

151 FERC ¶ 61,036
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Atmos Energy Corporation
v.
American Midstream (Midla), LLC

Docket No. RP14-638-000

American Midstream (Midla), LLC

Docket Nos. CP14-125-000
CP14-126-000
RP14-689-000
RP14-689-001
RP14-1049-000
RP14-1049-001
RP14-1049-002
(not consolidated)

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued April 16, 2015)

1. On December 11, 2014, American Midstream (Midla), LLC (Midla) filed, on behalf of itself and the other Supporting Parties,¹ a Stipulation and Agreement (Settlement) that resolves all issues raised in the above captioned proceedings. As discussed below, the Commission will approve the Settlement without modification.

¹ In addition to Midla, the Supporting Parties are Atmos Energy Corporation; BASF Corporation; Enbridge Marketing (US) L.P.; Entergy Services, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC and Entergy Arkansas, Inc.; EV Properties, L.P.; Louisiana Public Service Commission; Louisiana Municipal Gas Authority; Mississippi Public Service Commission; and Tunica Pipeline, LLC.

I. Background

2. In mid-year 2013, Midla began discussions/negotiations with customers regarding the condition of its pipeline and the need for significant infrastructure investment in order to continue to operate the pipeline safely. On November 27, 2013, Midla issued an open season notice that sought bids for capacity on a new replacement pipeline system to be constructed in one of three configurations. Among other things, the notice provided that the absence of a binding request by a firm customer would serve as notice of the customer's consent to the termination of service. No bids were submitted in response to the open season.
3. On March 24, 2014, in Docket No. RP14-638-000, Atmos Energy Corporation (Atmos) filed a complaint against Midla alleging, among other things, that Midla's open season notice and process violate the requirements of section 7(b) of the Natural Gas Act (NGA).
4. On March 28, 2014, in Docket No. CP14-125-000, Midla filed an application under section 7(b) of the NGA to abandon segments of its jurisdictional pipeline that are currently used to provide service to Atmos, as well as other shippers. Specifically, Midla proposed to: (1) abandon in place approximately 355 miles of 16-to-22-inch-diameter pipeline and associated laterals from the Desiard Compressor Station in Ouachita Parish, Louisiana to a point near Scottlandville in East Baton Rouge Parish, Louisiana; (2) abandon by removal the Desiard Compressor Station and two inactive compressor stations from which the compressor units have already been removed; (3) abandon by removal 42 meter stations and 57 valve sites; and (4) abandon in place 38 meter stations. Midla asserted that abandonment is warranted because of the age and physical condition of the pipeline.
5. Also on March 28, 2014, Midla made a prior notice filing in Docket No. CP14-126-000 requesting to abandon the remainder of its jurisdictional pipeline, consisting of two pipeline segments (T-32 and Baton Rouge Systems), by sale to its affiliate, Mid Louisiana Gas Transmission, LLC (MLGT). After abandonment, the facilities would be operated by MLGT as a Hinshaw pipeline.
6. Subsequent to these filings, Midla, Atmos, and other interested parties contacted the Dispute Resolution Division of the Office of Administrative Law Judges to initiate alternative dispute resolution procedures to address the issues raised in these proceedings. The subject Settlement is the result of mediation conducted by the Dispute Resolution Division Staff with the active parties over approximately six months.

7. In addition to resolving issues in the complaint and abandonment proceedings, the Settlement also resolves outstanding issues in two other proceedings: (1) Docket No. RP14-689-000, *et al.*, in which the Commission approved non-conforming service agreements between Midla and Entergy Arkansas, Inc. and between Midla and Entergy Gulf States Louisiana, L.L.C., subject to condition;² and (2) Docket No. RP14-1049-000, *et al.*, in which the Commission conditionally granted authorization for Midla to obtain off-system capacity on upstream and downstream pipelines.³

8. Initial and reply comments on the Settlement were due no later than December 31, 2014, and January 12, 2015, respectively. Comments in support of the Settlement were filed by Midla; Atmos; BASF Corporation (BASF); Enbridge Marketing (US) L.P.; Entergy Services, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC and Entergy Arkansas, Inc.; EV Properties, L.P. (EVP); Louisiana Public Service Commission; Louisiana Municipal Gas Authority (LMGA); and Mississippi Public Service Commission. No reply comments were filed, and the Settlement is therefore uncontested.

II. Outstanding Procedural Matters

9. Notice of Atmos' complaint in Docket No. RP14-638-000 was published in the *Federal Register* on April 1, 2014 (79 Fed. Reg. 18,292). The parties listed in Appendix A filed timely, unopposed motions to intervene. BASF Corporation (BASF) filed a late, unopposed motion to intervene. Many parties filed in support of Atmos. Midla filed an answer denying all allegations of impropriety and moved to dismiss the complaint.

10. Notice of Midla's abandonment application in Docket No. CP14-125-000 was published in the *Federal Register* on April 17, 2014 (79 Fed. Reg. 21,750). The parties listed in the Appendix A filed timely, unopposed motions to intervene. Numerous parties filed protests to the abandonment application. Midla filed answers in opposition to the protests.

11. Notice of Midla's prior notice request in Docket No. CP14-126-000 was published in the *Federal Register* on April 15, 2014 (79 Fed. Reg. 21,236). The parties listed in the Appendix A filed timely, unopposed motions to intervene. Numerous parties filed protests to the prior notice application. Midla filed answers in opposition to the protests.

² *American Midstream (Midla), LLC*, 147 FERC ¶ 61,081 (2014).

³ *American Midstream (Midla), LLC*, 148 FERC ¶ 61,039 (2014).

12. Timely, unopposed motions to intervene are granted in all three dockets by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁴ We will also grant the late, unopposed motion to intervene filed by BASF in Docket No. RP14-638-000. We find that BASF has demonstrated an interest in these proceedings and granting intervention will not cause undue delay or undue burden for the existing parties.⁵

13. On August 8, 2014, H&S Operating Company (H&S) filed an out of time motion to intervene in all three dockets. Midla filed an answer in opposition, asserting that H&S did not present any reason for its late filed motions. Midla also asserted that H&S's late intervention would be disruptive because other parties had been engaged in informal settlement discussions for nearly three months and adding another party to these discussions at this late stage would be prejudicial and impose additional burdens on Midla and the other parties. H&S filed a response to Midla stating that it has an interest in developing gas production in the area but did not know, until recently, that it was necessary to file a motion to intervene.

14. We find that granting H&S's untimely intervention would cause undue delay or disruption and otherwise prejudice Midla and other parties.⁶ H&S filed its motion to intervene several months after settlement negotiations had started and subsequently did not participate in those negotiations. Moreover, the time for filing comments on the Settlement has passed, and H&S filed no comments in opposition to the Settlement. Under these circumstances, we will deny H&S's untimely motion to intervene, and find the Settlement is uncontested.

III. The Settlement Proposal

15. The Settlement provides for the approval of Midla's abandonment applications, as amended and conditioned in the Settlement.⁷ In addition, the Settlement requires Midla

⁴ 18 C.F.R. § 385.214 (2014).

⁵ 18 C.F.R. § 385.214(d) (2014).

⁶ The Commission's regulations addressing motions for late intervention state that, in acting on such a motion, the decisional authority may consider: whether the movant had good cause for not filing timely; any disruption of the proceeding that might result from permitting intervention; whether the movant's interest is adequately represented by other parties; and whether any prejudice to, or additional burden on, existing parties might result from permitting intervention. 18 C.F.R. § 385.214(d) (2014).

⁷ On December 31, 2014, Midla filed supplemental information in Docket No. CP14-125-000 to revise its environmental resource reports to reflect the amendments to its abandonment application that are reflected in the Settlement.

to take several actions after the Settlement is approved by the Commission, including filing an application under NGA section 7(c) to build a new pipeline from near Winnsboro, Louisiana, to the Natchez, Mississippi area (Natchez Line). Under the provisions of the Settlement, all of Midla's existing shippers will continue to be served either through the Natchez Line, an alternate gas provider, or converted to propane service.

16. Article I provides the background to the Settlement and describes the proceedings that will be settled upon Commission approval of the Settlement.

17. Article II requires Midla to file a section 7(c) certificate application for authorization to build, own, and operate the Natchez Line after the Commission approves the Settlement and Midla completes all necessary environmental analysis for inclusion in the Natchez Line certificate application. The Natchez Line is described as an approximately 52 mile-long, 12-inch-diameter pipeline from interconnections with Tennessee Gas Pipeline, L.L.C. and Columbia Gulf Transmission, LLC in the Winnsboro, Louisiana area to the Natchez, Mississippi area that will serve Atmos, BASF, and LMGA, as Anchor Shippers. A preliminary map of the path of the Natchez Line is included as Appendix B to the Settlement.

18. Article III describes the main components of the firm service agreements negotiated with the Anchor Shippers that Midla will file as non-conforming agreements with its Natchez Line certificate application.

19. Article IV addresses Midla's abandonment applications in Docket Nos. CP14-125-000 and CP14-126-000. Section 4.1 sets forth amendments to Midla's abandonment application in Docket No. CP14-125-000 including the following: (1) the Desiard Compressor Station will be abandoned by transfer to MLGT, instead of by removal; (2) Midla's T-24 Lateral will be abandoned by transfer to MLGT, instead of in place; (3) Atmos is granted an option, exercisable by May 1, 2015, to take title to Midla's T-15 and T-49 Laterals, a portion of the Midla mainline, and some appurtenant facilities;⁸ (4) Midla will transfer its T-17 Lateral and appurtenant facilities to Locust Ridge Natural Gas Company, instead of abandonment in place; and (5) Midla will transfer a gas regulator and over-pressure station to the East Feliciana Gas Utility District #2 and another portion of its mainline to Griffin & Griffin Exploration, LLC (Griffin & Griffin), an affiliate of Tunica Pipeline. Midla's proposal for many of its above-ground facilities (mainly delivery meters) has changed and is reflected in Appendix C to the Settlement (revised Exhibit Z) and in Appendix D (revised Exhibits Z- 1 and Z-5). Appendix E to

⁸ Barring Atmos' exercise of its option, Midla will either abandon in place or remove these two laterals, the line, and the appurtenant facilities.

the Settlement updates the accounting treatment of the assets (Revised Exhibit Y) to reflect the changes to Midla's abandonment proposal.

20. Section 4.2 requests that the Commission approve Midla's prior notice application in Docket No. CP14-126-000. Section 4.3 requests that the Commission approve Midla's abandonment application in Docket No. CP14-125-000, as amended in the Settlement, conditioned on (1) Commission issuance of and Midla's acceptance of a certificate of public convenience and necessity, regarding the Natchez Line; (2) no facility being abandoned by Midla unless and until any shipper currently having gas transported through the facilities has alternate gas service or propane service in place to assure continuity of service; and (3) the Director of the Office of Energy Projects being granted delegated authority to approve Midla's implementation of particular elements of the Settlement before Midla accepts a certificate of public convenience and necessity regarding the Natchez Line.

21. Article V sets forth other facilities' reconfigurations that Midla and/or the affected parties will take following Commission approval of the Natchez Line and Midla's acceptance. These include the transfer of certain Midla laterals and delivery meters to certain parties, the connection of certain customers to alternate gas providers through the building and reconfiguration of gas distribution lines, and the conversion of certain customers to propane service. Moreover, Article V provides that upon application by Midla in its sole discretion and approval by the Director of the Office of Energy Projects, Midla and/or the affected parties may abandon individual facilities or services and take related actions prior to Midla's acceptance of a certificate of public convenience and necessity relating to the Natchez Line.

22. Article VI describes other implementation filings that Midla will make to revise its FERC NGA Gas Tariff, including revising its gas quality provisions and proposing a reservation fee crediting and imbalance cash-out mechanism.

23. Article VII sets forth other agreements reached among the Settling Parties relating to Midla's rates which assume that the Natchez Line commences service. Among other things, Article VII provides that (1) Midla may file a general rate case under NGA section 4 at any time following the Natchez Line commencement date; (2) Midla shall file a cost/revenue study based on the most recent 12-month period available consistent with section 154.313 of the Commission's regulations on the third anniversary of the Natchez Line commencement date; and (3) Midla shall file a general rate case under section 4 of the NGA between the 13th and 14th anniversary of the Natchez Line.

24. Article VIII sets forth various other miscellaneous agreements reached among the Settling Parties.

25. Article IX provides that the Settlement will become effective upon approval by the Commission without modifications or conditions (other than those set forth in section 4.3 of the Settlement) and provides for procedures for the parties to follow in the event the Commission modifies or otherwise conditions its approval of the Settlement. It also provides that Midla may withdraw from the Settlement if it is not approved by May 1, 2015.

26. Article X defines Contesting and Settling Parties and sets forth procedures for Midla and the Settling Parties to follow regarding subsequent filings by Midla to implement the Settlement.

27. Article XI sets forth the standard of review for any changes to the Settlement. It provides that the standard of review shall be the public interest standard of review for Settling Parties and “the most stringent standard permitted by law” with respect to Contesting Parties, non-settling parties to the Settlement, or the Commission acting *sua sponte*.

28. Article XII provides for the withdrawal of various pleadings upon the effective date of the Settlement including the complaint in Docket No. RP14-638-000, and the pleadings filed by the Settling Parties that are adverse to Midla and Midla’s responsive pleadings in all the above-captioned dockets.

29. Article XIII sets forth certain reservations, including that nothing in the Settlement shall be deemed a “settled practice” as interpreted in *Public Service Commission of the State of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980).

30. Article XIV contains a release and refrain provision applicable to the Settling Parties and the Commission that bars actions related to matters addressed in the Settlement.

31. Article XV sets forth various miscellaneous provisions.

IV. Commission Determination

32. The Settlement represents a significant achievement on the part of Midla, the other Settling Parties, and our Dispute Resolution Division. The Settlement will allow Midla to abandon its aging pipeline while ensuring that its shippers continue to receive natural gas service from Midla or an alternate supplier, or in some cases, propane service. The Settlement is uncontested. Under these circumstances, we find that the Settlement appears to be fair, reasonable, and in the public interest and it is approved. The Commission’s approval of this Settlement shall not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

33. As provided for in Article IV of the Settlement, we authorize Midla's proposal filed under the blanket certificate regulation's prior notice provisions in Docket No. CP14-126-000 to abandon certain facilities under its Part 157 blanket certificate.⁹ Consistent with section 4.3 of the Settlement, we also approve Midla's request to abandon facilities in Docket No. CP14-125-000, as amended and supplemented, conditioned on the following:

(a) Commission approval of the Natchez Line certificate application and Midla's acceptance of the certificate;

(b) No facility will be abandoned unless and until any shipper currently having gas transported through the facility has substitute alternate gas service or propane service in place, as contemplated by the Settlement, that will ensure continuity of service in the transition to the alternate gas or propane service;

(c) The Commission grants delegated authority to the Director of the Office of Energy Projects, subject to review by the Commission if any request for rehearing of a Director order is filed, to allow, upon application by Midla in coordination with the Supporting Parties, abandonment by transfer or removal of or in place any facility consistent with the Settlement and the Commission's order approving the Settlement before Midla's acceptance of any certificate of public convenience and necessity issued relating to the Natchez Line.

34. On May 22, 2014, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Midla Pipelines Abandonment Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the Federal Register¹⁰ and mailed to about 950 parties including federal, state, and local government officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and property owners affected by the abandonment activities.

35. We received environmental comments from the Mississippi Department of Archives and History, Louisiana Department of Wildlife and Fisheries, Atmos, and

⁹ In its March 28, 2014 Environmental Assessment Report, Commission staff found that Midla's abandonment proposal in Docket No. CP14-126-000 did not involve any ground disturbance and no environmental assessment was prepared for the project.

¹⁰ 79 Fed. Reg. 32,272 (2014).

one landowner. The primary issues raised by the commentors were an assessment of cultural resources at facility removal sites, potential impacts in the Russell Sage Wildlife Management Area, public safety concerns, the need for the project, impacts on customers served by the pipeline, and maintenance of the right-of-way following the abandonment.

36. To satisfy the requirements of the National Environmental Policy Act of 1969,¹¹ our staff prepared an environmental assessment (EA) that was placed into the public record on March 27, 2015. The EA addressed geology and soils, water resources, vegetation and wildlife, fisheries, land use, recreation and visual resources, cultural resources, air quality and noise, reliability and safety, cumulative impacts, and alternatives. The EA addresses all substantive comments filed in response to the NOI. No comments on the EA were filed.

37. We have reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effect of Midla's abandonment proposal in Docket No. CP14-125-000. Based on our consideration of this information, we agree with the conclusions presented in the EA and find that if the facilities are abandoned in accordance with Midla's application, as supplemented and amended, and the conditions imposed herein, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

38. Because the Settlement provides that the standard of review for changes to the Settlement by the Commission and non-settling parties to the Settlement¹² is "the most stringent standard permitted by law," we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement.

39. The *Mobile-Sierra*¹³ "public interest" presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm's length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and

¹¹42 U.S.C. §§ 4321-4370f (2006).

¹² We interpret "non-settling parties to the Settlement" to include any entity that did not intervene in the captioned proceedings.

¹³ *United Gas Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

reasonableness associated with arm's-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Association v. FERC*,¹⁴ however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory "just and reasonable" standard of review on future changes to agreements that fall within the second category described above.

40. In light of the fact that the Settlement provides for the parties to withdraw the complaint and all adverse pleadings in Docket Nos. RP14-638-000, RP14-689-000, *et al.* and RP14-1049-000 *et al.*, we will terminate the proceedings in Docket Nos. RP14-638-000 and RP14-1049-000, *et al.* In addition, we will accept Midla's compliance filing in Docket No. RP14-689-001, along with the tariff records proposed in that filing,¹⁵ and terminate that proceeding as well.

The Commission orders:

- (A) The Settlement is approved without modification.
- (B) Midla's abandonment authorization in Docket No. CP14-125-000 is conditioned on Midla's compliance with the environmental conditions listed in Appendix B to this order.
- (C) Midla shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Midla. Midla shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.
- (D) Midla's compliance filing in Docket No. RP14-689-001 and the tariff records listed in Appendix C are accepted effective April 1, 2014, and Docket Nos. RP14-689-000 and 001 are terminated. Docket Nos. RP14-638-000 and RP14-1049-000, 001, and 002 are also terminated.
- (E) Midla shall notify the Commission within 10 days of the date of abandonment of any facility.

¹⁴ *New England Power Generators Ass'n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

¹⁵ *See* Appendix C.

(F) BASF's motion to intervene out-of-time is granted.

(G) H&S's motions to intervene out-of-time are denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Timely Interventions

Docket No. RP14-638-000

Atmos Energy Marketing LLC
Enbridge Marketing (U.S.) L.P.
Entergy Services, Inc, *et al.*
EV Properties, L.P.
Louisiana Municipal Gas Authority
Louisiana Public Service Commission
Mississippi Public Service Commission
Town of Centreville, Mississippi
Town of Woodville, Mississippi

Docket No. CP14-125-000

Adams County, Mississippi
American Gas Association
American Public Gas Association
Atmos Energy Corporation
Atmos Energy Marketing LLC
BASF Corporation
City of Natchez, Mississippi
Enbridge Marketing (U.S.) L.P.
Entergy Services, Inc., *et al.*
EV Properties, L.P.
Interstate Natural Gas Association of America
Locust Ridge Gas Company, LLC
Louisiana Municipal Gas Authority
Louisiana Public Service Commission
Mississippi Public Service Commission
Town of Centreville, Mississippi
Town of Woodville, Mississippi
Tunica Pipeline, LLC, *et al.*
Xpress Natural Gas LLC

Docket No. CP14-126-000

Adams County, Mississippi
American Gas Association
American Public Gas Association

Atmos Energy Corporation
Atmos Energy Marketing LLC
BASF Corporation
City of Natchez, Mississippi
Enbridge Marketing (U.S.) L.P.
Entergy Services, Inc., *et al.*
EV Properties, L.P.
Interstate Natural Gas Association of America
Louisiana Municipal Gas Authority
Louisiana Public Service Commission
Mississippi Public Service Commission
Town of Centreville, Mississippi
Town of Woodville, Mississippi

Appendix B
Environmental Conditions in Docket No. CP14-125-000

As recommended in the Environmental Assessment (EA), the authorization in Docket No. CP14-125-000 includes the following conditions:

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

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

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

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

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

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

- specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Midla will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Midla 's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Midla will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Midla shall employ at least one EI. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Midla shall file updated status reports with the Secretary on a **biweekly basis until all abandonment and restoration activities are complete**. On request, these status reports will also be

provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

- a. the activity status of the project, work planned for the following reporting period, and any schedule changes for work in environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Midla from other federal, state, or local permitting agencies concerning instances of noncompliance, and Midla's response.
9. **Within 30 days of abandoning and removing the facilities**, Midla shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been abandoned and removed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Midla has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
10. **Prior to abandonment activities or project use of access roads**, Midla shall file with the Secretary the results of its consultations with the Louisiana Department of Wildlife and Fisheries and a copy of the Special Use Permit for activities occurring within the Russell Sage Wildlife Management Area.
11. **As a part of its Implementation Plan**, Midla shall file with the Secretary, for review and written approval by the Director of OEP, site-specific residential construction plans for the proposed construction workspaces within 25 feet of a residence and provide documentation of communication with the landowner about the plan.

12. Midla shall not begin abandonment activities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
- a. Midla files with the Secretary an updated “Blanket Clearance” letter agreement with the Louisiana State Historic Preservation Office applicable to Midla’s planned 2015 construction activities; and
 - b. the Director of OEP notifies Midla in writing that construction may proceed.

All materials filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **“CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.”**

13. **Prior to any abandonment activities**, Midla shall file the following information with the Secretary for the review and written approval of the Director of OEP:
- a. identify any facilities to be abandoned or disturbed that may be contaminated with polychlorinated biphenyls (PCBs);
 - b. verify that the appropriate PCB testing will be conducted on these facilities, and discuss how any abandoned PCB contaminated facilities will be properly disposed of; and
 - c. identify measures to be implemented to provide adequate worker safety for handling PCB contaminated materials.
14. **Prior to any abandonment activities**, Midla shall file the following information with the Secretary for the review and written approval of the Director of OEP:
- a. identify any known facilities to be abandoned or disturbed having asbestos containing materials (ACMs);
 - b. develop protocols to comply with the appropriate requirements to identify ACMs that might be encountered;
 - c. if facilities with ACMs would be abandoned or disturbed, identify methods to separate the ACMs for proper disposal; and
 - d. develop worker protection protocols, and provide for proper disposal of ACMs.

Appendix C

American Midstream (Midla), LLC
FERC NGA Gas Tariff
FERC Gas Tariff (Volume Nos. 1 and 2)

Docket No. RP14-689-001
Tariff Records Accepted Effective April 1, 2014

[43-NNS Service Agreement, 1.0.0](#)

[49-FTS Service Agreement, 1.0.0](#)

[61-FTS-OSF Service Agreement, 1.0.0](#)

[76-Service Request Form, 1.0.0](#)