipeline which has obtained a certificate of public convenience and necessity to serve a particular market has an obligation, deeply embedded in the law, to continue to serve; and (2) the burden of proof is on the applicant to show that the public convenience or necessity permits abandonment, that is, that the public interest will in no way be disserved by abandonment.²⁹

46. The Commission examines abandonment applications on a case-by-case basis. In deciding whether a proposed abandonment is warranted, the Commission considers all relevant factors, but the criteria vary as the circumstances of the abandonment proposal vary. Historically, in reviewing an interstate pipeline's request to abandon facilities currently being used to provide jurisdictional services by selling the facilities to another pipeline company, the Commission has considered the needs of the two natural gas systems and the public markets they serve, the environmental effects of its decision, the economic effect on the pipelines and their customers, and the level of assurance of continued service to customers dependent on the subject facilities.³⁰ The Commission also weighs the claimed benefits of the abandonment against any detriments. When, as in these proceedings, an interstate pipeline seeks to abandon facilities currently being used for jurisdictional transportation services under the NGA by selling the facilities to a non-jurisdictional pipeline company, there is potential detriment because shippers that need service on the facilities would no longer be assured the same quality of service that shippers have under Commission's open-access policies, which ensure all shippers equal and competitive access to gas markets, the right to release their reserved capacity, and equal and timely access to information relevant to the availability of open-access transportation services.³¹

47. In support of its application, Gulf South claims that the public convenience and necessity permit its abandonment of the subject facilities because the abandonments will

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

³⁰ *Trunkline Gas Company and Sea Robin Pipeline Company*, 139 FERC ¶ 61,239, at P 26 (2012), *Northern Natural Gas Company*, 123 FERC ¶ 61,325, at P 12 (2008). See also *Transcontinental Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1330 (D.C. Cir. 1973).

³¹ *Transcontinental Gas Pipe Line Corporation & Crosstex CCNG Transmission, Ltd.*, 110 FERC ¶ 61,337, at n.26 (2005).

eliminate a subsidy borne by mainline shippers to maintain these facilities that they do not use, which will make Gulf South more competitive and, in turn, provide it with an improved opportunity to earn a reasonable rate of return. Gulf South states it is currently earning far below the 12.25 percent return provided for in the settlement approved in its last rate case.³² Gulf South also states that its customers that do rely on the facilities will in no way be disserved as Gulf South will renegotiate their service agreement to keep them economically whole for what would have been the remainder of the current terms under their service agreements with Gulf South. Specifically, Gulf South states that it will agree to reduce the rates these customers pay Gulf South by the amounts they have to pay the Boardwalk Intrastates for service on the facilities abandoned by Gulf South.³³

48. For the reasons described below, we find that Gulf South has failed to support its assertion that the public convenience or necessity permits its proposed abandonments. Therefore, we deny Gulf South's applications.

A. Continuity and Stability of Service

49. We turn first to the issue of continuity and stability of service, as it is the primary consideration in assessing whether the public convenience or necessity permits Gulf South's abandonment of the subject facilities and a permanent cessation of the jurisdictional services being provided thereon.³⁴ Gulf South claims that its abandonment of its Louisiana, Mississippi, and Texas Facilities will not disrupt the continuity and stability of service for its existing customers because none of these facilities are integral to its interstate transportation service. Gulf South states that rather the facilities are distribution-type and gathering facilities that carry only a small percentage of its total system throughput. Gulf South claims that the facilities in its applications are underutilized, and it alleges that abandoning them will actually benefit the shippers that they serve because, severed from its interstate system, the facilities will be able to better compete in the intrastate and gathering markets for which they were originally designed. Gulf South also asserts that shippers on the facilities will continue to receive the same quality of service at the same rates for the primary term of their existing contracts, thus being kept economically whole for that period of time.

³² *See, e.g.*, Gulf South April 17 Answer in Docket No. CP13-92-000 at 3-4.

³³ *Id.*

³⁴ *Southern Natural Gas Company*, 126 FERC ¶ 61,246, at P 27 (2009) (*Southern*). *See also Gulf Oil v. FERC*, 575 F.2d 67, 69-70 (3d Cir. 1978); *Farmland Industries, Inc. v. Kansas-Nebraska Natural Gas Co.*, 349 F. Supp. 670, 680-81 (D.C. Neb. 1972), *aff'd*, 486 F.2d 315 (3d Cir. 1973).

1. Are the Facilities Integral to Interstate Service?

50. In its three applications, Gulf South claims that the facilities it proposes to abandon are not integral to its open-access interstate transportation business. Gulf South characterizes the facilities proposed for abandonment as primarily small-diameter, low-pressure facilities that are used to deliver gas to local markets, that effectively function as intrastate and gathering facilities, and that are “typical of the non-jurisdictional intrastate and Hinshaw facilities that already operate in” the region.³⁵ Gulf South asserts that, historically, these facilities were designed and constructed in order to transport local gas production to local intrastate markets, and today are used primarily to facilitate the receipts and deliveries of natural gas on behalf of specific local customers. Gulf South maintains that the facilities were chosen for abandonment because of their ability to function on a stand-alone basis, without impacting Gulf South’s interstate service. In addition, Gulf South claims that the customers on the facilities will retain the ability to receive gas from the interstate market, via interconnections between the facilities and Gulf South’s retained mainline system.

51. Gulf South alleges that its proposed abandonments will allow it to focus on its core business of providing interstate transportation service, rather than the distribution-type and gathering functions which it claims are primarily provided by the Louisiana, Mississippi, and Texas Facilities. Further, Gulf South believes the Boardwalk Intrastates will be able to use the facilities to provide services to customers that are “more consistent with the needs of the intrastate . . . market,” thus benefiting customers in the areas of Louisiana, Mississippi and Texas where the facilities are located.³⁶

52. A number of protestors, including CenterPoint and Indicated Shippers, respond by arguing the facilities Gulf South seeks to abandon are currently being used, in fact, to provide interstate transmission service, delivering interstate gas supplies to customers throughout Gulf South’s operating region. They assert the facilities affected by the proposed abandonments are located in the heart of Gulf South’s mainline interstate transmission market area, directly connect with other Gulf South mainline pipeline facilities, and constitute “critical pipeline supply links to interstate gas supplies.”³⁷

³⁵ Gulf South April 17 Answer in Docket No. CP13-92-000 at 4; Gulf South April 18 Answer in Docket No. CP13-91-000 at 4; Gulf South April 18 Answer in Docket No. CP13-93-000 at 4.

³⁶ Gulf South CP13-91-000 Application at 29-30; Gulf South CP13-92-000 Application at 28-29; Gulf South CP13-93-000 Application at 27.

³⁷ CenterPoint Protest at 5.

Protestors point out that the size, length, and operating pressures associated with the facilities are typical of a subset of interstate pipelines' facilities that are functionalized as jurisdictional interstate transmission facilities and operated by "virtually all interstate transmission pipelines operating in the U.S. today."³⁸ Protestors further assert that approving Gulf South's abandonment of the subject facilities would be counterproductive to the Commission's open-access policies.

53. CenterPoint, which operates local distribution facilities in a number of states, including Louisiana, Mississippi, and Texas, notes that the facilities that Gulf South seeks to abandon have been "functionalized and classified as interstate transmission pipeline facilities for eight decades" and provide "vital links to interstate gas supply resources" for customers served by the facilities, including LDCs.³⁹ CenterPoint stresses that it does not rely on local production transported by the Louisiana, Mississippi, and Texas Facilities for its local distribution supplies, and asserts that if Gulf South's proposed abandonment of these facilities is approved, CenterPoint will be denied access to its supply resources from producing areas located elsewhere on, or off, the Gulf South system. Likewise, Indicated Shippers, which represents producers, argue the facilities need to continue to be available for jurisdictional transportation service to ensure that shippers that rely on the facilities have access to diversified interstate supply sources to meet their supply needs as well as an outlet for local production when supply exceeds local demand.⁴⁰ Indicated Shippers also echo CenterPoint's argument that the facilities are still utilized for, and essential to, interstate transportation service.⁴¹

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54. Gulf South's descriptions of the Louisiana, Mississippi, and Texas Facilities emphasize their lower operating pressures and smaller diameters compared to the higher operating pressures and larger diameters of the upstream facilities that Gulf South would

³⁸ *Id.*

³⁹ CenterPoint Protest at 6-7. UMDG, which represents municipal distributors and utilities, is also concerned that approval of Gulf South's abandonment proposals would reduce access to interstate supplies for firm shippers that rely on the subject facilities. UMDG Protest at 5.

⁴⁰ Indicated Shippers Protest at 9.

⁴¹ *Id.*

retain.⁴² Gulf South also emphasizes that the facilities it seeks to abandon serve distribution, municipal, and end-use customers, whereas its upstream facilities transport gas to other pipelines for further transportation to trading hubs and markets throughout the eastern United States. Even if we agreed with Gulf South's characterization of the facilities that it seeks to abandon as typical of the non-jurisdictional facilities operated by LDCs and Hinshaw pipelines, that characterization alone would not provide a sufficient rationale for approving its abandonment proposals.⁴³

55. Despite the Louisiana, Mississippi, and Texas Facilities' relatively low operating pressures and small diameters, these facilities nevertheless are part of Gulf South's

⁴² As described above, the North Louisiana Facilities' pipelines range from one inch to 20 inches in diameter, with the pipeline facilities in the western segment operating at pressures between 200 and 275 psig, and the pipeline facilities in the eastern segment operating at pressures between 250 and 300 psig; the South Louisiana Facilities' pipelines range from one to 16 inches in diameter and operate at pressures between 300 and 525 psig; the Mississippi Facilities' pipelines range from two to 18 inches in diameter and operate at pressures between 150 and 400 psig; and the Texas Facilities' pipelines range from one inch to 18 inches in diameter and operate at pressures ranging from 150 to 500 psig.

⁴³ In its applications, Gulf South also states that some of the facilities it seeks to abandon are gathering facilities, but it does not specifically identify any particular facilities it believes qualify for this NGA exemption. *See supra* notes 4, 11, & 14. This order denies Gulf South's request to abandon any of the facilities included in its applications because Gulf South has not met its burden of demonstrating that the facilities are no longer essential to Gulf South's provision of jurisdictional transmission service. However, this order is without prejudice to Gulf South filing future applications to abandon those facilities it believes are gathering facilities based on application of the Commission's primary function test for determining whether facilities function as non-jurisdictional gathering facilities. The Commission has acknowledged that it cannot deny abandonment authority when certificated facilities owned by an interstate pipeline company currently are performing a primary function of gathering. *See Tennessee Gas Pipeline Company*, 138 FERC ¶ 61,179, at P 13 (2012). However, we emphasize that if an abandonment application is opposed by customers that rely on the facilities, Gulf South will have the burden of demonstrating that the facilities' *current* primary function is non-jurisdictional gathering, rather than jurisdictional transmission. Thus, in a protested abandonment proceeding, it is not sufficient for the record to merely state that the facilities would function as gathering facilities if acquired and operated by a new owner. *Id.*

jurisdictional interstate pipeline system and have continuously been used to render interstate service under Gulf South's open access tariff for many customers on its system.⁴⁴ While Gulf South asserts its proposed abandonments would provide an opportunity for the Boardwalk Intrastates to "better utilize" the subject facilities to provide customers in Louisiana, Mississippi, and Texas with service more consistent with their needs, this assertion is disputed by all of the comments filed by customers that currently rely on the facilities. Further, even if it were clear that all of the facilities would qualify as non-jurisdictional Hinshaw or local distribution facilities if we approved Gulf South's sale of the facilities to the Boardwalk Intrastates, the NGA's exemptions for LDCs, Hinshaw companies, and their facilities do not compel us to permit an interstate pipeline to abandon facilities that are part of its integrated system just because they could qualify for one of the NGA's exemptions if owned by a company other than an interstate pipeline.⁴⁵ Because the facilities at issue are certificated facilities and Gulf South uses them to provide jurisdictional interstate transportation services, Gulf South has "an obligation, deeply embedded in the law, to continue service" on these certificated facilities.⁴⁶ Therefore, to receive abandonment authority, Gulf South must demonstrate, consistent with Commission precedent, that the public interest "will in no way be disserved" by abandonment.⁴⁷

⁴⁴ See *Michigan Public Service Commission v. Panhandle Eastern Pipe Line Company*, 689 F. Supp. 729 (W.D. Mich. 1988). In ruling that a state commission could not prevent deliveries of gas to industrial end users by an interstate pipeline company with an NGA certificate to extend its facilities, the court stated: "The Court attaches, for purposes of identifying the transportation as 'interstate' or 'intrastate,' no significance to the point at which the subject natural gas is transferred from high pressure transmission lines to low pressure lines." *Id.* n.3.

⁴⁵ See *Oklahoma Natural Gas Co. v. FERC*, 28 F.3d 1281 (D.C. Cir. 1994). The court rejected the argument that the Commission did not have jurisdiction to authorize an interstate pipeline to construct and provide transportation over a lateral that would deliver gas production from wells in Oklahoma to an electric generation plant in Oklahoma because the lateral would be providing local distribution service for which the NGA reserves jurisdiction to the states. The court found that the Commission's jurisdiction attaches to any facilities constructed by an interstate pipeline and used as part of its integrated system. *Id.* 1287.

⁴⁶ *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d at 214.

⁴⁷ *Id.*

2. Are the Facilities Underutilized?

56. Gulf South also claims that the facilities are not essential for interstate service because they are underutilized by shippers currently holding contracts for capacity on the facilities. Gulf South states that although the Louisiana, Mississippi, and Texas Facilities represent approximately 25 percent of Gulf South's overall pipeline mileage, they carry less than two percent of Gulf South's system throughput.⁴⁸ Gulf South emphasizes that in 2012, shippers with service agreements for firm capacity on the facilities transported far less than their total contracted MDQs, with the amount of gas actually flowing on the facilities ranging from only 20 percent of total contracted MDQ on the South Louisiana Facilities to 56 percent of total contracted MDQ on the Texas Facilities.⁴⁹ Gulf South asserts the Commission has authorized an interstate pipeline's abandonment of facilities to a non-jurisdictional Hinshaw pipeline under similar circumstances. For example, Gulf South cites a *Texas Eastern* order in which the Commission approved Texas Eastern's abandonment of underutilized lateral lines and stated that the purchaser, which would operate the laterals as non-jurisdictional Hinshaw facilities, might be able to increase utilization of the facilities.⁵⁰ Gulf South also cites an order in which the Commission

⁴⁸ See Gulf South CP13-91-000 Application at 4 (stating North Louisiana Facilities account for approximately five percent of Gulf South's total pipeline mileage and approximately 0.07 percent of its system throughput and South Louisiana Facilities account for eight percent of Gulf South's total pipeline mileage and approximately 0.42 percent of its system throughput); Gulf South CP13-92-000 Application at 4 (stating Mississippi Facilities account for seven percent of total pipeline mileage and approximately 0.55 percent of system throughput); and Gulf South CP13-93-000 Application at 4 (stating Texas Facilities account for seven percent of total pipeline mileage and approximately 0.71 percent of system throughput).

⁴⁹ Gulf South CP13-91-000 Application at 16-17 (stating the North Louisiana Facilities and the South Louisiana Facilities transported, respectively, 21 percent and 20 percent of total contracted MDQ for service on those facilities on an annual basis); Gulf South's April 17, 2013 Answer in Docket No. CP13-92-000 at Supplement Comeaux Affidavit at P 15 (stating the Mississippi Facilities transported 30 percent of total contracted MDQ on an annual basis); Gulf South CP13-93-000 Application at Exhibit Z-2 at P 8 (stating the Texas Facilities transported 56 percent of total contracted MDQ on an annual basis).

⁵⁰ *Texas Eastern Transmission Corporation*, 89 FERC ¶ 61,054, at 61,183 (1999) (*Texas Eastern*).

similarly authorized Columbia Gas to abandon underutilized pipeline and compression facilities by sale to a non-jurisdictional Hinshaw pipeline company.⁵¹

57. Protestors disagree that the levels of utilization for the Louisiana, Mississippi, and Texas facilities justify Gulf South's abandonment of any of these facilities. They point to *Transco I* and *Transco II*, in which the Commission denied applications by Transco to abandon its South Texas Pipeline Facilities, which were underutilized but still transporting significant volumes of gas.⁵² Protestors state that, where the Commission has approved abandonment of certificated facilities by transfer to non-jurisdictional companies, there was either no or miniscule throughput on the facilities.

58. UMDG argues that, despite Gulf South's assertion that the facilities are underutilized, Gulf South also acknowledges that the facilities include primary delivery points in shippers' firm service agreements for no-notice service under Rate Schedule NNS and firm transportation service under Rate Schedule FTS. UMDG states that, as small LDCs, these firm shippers' utilization levels are driven by their temperature-

⁵¹ *Columbia Gas Transmission Corporation*, 119 FERC ¶ 61,080 (2007) (*Columbia Gas*).

⁵² *Transcontinental Gas Pipe Line Corporation*, 103 FERC ¶ 61,118 (2003) (*Transco I*); *Transcontinental Gas Pipe Line Corporation*, 110 FERC ¶ 61,337 (2005) (*Transco II*). While the Commission acknowledged in *Transco I* that Transco's South Texas Pipeline Facilities were underutilized (averaging 37 percent utilization over the past five years), the Commission denied Transco's abandonment application because, *inter alia*, the facilities were still transporting significant volumes of interstate gas and the protestors included shippers with contracts for firm service. 103 FERC ¶ 61,118 at P 9. In *Transco II*, the Commission found that the facts regarding Transco's South Texas Pipeline Facilities, in many respects, were not significantly different those in *Transco I*. Although the facilities were underutilized, significant volumes still continued to flow on the facilities. Further, since service on the South Texas Pipeline Facilities was necessary to have gas transported from upstream facilities owned by Transco to downstream transmission facilities owned by Transco, the Commission found that the South Texas Pipeline Facilities were still essential to Transco's provision of its open-access service and the proposed abandonment would result in shippers having to pay higher, stacked rates to have their gas transported the same overall distance. In addition, while in *Transco II* only one shipper still had a grandfathered firm service agreement, the other shippers had not had the option under Transco's current rate design to contract for firm service to Transco's downstream mainline facilities and Transco's proposal did not provide for them to receive rate mitigation.

sensitive, largely residential and commercial loads and are typical of such customers' utilization levels in the Gulf Coast area.

59. While disputing Gulf South's claims that the facilities are underutilized, the protestors assert that Commission precedent indicates that a pipeline's underutilization argument is irrelevant when firm customers are objecting to a proposed abandonment of facilities.⁵³ CenterPoint argues that *Transco I*, and *Transco II*, as well as a *Southern Natural Gas Company* order,⁵⁴ are directly relevant to the instant proceeding because in each of those proceedings, the Commission denied the interstate pipeline's application for authorization to abandon facilities that were still being used to serve any shippers that had firm service agreements and protested the proposed abandonment.

60. Gulf South asserts that while the Commission has denied proposed abandonments opposed by firm shippers, the Commission did not announce a general policy in any of those orders that would amount to a "blanket rule," under which it would deny any application by an interstate pipeline to abandon facilities if it is protested by even one firm shipper.⁵⁵ According to Gulf South, the Commission's decisions in *Southern*, *Transco I*, and *Transco II* are distinguishable because in those cases the pipelines proposing to abandon facilities did not make commitments to keep their customers economically whole for what would have been the remaining terms of their existing contracts with the interstate pipelines, as Gulf South states it will do. Additionally, citing a *Koch Gateway* order, Gulf South asserts that the Commission has approved at least one abandonment proposal protested by a firm shipper where the pipeline made a specific commitment to provide for continuity of service *following* abandonment.⁵⁶

⁵³ See, e.g., CenterPoint Protest at 11.

⁵⁴ *Southern*, 126 FERC ¶ 61,246 (2009).

⁵⁵ See, e.g., Gulf South's April 17 Answer in Docket No. CP13-92-000 at 7-12.

⁵⁶ *Id.* 11 (citing *Koch Gateway Pipeline Company (Koch Gateway)*, 80 FERC ¶ 61,191, at 61,757 (1997), *vacated*, 82 FERC ¶ 61,166 (1997)). Two local distribution companies had firm service agreements with Koch Gateway for eight MMBtu/d and 250 MMBtu/d, respectively. Koch Gateway had offered to reserve capacity on the facilities that it proposed to abandon by sale to a non-jurisdictional intrastate pipeline and use the capacity to ensure continued service for the local distribution companies for two years. The Commission approved the proposed abandonment, but conditioned the authorization on Koch Gateway ensuring continued service for the two local distribution companies at no additional expense for the remainder of their contracts with Koch Gateway, including any renewals of the service agreements by the local distribution

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61. We disagree with Gulf South's assertions that current utilization of the facilities supports its abandonment proposals. Some shippers hold firm entitlements on the facilities under Rate Schedules NNS and FTS, and under the small customer rate options under those rate schedules.⁵⁷ Specifically, the total contracted MDQs are approximately 53,000 MMBtu/d on the Texas Facilities; 15,000 MMBtu/d on the North Louisiana Facilities and 89,700 MMBtu/d on the South Louisiana Facilities; and 74,500 MMBtu/d on the Mississippi Facilities.⁵⁸ Gulf South emphasizes that actual gas flows over the facilities are significantly lower than the total contracted MDQs for service on the facilities and well below capacity. Gulf South's data response also shows that usage of the subject facilities has steadily declined in recent years. However, the firm shippers nevertheless still have significant volumes of supply transported on the facilities, and that is more germane than whether firm shippers are transporting their full MDQs in deciding how much weight we should give to the low levels of throughput utilization of the facilities. Gulf South's NGA service obligation is represented by the MDQ of each firm shipper. This is the maximum quantity of capacity Gulf South must make available for the shipper to use on any given day in order to meet its customers' peak demands. As pointed out by some of the protestors, many of the firm shippers served by the facilities are small LDCs whose utilization levels are typical of such customers' utilization levels in the Gulf Coast area, as they are driven by their temperature-sensitive, largely residential and commercial loads.⁵⁹ Thus, when shippers have their own service obligations, their MDQs reflect their peak day requirements, and there is no expectation that they will take their full MDQs every day. In any event, Gulf South collects the fixed costs assigned to firm FTS and NNS services in the reservation component of the rates paid by firm shipper, regardless of how much gas they have transported.

62. We also disagree with Gulf South's claim that its abandonment requests are consistent with the Commission's decision in the cited *Texas Eastern* proceeding, in

companies if they exercised their rights of first refusal. The local distribution company that had protested the abandonment filed a request for rehearing, which the Commission dismissed as moot when it vacated its order approving the abandonment after the intrastate pipeline decided not to purchase the facilities.

⁵⁷ Gulf South June 4 Response to May 15, 2013 Staff Data Request.

⁵⁸ Gulf South CP13-91-000 Application at 16-17; Gulf South CP13-92-000 Application at; Gulf South CP13-93-000 Application at Exhibit Z-3 at 3.

⁵⁹ *See, e.g.*, UMDG protest at 5-6.

which the Commission approved abandonment of pipeline lateral facilities by sale to a Hinshaw pipeline company, finding that the lateral lines were currently underutilized and drawing from depleted gas reserves. In that case, unlike in Gulf South's case, the facilities were used only to service interruptible shippers and for aggregation balancing of interruptible supplies. Moreover, none of Texas Eastern's firm mainline shippers used the facilities or objected to the proposed abandonment.⁶⁰ Similarly, in the *Columbia Gas* proceeding cited by Gulf South, none of Columbia Gas's shippers opposed its proposed abandonment of pipeline and compression facilities by sale to a non-jurisdictional Hinshaw pipeline company.⁶¹

63. In previous cases, the Commission has held that where a pipeline company seeks to transfer facilities to a non-jurisdictional entity, it will presume a lack of continuity of service issues if none of the pipeline's shippers protest the abandonment.⁶² In this case, protests have been filed by a large number of Gulf South's shippers holding firm capacity on the facilities in each of the three states where the facilities are located.

64. As pointed out by the protestors, we have consistently denied abandonment of interstate pipeline facilities under similar circumstances. For example, in *Transco I*, the Commission found that Transco failed to support its contention that the facilities it proposed to abandon were "underutilized to the extent that they were not essential to the provision of open-access interstate transportation service."⁶³ The Commission found abandonment would have prevented Transco from honoring its long-term contractual obligations to provide interstate transportation service.⁶⁴ The Commission noted that where it has authorized interstate pipelines to abandon certificated pipeline facilities to intrastate entities, either no gas was flowing through the facilities or only small volumes of gas were being transported in interstate commerce, and there were no protests by shippers with contracts for firm service on the facilities proposed to be abandoned.⁶⁵

⁶⁰ *Texas Eastern*, 89 FERC at 61,183.

⁶¹ *Columbia Gas*, 119 FERC ¶ 61,080 at P 27.

⁶² See, e.g., *Columbia Gulf Transmission Company and Texas Eastern Transmission*, 139 FERC ¶ 61,236, at P 26 (2012).

⁶³ *Transco I*, 103 FERC ¶ 61,118 at P 16.

⁶⁴ *Id.* P 9.

⁶⁵ *Id.* at 61,373.

65. Likewise, in *Transco II*, which involved Transco's same South Texas Pipeline Facilities, the Commission found that Transco's proposed abandonment was not in the public interest because the facilities were essential to the provision of open-access interstate service.⁶⁶ While the protesters in *Transco II* were shippers holding contracts for interruptible service on the subject facilities, the Commission pointed out that they had not had the option under Transco's current service design to contract for firm service on the facilities.⁶⁷ Further, Transco's abandonment proposal in that proceeding would have bifurcated its jurisdictional system, as the facilities proposed to be abandoned served as a necessary conduit for gas to move from Transco's offshore facilities classified as jurisdictional transmission to Transco's downstream mainline facilities. In addition, the Commission found that although there could be slight rate benefits to Transco's customers on the rest of its system, the customers that needed to use the facilities to be abandoned were likely to pay higher rates if the abandonment were approved.⁶⁸ It is of particular note that in *Transco II* the Commission denied abandonment based on protests by interruptible shippers, finding in any event that the facilities were part of Transco's existing integrated interstate pipeline system and essential to its ability to provide open-access service on its system. While in the present case Gulf South's abandonment of its facilities in Louisiana, Mississippi, and Texas would not bifurcate its jurisdictional system, the proposals similarly would prevent Gulf South from satisfying existing, firm service obligations requiring use of the facilities it seeks to abandon.

66. In the *Southern* proceeding cited by CenterPoint, the pipeline proposed to abandon facilities claiming, as Gulf South does here, that the facilities were underutilized, and that abandonment would allow the pipeline to focus on its primary business of interstate natural gas transportation and to reduce its operating costs.⁶⁹ In that case, we found that "the most pertinent issues in determining whether the proposed abandonment is permitted by the public convenience or necessity are the impact of the abandonment on Southern's customers, those customers' current utilization rates . . . and whether there are continuation of service issues for the current shippers using the facilities."⁷⁰ Regarding utilization rates, the Commission explained the issue was whether Southern had adequately supported "its contention that the facilities are underutilized to the extent that

⁶⁶ *Transco II*, 110 FERC ¶ 61,337 at P 65.

⁶⁷ *Id.*

⁶⁸ *Id.* P 66.

⁶⁹ *Southern*, 126 FERC ¶ 61,246.

⁷⁰ *Id.* P 30.

they are not essential to the provision of its open-access interstate transportation service.”⁷¹ As it turned out in that case, the Commission found that contrary to Southern’s assertions, the subject facilities were almost fully utilized.⁷² Similar to the situation here, the Commission gave significant weight to the fact that the customers using the facilities under firm contracts had protested the proposed abandonment, evidencing their desire to continue to receive interstate transportation service over the facilities. The Commission stated that it could not find abandonment to be in the public convenience or necessity when the subject facilities are essential to an interstate pipeline meeting its existing service obligation.⁷³

67. The Commission rejects Gulf South’s argument that denying its abandonment proposals would impose a “blanket rule” that disallows abandonments if only one firm shipper filed a protest. In support of its argument, Gulf South points out that in the *Koch Gateway* order it cites,⁷⁴ we granted Koch Gateway’s authorization to abandon facilities over the objection of a firm shipper. In that proceeding, Koch Gateway had offered to reserve firm capacity on the facilities that it planned to sell to Metroplex Pipeline Company (Metroplex), a non-jurisdictional intrastate pipeline, and use the capacity for two years to continue transportation service on the facilities for the protesting shipper, an LDC, and one other firm shipper, another LDC that had not filed a protest. The Commission issued an order approving the proposed abandonment, but conditioned the authorization on Koch Gateway continuing to provide service for the protesting LDC, as well as the LDC that had not filed a protest, for the entire period they would have been entitled to service under the contracts with Koch Gateway, including any extension periods to which the LDCs would have had rights of first refusal under the Commission’s Part 284 open-access regulations, even if their service agreements did not provide such a right of first refusal.⁷⁵

⁷¹ *Id.*

⁷² *Id.* P 49.

⁷³ *Id.* P 50.

⁷⁴ *Koch Gateway*, 80 FERC ¶ 61,191 (1997).

⁷⁵ *Id.* 61,760-61,761. We note that the protesting LDC’s and the other LDC’s MDQs under their firm service agreements with Koch Gateway were for 250 MMBtu/d and eight MMBtu/d, respectively, and the protesting shipper’s average daily transportation volumes over the previous four years was less than 57 MMBtu. The only other firm shipper’s MDQ was 85 MMBtu/d, for a total MDQ of 343 MMBtu/d on the 108 miles of pipeline that Koch Gateway sought to abandon. In comparison, of the

(continued...)

68. In contrast, Gulf South's proposal would require its existing firm shippers to contract for intrastate service on the Boardwalk Intrastates. Gulf South has merely offered to keep shippers economically whole by discounting the rate of service on its retained upstream facilities until the end of the current terms under their existing service agreements. Moreover, it must be noted that the Commission vacated the *Koch Gateway* order prior to ruling on the protesting LDC's pending request for rehearing,⁷⁶ eliminating the order's precedential value.

69. For the above reasons, we reject Gulf South's contention that its abandonment requests are materially different from *Transco I*, *Transco II*, and *Southern* because it has committed to keep its shippers economically whole for the duration of their contracts. Moreover, as discussed below, we are not persuaded by Gulf South's claim that its proposal would keep its firm shippers economically whole.

3. Impact on Customers

70. Gulf South argues that abandonment will not have a negative impact on its customers, either economically or in terms of quality of service. Instead, Gulf South claims that it commits to ensuring customers continue to receive service for the remaining term of all existing service agreements. In support, Gulf South states there will be no modification in the services provided or rates charged and that Gulf South will keep customers economically whole for any combined services of Gulf South and the Boardwalk Intrastates for the terms of the customers' existing contracts.

a. Services

71. Gulf South claims that its customers' services will not be negatively impacted by the proposed abandonment because customers will continue to receive the same type of service they currently receive. Gulf South explains that an existing Rate Schedule NNS shipper that wishes to continue to take firm deliveries at a primary delivery point on the abandoned facilities could do so by (1) amending their service agreements with Gulf South to change the delivery point to a new point of interconnection between Gulf South and the Boardwalk Intrastate acquiring the facilities in the state to which the shipper's gas

groups of facilities at issue in this proceeding, Gulf South's North Louisiana Facilities have the lowest total MDQ, approximately 15,000 MMBtu/d, over approximately 390 miles of pipeline.

⁷⁶ *Koch Gateway*, 82 FERC ¶ 61,166 (1997) (order vacating prior order). The Commission vacated its abandonment order after Koch Gateway indicated that Metroplex had decided not to purchase the facilities.

is to be delivered; and (2) simultaneously executing an FT agreement with the Boardwalk Intrastate for receipt point capacity at its interconnections with Gulf South's upstream facilities and delivery point capacity at the desired point, which would now be located on the Boardwalk Intrastate system.

72. Gulf South claims that for the remaining primary terms of their current service agreements with Gulf South, its Rate Schedule NNS customers taking deliveries on the subject facilities would not experience operational impacts resulting from Gulf South's sale of the facilities to the Boardwalk Intrastates, despite the fact that after the abandonments, such customers would receive NNS service from Gulf South only on the upstream facilities that it would retain. Service on the facilities acquired by a Boardwalk Intrastate would be firm service under its Rate Schedule FTS. However, while the Boardwalk Intrastates would not offer a no-notice service as such, Gulf South states it would create a seamless replication of the volumetric flexibility currently available under Gulf South's Rate Schedule NNS all the way to the shippers' delivery points on the facilities acquired by the Boardwalk Intrastates by entering into an Operational Balancing Agreement (OBA) with each downstream Boardwalk Intrastate to provide a mechanism for any needed volumetric adjustments at their interconnection. Gulf South also asserts that its mainline system and the Boardwalk Intrastates' systems will be operated by the same personnel and the attributes of no-notice service will be maintained on the Boardwalk Intrastates' facilities through operational cooperation with Gulf South.

73. Protestors disagree and assert that the proposed abandonment will result in the degradation of service for Gulf South's current customers. They assert that Gulf South's current no-notice service will not be replicated after abandonment, in part because the facilities to be acquired by the Boardwalk Intrastates will no longer have access to their own on-system storage assets. Further, even assuming the shippers would still be able to receive the equivalent of no-notice service all the way to their delivery points, the shippers would be subject to the complexities caused by having to deal with duplicative contracts, rates, and tariffs.

74. Indicated Shippers point out that no-notice service, which will no longer be offered on the subject facilities, allows customers the flexibility to meet demand for natural gas without specifying a precise quantity to be scheduled for delivery. Similarly, UMDG questions how OBAs between Gulf South and the Boardwalk Intrastates for volumetric adjustments at their points of interconnection could replicate no-notice service to the ultimate point of delivery.

75. CenterPoint states the facilities Gulf South proposes to abandon largely serve customers currently receiving service under Gulf South's Rate Schedule NNS, and argues that if the abandonment is approved, shippers will lose their firm storage service component, which is critical to the provision of no-notice service. CenterPoint states that a significant percentage of no-notice customers are LDCs or municipal gas utilities that

serve high priority customers such as residential customers, schools, local businesses, and hospitals. CenterPoint asserts that under Gulf South's proposal there is no possibility that these customers will continue to receive no-notice service equivalent to that which they have received in the past. CenterPoint also points out that the newly created Boardwalk Intrastate pipelines will have no experience in providing no-notice service, and Gulf South has not demonstrated that the Boardwalk Intrastates will have access to gas supply and storage capacity necessary to the provision of no-notice service.

76. Louisiana Municipal and Atmos Corp. echo other protestors' concerns and further state that Gulf South's existing customers served by the subject facilities will be subject to duplicative jurisdictional structures since part of the service now provided by Gulf South would be taken over by the Boardwalk Intrastates, which would be subject to state regulation. Their concern is that customers have no idea what terms and conditions of service might be proposed by the Boardwalk Intrastates or ultimately accepted or required by state regulators should the Commission approve Gulf South's proposals.

77. In response to the protests, Gulf South states that it will coordinate its deliveries under Rate Schedule NNS to the Boardwalk Intrastates to meet the needs of its customers. This includes entering into OBAs that will purportedly cushion shippers from any minor imbalances that might occur as a result of reduced local production, higher than anticipated demand, or for other reasons. According to Gulf South, the OBAs will allow Gulf South to support flexible deliveries to the Boardwalk Intrastates to meet the customers' needs, such that the customers will not experience a material change in service during the remainder of the current terms of their contracts with Gulf South. Further, when the current terms of the shippers' existing contracts are about to expire, Gulf South states that it will "honor all contract renewal rights for service on Gulf South," and the Boardwalk Intrastates will offer new contracts at the rates approved by their respective state regulatory commissions.⁷⁷

i. Intrastates' Statements of Operating Conditions

78. As stated above, on June 28, 2013, Gulf South filed, in each of the dockets for its three abandonment applications, substantively identical *pro forma* Operating Conditions setting forth the terms and conditions under which intrastate services would be provided by the Boardwalk Intrastates. In the transmittal letter, Gulf South stated that "the terms and conditions in the draft [Operating Conditions] and service agreements will mirror its [Gulf South's] existing tariff as closely as possible, consistent with applicable state rules

⁷⁷ Gulf South's May 3, 2013 Answer at 5.

and regulations, including terms and conditions related to gas quality, creditworthiness, and billing procedures.”⁷⁸ Gulf South also stated that upon approval of its proposed abandonments, the Boardwalk Intrastates would file the Operating Conditions and service agreements for approval by their respective state regulatory agencies in Louisiana, Mississippi, and Texas.

79. Gulf South states that it will coordinate operations between itself and the Boardwalk Intrastates to ensure that the service its existing customers receive on the facilities acquired by the Boardwalk Intrastates duplicates the services those customers now receive from Gulf South, including firm and no-notice service. Gulf South asserts this cooperation and the Boardwalk Intrastates’ Operating Conditions will ensure far better intrastate service on the abandoned facilities than that typically offered on intrastate systems by intrastate pipelines providing interstate service under section 311 of the NGPA and Hinshaw pipelines providing service under certificates of limited jurisdiction issued under section 284.224 of the Commission’s regulations and section 7 of the NGA. Gulf South points out that the Commission has specifically rejected arguments that Hinshaw pipelines providing interstate transportation services under section 311 of the NGPA must duplicate the full terms and conditions of service offered by interstate pipelines under their Part 284 open-access certificates issued pursuant to section 7 of the NGA.⁷⁹ Gulf South asserts that customers receiving service under service agreements with both Gulf South and one of the Boardwalk Intrastates will have a firm service all the way to their delivery points on the abandoned facilities that is equivalent to what they receive today from Gulf South.

ii. Comments Opposing the Statements of Operating Conditions

80. Commenters point out that the only post-abandonment firm service offered by the Boardwalk Intrastates on the facilities will be FTS service, whereas most deliveries on the facilities currently are made by Gulf South under its Rate Schedule NNS. These commenters state that as local distributors, they require the ability to quickly respond to the volatility of their temperature-sensitive loads, and therefore object to the absence of provisions in the Boardwalk Intrastates’ Operating Conditions for NNS service including

⁷⁸ Gulf South’s June 28, 2013 transmittal letter filing its draft Statement of Operating Conditions for Boardwalk Intrastate in Docket No. CP13-91-000.

⁷⁹ Gulf South’s July 26, 2013 Answer at 3-6 (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1039 (D.C. Cir. 1987) and *Mustang Energy Corp. v. FERC*, 859 F.2d 1447, 1457 (D.C. Cir. 1988)).

a storage component for managing no-notice volumetric adjustments. CenterPoint states that local distribution and municipal utility operations are dependent on the NNS service they receive from Gulf South to serve the high priority requirements of residential and small commercial consumers, including schools, local businesses, and hospitals.

81. In addition to concerns about the lack of NNS service by the Boardwalk Intrastates, commenters also express concern that Gulf South's proposed abandonments will result in a number of additional adverse impacts on service. They emphasize that the Operating Conditions for the Boardwalk Intrastates do not provide for a number of things provided for in Gulf South's FERC tariff that are important to shippers, including the Right of First Refusal, North American Energy Standards Board (NAESB) Standards, Flexible Receipt and Delivery Points, Discounting and Negotiated Rates, and Capacity Release.

82. Commenters also note the absence of services that they claim enable them to mitigate price volatility risk, such as Rate Schedule FSS-B (Firm Storage Service-Bistineau); Rate Schedule ISS (Interruptible Storage Service); and Rate Schedule PAL (Park and Loan Service). They also note the absence from the Boardwalk Intrastates' Operating Conditions of the jurisdictional volumetric FTS-Small Customer Option (SCO) service, which they contend helps small volume customers, including many LDCs and municipal utilities, lower their transportation costs, as well as other seasonal, enhanced, and volumetric management services that Gulf South currently offers.⁸⁰

83. Even assuming that cooperation between Gulf South and the Boardwalk Intrastates can ensure that service on the facilities transferred to the Boardwalk Intrastates is equivalent to the NSS service customers currently receive from Gulf South, CenterPoint emphasizes that Gulf South has only committed to ensuring this equivalency of service for the remainder of customers' current terms under their existing service agreements with Gulf South. Gulf South has not offered to honor its commitment in its agreements for service under Rate Schedule NNS to provide customers a contractual right of first

⁸⁰ Identified seasonal, enhanced, and volumetric management services that are not provided for in the Boardwalk Intrastates' Operating Conditions but which are provided for in Gulf South's tariff include: Rate Schedule FTS (Firm Transportation Service-Summer Season Option); Rate Schedule EFT (Enhanced Firm Transportation Service); Rate Schedule EFT (Enhanced Firm Transportation Service-Summer Season Option); Rate Schedule PXS (Perryville [Louisiana] Exchange Service); Rate Schedule ENS (Enhanced Nomination Service); and Rate Schedule ATS (Aggregation Trading Service).

refusal to renew their NNS service all the way to their current delivery points at the end of the their current contract terms.⁸¹

84. Atmos Corp., Louisiana Municipal, and other commenters reiterate concerns about the unknown state regulatory environment that may exist if the Commission approves Gulf South's proposed abandonments, and whether the state regulatory agencies assuming jurisdiction over the facilities and services on those facilities will approve the accommodation proposed by Gulf South to replicate NNS service and other provisions of the Boardwalk Intrastates' Operating Conditions.

85. Finally, Atmos Corp., as an asset manager dependent on the use of secondary points, states the proposed abandonments would also interfere with customers' secondary receipt and delivery point contract rights by requiring customers to enter into contracts with both Gulf South and the Boardwalk Intrastates and pay two sets of rates.

iii. Gulf South's Responses to Comments on the Operating Conditions

86. In response to CenterPoint's contention that shippers will lose contract renewal rights if the abandonments are approved, Gulf South states that it will honor all contract renewal rights, which will allow customers to renew their contracts for service on Gulf South's system as far as the new interconnections with the Boardwalk Intrastates in Louisiana, Mississippi, and Texas.

87. Gulf South also urges the Commission to reject CenterPoint's and other protestors' contention that Gulf South would not be able to achieve a replication of NNS service since "the same operational personnel will continue to operate both Gulf South and [the Boardwalk Intrastates] following abandonment."⁸²

88. According to Gulf South, while the Commission's policies require interstate pipelines to offer no-notice service and imbalance management, it is appropriate for the Boardwalk Intrastates' Operating Conditions to offer only firm point to point FTS and ITS services. Gulf South emphasizes that the Commission has never required Hinshaw

⁸¹ CenterPoint Protest at 11. CenterPoint refers to the fact that all contracts for deliveries on the facilities include right of first refusal (ROFR) rights, as indicated in Gulf South's June 4, 2013 data responses.

⁸² Gulf South April 17 Answer in Docket No. CP13-92-000 at 5; Gulf South April 18 Answer in Docket No. CP13-91-000 at 4, 16; Gulf South April 18 Answer in Docket No. CP13-93-000 at 4, 16.

and intrastate pipelines to provide service under all of the same terms and conditions as interstate pipelines. Gulf South also points out that state commissions do not have to ensure that their policies provide protection for state-regulated pipelines' customers that is equal to or greater than the protection that the Commission finds appropriate for customers of interstate pipelines subject to its NGA jurisdiction. Gulf South adds, however, that it believes the Boardwalk Intrastates' draft Operating Conditions are consistent with those of similar existing intrastate pipelines, and voluntarily incorporate aspects of Gulf South's tariff not required of intrastate pipelines such as Gulf South's gas quality specifications and the creditworthiness standards.

89. Further, according to Gulf South, the Boardwalk Intrastates' draft Operating Conditions appropriately modify or do not include terms and conditions of interstate open-access service required by section 284.12 of the Commission's regulations, which requires interstate pipelines to comply with the business practice and electronic communication standards promulgated by the NAESB.⁸³ Gulf South also states that the protestors do not currently use many of the services provided in its jurisdictional tariff that they complain about being missing from the Boardwalk Intrastates' draft Operating Conditions.⁸⁴ Gulf South further states that certain of the missing tariff provisions are effectively replicated in the Boardwalk Intrastates' Operating Conditions.⁸⁵

90. Finally, in response to Atmos Corp.'s concern about the loss of secondary point rights, Gulf South points out that shippers do not have a guaranteed right to service at secondary points.

⁸³ 18 C.F.R. § 284.12 (2013).

⁸⁴ As discussed above, commenters object to the Boardwalk Intrastates' Operating Conditions' omission of a number provisions in Gulf South's tariff for Right of First Refusal, NAESB Standards, Flexible Receipt and Delivery Points, Discounting and Negotiated Rates, Capacity Release, FSS-B Firm Storage Service-Bistineau, ISS Interruptible Storage Service, PAL Service, a volumetric FTS-Small Customer Option for service, FTS Firm Transportation Service-Summer Season Option, EFT Enhanced Firm Transportation Service, EFT Enhanced Firm Transportation Service-Summer Season Option, PXS Perryville [Louisiana] Exchange Service, ENS Enhanced Nomination Service, and ATS Aggregation Trading Service.

⁸⁵ As an example, Gulf South cites the nomination cycles in the Operating Conditions, which it states corresponding to the NAESB nomination cycles in its FERC tariff.

Commission Response

91. The Commission has repeatedly found that “there is a presumption in favor of continued certificated service” and that “continuity and stability of service are the primary considerations in assessing the public convenience or necessity of a permanent cessation of service under section 7(b) of the NGA.”⁸⁶ We find that the impact of the proposed abandonments on those Gulf South customers wishing to continue receiving their contracted-for interstate transportation services through the facilities as currently configured would be significant and that the protestors’ concerns with respect to degradation of service are valid.

92. Gulf South has not adequately supported its contention that existing firm shippers will receive the same quality of service if we approve its abandonment of the facilities. If we approved Gulf South’s abandonment proposals, the Boardwalk Intrastates would provide service no longer subject to full Commission jurisdiction and the full panoply of open-access protections. Thus, the Boardwalk Intrastates would not be obligated to implement various terms and conditions of service that the Commission deems essential to its open-access regulatory regime, including procedures for allocation of capacity, capacity release mechanisms, flexible receipt and delivery points, and equal and timely access for all shippers to information relevant to the availability of open-access transportation services.

93. In particular, Gulf South indicates that no-notice service as currently provided under Gulf South’s Rate Schedule NNS would no longer be offered on the Louisiana, Mississippi, and Texas Facilities if the abandonments were approved. As stated by protestors, local distribution companies on Gulf South’s system rely on Gulf South’s NNS service to serve their core residential and commercial customers whose requirements fluctuate throughout the day depending on a variety of variables, including weather. The affected shippers point out that prior to the Commission’s industry-wide restructuring following issuance of Order No. 636,⁸⁷ they received bundled sales and

⁸⁶ *Tennessee Gas Pipeline Company, et al.*, 137 FERC ¶ 61,105, at P 20 (2011) (*Tennessee Gas*). See also *Southern*, 126 FERC ¶ 61,246 at P 27.

⁸⁷ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh’g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh’g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh’g*, 62 FERC ¶ 61,007 (1993), *aff’d in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

transportation service from Gulf South's corporate predecessors, but since restructuring they have received no-notice service which includes Gulf South's delivery of their gas supplies to their ultimate delivery point. In Order Nos. 636, *et seq.*, the Commission required all pipelines to offer no-notice service in response to concerns on the part of formerly bundled, city-gate, firm sales customers so that such customers could continue to receive service of the same reliability and quality in the unbundled environment as they had received in the bundled environment. The Commission attached such importance to this requirement that it declared "it is in the public interest for all pipelines to make no-notice service available to such shippers, because it enables pipeline customers to meet unexpected changes in peak service needs"⁸⁸ Gulf South's proposed abandonments would result in changes in the terms under which affected shippers could take deliveries at their city gates such that their current operational flexibility would be significantly undermined.

94. As emphasized by the protestors, no-notice service under Gulf South's Rate Schedule NNS includes a transportation component and a storage component, each with specifically contracted levels of service. In combination, these components enable Gulf South to balance NNS shippers' daily transportation receipts and deliveries. NNS shippers nominate transportation capacity only at primary or supplemental receipt points, not at primary delivery points.⁸⁹ Gulf South records any variance between daily allocated transportation receipts and deliveries either as a withdrawal from storage of the shipper's own previously injected gas in order to balance the shipper's excess transportation delivery takes for the gas day, or as an injection into storage of the shipper's transportation undertakes.⁹⁰ NNS shippers are exempt from Gulf South's uniform hourly flow requirement. Further, they can change delivery takes within maximum contracted transportation and storage parameters (provided necessary storage capacity or inventory is available) throughout the applicable daily or monthly period, without a nomination or exposure to penalties.

⁸⁸ *Re: Pipeline Service Obligations*, Order No. 636-B, 61 FERC ¶ 61,272 (1992). These principles are now memorialized in section 284.7(a)(4) of the Commission's regulations. 18 C.F.R. § 284.7(a)(4) (2013).

⁸⁹ NNS service is available only at primary delivery points, which are designated in the executed NNS contract.

⁹⁰ For customers utilizing the Small Customer Rate Option, the variances between allocated transportation receipts and deliveries are recorded on a monthly basis.

95. In contrast, FTS service offered under the Boardwalk Intrastates' draft Operating Conditions would be a point to point transportation-only service provided at a uniform hourly rate of flow at all times, subject to variance in the transporter's sole discretion.⁹¹ FTS shippers receiving service under the Boardwalk Intrastates' Operating Conditions would be allowed to nominate changes in transportation quantities only within the deadlines of four nomination cycles corresponding to the standard NAESB nomination cycles in Gulf South's tariff. The following scenario illustrates the difference in operational flexibility between the FTS service provided for in the Boardwalk Intrastates' draft Operating Conditions and the NNS service the affected shippers currently receive from Gulf South.

96. Section 6.12.2 of the General Terms & Conditions (GT&C) of the Boardwalk Intrastates' Operating Conditions would allow shippers to nominate increased daily quantities only within four nomination cycles corresponding to the NAESB cycles. Thus, if a shipper needed to nominate an increase in deliveries before the 5 pm Intraday 2 nomination deadline due to an unexpected decrease in temperature, the increase would become effective at 9 pm on the same day. But if a need for increased deliveries developed after the 5 pm Intraday 2 nomination deadline but before the 6 pm nomination deadline of the Evening Cycle, the nominated increase would not be effective until the beginning of the following gas day at 9 am. Thus, under the Operating Conditions, the FTS shipper would not begin to experience an increase in gas flow until 15 hours after the nomination, and the shipper would have to rely on the sole discretion of the Boardwalk Intrastate to waive the Operating Condition's uniform hourly flow requirement that receipts match takes on an hourly basis.⁹² Under the same circumstances, a shipper receiving no-notice service from Gulf South could immediately begin to satisfy its need for increased deliveries, subject only to the parameters of the NNS contract and Gulf South's tariff, which do not contain the limitations described in the Boardwalk Interstates' Operating Conditions.

⁹¹ The Operating Conditions' version of Rate Schedule FTS appears to have a stricter Uniform Hourly Rate of Flow requirement for FTS service than in Gulf South's tariff.

⁹² The Operating Conditions state that "Uniform Rate of Flow shall mean the quantity of gas to be received and delivered each hour," and that "[a]s practicable . . . shall mean that the hourly rate of flow shall be uniform unless Transporter determines, in its sole discretion that operating conditions exist on Transporter's system or portion thereof that would permit variations in hourly flow rates."

97. Although Gulf South commits to cooperate operationally, and to negotiate OBAs with the Boardwalk Intrastates to replicate the NNS service currently contracted by each affected shipper, Gulf South has not explained how such an accommodation would be accomplished through an OBA which customarily address operational imbalances at pipelines' interconnections, not at the downstream pipeline's delivery points. Moreover, even if the Boardwalk Intrastates agree to all terms needed by the affected shippers, there is no assurance that any accommodations with affiliates will be approved by state regulatory authorities.

98. In addition, the Boardwalk Intrastates proposed Operating Conditions do not provide shippers with the necessary provisions to retain their rights to the abandoned capacity. Gulf South's commitment to replicate the no-notice service is only for the remaining term of the existing contracts. However, according to Gulf South's June 4, 2013 data responses, all such contracts on the facilities proposed to be abandoned include ROFR rights that would give shippers the ability to avoid pre-granted abandonment at the end of their primary contract terms. Therefore, Gulf South's commitment to replicate shipper's NNS only through the end of their contracts primary terms does not adequately address the shipper's contractual rights. Under the assumption that affected shippers will continue to need the flexibility of no-notice service at their city gate delivery points, the public interest in making that service available to them will not end. Therefore, we find that Gulf South has not satisfied its burden of proof to show that the public interest will in no way be disserved by the permanent disruption of the continuity and stability of NNS it currently provides for the affected shippers.

99. Gulf South misses the point when it argues that any modification or absence in the draft Operating Conditions of tariff provisions included in Gulf South's FERC tariff is appropriate within the context of the Commission's light-handed regulation of intrastate pipelines. The subject facilities are currently operated by an interstate pipeline fully subject to the Commission's NGA jurisdiction, not by otherwise non-jurisdictional pipelines providing limited interstate service under the Commission's authorization. Thus, the issue here is whether approval of the abandonments will disrupt the continuity and stability of existing shippers' service.

b. Rates

100. Gulf South proposes that if the abandonments are approved, it will keep shippers economically whole with respect to service they receive from both itself and the Boardwalk Intrastates until the expiration of the primary terms of the existing Gulf South service agreements. Gulf South proposes to do so by reducing its shippers' existing contract rates and fuel charges by any comparable charges assessed by the Boardwalk Intrastates.

101. Protestors state that although Gulf South alleges that it will keep its customers economically whole for any combined service for the remainder of the term of their

existing contracts, Gulf South has provided no specifics on its plans to accomplish this. The protestors also are concerned that the “keep whole” provisions would not apply beyond the expiration dates of the primary terms specified in the customers’ existing contracts.

102. In any event, protestors emphasize that they would eventually have to pay more for service as the result of the rate stacking caused by the abandonments because, after expiration of their Gulf South contracts’ primary terms, Gulf South would no longer be reducing its rates by the amounts being charged by the Boardwalk Intrastates. CenterPoint adds that it and other firm shippers would also need to purchase storage services on Gulf South or other pipelines and incur multiple upstream transportation and storage fees to replace the access to storage they will lose if Gulf South’s abandonment proposals are approved.

103. Gulf South responds that shippers are not guaranteed that their existing rate levels will remain the same. In this regard, Gulf South states it is a virtual certainty that its rates will increase in a future rate case due to cost increases and declining throughput. Therefore, even if Gulf South’s abandonment proposals are rejected, shippers will eventually have to pay more than they do now for the service they currently receive.

Commission Response

104. The Commission has stated that when evaluating an abandonment proposal, it will consider the potential that shippers will be charged higher rates for the same services they currently receive.⁹³ Further, as pointed out by Indicated Shippers, the Commission does not require evidence of actual stacked rates to deny an application for abandonment.⁹⁴

105. Under Gulf South’s proposal, current firm shippers would have to contract for service and pay rates on both Gulf South’s interstate pipeline and a Boardwalk Intrastate. In its April 17 and 18 Answers, Gulf South reiterated its commitment to keep customers economically whole during the primary terms of their Gulf South contracts, by providing service at the contracts’ current rates “minus the total amounts charged for service on the [applicable Intrastate].”⁹⁵ However, Gulf South has not entered into contracts or

⁹³ *See Southern*, 126 FERC ¶ 61,246 at P 45.

⁹⁴ *Tennessee Gas*, 137 FERC ¶ 61,105 at P 26 (acknowledging that the rates, terms, and conditions of service were unknown, yet denied the abandonment application, in part, because the proposed abandonment would likely lead to higher stacked rates).

⁹⁵ *See, e.g., Gulf South April 17 Answer in Docket No. CP13-92-000 at 19.*

otherwise negotiated the specifics of its proposal with its customers. Moreover, as indicated above, all existing firm contracts on the subject facilities include ROFR rights that would give shippers the option to continue service at the end of their primary contracts term under certain conditions. Gulf South makes no commitment to keep its shippers economically whole after the termination of the primary terms of their contracts.⁹⁶ Therefore, any shipper electing to exercise its ROFR rights would be required to pay a combination of interstate and intrastate rates for service that would likely include the costs of the abandoned facilities in both sets of rates. This is because Gulf South has made no commitment to file a section 4 rate case to remove the costs of the facilities from its rates. In fact, Gulf South proposes the abandonments in lieu of filing a section 4 rate case.

106. Under these circumstances, and given our findings above regarding the continued necessity of these facilities in meeting Gulf South's existing service obligations, we find that Gulf South has not sufficiently demonstrated that customers would not be economically harmed if abandonment is approved.

B. Cost Causation Principles and Inability to Earn a Reasonable Rate of Return

107. In addition to asserting that abandonment will not adversely affect customers that rely on the Louisiana, Mississippi, and Texas Facilities, Gulf South also argues that its proposed abandonments are justified under the Commission's own policies which allocate costs to customers based on the cost of providing their services and which recognize a company's right to earn a reasonable rate of return.⁹⁷

108. Gulf South argues that in abandonment proceedings the Commission applies cost causation principles to better align incurred costs with services provided. Gulf South

⁹⁶ Current contracts for service that utilize the facilities have varying expiration dates. Some contracts are due to expire in early 2014 and others have expiration dates as late as 2020; the majority of contracts expire in 2016. *See* Gulf South June 4 Response to May 15, 2013 Staff Data Request.

⁹⁷ Gulf South states that under the "just and reasonable" standard set forth in section 4 of the NGA, a pipeline's rates must "reflect to some degree the costs actually caused by the customer who must pay for them." Gulf South CP13-91-000 Application at 24 (citing *Transcontinental Gas Pipe Line Corp.*, Opinion No. 507, 130 FERC ¶ 61,043, at P 20 (2010)); Gulf South CP13-92-000 Application at 23; Gulf South CP13-93-000 Application at 21.

cites *Panhandle Eastern Pipeline Company (Panhandle)*,⁹⁸ where the Commission authorized Panhandle's abandonment of a compressor station over the objection of upstream producers.

109. Gulf South further asserts that costs associated with the facilities that it seeks to abandon are subsidized by customers whose services do not rely on or use the facilities.⁹⁹ Gulf South states that this cross subsidy is demonstrated by the fact that in each applicable rate zone, throughput in relation to pipeline mileage is disproportionately lower on the subject facilities than on Gulf South's upstream mainline facilities, yet the same recourse rates apply to all services within the zone. For example, Gulf South states the Mississippi Facilities constitute seven percent of the pipeline mileage in Gulf South's entire system but are used for only 0.55 percent of its throughput.¹⁰⁰

110. Gulf South also states it has calculated hypothetical stand-alone rates for service that rely on the Mississippi Facilities and for services that rely on each of the other sets of facilities that it seeks to abandon so that they can be compared to maximum FTS recourse rate for each of its zones in order to estimate the level of subsidy paid by other shippers toward the costs of providing services on the facilities included in its abandonment applications.¹⁰¹ For the North Louisiana Facilities and the South Louisiana Facilities, Gulf South calculated unit rates of \$0.9412 per dekatherm (Dth) and \$0.3539/Dth, respectively, whereas the current Zone 2 rate is \$0.1440/Dth. For the Mississippi Facilities, Gulf South calculated a unit rate of \$0.6852/Dth, whereas the current Zone 3 rate is \$0.1648/Dth. For the Texas Facilities, Gulf South calculated a unit rate of \$0.2445/Dth, whereas the current Zone 1 rate is \$0.2032/Dth. Gulf South claims that because the stand-alone rates it calculated to recover the cost of providing services that

⁹⁸ *Panhandle Eastern Pipeline Company*, 141 FERC ¶ 61,119, at P 23 (2012).

⁹⁹ Gulf South CP13-91-000 Application at 24; Gulf South CP13-92-000 Application at 27; Gulf South CP13-93-000 Application at 25.

¹⁰⁰ Gulf South also states that the North Louisiana Facilities constitute five percent of its system's total pipeline mileage but are used for only 0.07 percent of its throughput, that the South Louisiana Facilities constitute eight percent of its system's total pipeline mileage but are used only for 0.42 percent of its throughput, and that the Texas Facilities constitute seven percent of its total pipeline mileage but are used for only 0.71 percent of its throughput.

¹⁰¹ Gulf South explains it calculated the stand-alone rates using remaining plant costs and throughput. It asserts the calculated stand-alone rates would be higher had it included general and administrative costs or operating and maintenance expenses.

use the facilities it seeks to abandon are more than the maximum recourse rate in each of its zones, it is evident that those shippers' services that rely on the facilities are being heavily subsidized by shippers that do not use the facilities.¹⁰²

111. Citing the Commission's Certificate Policy Statement,¹⁰³ Gulf South claims that its proposed abandonments of the facilities are justified to remove a long-standing subsidy and better align cost responsibility with cost causation. Gulf South maintains that the great majority of its shippers that do not rely on the facilities will benefit from the abandonments because the facilities' costs will be removed from rate base in its next rate case.

112. Protestors argue that the facilities they rely on are not being subsidized by other customers. They state that, unlike the protestors in the *Panhandle* order cited by Gulf South, firm shippers on the facilities Gulf South seeks to abandon pay a reservation rate to transport gas on both the facilities and the rest of Gulf South's system. Protestors emphasize that the Commission found the current rates on the Gulf South system just and reasonable and that the contracts for service on Gulf South's system at rates below the maximum recourse rates were freely negotiated.

113. Protestors assert that Gulf South's own actions indicate it agrees the discounted rates paid by shippers on the facilities, specifically the NNS rates paid by these shippers, are not subsidized by other services. In this regard, they point out that Gulf South insisted NNS rates remain the same during negotiations leading to its last rate settlement agreement filed in 1997. They stress that Gulf South has not filed a rate case in over fifteen years. Moreover, protestors state they are unaware of any other Gulf South shippers claiming that the rates they pay are subsidizing services on the facilities that the protestors rely on.

114. Further, protestors assert the public convenience or necessity does not permit the abandonment of the facilities because Gulf South has chosen not to file under section 4 for approval of revised rates and its fuel retention mechanism. As protesting shippers would still need service on the retained Gulf South system to the planned interconnections with the Boardwalk Intrastates if the Commission grants abandonment,

¹⁰² Gulf South April 17 Answer in Docket No. CP13-92-000 at 24; Gulf South April 18 Answer in Docket No. CP13-91-000 at 25; Gulf South April 18 Answer in Docket No. CP13-93-000 at 24.

¹⁰³ *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).

the protestors request that the Commission condition abandonment upon Gulf South filing a rate case to reexamine its rates and fuel retention mechanism.

115. Gulf South also argues that abandoning the facilities, in addition to eliminating the current subsidization of services on the facilities, will allow Gulf South to streamline its system and provide it with an improved opportunity to earn a reasonable rate of return, which it asserts is consistent with principles outlined by the U. S. Supreme Court in *FPC v. Hope Natural Gas Company (Hope)*.¹⁰⁴ Gulf South states that in *Hope*, the Court required the Commission to balance investor and customer interests when setting just and reasonable rates.

116. Gulf South claims that its actual return on equity is substantially below its Commission-approved rate of return of 12.25 percent.¹⁰⁵ It states its estimated return on equity was 7.9 percent in 2010, 5.3 percent in 2011,¹⁰⁶ and 8.33 percent in 2012.¹⁰⁷ Gulf South explains it faces intense competition in interstate and intrastate markets, forcing it to heavily discount its transportation rates. It alleges that if it proposed to build today the facilities that it seeks to abandon, the Commission would likely not find the construction of the facilities to be in the public convenience and necessity because the volumes transported and load factors would not justify facility costs.

117. Protestors argue that Gulf South's rate of return argument is unsubstantiated. They assert that the Court in *Hope* did not support investor interests over customer interests, but stated, "the primary aim of this [NGA] legislation was to protect consumers against exploitation at the hands of natural gas companies."¹⁰⁸ Moreover, protestors argue that Gulf South merely speculates when it claims that abandoning the facilities

¹⁰⁴ See, e.g., Gulf South CP13-91-000 Application at 26 (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944)).

¹⁰⁵ See *Koch Gateway Pipeline Company*, 84 FERC ¶ 61,143 (1998) (approving settlement, which provided a 12.25 percent rate of return on equity). Gulf South was formerly Koch Gateway Pipeline Company. See *Gulf South Pipeline Co., LP (Formerly Koch Gateway Pipeline Company)*, 101 FERC ¶ 61,156 (2002).

¹⁰⁶ See, e.g., Gulf South CP13-91-000 Application at n.50 (citing BenteK Energy, Pipeline Market Tracker, Table entitled "Pipeline Performance Metrics," May 21, 2012).

¹⁰⁷ See, e.g., Gulf South's April 18 Answer in Docket No. CP13-91-000 at 25.

¹⁰⁸ See, e.g. Gulf South CP13-91-000 Application at 26 (citing *Hope*, 320 U.S. 591, 610-12 (1944)).

would give it an opportunity to earn a reasonable rate of return. They state Gulf South itself has presented a bleak portrayal of its competitive position in current market conditions.

118. Protestors also assert that Gulf South's concerns over cost allocation and rate design and return on equity are economic concerns. Citing *Northern Natural Gas Company, et al. (MOPS)*, they argue that these economic concerns are appropriately addressed in a section 4 rate proceeding, not a section 7 abandonment proceeding.¹⁰⁹

119. Gulf South states that it considered filing a rate case prior to filing its abandonment applications. Although Gulf South acknowledges that a rate case would result in higher recourse rates, it maintains that a rate case would likely not improve its overall return on equity because its system is located in a competitive market and roughly 70 percent of its customers receive discounted rates. Therefore, even with higher maximum recourse rates, Gulf South claims the vast majority of its customers would continue to pay discounted rates or would contract for transportation services elsewhere.

120. Gulf South distinguishes itself from the applicants in *MOPS*, where the Commission denied abandonment and found that a section 4 rate proceeding was the appropriate forum to address the economic issues the applicants raised. Gulf South argues that the Commission should grant its request for abandonment authorization because unlike the applicants in *MOPS*, it has made sufficient efforts to remedy its revenue problems, including attempting to sell facilities, negotiating rates with shippers, and considering a rate proceeding. Gulf South also cites *Panhandle* to argue that the Commission recognizes that the public interest may be served by permitting pipelines to abandon facilities to reduce costs.¹¹⁰

Commission Response

121. We find that Gulf South has not supported its assertions that abandonment is permitted by the public convenience or necessity to eliminate a subsidy or to provide Gulf South with a better opportunity to earn its allowed return on equity. As explained below, these concerns are more appropriately addressed in a section 4 rate proceeding.

¹⁰⁹ *Northern Natural Gas Company, et al.*, 135 FERC ¶ 61,048 (2011) (*MOPS*).

¹¹⁰ *Panhandle*, 141 FERC ¶ 61,119 at P 23. As discussed above, in *Panhandle*, the Commission authorized *Panhandle*'s abandonment of a compressor station over the objection of upstream producers of gas that had been compressed by the compression facilities but were not themselves shippers.

122. Gulf South's claim that mainline shippers subsidize services on the facilities to be abandoned is not supported. In Gulf South's last rate case filed in 1997, Gulf South proposed and the Commission approved the use of a zone gate method for cost allocation to replace its previously effective six-tier method.¹¹¹ In short, the current zone gate methodology divides Gulf South's system into four zones. FT and IT shippers pay the costs associated with the facilities in the zone or zones that contain and lie between their respective receipt and delivery points. NNS shippers pay a system average, or postage stamp rate. The Commission approved this zone gate method over protestors' objections finding that it matches cost responsibility with cost incurrence, and is therefore, a just and reasonable method for assigning costs on the system.¹¹² The Commission cannot determine whether this method no longer fairly matches cost incurrence with cost responsibility based on one operational factor (i.e., proportional throughput within a zone) as Gulf South claims. Rather, such determinations must be based on Gulf South's overall operations including, among other things, consideration of operational areas and constraint points, the factors the Commission considered in its last rate case.

123. We also reject Gulf South's argument that it has demonstrated that shippers' services on the subject facilities are being inappropriately subsidized by other customers with its calculation of stand-alone rates for services using the subject facilities that are higher than the current FTS rate in each zone. Gulf South's calculations assume that the facilities in each state should be a separate zone for allocation and rate making purposes. However, Gulf South, provides no support for treating each of these facilities as a separate zone.¹¹³

124. In considering Gulf South's subsidy arguments, it is also worth noting that no shipper in any of the subject proceedings supports Gulf South's claims. In addition, Gulf South's contention that its proposals would benefit mainline shippers because the abandoned facilities' costs would be eliminated in its next rate case is unavailing. Gulf South filed the subject abandonment applications in lieu of filing a section 4 rate case. Thus, if abandonment is authorized, it appears unlikely that Gulf South would file a section 4 rate case anytime in the near future.

¹¹¹ *Koch Gateway Pipeline Co.*, 84 FERC at 61,785.

¹¹² *Id.* 61,766.

¹¹³ Gulf South's reliance on the no-subsidy test in the Certificate Policy Statement is misplaced. The Certificate Policy Statement applies to certificating new pipeline construction. See Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,745.

125. In sum, we find that the subject abandonment proceedings are not the proper forum for evaluating the subsidization arguments raised by Gulf South here. Rather, if Gulf South believes there is a more appropriate method for allocating costs on its system than its current zone gate methodology it should file a section 4 rate case where the Commission can make an informed decision based on the overall operations of Gulf South's system. In this regard, we find that Gulf South's reliance on *Panhandle* is misplaced. In that case, the Commission did not address the method for allocating costs on Panhandle's system. Rather, while the Commission approved the abandonment of certain facilities over the objection of protestors, the Commission noted that the "costs associated with the Adams Compressor Station are being borne not by the protestors, but by the firm and interruptible shippers transporting gas downstream of the pooling point."¹¹⁴

126. We also disagree with Gulf South's assertion that its proposed abandonment of facilities is supported because it will provide Gulf South an improved opportunity to earn a reasonable rate of return. As we have explained above, our emphasis in abandonment cases is on continuity and stability of existing services, not on establishing rates to provide a company with an opportunity to earn a reasonable return on equity. Thus, we reiterate that these issues are appropriately addressed in the context of a section 4 rate case where rates can be established based on current costs and billing determinants and a rate of return can be allowed based on the financial and business risks faced by Gulf South.¹¹⁵

127. Moreover, Gulf South has not alleged, much less demonstrated, that it is unable to recover its operating costs for the facilities. Instead, Gulf South claims that abandonment of the facilities will provide it a better opportunity to earn a reasonable return by allowing it to focus its operations on interstate transportation. Further, Gulf South acknowledges

¹¹⁴ *Panhandle*, 141 FERC ¶ 61,119 at P 23.

¹¹⁵ As to Gulf South's assertion that higher recourse rates would not likely improve Gulf South's overall rate of return, we note that while a company has a right for an opportunity to earn a reasonable rate of return, the Commission does not guarantee that a regulated entity will earn its allowed return. *See FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 590 (1942); *Skelly Oil Co. v. FPC*, 375 F.2d 6, 32 (10th Cir. 1967), *rev'd in part on other grounds, sub nom. Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

that its system as a whole is not able to earn its allowed return because of competition, which has required it to “discount heavily its transportation rates.”¹¹⁶

128. Gulf South mistakenly relies on *MOPS* to argue that when an applicant has already considered or attempted several alternatives to a section 4 rate proceeding, the Commission would approve abandonment. While indicating its sensitivity to the economic realities faced by pipelines, the Commission in *MOPS* reaffirmed that “continuity and stability of existing service are the primary considerations in assessing the public convenience or necessity of a permanent cessation of service under section 7(b) of the NGA,”¹¹⁷ and found that the evidence presented by the applicants did not support a finding that the public convenience or necessity permitted the removal of the MOPS facilities from service. The Commission also stated that “[i]n the absence of Applicants and their shippers agreeing to negotiated rates, the appropriate forum for determining what rates are necessary to provide applicants an opportunity to recover their costs in providing services using the MOPS facilities is a section 4 rate case.”¹¹⁸ Similarly, the appropriate forum for Gulf South to address its rate of return issues is a section 4 rate case.

¹¹⁶ Gulf South CP13-91-000 Application at 26; Gulf South CP13-92-000 Application at 25; Gulf South CP13-93-000 Application at 23.

¹¹⁷ *MOPS*, 135 FERC ¶ 61,048 at P 35 (citing *Southern*, 126 FERC ¶ 61,246).

¹¹⁸ *Id.* P 43. The Commission’s order in *MOPS* acknowledged the applicants’ explanation that before they filed their application for abandonment authority they had made good faith attempts to sell the MOPS facilities to the producer/shippers that rely on the facilities or other third parties, offering to transfer the facilities at current net book value, but no one expressed interest in purchasing the system, even if the applicants would retain certain obligations relating to future abandonment costs. The MOPS applicants also had, at the request of some MOPS producers, evaluated the option of continuing to operate the system under a negotiated rate agreement that would allow the applicants an opportunity to recover their costs, but that only two smaller producers with approximately 11 percent of the MOPS throughput had agreed to the proposal. It was only after continued negotiations with the larger MOPS producers failed to produce an agreement that the MOPS applicant filed their request for abandonment authority, which the Commission denied, finding that a section 4 rate case was the appropriate forum for determining what rates were necessary to provide the applicants an opportunity to recover their costs in providing services using the MOPS facilities. We note that the owners of the MOPS facilities have filed another application in Docket No. CP13-491-000 for authorization to abandon the MOPS facilities.

129. In conclusion, the record shows that shippers hold firm contracts for entitlements on each group of facilities that Gulf South seeks to abandon and all three of Gulf South's abandonment applications are protested by a number of these shippers. Gulf South cannot satisfy the standard that the public interest "in no way be disserved" by its proposed abandonments,¹¹⁹ since it has not demonstrated, among other things, that the claimed benefits to its other customers would outweigh the detriment to shippers that rely on these facilities. Accordingly, we find that Gulf South's proposed abandonments are not in the public interest because the facilities to be abandoned are essential to the provision of open-access interstate service.

C. Request for Determination for Hinshaw Pipeline Exemption

130. Gulf South requests the Commission find pursuant to section 1(c) of the NGA that, upon abandonment and sale of the Louisiana, Mississippi, and Texas Facilities to the respective Boardwalk Intrastate, the facilities would be exempt from the Commission's jurisdiction as Hinshaw pipeline facilities.

131. In this case, we have determined that the facilities continue to provide essential interstate transportation service and abandonment is not permitted by the public convenience or necessity. Therefore, we need not reach a decision as to whether the facilities would be exempt from the Commission's jurisdiction under section 1(c) of the NGA if sold to the Boardwalk Intrastates, segregated from Gulf South's retained upstream facilities, and operated by the Boardwalk Intrastates as described in Gulf South's applications.¹²⁰

¹¹⁹ *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d at 214.

¹²⁰ See *Transcontinental Gas Pipe Line Co., et al. (Transco)*, 129 FERC ¶ 61,255, at P 42 (2009). In *Transco*, applicants requested that the Commission find under its primary function test that, upon abandonment and modification by the gathering company seeking to purchase the subject facilities, the facilities' primary function would be non-jurisdictional gathering. The Commission explained when an interstate pipeline's proposed abandonment of facilities is protested, the Commission first analyzes the function of the facilities as they *currently* operate as part of the interstate pipeline's system, not how they would operate if the proposed abandonment were approved and the facilities were acquired and operated by another company as part of the latter's existing system or as a stand-alone system. The Commission found, as in this case, that the subject facilities were being used to provide essential interstate transportation service and Transco's proposed abandonment of the facilities therefore was not permitted by the public convenience or necessity. Therefore, the Commission stated it did not need to

(continued...)

D. Environmental Review

132. Pursuant to the Commission's Rules and Regulations, an environmental assessment will not be prepared for certain actions that the Commission has found to have no significant effect on the human environment and qualify as a "categorical exclusion."¹²¹ "Abandonment of facilities by sale that involves only minor or no ground disturbance to disconnect the facilities from the system," qualifies as a project that is categorically excluded.¹²²

133. In its May 22, 2013 Environmental Assessment Report, Commission staff concluded that Gulf South's proposal, including its three applications for abandonment authority, qualifies as a project that is categorically excluded. Therefore, no environmental assessment was prepared. We note that in CenterPoint's June 18, 2013 Supplemental Protest filed in all three dockets, CenterPoint argues that Gulf South's proposed abandonments, and the construction that may result, would have a significant effect on the human environment and requests that the Commission reconsider its Environmental Assessment Report. Since this order denies Gulf South's applications to abandon facilities, CenterPoint's argument is moot.

134. At a hearing held on December 19, 2013, the Commission on its own motion received and made a part of this proceeding's record all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) Gulf South's applications to in Docket Nos. CP13-91-000, CP13-92-000, and CP13-93-000 for authorization to abandon facilities are denied. The motions for late intervention discussed herein are granted.

(B) The requests for consolidation of Docket Nos. CP13-91-000, CP13-92-000, and CP13-93-000 are denied.

(C) The requests for a formal, trial-type evidentiary hearing are denied.

reach a decision as to whether the facilities with Copano's planned modifications would perform an NGA exempt gathering function. *Id.* P 42.

¹²¹ 18 C.F.R. § 380.2(a) (2013).

¹²² 18 C.F.R. § 380.4(a)(31) (2013).

(D) The request for a finding that the subject facilities would be non-jurisdictional Hinshaw pipeline facilities if transferred to Boardwalk Mississippi, Boardwalk Louisiana, and Boardwalk Texas is dismissed as moot.

(E) The answers, replies to comments, protests, answers, and responses discussed herein are accepted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A Timely Interventions

CP13-91-000

- Apache Corporation
- Atmos Energy Corporation
- Atmos Energy Marketing LLC
- Atmos Pipeline - Texas
- BG Energy Merchants, LLC
- Boise Packaging & Newsprint, L.L.C.
- BP America Production Company
- BP Energy Company
- Calpine Energy Services, L.P.
- CenterPoint Energy Resources Corp.
- Louisiana Municipal Gas Authority
- Louisiana Public Service Commission
- MeadWestvaco Corporation
- Omega Protein, Inc.
- Sapa Extrusions North America
- Southern Company Services, Inc.
- SWEPI LP
- Texla Energy Management Company, Inc.
- Town of Iota, Louisiana
- Trans Louisiana Gas Pipeline, Inc.
- United Municipal Distributors Group, on its own and on behalf of its members:
City of Brewton, Alabama; Town of Century, Florida; Utilities Board of the Town of Citronelle, Alabama; City of Fairhope, Alabama; Utilities Board of the City of Foley, Alabama; North Baldwin Utilities, Alabama; Okaloosa Gas District, Florida; City of Pascagoula, Mississippi; City of Pensacola, Florida; and South Alabama Gas District, Alabama.

CP13-92-000

- Apache Corporation
- Atmos Energy Corporation
- Atmos Energy Marketing LLC
- Atmos Pipeline - Texas
- BG Energy Merchants, LLC
- BP America Production Company
- BP Energy Company
- Calpine Energy Services, L.P.
- CenterPoint Energy Resources Corporation

- City of Vicksburg, Mississippi
- Denbury Onshore, LLC
- Double G Coatings Company, L.P.
- Griffin Industries LLC
- Mobile Gas Service Corporation
- Southern Company Services, Inc.
- SWEPI LP
- Texla Energy Management Company, Inc.
- Trans Louisiana Gas Pipeline, Inc.
- United Municipal Distributors Group, on its own and on behalf of its members:
City of Brewton, Alabama; Town of Century, Florida; Utilities Board of the Town of Citronelle, Alabama; City of Fairhope, Alabama; Utilities Board of the City of Foley, Alabama; North Baldwin Utilities, Alabama; Okaloosa Gas District, Florida; City of Pascagoula, Mississippi; City of Pensacola, Florida; and South Alabama Gas District, Alabama.
- Willmut Gas Company

CP13-93-000

- Apache Corporation
- Atmos Energy Corporation
- Atmos Energy Marketing LLC
- Atmos Pipeline - Texas
- BG Energy Merchants, LLC
- BP America Production Company
- BP Energy Company
- Calpine Energy Services, L.P.
- CenterPoint Energy Resources Corp.
- Southern Company Services, Inc.
- SWEPI LP
- Trans Louisiana Gas Pipeline, Inc.
- Texla Energy Management Company, Inc.
- United Municipal Distributors Group, on its own and on behalf of its members:
City of Brewton, Alabama; Town of Century, Florida; Utilities Board of the Town of Citronelle, Alabama; City of Fairhope, Alabama; Utilities Board of the City of Foley, Alabama; North Baldwin Utilities, Alabama; Okaloosa Gas District, Florida; City of Pascagoula, Mississippi; City of Pensacola, Florida; and South Alabama Gas District, Alabama.