

123 FERC ¶ 61,100  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

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| Gulf Crossing Pipeline Company LLC | Docket Nos. CP07-398-000<br>CP07-398-001<br>CP07-399-000<br>CP07-400-000 |
| Gulf South Pipeline Company, LP    | Docket Nos. CP07-401-000<br>CP07-402-000                                 |
| Enogex, Inc.                       | Docket No. CP07-403-000  |

ORDER ISSUING CERTIFICATES AND GRANTING ABANDONMENT  
AUTHORITY

(Issued April 30, 2008)

1. On June 19, 2007, Gulf Crossing Pipeline Company LLC (Gulf Crossing) and Gulf South Pipeline Company LP (Gulf South) jointly filed an application under section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate facilities to be known as the Gulf Crossing Project. Under the proposal, Gulf Crossing requests authority to construct four compressor stations and approximately 353.2 miles of new pipeline with a capacity of 1.732 Bcf per day extending from a point near Sherman, Texas to an interconnection with Gulf South at its Tallulah Compressor Station in Madison Parish, Louisiana.<sup>1</sup> Gulf South requests authorization to construct approximately 17.8 miles of pipeline loop between its Tallulah Compressor Station and its Harrisville Compressor Station in Simpson County, Mississippi. Gulf South also proposes to add 30,000 hp of compression at the Harrisville Compressor Station.

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<sup>1</sup> On October 16, 2007, Gulf Crossing filed an amendment to the June 19, 2007 application. The amendment changes the configuration of the compression at two of Gulf Crossing's proposed compressor stations.

2. As part of the project, Gulf Crossing also requests authorization to lease up to 90,000 Dth a day of capacity on the intrastate pipeline system of Enogex, Inc. (Enogex) and to lease up to 1.4 Bcf a day of capacity from Gulf South from the Tallulah Compressor Station to an interconnection with Transcontinental Gas Pipe Line Corporation's (Transco) Station 85 in Alabama. Gulf South, in turn, requests authorization under NGA section 7(b) to abandon by lease 1.4 Bcf a day of capacity to Gulf Crossing, and in a companion application filed June 20, 2007, Enogex requests a limited jurisdiction NGA section 7(c) certificate authorizing it to lease 90,000 Dth a day to Gulf Crossing, as described above. Gulf Crossing also requests a blanket construction certificate under Part 157, Subpart F of the Commission's regulations, and a blanket transportation certificate under Part 284, Subpart G of the regulations.

3. For the reasons set forth below, we are granting the requested authorizations, subject to conditions.

### **Background and Proposal**

4. Gulf Crossing is a new entity which will become a natural gas company subject to the jurisdiction of the Commission under the NGA upon acceptance of any authorizations issued by the Commission in this proceeding. Gulf South is a natural gas company which owns and operates pipeline facilities extending from southern and eastern Texas through Louisiana, Mississippi, southern Alabama and western Florida. The Commission has recently approved two Gulf South expansion projects: the East Texas to Mississippi Expansion Project, a 239-mile pipeline with a capacity of up to 1.7 Bcf per day extending from East Texas to Harrisville, Mississippi,<sup>2</sup> and the Southeast Expansion Project, a 111-mile pipeline with a capacity of approximately 1.27 Bcf a day extending from the end point of the East Texas to Mississippi Expansion Project at Harrisville, Simpson County, Mississippi to a new interconnect with Transco in Choctaw County, Alabama (Transco Station 85).<sup>3</sup> Gulf Crossing and Gulf South are wholly owned by Boardwalk Pipeline Partners, LP (Boardwalk).

5. Enogex is an intrastate pipeline operating natural gas transportation facilities entirely within the State of Oklahoma. The Enogex system consists of approximately 2,283 miles of transmission pipeline arranged in a web-like configuration. Enogex receives natural gas into its system from numerous wells and gathering facilities and from other intrastate and interstate pipelines. Enogex offers firm and interruptible intrastate transportation services, and it offers interruptible transportation service in interstate commerce under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

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<sup>2</sup> *Gulf South Pipeline Company, L.P.*, 119 FERC ¶ 61,281 (2007).

<sup>3</sup> *Gulf South Pipeline Company, LP*, 120 FERC ¶ 61,291 (2007).

6. Gulf Crossing and Gulf South state that their proposals will provide an outlet for significant volumes of new gas production from the Barnett Shale, Caney Woodford Shale, and other production areas in Texas and southeast Oklahoma. Natural gas production from shale plays in these areas, they aver, is projected to increase 35 percent by 2011. They state that the new pipeline infrastructure they propose will alleviate projected capacity constraints that have developed or are expected to develop in these production areas as increasing quantities of gas become available for shipment. According to the applicants, the project will provide gas suppliers with access to consuming markets in the eastern half of the United States through interconnects with other interstate pipelines and storage facilities. The new facilities, they state, will also improve supply diversity for consuming markets by facilitating the delivery of additional reliable onshore domestic gas production to areas traditionally reliant on offshore gas supplies that can be subject to disruption during storm-related events.

7. As described more fully below, the proposals will create up to 1.732 Bcf per day of new natural gas transportation capacity, at an estimated total capital cost of \$1,470,029,646. Gulf Crossing has thus far entered into binding precedent agreements for 1.05 Bcf per day of that capacity.

#### **Gulf Crossing Facilities**

8. Gulf Crossing requests authorization to construct approximately 353.2 miles of new 42-inch pipeline extending from Sherman, Texas to an interconnection with Gulf South at Tallulah, Louisiana. In addition to the pipeline facilities, Gulf Crossing also proposes to install a total of approximately 100,734 hp of compression at four new compressor stations at or near Sherman (25,339 hp) and Paris (29,452 hp), Texas, and Mira (20,604 hp) and Sterlington (25,339 hp), Louisiana.

#### **Gulf South Facilities**

9. Gulf South requests authorization to construct approximately 17.8 miles of 42-inch pipeline looping a portion of Gulf South's East Texas to Mississippi Project in Hinds, Copiah, and Simpson Counties, Mississippi (east of the Tallulah Compressor Station) and terminating at Gulf South's new Harrisville Compressor Station. Gulf South also proposes to add 30,000 hp of compression at the Harrisville Compressor Station.<sup>4</sup>

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<sup>4</sup> The Commission authorized Gulf South to install 18,940 hp of compression at the Harrisville Compressor Station as part of the Southeast Expansion Project. *Gulf South Pipeline Company, LP*, 120 FERC ¶ 61,291.

## **Capacity Leases**

### **Gulf South Lease**

10. Gulf Crossing and Gulf South have entered into an operating lease agreement which provides that Gulf Crossing will lease up to 1.4 Bcf a day of unsubscribed transportation capacity (exclusive of fuel) for a primary term of 10 years from Gulf South's Tallulah Compressor Station (East Texas to Mississippi Expansion Project) to Transco Station 85 in Choctaw County, Alabama. Gulf Crossing will pay Gulf South a monthly lease charge consisting of a monthly demand charge and a monthly commodity charge described below. Under the agreement, Gulf Crossing has the right to use the leased capacity on a firm basis, and will use the capacity to provide open-access transportation service to its customers pursuant to its FERC Gas Tariff.

### **Enogex Lease**

11. Gulf Crossing and Enogex have entered into an operating lease agreement which provides that Gulf Crossing will lease 90,000 Dth a day of available transportation capacity (exclusive of fuel) for a primary term of 7 years on Enogex's intrastate system to an interconnect with Gulf Crossing's proposed facilities at Bennington, Oklahoma.

12. Enogex states that the lease will enable Gulf Crossing to transport gas on a firm basis from various points in Oklahoma to the interconnection of the Enogex system with Gulf Crossing. As in the Gulf South lease, Gulf Crossing will pay Enogex a monthly lease charge consisting of a monthly demand charge and a monthly commodity charge. Likewise, Gulf Crossing has the right to use the leased capacity on a firm basis, and will use the capacity to provide open-access transportation service to its customers pursuant to its FERC Gas Tariff.

13. Enogex requests a limited jurisdiction certificate to enable it to lease its capacity to Gulf South without its facilities and otherwise non-jurisdictional activities becoming jurisdictional.

### **Open Season**

14. Gulf Crossing and Gulf South conducted an open season for the project from November 17, 2006 to January 15, 2007. Prior to the start of the open season, Gulf Crossing entered into precedent agreements with three foundation shippers for 1.00 Bcf a day of firm capacity on the project. The open season and later negotiations have resulted in the execution of binding precedent agreements with two additional shippers for 50,000 Mcf a day of firm transportation capacity. These contracts have terms ranging from five to ten years.

15. Gulf Crossing and Gulf South request that the Commission find that their open season procedure and precedent agreements meet the requirements of the NGA. They

explain that because of the magnitude of the project and the need to secure very large capacity commitments they designed the open season to provide incentives for shippers to make large, long-term firm transportation commitments to the project. Accordingly, they assert, the open season offered greater benefits, in terms of rate and rate-related contractual benefits, to shippers based on the quantity of firm transportation commitment. Gulf Crossing and Gulf South established two classes of shippers – foundation shippers and standard shippers – based on the capacity awarded. They state that during the open season all potential shippers were provided with equal opportunity to obtain the benefits and rights of each shipper category. No shipper was pro-rated or denied capacity.

16. Gulf Crossing and Gulf South also state that all shippers were afforded the Commission-required option of electing to pay the applicable recourse rates to be established in the certificate proceeding. In addition, they state that they endeavored to make necessary accommodations to large shippers in a non-discriminatory and transparent manner. They aver that shippers able to make large capacity commitments to the project will make the development of a project of such large size possible and that they have been provided with benefits commensurate with those commitments. Smaller shippers, they say, will receive the benefits of overall economies of scale that the project offers as a result of the foundation shippers, commitments without having to overextend their own capacity commitments.

### **Gulf Crossing's Proposed Rates**

17. Gulf Crossing, as a new pipeline, is proposing to offer firm (Rate Schedule FTS) and interruptible (Rate Schedules ITS) open access transportation services at cost-based recourse rates under Part 284 of the Commission's regulations.<sup>5</sup> Gulf Crossing states that its proposed rates reflect a straight fixed-variable rate design, but that it may offer negotiated rates as an option pursuant to Section 9 of the General Terms and Conditions (GT&C) of its pro forma tariff. Gulf Crossing avers that the pro forma tariff is modeled after the approved existing tariffs of Gulf South Pipeline, Rockies Express Pipeline and North Baja Pipeline and incorporates all North American Energy Standards Board (NAESB) Version 1.7 Business Practices and Electronic Standards required by the Commission in accordance with Order No. 587, *et al.*

18. The proposed FTS recourse rates are derived using a \$290,772,815 first year cost of service<sup>6</sup> and annual FTS reservation billing determinants of 20,782,800 Dth based on

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<sup>5</sup> See Gulf Crossing's FERC Gas Tariff, Pro Forma Volume No. 1.

<sup>6</sup> Gulf Crossing's proposed total cost of service of \$290,772,815 consists of \$19,935,008 of operation and maintenance expenses; \$42,000,847 of depreciation expenses; \$144,303,847 of return allowance (at 13.5 percent rate of return on equity based on a capital structure of 50 percent equity and 50 percent debt, and 6.50 percent  
(continued...)

Gulf Crossing's maximum daily design capacity<sup>7</sup>. The proposed maximum cost-based FTS reservation rate is \$13.8788 per Dth (a \$0.4563 per Dth daily rate). Gulf Crossing estimates \$2,331,735 of variable costs and annual FTS usage determinants of 485,065,568 Dth resulting in a proposed FTS usage rate of \$0.0048 per Dth. The proposed maximum recourse ITS rate is \$0.4611 per Dth.

19. Customers using Gulf Crossing's leased capacity on Enogex's intrastate system will pay, in addition to Gulf Crossing's base rate, a daily demand rate of \$0.05 per Dth and a commodity rate of \$0.04 per Dth for transportation from the Devon Gerty and Northridge receipt points and a daily demand rate of \$0.11 per Dth for transportation from the Antero receipt point. Customers using Gulf Crossing's leased capacity on Gulf South's system will pay a daily demand rate of \$0.1559 per Dth and a commodity rate of \$0.0046 per Dth in addition to Gulf Crossing's base rate.

20. Gulf Crossing is proposing a fixed fuel charge, including lost and unaccounted for gas, of 1.0 percent for transactions utilizing the Gulf Crossing project from Sherman, Texas to Tallulah, Louisiana. Customers using Gulf Crossing's leased Enogex capacity and/or the leased Gulf South capacity will pay fuel charges on those pipelines in addition to the Gulf Crossing fuel rate.

### **Notice and Interventions**

21. Notice of the applications was published in the *Federal Register* on July 3, 2007 (71 Fed. Reg. 36440).

22. Atmos Energy Corporation, BP America Production Company and BP America Energy Company (jointly BP), Calpine Energy Services, L.P., CenterPoint Energy Resources Corp, the Cherry Mound Coalition, Chevron Natural Gas division of Chevron U.S.A., Devon Gas Services, Merrill Lynch Commodities, Inc. (Merrill Lynch), Oneok Gas Transportation, L.L.C., Ozark Gas Transmission, L.L.C., Shell NA LNG LLC (Shell), Southern Natural Gas Company, Tennessee Gas Pipeline Company, Transcontinental Gas Pipe Line Corporation, Alan Ritchey, Inc., Alan Ritchey and

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cost of debt); \$61,053,114 of income taxes; and \$23,480,000 of taxes other than income taxes. For year 1, Gulf Crossing reflects a proposed rate base comprised of gross plant investment of \$1,470,029,646, less accumulated depreciation of \$21,000,424, less accumulated deferred income taxes of \$5,990,757, for a total rate base of \$1,443,038,466.

<sup>7</sup> Gulf Crossing's October 16, 2007 amendment to its application to reconfigure some of its proposed compression facilities results in an estimated increase in construction costs of \$20,583,063. However, Gulf Crossing proposed no change in its initial recourse rates.

Charlene Ritchey (jointly), filed timely, unopposed motions to intervene in the application proceeding. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>8</sup>

23. Texas Eastern Transmission, LP (Texas Eastern), Unimark LLC (Unimark), Shannon K. McClendon, Leigh Alexander McClendon, III, and Stonebridge Estates, LLC filed unopposed motions to intervene out-of-time. All have shown an interest in this proceeding, and their participation will not delay the proceeding or prejudice the rights of any other party. Accordingly, for good cause shown, we will permit their late intervention.<sup>9</sup>

24. Merrill Lynch, Unimark, and Shell filed comments with their motions to intervene, and BP filed a protest. Gulf Crossing filed an answer to BP's protest. Although our rules do not permit this kind of responsive pleading,<sup>10</sup> they do provide that we may, for good cause, waive this provision.<sup>11</sup> We find good cause to do so in this instance because Gulf Crossing's answer provides information that will assist us in our decision-making. We will address the comments and protests below.

25. On February 19, 2008, Hall-Williams, L.L.C. filed a motion to intervene out-of-time and protest requesting the Commission to deny Gulf Crossing's application. Hall-Williams agrees to accept the record as it now stands, and asserts that its late intervention will not disrupt or delay the proceeding. Hall-Williams states that it owns an undivided 50 percent interest in land across which Gulf Crossing is proposing to construct a portion of its pipeline. Hall-Williams acknowledges that it has been aware of this proceeding and its impact on its property, and that it has been involved in negotiations with representatives of Gulf Crossing "for many months" for a right-of-way (ROW) agreement. It states that it did not seek to intervene earlier because it believed that intervention and protest in the proceeding would jeopardize a potential agreement. It decided to file this request when Gulf Crossing brought action to acquire the ROW through an eminent domain type procedure under state law in Louisiana state court. As grounds for its protest, Hall-Williams alleges that Gulf Crossing has not negotiated in good faith for the ROW, although it acknowledges that the actual ROW issues will be decided in state court under state law.

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<sup>8</sup> 18 C.F.R. § 385.214 (2007).

<sup>9</sup> 18 C.F.R. § 385.214(d) (2007).

<sup>10</sup> 18 C.F.R. § 385.213(a)(2) (2007).

<sup>11</sup> 18 C.F.R. § 385.101(e) (2007).

26. Gulf Crossing filed a motion for leave to file an answer and an answer to the Hall-Williams intervention request and protest on February 29, 2008. Late intervention at this point in the proceeding, argues Gulf Crossing, will disrupt the proceedings, and prejudice and add burdens upon existing parties. We will allow Gulf Crossing's answer because it provides us with additional information that will add to our understanding of the overall situation involving the issue raised by Hall-Williams. Gulf Crossing avers that, contrary to Hall-Williams' allegation, it has been engaging in good faith negotiations with Hall-Williams since April 2007, even before it filed this application. Gulf Crossing points out that it has successfully negotiated an agreement with the other 50 percent owner of the property involved, Hall Land & Timber, LLC, on the same terms it has offered Hall-Williams. Gulf Crossing states that the property is currently subject to a judicial partition sale due to what Gulf Crossing understands to be a dispute between the two 50 percent landowners, and Gulf South avers that Hall-Williams made it clear in January 2008 that it will not negotiate with Gulf Crossing until the partition sale is complete. Gulf Crossing states that it is continuing to try to reach agreement,<sup>12</sup> but is exercising its rights under Louisiana law to acquire the ROW it seeks for its pipeline because it is unclear when the partition litigation will be resolved. Gulf Crossing alleges that Hall-Williams has been fully aware of its intervention rights and has timed this late request in an attempt to leverage its bargaining power in the Louisiana state proceeding.

27. The July 17, 2007 date for timely intervention has long since passed, and we will deny Hall-Williams' intervention request. Hall-Williams acknowledges that it was aware of the proposed pipeline project, that it knew Gulf Crossing had filed an application that could impact its property, and that it knew that it had a right to participate in this proceeding as a party. Hall-Williams elected, however, not to intervene as a party in this proceeding, but to pursue an ROW agreement through negotiations with Gulf Crossing as the exclusive means for addressing its interests in the project. Hall-Williams' explanation in its motion that it did not file for intervention until now because it thought an intervention request would be counterproductive to reaching an ROW agreement falls short of a showing of good cause for a waiver of the Commission's filing requirements. Moreover, as Hall-Williams itself recognizes, the issues relating to the ROW sought by Gulf Crossing are properly before the Louisiana court and are not subject to this Commission's jurisdiction under the NGA.

28. On February 28, 2008, interveners BP and Shell jointly filed a motion requesting that the Commission postpone action on the Btu specifications to be included in Gulf Crossing's tariff until the Commission acts on a proposal by Gulf South in Docket No. RP08-198 involving the gas quality specifications on its downstream system. Although

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<sup>12</sup> Gulf Crossing attaches a list of several contacts between Hall-Williams and Gulf Crossing in February 2008.

the deadline for filing comments in this proceeding has passed, we will allow the motion because of a change in circumstances arising from the filing of the new Gulf South tariff proposal. The substance of the motion will be described below in the section relating to gas quality standards.

### **Discussion**

29. Because the facilities proposed by Gulf Crossing and Gulf South will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, their construction and operation, as well as Gulf Crossing's acquisition of capacity by lease, are subject to the requirements of section 7(c) of the NGA. The proposed abandonment of capacity by Gulf South is subject to the requirements of NGA section 7(b).

### **Certificate Policy Statement**

30. On September 15, 1999, the Commission issued its Certificate Policy Statement to provide guidance as to how it will evaluate proposals for certificating new construction.<sup>13</sup> The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

31. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers.

32. The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on

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<sup>13</sup>*Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000).

these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

33. Gulf Crossing is a new entrant with no existing customers. Thus, there presently is no potential for subsidization on Gulf Crossing's system. However, it is appropriate to ensure that Gulf Crossing's capacity lease arrangements do not result in subsidization in the future. Therefore, consistent with current policy<sup>14</sup> and Gulf Crossing's proposal to charge its customers separate incremental rates for the leased capacity on Gulf South's and Enogex's systems, the Commission will condition its approval of the leases on Gulf Crossing's not being permitted in the future to shift any of its costs associated with the leased capacity to customers that do not use the leased capacity. Similarly, during the term of the lease, Gulf South will not be allowed to reflect in its system rates any of the costs (i.e., the fully-allocated cost of service, including actual fuel costs) associated with the capacity it has leased to Gulf Crossing or will construct in conjunction with this proceeding. Further, since Enogex uses its intrastate pipeline system to provide interstate services under section 311 of the NGPA at rates approved by the Commission, Enogex will not be allowed to shift any unrecovered costs of its leased capacity from its customers for which it is providing jurisdictional interstate services.

34. With the above conditions, the Commission finds that the applicants' proposals will meet the threshold test that existing customers not subsidize the project. Furthermore, the project will not degrade any present services to existing customers. The project will likewise have no adverse impact on existing pipelines or their captive customers as the new facilities will be transporting new domestic sources of gas so that the project will not replace existing customers' service on existing pipelines.

35. We are also satisfied that Gulf Crossing and Gulf South have taken appropriate steps to minimize adverse impacts on landowners. They explain that most of the project's right-of-way parallels other pipelines' rights-of-way and that they have attempted to locate compressor stations as remotely as possible from residences to minimize potential impacts on homeowners. Gulf Crossing and Gulf South state also that they have conducted open houses along the proposed pipeline route and have worked with landowners to minimize landowners' concerns. They aver that they are committed to securing any needed rights-of-way through negotiation wherever possible.

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<sup>14</sup> *Gulf South Pipeline Company, L.P., and Texas Gas Transmission, LLC*, 119 FERC ¶ 61,281 (2007).

36. The Gulf Crossing Project will benefit the public because it will provide an important new outlet for onshore domestic gas supplies to the interstate market from capacity constrained production areas that are expected to serve as rich supply sources for a number of years. Gulf Crossing has entered into binding precedent agreements with shippers for 1.05 Bcf per day of capacity for terms ranging from five to ten years, and will assume the risk for the remaining portion of the project's 1.732 Bcf per day capacity. The project will also help create market alternatives, and enhance gas supplies available to customers on other connected pipelines. Therefore, consistent with the criteria discussed in the Certificate Policy Statement and section 7(c) of the NGA, we find that the benefits of the Gulf Crossing Project will outweigh any potential adverse effects, and that the proposed project is required by the public convenience and necessity.

37. Consistent with our standard practice, we will condition our certificate authorization so that construction cannot commence until after Gulf South executes contracts that reflect the levels and terms of service represented in its precedent agreements.<sup>15</sup>

### **Open Season and Precedent Agreements**

38. All firm shippers executing precedent agreements for service on Gulf Crossing have elected to pay negotiated reservation rates.<sup>16</sup> The negotiated rate and other contractual terms are dependent on whether the shipper qualifies as a Foundation Shipper or a Standard Shipper. Gulf Crossing and Gulf South seek approval of the conduct of their open season that led to the execution of the precedent agreements and approval of the rates and contractual terms contained in the precedent agreements.

39. We have made determinations as to whether certain non-conforming provisions in service agreements are consistent with Commission policy when asked to do so in other certificate proceedings.<sup>17</sup> We would be willing to do so here; however, Gulf Crossing has not identified specific provisions in its precedent agreements for which it desires our

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<sup>15</sup> See, e.g., *Tennessee Gas Pipeline Company*, 101 FERC ¶ 61,360, at P 21 (2002).

<sup>16</sup> Section 9 of the GT&C of the pro forma tariff sets forth Gulf Crossing's negotiated rate authority under which these elections were made.

<sup>17</sup> See, e.g., *Rockies Express Pipeline, LLC*, 116 FERC ¶ 61,272, at P 69-78 (2006) (*Rockies Express*) (approving negotiated rates and contractual terms offered to foundation shippers and anchor shippers); *Midwestern Gas Transmission Company*, 114 FERC ¶ 61,257, at P 50 (2006) (accepting provision that provides for the recovery of the costs of construction if the shipper defaults).

approval at this time. If Gulf Crossing continues to seek an early determination of the reasonableness of any non-conforming provisions in its service agreements with expansion shippers, it should file either copies of the unexecuted service agreements with the non-conforming provisions in redline/strikeout format or an information sheet identifying those provisions. Gulf Crossing should also fully explain why the non-conforming provisions are not unduly discriminatory and why they are consistent with Commission policy.

40. Under the Commission's policies, all new interstate pipeline construction must be preceded by a nondiscriminatory, nonpreferential, open-season process through which potential shippers may seek and obtain firm capacity rights. Second, as part of the open season, the project sponsor must offer a maximum recourse rate so that the bidder in the open season may have the option to choose between the recourse rate and a negotiated rate.<sup>18</sup> Gulf Crossing and Gulf South have fully explained how their open season for this project meets these requirements and no party has challenged those statements. Thus, we find that the conduct of the open season was consistent with the Commission's open-season policies.

41. We will also approve the proposed rates that are based on a shipper's status as a Foundation Shipper or Standard Shipper. Under the Commission's negotiated rate program, a pipeline is permitted to negotiate individual rates for particular customers as long as they do so in a not unduly discriminatory manner.<sup>19</sup> The Commission has explained that its existing negotiated rates and discount policies permit, under certain circumstances, project sponsors to provide rate incentives to shippers on a number of grounds, including volumes to be transported, without constituting undue discrimination.<sup>20</sup> The Commission stated it would review different rate incentives on a case-by-case basis and observed that the risk of undue discrimination would be reduced

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<sup>18</sup> *Natural Gas Pipeline Co. of America*, 101 FERC ¶ 61,125 (2002).

<sup>19</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied, Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, *et al.*, U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998).

<sup>20</sup> *Revisions to Blanket Certificate Regulations and Clarification Regarding Rates*, FERC Stats. & Regs. ¶ 32,606 at P 93-107 (2006) (order proposing to amend blanket certificate regulations and clarifying rates).

to the extent that the rate incentives offered are clearly defined in the announcement of the open season, publicly verifiable, and equally available to all potential shippers.<sup>21</sup>

42. Here, Gulf Crossing and Gulf South have closely followed the procedures approved in the *Rockies Express* proceeding, explaining that they offered rates and contractual incentives to secure adequate support for the project. As in *Rockies Express*, Gulf Crossing and Gulf South held transparent open seasons where the rate and contractual incentives offered were clearly defined, and qualification for these incentives was based on a shipper's commitment to the project. Additionally, all potential shippers had an opportunity to become foundation shippers. Under these circumstances, we find that the negotiated rates offered to foundation shippers are not unduly discriminatory.

### **Gulf Crossing's Proposed Rates**

43. The Commission has reviewed the proposed cost of service and proposed initial rates, and generally finds them reasonable for a new pipeline entity, such as Gulf Crossing, subject to the modifications and conditions discussed below.

### **Return on Equity and Capital Structure**

44. Gulf Crossing proposes a capital structure of 50 percent equity and 50 percent debt. The overall rate of return of 10 percent incorporates a return on equity of 13.5 percent based upon the project's business and financial risk. We find that Gulf Crossing's proposal to finance the instant project is consistent with other recent projects approved by the Commission for new pipeline companies. In these projects, the Commission approved a capital structure of 50 percent debt and 50 percent equity, as well as a return on equity of 13.5 percent.<sup>22</sup> Accordingly, we will approve Gulf Crossing's proposed capital structure and rate of return on equity.

### **Cost of Debt**

45. Gulf Crossing proposes to use a projected 6.5 percent cost of debt in developing its recourse rates. BP asserts that it is Commission policy that when a pipeline seeks to implement its initial rates it must revise the rates to reflect the pipeline's actual debt cost.<sup>23</sup> Gulf Crossing states in its answer that this would be inappropriate for Gulf Crossing, which does not have any debt in its name and does not at this time intend to

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<sup>21</sup> *Id.* at P 102.

<sup>22</sup> *See, e.g., Southeast Supply Header LLC*, 119 FERC ¶ 61,153 (2007).

<sup>23</sup> *Citing, e.g., Columbia Gas Transmission Corp.*, 113 FERC ¶ 61,118, at P 47 (2005).

obtain project financing. According to Gulf Crossing, any debt that is issued for the project between now and the in-service date will probably be issued by Boardwalk, Gulf Crossing's parent company. As a result, the debt rate and the capital structure supporting the rates are hypothetical. Gulf Crossing states that Commission policy regarding an initial rate filing is generally to allow, but not require, a pipeline to modify its rate to the extent necessary to reflect the actual cost of debt.<sup>24</sup>

46. The Commission has in certain instances required pipelines to file their actual debt cost when the pipeline files its initial rates, if there has been a dispute over the rate and the actual debt cost can easily be determined. This is not, however, the usual Commission practice. Gulf Crossing states that any debt that is issued for the project between now and the in-service date will probably be issued by Gulf Crossing's parent company. In addition, the Commission has recently approved debt costs that were comparable to Gulf Crossing's proposed 6.5 percent in projects with similar capital structures.<sup>25</sup> The Commission finds that Gulf Crossing's proposed 6.5 percent cost of debt is reasonable to use in developing Gulf Crossing's initial rates.

#### **Interruptible Services Revenue Crediting**

47. Gulf Crossing has allocated \$20,000,000 from its cost of service to interruptible service. The Commission's policy regarding new interruptible services requires the pipeline either to credit 100 percent of the interruptible revenues, net of variable costs, to firm and interruptible customers, or to allocate costs and volumes to these services.<sup>26</sup> Gulf Crossing's allocation complies with the Commission's policy.

#### **FTS and ITS Rate Calculation**

48. Gulf Crossing has calculated its FTS and ITS recourse rates incorrectly on page 6 of Exhibit N. Although Gulf Crossing has reduced the FTS cost of service by allocating \$20,000,000 of its cost for interruptible transportation, it has also reduced the annual billing determinants from 20,782,800 Dth to 19,341,756 Dth. This reduction in the billing determinants nullifies the allocation of costs to ITS service and results in the same FTS rate as before the allocation. The Commission's general policy is to require pipelines to design initial firm rates assuming billing determinants equal to the annualized

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<sup>24</sup> *Citing, Southern Natural Gas Company*, 99 FERC ¶ 61,345, at P 77 (2002); *Islander East Pipeline Company*, 97 FERC ¶ 61,363, at P 106 (2001).

<sup>25</sup> *See, e.g., Southeast Supply Header, LLC*, 119 FERC ¶ 61,153 (2007); *Natural Gas Pipeline Company of America*, 120 FERC ¶ 61,050 (2007).

<sup>26</sup> *See, e.g., Creole Trail LNG, L.P.*, 115 FERC ¶ 61,331, at P 27 (2006); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 51 (2005).

capacity of the system<sup>27</sup> and to design interruptible rates based on the 100 percent load factor equivalent of the firm rate.<sup>28</sup> The Commission has departed from this policy in the past when specific operational constraints would have prevented the pipeline from having a reasonable opportunity to recover its cost of service using the actual capacity for billing determinants.<sup>29</sup> No such circumstances exist here. If a new pipeline elects to allocate costs to interruptible service, the result should be a reduction to the firm transportation rate, reflecting the fact that any interruptible revenue from the project will be retained by the pipeline and not credited to firm shippers. Gulf Crossing must recalculate its FTS rates using its system design capacity and recalculate its ITS rate at the 100 percent load factor equivalent of the FTS rate.

### **Rate Changes and Three-Year Filing Requirement**

49. If Gulf Crossing desires to make any other rate changes not specifically authorized by this order prior to placing its facilities into service, it must file an amendment to its application under NGA section 7(c). In that filing, Gulf Crossing will need to provide cost data and the required exhibits supporting any revised rates. After the facilities are constructed and placed in service, if Gulf Crossing desires to change its rates to reflect revised construction and operating costs, Gulf Crossing must make a filing under section 4 of the NGA.

50. Consistent with Commission precedent, the Commission will require Gulf Crossing to file a cost and revenue study at the end of its first three years of actual operation to justify its existing cost-based firm and interruptible recourse rates.<sup>30</sup> In its

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<sup>27</sup> See, e.g., *Portland Natural Gas Transmission System*, 76 FERC ¶ 61,123 (1996); *Pacific Gas Transmission Co.*, 70 FERC ¶ 61,016 at p. 61,045, *aff'd*, 71 FERC ¶ 61,268 (1995).

<sup>28</sup> See, e.g., *Discovery Gas Transmission LLC*, 107 FERC ¶ 61,124 (2004); *Southern Natural Gas Company and SCG Pipeline, Inc.*, 99 FERC ¶ 61,345 (2002).

<sup>29</sup> See, e.g., *East Tennessee Natural Gas, LLC*, 114 FERC ¶ 61,122 (2006) (allowing rate to be designed using lower capacity due to an operating constraint on an upstream gathering facility limiting the amount of gas that could be transported); and *Weaver's Cove Energy, LLC*, 114 FERC ¶ 61,058 (2006) (allowing rate to be designed at lower capacity due to a downstream constraint on connecting pipeline limiting take-away capacity from the LNG terminal).

<sup>30</sup> See, e.g., *Empire State Pipeline and Empire Pipeline, Inc.*, 116 FERC ¶ 61,074, at P133 (2006); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 52 (2005).

filing, the projected units of service should be no lower than those upon which Gulf Crossing's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost of service data.<sup>31</sup> After reviewing the data, the Commission will determine whether to exercise our authority under NGA section 5 to establish just and reasonable rates. In the alternative, in lieu of this filing, Gulf Crossing may make an NGA section 4 filing to propose alternative rates to be effective no later than 3 years after the in-service date for its proposed facilities.

### **Fixed Fuel Rate**

51. BP avers that Gulf Crossing provides no justification for its proposed fixed fuel rate of 1.0 percent and asserts that the Commission should reject the rate and require Gulf Crossing to establish an initial fuel rate based on a properly determined initial estimate of fuel costs, subject to an annual true-up provision. BP states that a fixed fuel rate could allow Gulf Crossing to over-recover its actual fuel consumption and asserts that the regulatory trend in recent years has been for the Commission to require pipelines to include an annual fuel tracker based on a pipeline's actual fuel consumption plus a true-up mechanism that ensures the pipeline neither over-recovers nor under-recovers its actual fuel costs.

52. Gulf Crossing responds in its answer that establishing a fixed fuel rate at the same time the recourse transportation rates are established is entirely consistent with Commission policy. The fuel retention rate it proposes here, it states, is based specifically upon the facilities it is proposing and the resulting pipeline hydraulics. Gulf Crossing states that all the shippers have agreed to a fixed fuel rate for the terms of their negotiated rate agreements, that the parties have allocated the operational risk associated with fuel solely to Gulf Crossing, and that the shippers supporting the project have agreed to allow Gulf Crossing to retain any benefit associated with efficiently operating the pipeline. According to Gulf Crossing, any perceived risk of overrecovery related to fuel is offset by the allocation of economic risk to Gulf Crossing in the event of an under-collection. In addition, Gulf Crossing questions whether imposing a fuel tracker based on the initial operations of a new interstate pipeline would lead to more accurate results, as there is no actual operating experience on which to develop the tracker. Moreover, adds Gulf Crossing, given the variations in throughput that are likely to occur during the initial years of the project, the tariff rate, which will be applicable only to new shippers, could be volatile. A volatile fuel rate created by wide swings in a periodic true-up mechanism could make Gulf Crossing competitively unattractive to new shippers, it says.

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<sup>31</sup> 18 C.F.R. § 154.313 (2007).

53. Current Commission policy offers pipelines two options for recovering fuel they use for compression and for making up for lost and unaccounted for gas.<sup>32</sup> The first option is for the pipeline to establish a fixed fuel retention percentage that can be changed only in a general NGA section 4 rate case. The second option, which BP favors, allows the pipeline to include in its tariff a mechanism permitting periodic changes in its fuel retention percentage, as allowed by section 154.403 of the Commission's regulations.<sup>33</sup> A fixed fuel retention rate as proposed by Gulf Crossing is currently an allowable mechanism for allocating the operational and financial risk between Gulf Crossing and its expansion shippers.<sup>34</sup> The remaining question is whether the fuel retention percentage proposed by Gulf Crossing is appropriate. In a September 25, 2007 data request, we requested Gulf Crossing to provide a worksheet supporting the development of its proposed 1.0 percent fuel rate. Gulf Crossing provided supporting data in its October 10, 2007 response. Based on the information in the application and in the October 10, 2007 data response, we find that the fuel retention rate proposed by Gulf Crossing is reasonable.

### **Pro Forma Tariff Issues**

#### **Currently Effective Rates**

54. Gulf Crossing submitted a blank pro forma current rate sheet (Sheet No. 20) with its application. Our September 25, 2007 data request directed Gulf Crossing to provide an updated Sheet No. 20 with the current rates for Gulf Crossing and for the leased capacity. Instead, Gulf Crossing filed two pro forma Sheets No. 21, one listing the effective transportation rates for service under Rate Schedule FTS, and the other listing the rates for service under Rate Schedule ITS. We accept these sheets subject to the changes discussed in the body of this order and subject to Gulf Crossing's either combining the two into one sheet, or refiling them as Sheet No. 20 and Sheet No. 21.

55. Section 4.2 of the Enogex lease states that shippers using the Antero receipt point shall provide the quantity of fuel specified in Enogex's Statement of Operating Conditions (SOC) applicable to receipts and deliveries in Enogex's Eastern Zone. Gulf

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<sup>32</sup> See *ANR Pipeline Co.*, 110 FERC ¶ 61,069 (2005).

<sup>33</sup> 18 C.F.R. § 154.403 (2007).

<sup>34</sup> We note, however, that on September 20, 2007, the Commission issued a Notice of Inquiry seeking comments on whether it should change its current policy and prescribe a uniform method for all pipelines to use in recovering fuel costs. The results of that inquiry may impact Gulf Crossing's fuel recovery process. See *Fuel Retention Practices of Natural Gas Companies*, FERC Statutes & Regulations ¶ 35,556 (2007).

Crossing's pro forma Sheet No. 21 states that shippers will pay the fuel rate from the Antero receipt point applicable to Enogex's Eastern Zone. In order to avoid confusion, Gulf Crossing is ordered to clearly state in its tariff that shippers will pay the fuel rate stated in Enogex's SOC.

### **Annual Charge Adjustment (ACA)**

56. Gulf Crossing's proposed rate sheets described above provide for an ACA of \$0.0019 per Dth to apply to service under Rate Schedules FTS and ITS. Our regulations permit a pipeline to adjust its rates annually to recover from its customers the charges assessed under Part 382 of our regulations pursuant to an ACA clause.<sup>35</sup> Section 154.402(a) of the Commission's regulations, however, provides that the annual charge must be paid before the company applies an ACA unit charge.<sup>36</sup> The ACA charge may go into effect only if the company has paid the applicable annual charge in compliance with section 382.103 of our regulations. Because the ACA is based on the previous fiscal year's throughput, and Gulf Crossing will not receive a bill for the ACA charge until it has been in operation for a year, including the ACA charge now would be premature. Therefore, Gulf Crossing must delete the ACA charge from its rate schedules. Once Gulf Crossing has paid its applicable annual charge, it may file revised tariff sheets reflecting the applicable ACA charge at that time in accordance with Commission regulations, but should separately identify the ACA charge as a component of rates.

### **Rate Schedule FTS – Fuel Charge Exemption**

57. Gulf Crossing's proposed rate schedules contain a provision that Gulf Crossing will not charge for fuel for particular transactions involving receipt and delivery point combinations or paths on its system where it determines that fuel will not be used. The rate schedules further provide that, if Gulf Crossing later determines that fuel is needed for a point pair/segment previously identified as not requiring fuel, it will honor any existing no-fuel firm transactions for the term of the service agreement.

58. BP objects to these so-called "zero fuel" provisions, found in Rate Schedule FTS section 5(b) and Rate Schedule ITS section 4(c), on the grounds that they are unduly discriminatory and preferential because they allow Gulf Crossing to grant fuel exemptions subjectively to shippers it selects. BP argues that, if a segment of Gulf Crossing's system does not use fuel, all shippers using that capacity should receive a fuel

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<sup>35</sup>18 C.F.R. § 382 (2007). Part 382 provides that the adjusted costs of the administration of the natural gas regulatory program will be assessed against each pipeline in proportion to the amount of gas each pipeline transports during a year.

<sup>36</sup>18 C.F.R. § 154.402 (2007).

exemption. BP also states that the Commission should require Gulf Crossing to file for authorization to establish exempted flowpaths so that all shippers are aware of the exemptions.

59. BP also argues that Gulf Crossing's proposal to grandfather any fuel charge exemptions is likewise unduly discriminatory and preferential because it would permit Gulf Crossing to waive fuel charges where fuel is actually consumed, thereby shifting fuel costs to other shippers. The grandfather provision, it states, would also exempt some, but not all, shippers from fuel charges on the same flow path, thus effectively charging different maximum rates to different shippers for the same service. According to BP, not reinstating the fuel rate for all shippers provides the grandfathered shipper a competitive advantage that will distort competition.

60. Gulf Crossing replies that its proposal is designed to provide transportation options to customers without assessing a fuel charge when no incremental fuel is actually consumed during a specific transaction. Gulf Crossing avers that the Commission has approved a virtually identical proposal to determine "zero fuel" transactions on Gulf South's system.<sup>37</sup> Gulf Crossing avers that its FTS and ITS rate schedules will allow all similarly situated shippers to use designated no-fuel points or segments and that the point pairs and segments will be posted on Gulf Crossing's website.

61. Gulf Crossing states that honoring any existing no-fuel firm transactions for the term of the service agreements (grandfathering), even if Gulf Crossing determines that fuel is needed, is important in that it preserves the agreement between Gulf Crossing and the shipper and assures shippers that Gulf Crossing will bear the risk of under-collection of fuel. Gulf Crossing asserts that the resulting rate certainty encourages shippers to enter into longer term contracts. Gulf Crossing also states that the Commission has approved a similar provision for Gulf South's tariff.<sup>38</sup>

62. The Commission has permitted pipelines to exempt certain transactions or portions of their pipeline systems from fuel charges upon a showing that no fuel is used. However, the Commission has usually permitted the pipeline to make such exemptions only after the pipeline has first made a filing with the Commission that identifies the specific transactions which the pipeline proposes to exempt from fuel charges and demonstrated that those transactions do not require the use of fuel.<sup>39</sup> Once the pipeline has made the required demonstration, the exempted transactions are then listed in the pipeline's tariff.

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<sup>37</sup> *Gulf South Pipeline Company, LP*, 111 FERC ¶ 61,463 (2005).

<sup>38</sup> *Id.* P 16.

<sup>39</sup> *See Colorado Interstate Gas Company*, 112 FERC ¶ 61,199 (2005).

The Commission has insisted on those requirements to assure that there will be non-discriminatory selection of exempted transactions and to avoid unwarranted cost shifts to other customers.<sup>40</sup>

63. Although the Commission did approve the proposed tariff language for Gulf South, it did so because of the specific circumstances extant, especially the fact that the reticulated nature of the Gulf South pipeline system could make it impossible to chart specific mileage or fuel use for a specific shipment of gas. These special circumstances do not apply to Gulf Crossing. Therefore, if Gulf Crossing intends to exempt certain transactions from fuel charges, it must make a filing with the Commission that identifies the specific transactions which the pipeline proposes to exempt from fuel charges and demonstrate that those transactions do not require the use of fuel. Gulf Crossing must revise Rate Schedule FTS section 5(b) and Rate Schedule ITS section 4(c) accordingly.

64. In addition, while the Commission has permitted pipelines to exempt certain transactions from fuel, the Commission has required pipelines to charge all shippers at least the lost and unaccounted for (LAUF) gas component of the fuel charge, even in cases where no fuel use component is charged.<sup>41</sup> Appendix C of Gulf Crossing's October 10, 2007 data response shows that Gulf Crossing estimates its LAUF volumes to be 0.01 percent. Therefore, Gulf Crossing is ordered to revise its tariff to state separately its LAUF component and to charge shippers the LAUF component for transactions that are exempt from its fuel charge.

#### **Rate Schedule FTS – Withholding Capacity**

65. Gulf Crossing's tariff proposes language in Rate Schedule FTS section 1(b)(iii) providing that Gulf Crossing may reject a request for service if the service "would cause a reduction in Gulf Crossing's available firm capacity disproportionate to the level of service requested." BP contends that this tariff language is contrary to the Commission's open-access policy, which requires a pipeline to award available capacity to a shipper offering to pay the maximum applicable rate.<sup>42</sup> In addition, BP states that Gulf Crossing has failed to state any objective criteria for determining how the awarding of available capacity would cause a disproportionate reduction in available capacity.

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<sup>40</sup> *Northern Natural Gas Co.*, 82 FERC ¶ 61,270, at p. 62,062 (1998).

<sup>41</sup> *East Tennessee Natural Gas, LLC*, 110 FERC ¶ 61,060 (2005) (citing *Mississippi River Transmission Corporation*, 98 FERC ¶ 61,119 (2002)); *Columbia Gas Transmission Corporation*, 101 FERC ¶ 61,378 (2002).

<sup>42</sup> Citing *Columbia Gas Transmission Corp.*, 94 FERC ¶ 61,301, at p. 62,106 (2001).

66. Similarly, BP states that Rate Schedule ITS section 1(b)(i) provides that Gulf Crossing can reject a prospective shipper's request for service if the service "would cause a reduction in Gulf Crossing's capacity disproportionate to the level of service requested." As ITS service is scheduled on a daily basis, BP states there is no reason for Gulf Crossing to refuse to execute an ITS service agreement or schedule ITS service when capacity is available.

67. In its answer, Gulf Crossing explains that the purpose of this provision is not to allow it to withhold capacity; rather, the provision is intended to provide a method for Gulf Crossing to deny requests for service that would require it to reserve more capacity for a customer than the amount for which the customer has contracted under its firm service agreement. Gulf Crossing provides an example in which, due to system hydraulics, a 200 MMcf a day request for firm transportation would reduce the physical capacity of the pipeline by an amount greater than 200 MMcf a day. Gulf Crossing states that such a situation may occur where mainline pressure must be adjusted in order to make a primary delivery, thereby causing the pressure to drop at other delivery points on the system. As Gulf Crossing is not yet operating and cannot determine which points, if any, may be affected by such pressure differentials, it avers that it must have the ability to manage requests that it determines will disproportionately reduce capacity and potentially affect service to other customers adversely. Gulf Crossing notes that the Commission approved the same provision for Gulf South.<sup>43</sup>

68. The Commission agrees that Gulf Crossing should not be required to enter into transportation agreements that would require it to reserve more capacity than that which is under contract, and that would reduce system capacity disproportionately or potentially affect service to other customers adversely. If a customer believes Gulf Crossing is denying capacity in a discriminatory manner, it has options to pursue, including filing a formal complaint with the Commission. Therefore, we approve these provisions of Rate Schedules FTS and ITS.

#### **Rate Schedule FTS – MDQ (Maximum Daily Quantity) Increase**

69. Section 2(c) of Rate Schedule FTS includes language providing that "shippers that sign a precedent agreement which becomes an FTS service agreement for a term of at least five (5) years and a MDQ of at least 100,000 Dth per day may be granted an option to increase their MDQ during the first three (3) years of the service agreement" at their current rate without having to satisfy the capacity auction procedures in section 8 of the GT&C. Under this provision shippers that sign a precedent agreement will be assured

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<sup>43</sup> See Gulf South Pipeline Company, LP, FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet No. 100, FTS Rate Schedule 1(b)(iii); Substitute First Revised Sheet No. 200, ITS Rate Schedule 1(b)(iii).

access to additional available capacity at their current rate even if other shippers place a higher value on the capacity.

70. Gulf Crossing's proposed section 2(c) described above provides rights that are not available to all shippers under this rate schedule and may provide a shipper with the right to obtain capacity at a price that is below the market value of the capacity. Although, as noted above, the Commission recently clarified that pipelines may provide rate incentives to induce sponsoring shippers to commit to a project, the Commission did not extend this policy to include non-rate considerations. The Commission finds that providing certain shippers with the ability to obtain capacity without having to satisfy the capacity auction procedures in section 8 to be contrary to Commission policy. Therefore, the Commission directs Gulf Crossing to remove the above provision from its FTS Rate Schedule.

### **Section 1 – North American Energy Standards Board (NAESB)**

71. Gulf Crossing states that its tariff incorporates all NAESB Version 1.7 Business Practice and Electronic Standards and additional standards required by the Commission in accordance with Order No. 587, *et al.* In order for the Commission to be able to determine whether Gulf Crossing is currently in compliance with the requirements of Order No. 587-S,<sup>44</sup> Gulf Crossing must file a cross-reference table with its compliance filing which clearly shows the section of the tariff containing the NAESB standards and whether the standards are incorporated in the tariff by reference or included in the text verbatim.

### **Section 3 – Gas Quality**

72. Section 3.1 of Gulf Crossing's proposed tariff provides that, "[t]he gas tendered at each receipt and delivery point shall contain a gross heating value of not less than 950 Btu per cubic foot nor more than 1075 Btu per cubic foot." In support of the proposal Gulf Crossing stated in the application that the 1075 Btu tariff specification is necessary to insure that it will be able to deliver gas through the leased capacity on Gulf South to Florida Gas and Destin, both of which currently have a 1075 Btu limit in their tariffs. Shell and BP assert that the proposed tariff Btu specification should be rejected because Gulf Crossing has not provided any technical or operational support for its proposed 1075 Btu limit. They also assert that because Gulf South's gas quality standards will control the character of gas entering and flowing on its system, including gas that is entering the Gulf South system through deliveries at the Gulf South-Gulf Crossing interconnect or flowing on the Gulf South capacity being leased by Gulf Crossing, the Commission

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<sup>44</sup> *Standards for Business Practices of Interstate Natural Gas Pipelines*, FERC Stats. & Regs. ¶ 31,179 (2005).

should condition Gulf Crossing's Btu tariff specification on the Commission's resolution of Gulf South's gas quality proposal.

73. Given the design and location of the Gulf Crossing Project and the fact that the bulk of the Gulf Crossing gas will move through the Gulf South system, the Commission finds that the gas quality standards for the Gulf South system should be used for determining the gas quality standards applicable to the Gulf Crossing system. On July 20, 2007, the Commission, in Docket No. RP07-149-000, rejected Gulf South's proposal to reduce its maximum Btu limit from 1175 Btu to 1110 Btu and create a safe harbor of 1075 Btu, finding that Gulf South had not shown that these specifications were necessary to effect deliveries to Destin or Gulfstream, its two downstream pipelines that would potentially require a Btu limit as low as 1075.<sup>45</sup> However, on February 15, 2008, Gulf South submitted revised tariff sheets in Docket No. RP08-198-000, proposing separate gas quality specifications for its Expansion Facilities.<sup>46</sup> As part of the filing, Gulf South proposes to lower its current tariff maximum Btu limit from 1175 Btu to 1110 Btu. By order issued March 14, 2008, the Commission accepted and suspended the tariff sheets, to become effective the earlier of a date set by a subsequent Commission order or August 17, 2008.<sup>47</sup> To avoid a duplicative review of the same issues in this proceeding we will require Gulf Crossing to adopt the maximum Btu limit the Commission finds appropriate for Gulf South in Docket No. RP08-198-000.<sup>48</sup> Therefore, we direct Gulf Crossing to file revised tariff sheets incorporating the maximum Btu limit established in Docket No. RP08-198-000 once it is determined.

#### **Receipt/Delivery Point Linkage**

74. BP objects to Gulf Crossing's provision in General Terms and Conditions (GT&C) section 3.2 which states that Gulf Crossing will "not be required to receive gas at any receipt point which is of a quality inferior to that required by the operator at any delivery point," which, it maintains, could apply even if the gas meets Gulf Crossing's gas quality tariff specifications. According to BP, this would make Gulf Crossing's gas

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<sup>45</sup> *Gulf South Pipeline Company*, 120 FERC ¶ 61,076, at P 32-35 (2007).

<sup>46</sup> As described in that proceeding, Gulf South's Expansion Facilities extend from the Carthage, Texas area to Transco Station 85 in Choctaw County, Alabama, but exclude Gulf South's historical system interconnections and associated facilities. Gulf Crossing is proposing to lease capacity on Gulf South's Expansion Facilities.

<sup>47</sup> *Gulf South Pipeline Company, L.P.*, 122 FERC ¶ 61, 228 (2008).

<sup>48</sup> See *Southern Natural Gas Company*, 113 FERC ¶ 61,199 (2005), *order issuing certificates*, 115 FERC ¶ 61,328 (2006).

quality tariff provisions meaningless and allow Gulf Crossing to implement the lowest common denominator approach for gas quality specifications when any delivery point operator has posted a lower gas quality limit.

75. Gulf Crossing replies that it did not intend the provision to apply as BP suggests. Instead, it states, the purpose of the provision is to address situations in which a customer wishes to schedule gas to a delivery point, but the operator will not accept the gas for quality reasons. Gulf Crossing states that, on further reflection, it believes that this is more properly a scheduling matter rather than a gas quality issue. It proposes to delete the last three lines containing the material quoted above from the end of section 3.2 and add language in section 12.6 which states:

Gulf Crossing may decline to schedule service if Customer tenders Gas which is rejected by an interconnecting pipeline or a third party delivery operator due to such entity's applicable quality specifications at the Delivery Point to which a Customer has nominated deliveries.

76. Gulf Crossing avers that this proposal, which it states is consistent with tariff provisions approved in *Rockies Express*,<sup>49</sup> should resolve BP's concerns that Gulf Crossing would use the provision to override its gas quality specifications. Gulf Crossing is ordered to make the change described above.

### **Blending/Aggregation and Monitoring**

77. BP contends that Gulf Crossing has not proposed sufficient procedures governing how it will determine, post or implement blending and aggregation, as required by the Gas Quality Policy Statement.<sup>50</sup> In addition, BP believes that Gulf Crossing should be required to state in its tariff the number and location of gas quality monitoring points it will have, as well as what information will be monitored and how often gas quality information will be measured at the monitoring points and posted to its EBB.

78. BP also argues that the Commission should require Gulf Crossing to allow shippers to comply with a gas quality restriction by "pairing" conforming and non-conforming gas volumes along the same flow path by arranging for delivery of additional

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<sup>49</sup> 116 FERC ¶ 61,272 (2006).

<sup>50</sup> *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325, at P 39-41 (2006) (Gas Quality Policy Statement).

gas volumes to the extent operationally feasible. BP contends that shippers should also be allowed to arrange for processing of gas to avoid shut-in due to a gas quality limit.

79. In its answer, Gulf Crossing opposes BP's request to include more detailed gas quality procedures, monitoring points and pairing procedures in its tariff. Gulf Crossing states that it is a simple, long-line system with a limited number of receipt and delivery points and that its proposed tariff provisions provide Gulf Crossing with the means necessary to manage its gas stream in a manner that maintains maximum throughput and attempts to minimize supply disruption. Gulf Crossing states that appropriate measurement equipment will be installed at each receipt and delivery point that will enable Gulf Crossing to monitor all points and easily target points at which there is a gas quality issue. Because Gulf Crossing is not yet in-service, it has no actual experience that might indicate where monitoring points, other than receipt and delivery interconnects, might be appropriate. Gulf Crossing also avers that because its system has only a small number of receipt points, all of which are pipeline interconnects, proof of processing and contractual pairing are not appropriate or helpful on its system. These mechanisms are best used as tools for wellhead receipt points where the quality of the gas may be more rich or inconsistent, it says.

80. In the Gas Quality Policy Statement, the Commission stated that it is appropriate to allow pipelines to exercise their discretion to waive strict gas quality limits when operating conditions allow, and we encouraged pipelines to allow blending and other strategies to the extent they could be implemented on a non-discriminatory basis. However, the Gas Quality Policy Statement also acknowledged there may be limitations to a pipeline system's ability to blend supplies of varying quality. Gulf Crossing has stated in its answer that it is a long-line system with a limited number of receipt points, all of which are pipeline interconnects. We agree that, due to its configuration, the use of proof of processing and contractual pairing or blending, may not be particularly helpful on Gulf Crossing's system. Therefore, the Commission will not require Gulf Crossing to develop additional procedures to require the blending or pairing of gas supplies. We note that Gulf Crossing states that the appropriate measurement equipment will be installed at each receipt and delivery point to enable Gulf Crossing to monitor all points and easily target points at which there is a gas quality issue. Accordingly, we will not require Gulf Crossing to identify in its tariff specific monitoring points on its system.

### **Section 5 -- Creditworthiness**

81. Section 5 of Gulf Crossing's GT&C provides the creditworthiness provisions with which shippers will need to comply in order to receive service. Section 5.1 provides Gulf Crossing the ability to suspend service if a shipper deemed noncreditworthy does not provide adequate security. The Commission has not permitted pipelines to impose

reservation charges during the period when their services are suspended.<sup>51</sup> Gulf Crossing must add language stating that it will not impose reservation charges when the shipper's service is suspended.

### **Sections 7 and 21 – Reservation Charge Credits**

82. BP states that Gulf Crossing's tariff does not provide for reservation charge credits, as required by Commission policy, when the pipeline curtails firm service. In reply, Gulf Crossing states that, contrary to BP's assertion, Gulf Crossing's tariff does in fact provide a reservation charge credit during curtailment of service. Thus, proposed GT&C section 7.7 states, "If Gulf Crossing is unable to transport Gas as a result of scheduled maintenance, then Gulf Crossing shall credit Customer's account for the appropriate portion of the reservation charge based on the portion of Customer's MDQ affected by the interruption." This provision properly requires a full credit for the portion of the gas not delivered by Gulf Crossing, *avers* Gulf Crossing. In addition, Gulf Crossing states that proposed section 21.5(e) mandates a full credit of the reservation charge for any portion of the gas not delivered due to *force majeure*.

83. Although GT&C section 7.7 provides for reservation charge credits as a result of Gulf Crossing's being unable to transport gas as a result of scheduled maintenance, the Commission requires that pipelines provide full reservation charge credits for all scheduled gas not delivered to shippers due to a non-*force majeure* event.<sup>52</sup> Therefore, Gulf Crossing must revise its tariff to provide for full reservation charge credits in all non-*force majeure* situations, not just those involving scheduled maintenance. On the other hand, the Commission finds that Gulf Crossing's section 21.5(e) fully complies with the Commission's *force majeure* reservation charge crediting policy in that it provides a full reservation charge credit for the pro rata portion of any firm transportation service not provided due to a *force majeure* event.

### **Section 7 – Points less than 5,000 Dth**

84. Section 7.8 of Gulf Crossing's proposed tariff provides that it will not be required to connect a primary receipt point or a primary delivery point unless it has an MDQ of at least 5,000 Dth. In its October 10, 2007 data response, Gulf Crossing points out that the Commission approved a minimum volume requirement of 100 Dth for Gulf South, as

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<sup>51</sup> *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking*, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,191 (2005).

<sup>52</sup> *See, e.g., Natural Gas Pipeline Company of America*, 106 FERC ¶ 61,310 (2004).

consistent with the operation of Gulf South's system. Gulf Crossing asserts that Gulf Crossing's larger minimum volume of 5,000 Dth reflects the fact that Gulf Crossing is a large, high-pressure pipeline system and, given its operational requirements, small wells or delivery points will not physically be able to be connected because of the amount of compression or regulation that would need to be installed.

85. The Commission generally does not approve minimum volume tariff provisions for receipt and delivery points because they are contrary to the Commission's open access policies.<sup>53</sup> The Commission found Gulf South's proposal for a 100 Dth a day minimum volume requirement for connections of new receipt and delivery points to be just and reasonable, in light of Gulf South's explanation that serving such small volume points presents operational challenges because they are difficult to measure, thus increasing the potential for lost system gas, and in light of its statement that costs associated with operating small points is greater than the maximum rate will cover. The Commission's interconnect policy, as stated in *Panhandle*, requires a pipeline to grant access to its system if five criteria are met.<sup>54</sup> If shippers should elect to add facilities in order to effect deliveries into the Gulf Crossing system, Gulf Crossing's tariff should not prevent them. Therefore, Gulf Crossing's section 7.8 is rejected and must be removed.

### **Section 9 – Negotiated Rates**

86. Gulf Crossing's pro forma tariff includes a provision in GT&C section 9 that would allow Gulf Crossing to enter into negotiated rate agreements consistent with Commission policy. Section 9 states that Gulf South will file with the Commission all negotiated rate service agreements and an affirmation that the negotiated rate agreement does not deviate in any material aspect from the applicable form of service agreement in Gulf Crossing's tariff. Section 9, however, does not address the Commission's requirements that the pipeline maintain separate records for all revenues associated with negotiated rate agreements and maintain and provide separately identified and totaled volume, billing determinant, rate or surcharge component, and revenue accounting information for its negotiated rate arrangements in any general or limited rate change filing that it makes.

87. We will approve negotiated rate authority for Gulf Crossing and accept the proposed tariff language in section 9 concerning negotiated rate provisions. In certificate proceedings we establish initial recourse rates, but do not make determinations regarding

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<sup>53</sup>See, e.g., *Petal Gas Storage Company*, 64 FERC ¶ 61,190, at p.62,576 (1993).

<sup>54</sup> *Panhandle Eastern Pipe Line Company*, 91 FERC ¶ 61,037 (2000).

specific negotiated rates for proposed services.<sup>55</sup> In order to comply with the Alternative Rate Policy Statement<sup>56</sup> and our decision in *NorAm Gas Transmission Company*,<sup>57</sup> we direct Gulf Crossing to file any negotiated rate contracts not less than 30 days or more than 60 days, prior to the commencement of service, stating for each shipper the negotiated rate, the applicable gas volume to be transported, and an affirmation that the affected service agreements do not deviate in any material respect from the form of service agreement in Gulf Crossing's pro forma tariff. Gulf Crossing must also disclose all consideration received that is associated with the agreement. In addition, Gulf Crossing must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future section 4 or 5 rate case. Gulf Crossing is ordered to add this record keeping requirement to section 9 of its tariff.

### **Section 10 – Right of First Refusal (ROFR)**

88. Section 10.2(b) of Gulf Crossing's GT&C includes procedures for a shipper to provide a ROFR response for no-notice service (NNS). Gulf Crossing does not provide NNS Service and is directed to remove from its tariff any reference to that service.

### **Section 11 -- Discount Factor**

89. In the event Gulf Crossing auctions capacity that includes a negotiated rate option, Gulf Crossing proposes to use a 15 percent discount factor in determining the highest present value for evaluating bids for capacity. BP objects to the use of a 15 percent discount factor as not accurately reflecting the time value of money and suggests the Commission's refund interest rate, which utilizes the Federal Reserve's Quarterly Prime

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<sup>55</sup> *CenterPoint Energy – Mississippi River Transmission Corp.*, 109 FERC ¶ 61,007, at P 19 (2004); *ANR Pipeline Co.*, 108 FERC ¶ 61,028, at P 21 (2004); *Gulfstream Natural Gas System, LLC*, 105 FERC ¶ 61,052, at P 37 (2003); *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,360, at n.19 (2002).

<sup>56</sup> *Alternative to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines* (Alternative Rate Policy Statement), 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied, Burlington Resources Oil & Gas Co. v. FERC, Nos. 96-1160, et al.*, U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998).

<sup>57</sup> 77 FERC ¶ 61,011 (1996).

Rate, is a more appropriate net present value discount factor than the 15 percent rate proposed by Gulf Crossing.

90. Gulf Crossing states in its answer that the Commission has regularly found a variety of discount factors to be just and reasonable, including those based upon the pipeline's rate of return. Gulf Crossing states that the Commission has approved a 15 percent discount rate for Gulf South and asserts that use of a prescribed discount factor, regardless of the percentage chosen, ensures that all bids will be calculated on a non-discriminatory and non-preferential basis.

91. The Commission has found a variety of discount factors to be just and reasonable and agrees with Gulf Crossing that the use of a prescribed discount factor clearly stated in the tariff will ensure that bids for capacity will be calculated on a non-discriminatory basis. The Commission will accept Gulf Crossing's use of a 15 percent discount factor.

### **Section 11 – Capacity Award Process**

92. Section 11.2(b) states that the winning bidder of a capacity auction shall accept the capacity by notifying Gulf Crossing by telephone within 10 minutes of notification by Gulf Crossing that it is the winning bidder. If it does not do so, the winning bidder forfeits the capacity to the next highest bidder, which then likewise receives 10 minutes after notification to accept the capacity. The Commission is concerned that 10 minutes from notification is an insufficient amount of time within which to require a shipper to accept capacity. While we acknowledge that bidders should be prepared to accept their bids immediately, we are concerned that the small amount of time could potentially result in shippers that have successfully bid on capacity not getting access to the capacity because of administrative or other types of errors. Therefore, Gulf Crossing is ordered to provide further justification for the 10-minute window or provide an additional amount of time for a winning bidder to accept capacity.

### **Sections 12 and 18 – Scheduling Priority**

#### **Operational Purchase**

93. GT&C sections 12.4(b) and (c)(1), provide the highest scheduling priority for gas purchased by Gulf Crossing for operational purposes. BP states that this violates Commission policy that operational gas must be scheduled after both primary and secondary firm transactions.<sup>58</sup>

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<sup>58</sup> *Citing Colorado Interstate Gas Company*, 111 FERC ¶ 61,216, at P 19 (2005) (*CIG*); *Wyoming Interstate Company*, 111 FERC ¶ 61,215, at P34 (2005); *Entrega Gas Pipeline LLC*, 114 FERC ¶ 61,326, at P 42 (2006) (*Entrega*).

94. Gulf Crossing states in its answer that the purpose of section 12.4(c)(1) is to allow for the purchase of gas in order to protect the operational integrity of the system during emergencies, in contrast to the situation in *CIG* which addressed gas purchases to help manage “normal operations” of the pipeline. Gulf Crossing states that in the Gulf South tariff the Commission approved a provision identical to that proposed here, holding that “all users of the system will benefit and these purchases should have the highest priority for scheduling purposes.”<sup>59</sup>

95. Scheduling of operational gas with a priority over any firm service is inconsistent with Commission regulations and policy, as set forth in *Entrega*. The Commission has allowed pipelines to schedule gas purchased by the pipeline in an emergency in order to protect the operational integrity of the system as the highest priority since all users of the system will benefit. This was the situation addressed in approving United Gas Pipeline’s (later Gulf South) scheduling provision.<sup>60</sup> Gulf Crossing’s tariff provision here does not specifically define operational gas in this manner. If Gulf Crossing intends operational gas to refer to emergency supplies needed to protect system integrity, as it states in its answer, it must include a more appropriate definition in its tariff and use a more appropriate term such as “emergency gas.” Gulf Crossing is ordered to modify sections 12.4(b) and 12.4(c)(1) accordingly.

#### **Bumping Secondary and Overrun Capacity**

96. BP objects to Gulf Crossing’s priorities for curtailing firm service in GT&C section 18.4(e)(ii)(2), which, it asserts, improperly give priority to primary firm transactions over other firm service. BP asserts that this violates Commission policy that once secondary firm capacity is scheduled, primary firm capacity does not have a higher priority for the purposes of bumping or curtailing firm service.<sup>61</sup> In addition, BP contends that Gulf Crossing’s tariff should provide that curtailment of any firm service should be pursuant to the issuance of an operational flow order. BP also objects to Gulf Crossing’s section 12.4(c), which, it avers, provides a lower scheduling priority for

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<sup>59</sup>*United Gas Pipe Line Company*, 65 FERC ¶ 61,006, at p. 61,075 (1993).

<sup>60</sup> The Commission’s approval of United Gas Pipeline’s scheduling provision regarding operational gas was not unqualified. The Commission found that the provision was reasonable to protect the operational integrity of the system in an emergency; however, the Commission required the pipeline to report its need to invoke this tariff provision, and its actions under this provision on the electronic bulletin board so that shippers would be informed on a current basis.

<sup>61</sup> *Citing, e.g., Millennium Pipeline Co., et al.*, 117 FERC ¶ 61,319, at P145 (2006).

overrun service for firm shippers than for interruptible service. BP states that Commission policy is that overrun service should have the same scheduling priority as interruptible service.<sup>62</sup>

97. Gulf Crossing agrees with BP with respect to the priorities for curtailing firm service and commits that it will make the necessary revisions to its tariff. In addition, Gulf Crossing agrees to modify the language in pro forma Sheet No. 1158 to specify that curtailment of any firm service be pursuant to the issuance of an operational flow order. The Commission requires Gulf Crossing to make this change.

98. As for the overrun service, Gulf Crossing states in its answer that it does not intend to provide nominated overrun service. Gulf Crossing proposes to delete the overrun scheduling priority language in GT&C section 12 and make any related changes necessary for consistency. However, Gulf Crossing will retain language governing unintentional overruns that are not related to scheduling. The Commission requires Gulf Crossing to make these changes.

### **Section 17 – Segmentation**

99. Merrill Lynch states that Gulf Crossing's proposed segmentation provision in GT&C section 17.1 appears to provide Gulf Crossing's shippers with the ability to segment capacity leased from Gulf South in a manner that is not available to Gulf South's shippers. If this is correct, Gulf Crossing's shippers will have more rights than shippers on Gulf South, it asserts. BP raises similar concerns, and both parties state that it is unclear from the lease what segmentation rights shippers on Gulf Crossing will have on Gulf South. Both parties state that if Gulf Crossing's shippers are provided the ability to segment on the leased capacity, Gulf South's shippers should also be provided the ability to segment their capacity in a similar manner.

100. Gulf South replies that on August 3, 2007, it filed tariff sheets in Docket No. RP07-561-000 to establish firm in-the-path scheduling on its recent expansion facilities.<sup>63</sup> When the new tariff sheets go into effect, avers Gulf South, Gulf South's customers using these facilities will have essentially the same scheduling rights that Gulf Crossing's customers will have on Gulf South's system under the lease.

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<sup>62</sup> *Citing Elba Express Company L.L.C.*, 119 FERC ¶ 61,015, at P 41 (2007); *Golden Pass LNG Terminal LP*, 112 FERC ¶ 61,041, at P53 (2005).

<sup>63</sup> The three projects collectively referred to by Gulf South here are pipeline facilities authorized separately in Docket Nos. CP06-127-000 (which went into service in December 2006), CP06-446-000 (the East Texas to Mississippi Expansion Project), and CP07-32-000 (the Southeast Expansion Project).

101. According to Commission policy, once a pipeline acquires capacity through a lease, the pipeline in essence owns that capacity and the capacity is subject to the pipeline's (here, Gulf Crossing's) tariff. The tariff sheets in Gulf Crossing's section 17, which will apply to Gulf Crossing's entire system, including the leased Gulf South and Enogex capacities, properly reflect the Commission's segmentation policies and are approved.<sup>64</sup>

### **Section 19 -- Penalties**

102. Gulf Crossing proposes to use *Gas Daily's* Transco's Zone 4, Mississippi-Alabama index for determining penalties it will assess to shippers not complying with Operational Flow Orders. In 2004, the Commission determined that price indices that are used in interstate pipeline tariffs must provide the volume and number of transactions upon which the index value is based and must meet at least one of four criteria defined in the order.<sup>65</sup> In its compliance filing Gulf Crossing must address how its proposed index complies with the Commission's policy in this area.

### **Capacity Expansion Projects (Open Seasons)**

103. GT&C section 20.8 of Gulf Crossing's proposed tariff states that Gulf Crossing will conduct an open season for "significant mainline or lateral capacity expansion projects" which it defines as projects that would "increase capacity by at least 10 percent with a capacity greater than 50,000 Dth." BP asserts that the provision is unduly discriminatory and preferential, and it contends that, to be consistent with Commission policy, the Commission should require Gulf Crossing to revise its tariff to require an open season for all expansions.

104. Gulf Crossing states in its answer that other provisions in its tariff address BP's concerns. It states, for example, that all firm capacity is posted to Gulf Crossing's website, including new capacity not subject to the open season requirement. Under proposed GT&C section 8, any customer may submit a request for service or bid on available capacity, and the posting and bidding procedures provide all firm shippers nondiscriminatory, non-preferential access to new firm capacity. Gulf Crossing avers that the procedures in section 8 are far more efficient and appropriate than an open season for minor facility expansions that do not increase capacity by more than 50,000 Dth.

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<sup>64</sup>On January 31, 2008, the Commission approved Gulf South's proposal to establish in-the-path scheduling priority for shippers that have firm capacity on its Expansion Facilities. *See* 122 FERC ¶ 61,074 (2008).

<sup>65</sup>*See Order Regarding Future Monitoring of Voluntary Price Formation, Use of Price Indices in Jurisdictional Tariffs, and Closing Certain Tariff Dockets*, 109 FERC ¶ 61,184 (2004).

105. The Commission's general policy is that all new interstate pipeline construction be preceded by a non-discriminatory open-season process through which potential shippers may seek and obtain firm capacity rights.<sup>66</sup> The purpose of open seasons with respect to capacity expansions is to ensure that projects are sized efficiently by giving potential shippers the opportunity to request new capacity and existing shippers an opportunity to turn back capacity. Gulf Crossing's attempt to restrict the requirement to hold an open season to an expansion that increases capacity by at least 10 percent with a capacity greater than 50,000 Dth violates that policy. In addressing this issue in Gulf South's tariff, the Commission found that the open season requirement applies to significant facility expansions, including laterals, but that minor facilities may be excluded from the general situation.<sup>67</sup> Gulf Crossing has not made any attempt here to justify its proposed threshold so as to warrant an exemption from our general policy requiring open seasons. The provisions in section 8 to which Gulf Crossing refers, moreover, govern how existing capacity will be obtained and are not sufficient protection to shippers as there is no guarantee capacity will be available. Therefore, the Commission will require Gulf Crossing to eliminate or appropriately revise the restrictions in section 20.8 as to when it will conduct an open season for new capacity.

#### **Park and Loan Service**

106. Pursuant to 18 C.F.R. §284.12(b)(2)(iii), a pipeline with imbalance penalty provisions in its tariff must provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of shippers to manage transportation imbalances, as well as the opportunity to obtain similar imbalance management services from other providers without undue discrimination or preference. Gulf Crossing's tariff contains imbalance penalty tariff provisions. Accordingly, Gulf Crossing must include tariff provisions for park and loan service or other services to assist shippers in managing transportation imbalances.

#### **Exemption from the Standards of Conduct**

107. Gulf Crossing states it is wholly owned by Boardwalk and does not have any marketing affiliates. Gulf Crossing requests that the Commission confirm that it is exempt from the Commission's Standards of Conduct.<sup>68</sup> According to Gulf Crossing, both of Boardwalk's other two interstate pipelines, Gulf South Pipeline Company and Texas Gas Transmission, LLC, are exempt from the standards of conduct because they do

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<sup>66</sup> See *Sonora Pipeline, LLC*, 120 FERC ¶ 61,032, at P 40 (2007).

<sup>67</sup> See *Gulf South Pipeline Company, L.P.*, 95 FERC ¶ 61,132 (2001).

<sup>68</sup> See 18 C.F.R. § 358 (2007).

not have a marketing affiliate. Gulf Crossing states that it will operate its pipeline system on a non-discriminatory and non-preferential basis as required under the NGA and that if Gulf Crossing should acquire a marketing affiliate in the future it will make the appropriate filings with the Commission.

108. On January 19, 2007, the Commission issued an Interim Rule promulgating interim standards of conduct regulations that govern the relationship between natural gas transmission providers and their marketing affiliates.<sup>69</sup> The Commission issued the Interim Rule in response to the decision of the United States Court of Appeals for the District of Columbia concerning the Standards of Conduct for Transmission Providers under Order No. 2004.<sup>70</sup> The purpose of the Interim Rule was to repromulgate the standards of conduct not challenged in the court appeal in the interim while the Commission considered how to respond to the court's decision on a permanent basis. The interim regulation makes clear that the standards of conduct apply to the relationship between natural gas transmission providers and marketing affiliates, and that the standards of conduct will not govern the relationship between natural gas transmission providers and their other energy affiliates.

109. While Gulf Crossing is a transmission provider as defined in the Standards of Conduct, it does not currently have a marketing affiliate. Therefore, the Commission's interim standards of conduct regulations do not apply. Gulf Crossing must notify the Commission if there is any change in circumstances in its operations that might affect its exemption. Additionally, as this is only an interim rule, this finding will be subject to any final rule on the standards of conduct.

### **Capacity Leases**

110. Historically, the Commission has viewed lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.<sup>71</sup> To enter into a lease agreement, the lessee generally needs to be a natural gas company under the NGA and needs section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated

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<sup>69</sup> *Standards of Conduct for Transmission Providers*, Order No. 690, 72 Fed. Reg. 2427 (January 19, 2007), *FERC Statutes and Regulations* ¶ 31,237, *order on reh'g*, Order No. 690-A, 72 Fed. Reg. 14,235 (March 27, 2007), *FERC Statutes and Regulations* ¶ 31,243 (2007).

<sup>70</sup> *National Fuel Gas Supply Corporation v. FERC*, 468 F.3d 831 (D.C. Cir. 2006).

<sup>71</sup> *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at p. 61,530 (2001).

for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.<sup>72</sup>

111. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits from using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease; and (3) the lease arrangement does not adversely affect existing customers.<sup>73</sup> The lease agreements between Gulf Crossing and Enogex and between Gulf Crossing and Gulf South satisfy these requirements.<sup>74</sup>

112. At this time, however, the Commission will only authorize Gulf Crossing to lease 1.05 Bcf per day on Gulf South, the amount of capacity it has under contract. Given that the lease is limited to specific receipt and delivery points and that Gulf Crossing customers do not have access to the remainder of Gulf South's system, the Commission does not believe it is appropriate to encumber additional Gulf South capacity for which Gulf Crossing has yet to identify customers.<sup>75</sup> Gulf Crossing's application states that the actual capacity of the Gulf South lease will be established prior to Gulf Crossing's in-service date. If Gulf Crossing contracts for additional capacity on the lease, it must file to amend its certificate.

113. As discussed above, to ensure that the lease arrangements will not result in subsidization in the future, the Commission will condition its approval of the leases to prevent Gulf Crossing from shifting any costs associated with its leased capacity to customers that do not use the leased capacity and to prevent Gulf South and Enogex from shifting any costs associated with the leased capacity to their other interstate customers.<sup>76</sup> The Commission will approve the lease arrangements, subject to these conditions and the other conditions described below.

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<sup>72</sup> *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005).

<sup>73</sup> *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005); *Islander East Pipeline Company, L.L.C.*, 100 FERC ¶ 61,276, at P 69 (2002).

<sup>74</sup> Gulf Crossing's application states that the actual capacity of the Gulf South Lease will be established prior to the project's in-service date. This order authorizes Gulf Crossing to lease 1,400,000 Dth per day from Gulf South. If Gulf Crossing elects to decrease its lease capacity it must file an amendment and receive Commission approval.

<sup>75</sup> *See, e.g., Gulf South Pipeline Company, LP, L.L.C.*, 120 FERC ¶ 61,291 (2007).

<sup>76</sup> *Gulf South Pipeline Company, L.P.*, 119 FERC ¶ 61,281 (2007).

### **Lease Benefits**

114. The Commission has found that capacity leases in general have several potential public benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, minimize environmental impacts, and result in administrative efficiencies for shippers.<sup>77</sup> Here, both lease arrangements will have these and other benefits. Specifically, the leases proposed here on Enogex and on Gulf South will enable Gulf Crossing's shippers to have seamless access from the production area in Oklahoma to pipelines serving the Northeast and Florida without the construction of additional facilities. Shippers under Gulf Crossing's proposal will be able to enter into a single firm transportation contract under a single tariff and make one nomination to move gas from the production area to connecting pipelines downstream of Gulf South instead of having to enter into three separate contracts to move the gas. The proposed structure eliminates transportation imbalances that could exist under each transportation contract at each pipeline interconnect. In addition, the leasing of capacity will help Gulf Crossing assure producers in Oklahoma that gas will flow sooner than if Gulf Crossing had to construct its own additional pipeline facilities.

### **Lease Payments**

#### **The Enogex Lease**

115. Gulf Crossing states that the rate it proposes to pay Enogex under the lease is less than Enogex's maximum applicable transportation rates for comparable service. A comparison of the proposed lease rate with an Enogex firm interstate rate is not possible, however, because, although Enogex provides interruptible interstate service under section 311 of the NGPA, it does not currently offer firm section 311 transportation service. While Enogex acknowledges that its firm intrastate transportation rates are also not directly comparable to the Gulf Crossing lease rate, Enogex, in its December 28, 2007 response to a Commission data request, provides figures for 2008 for what it avers are its most comparable firm intrastate transportation service agreements. According to this data, the average demand charge with an MDQ of equal to or greater than 90,000 Dth per day is \$0.193 per Dth. Under the lease, Gulf Crossing will pay a demand charge of \$0.05 per Dth (and a commodity charge of \$0.04 per Dth for receipts from the Devon Gerty and Northridge receipt points), and a demand charge of \$0.11 per Dth for receipts from the Antero receipt point. The Commission agrees that under the circumstances here, where there is no directly comparable rate, this is a reasonable comparison method, and we find that the demand charges that Gulf Crossing will pay under the lease will be less than the

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<sup>77</sup> See, e.g., *Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003); *Islander East Pipeline Company*, 100 FERC ¶ 61,276, at P 70 (2002).

most comparable intrastate firm demand charges on the Enogex system. We also find that Gulf Crossing's shippers that intend to use the Enogex lease would pay a higher rate if Gulf Crossing were to construct additional facilities in order to provide the service.<sup>78</sup>

### **Gulf South**

116. Gulf Crossing's lease with Gulf South has a primary receipt point at the proposed interconnect between the two pipelines near Tallulah, Louisiana (located in Gulf South's Zone 2) and a primary delivery point at the proposed interconnect with Transco at Transco's Station 85 (located in either Zone 3 or 4).<sup>79</sup> The capacity Gulf Crossing is leasing from Gulf South consists of 1) unsubscribed capacity from Gulf South's East Texas to Mississippi Expansion Project and Southeast Expansion Project (Expansion Projects), and 2) new capacity being created by the looping and compression proposed by Gulf South in this proceeding. Therefore, for the Commission to determine whether the lease payments will be less than, or equal to, Gulf South's firm transportation rates for comparable service, we must compare the rate proposed for the leased capacity, on the one hand, with the rates for the capacity from the Expansion Projects, as well as with the rates for the capacity from the new facilities Gulf South is proposing.

117. Gulf Crossing will pay \$0.164 per Dth on a 100 percent load factor basis (a monthly demand charge of \$4.836 per Dth and a commodity charge of \$0.0046 per Dth) for the lease capacity between Tallulah, LA and Transco's Station 85. In orders certifying the East Texas to Mississippi Expansion Project and the Southeast Expansion Project the Commission determined that Gulf South must charge its existing system rate for the East Texas to Mississippi Expansion Project (\$0.338 per Dth for transportation from Gulf South's Zone 1 to Zone 3)<sup>80</sup> and an incremental rate for the Southeast Expansion Project (\$0.166 per Dth).<sup>81</sup> The path of the lease extends from Gulf South's Zone 2 to Zone 3; therefore, the applicable charges for comparison would be Gulf South's maximum tariff rate of \$0.2259 per Dth and the Southeast Expansion

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<sup>78</sup> Gulf Crossing's October 10, 2007 data response states that new construction of the required pipeline facilities would cost more than leasing capacity on the Enogex system and that use of Enogex's existing system allows Gulf Crossing to access supplies that would not, by themselves, support the construction of new facilities.

<sup>79</sup> The interconnect with Transco does not currently exist and is being constructed as part of the Southeast Expansion Project. Therefore, it is not currently within a rate zone but will be either within Zone 3 or Zone 4.

<sup>80</sup> *Gulf South Pipeline Company, L.P.*, 119 FERC ¶ 61,281 (2007).

<sup>81</sup> *Gulf South Pipeline Company, L.P.*, 122 FERC ¶ 61,162 (2008).

Project rate of \$0.166 per Dth. Gulf Crossing's lease rate for capacity made available as a result of the Expansion Projects is less than Gulf South's maximum rates for that same capacity.

118. In order to determine whether the lease payments are less than, or equal to, Gulf South's firm transportation rates for the capacity being authorized for construction herein, we must first determine the appropriate rate for that capacity. According to Gulf South's October 10 data response, the calculated incremental rate for the capacity being created by the proposed looping and additional compression would be \$0.0822 per Dth. However, for mainline expansion facilities, such as those being authorized here, the Commission has required pipelines to charge their generally applicable transportation rates if the proposed incremental rate is less than the system-wide generally applicable rate.<sup>82</sup> Therefore, Gulf South would be required to charge its existing system rate for the capacity. As we have found that Gulf Crossing's lease rate for capacity is less than Gulf South's maximum rate, the payments Gulf Crossing will make to Gulf South under the lease are less than Gulf South's applicable maximum transportation rates, and are therefore appropriate. In addition, as is discussed below, the proposed lease will have no detrimental impact on the customers of Gulf South.

### **Effect on Existing Customers**

#### **Enogex**

119. Unimark, an independent marketer of natural gas, holds contracts with Enogex and its gathering affiliate for gathering and transportation of natural gas on Enogex's gathering and transportation systems in Oklahoma. Unimark currently receives interruptible service from Enogex pursuant to Section 311 of the NGPA. Unimark states that approval of the lease with Gulf Crossing would result in a radical change to its use of the Enogex system as Unimark's service would have to compete with new firm and interruptible interstate service arrangements. Unimark questions whether Enogex's lease compromises the service Unimark has historically received and whether sufficient safeguards are in place to assure that service will continue without any degradation. Unimark also questions whether its rates will be increased as a result of the lease.

120. The Commission finds that the lease arrangements should not adversely affect Enogex's existing customers. In its application, Enogex states that the proposed lease of capacity will use available unsubscribed capacity on Enogex's system,<sup>83</sup> and that the

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<sup>82</sup> *See Trunkline Gas Company*, 119 FERC ¶ 61,078 (2007).

<sup>83</sup> Enogex's December 31, 2007 data response states that its system can readily accommodate the lease capacity under contract to Gulf Crossing.

quality of service Enogex provides today will not be adversely affected. According to Enogex, the lease agreement will not result in adverse operational or economic impacts on existing customers “entitled to capacity” on the Enogex system. Enogex also states that the lease will offer several benefits to existing Enogex customers in that it will broaden the markets available to those customers, increase throughput on Enogex’s system and attract additional supply to the Enogex system. In addition, there will be no cross subsidization of fuel recovery. Gulf Crossing will pay a fuel rate of 0.65 percent for gas received at the Gerty and Northridge CRP receipt points and the applicable fuel rate in Enogex’s then-effective Statement of Operating Conditions for transportation service under Section 311 for gas received at the Antero CRP receipt point.

121. With respect to Unimark’s concerns, Enogex states, in its December 5, 2007 data request response, that it will continue to provide section 311 interruptible service, with the same rights as that service holds today, after implementation of the Gulf Crossing lease. While the amount of capacity Enogex can provide as interruptible section 311 service could change at some point in the future, those transactions are, by definition, interruptible, and therefore subject to change. The Commission finds that the benefits from the Enogex lease outweigh any possible changes that may result to shippers receiving interruptible section 311 service.

### **Gulf South**

122. Gulf Crossing’s proposed lease of capacity on Gulf South will use a combination of unsubscribed capacity from Gulf South’s other expansion projects and capacity created by the facilities certificated for Gulf South in this proceeding. Therefore, the quality of service Gulf South provides today to its existing customers will not be adversely affected by the lease. Gulf Crossing has designed incremental firm and interruptible rates, based on the lease charges Gulf Crossing will pay Gulf South under the lease, to recover the costs of the lease capacity from those shippers that will use the lease capacity. In addition, each shipper using the lease capacity will pay a 0.54 percent fuel rate on Gulf South in addition to Gulf Crossing’s fuel rate. Although this rate is less than Gulf South’s 2.0 percent fuel rate, this reflects the fact that the lease is limited to specific receipt and delivery points and that Gulf Crossing does not have access to the remainder of Gulf South’s system. As Gulf South does not currently have a fuel tracker, there will be no cross-subsidization of fuel recovery. Therefore, Gulf South’s existing customers will not subsidize the incremental fuel costs associated with the project.

123. In addition, Gulf South will be fully at-risk for the capacity created by the facilities certificated for Gulf South in this proceeding, as well as the unsubscribed capacity from Gulf South’s other expansion projects that is being leased. During the term of the lease with Gulf Crossing, Gulf South will not be allowed to reflect in its system rate any of the costs (i.e., the fully-allocated cost of service, including actual fuel costs) associated with the leased capacity. Therefore, Gulf South’s existing customers are protected from subsidizing any of the costs of the facilities constructed for the lease.

### **Structure of the Gulf South Lease**

124. BP questions whether Gulf Crossing's lease with Gulf South is unduly discriminatory and preferential because it, in effect, grants rights and discounted transportation and fuel rates to shippers using Gulf Crossing's lease that are not available to other shippers on Gulf South. BP avers that a lease arrangement between affiliated pipelines to assign transportation capacity is inappropriate where the lessor-pipeline retains operational control of the pipeline facilities. BP also asserts that Gulf Crossing has failed to provide any justification for the lease arrangement as Gulf Crossing could have entered into an FTS agreement for the same capacity on Gulf South. BP believes Gulf Crossing should be required to reform its lease agreement to conform to Gulf South's pro forma FTS Service Agreement. This is more appropriate, it alleges, because Gulf Crossing is not leasing or controlling the pipeline facilities as much as it is contracting for capacity on facilities remaining in the control and possession of Gulf South.

125. Gulf Crossing states in its answer that it has received no preference from Gulf South as a result of its affiliate relationship and that the terms and conditions of its proposed lease with Gulf South are similar to other operational leases Gulf South has executed. Gulf Crossing states that the capacity on Gulf South under lease was offered to all market participants during multiple open seasons conducted over more than the course of a year. The proposed lease payments, moreover, comply with the Commission's policy requiring lease payments to be equal to or less than the lessor's firm transportation rates for comparable service. In addition, Gulf Crossing states that Gulf South offered every interested party the opportunity to contract for capacity on both the East Texas to Mississippi Expansion Project and the Southeast Expansion Project at negotiated rates and actively marketed capacity from the Delhi/Tallulah area to Transco's Station 85 at rates comparable to the lease rates granted Gulf Crossing.

126. The Commission has reviewed the lease agreement between Gulf Crossing and Gulf South and the process by which Gulf South made capacity available and finds no reason to modify the agreement as currently structured. Nothing in the lease agreement provides preferential rights to Gulf Crossing's shippers that are not available to other shippers on Gulf South.<sup>84</sup> Gulf South has actively marketed the lease capacity during the course of multiple open seasons, and the lease payments comply with the Commission's policy requiring lease payments to be equal to or less than the lessor's firm transportation rates for comparable service. BP has provided no evidence to support its contention that the use of a lease arrangement between affiliated pipelines to assign transportation

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<sup>84</sup> As noted above, the Commission is addressing the issue of segmentation rights on Gulf South's system in another proceeding. We also note here, that this issue is germane to Gulf Crossing's tariff, not to the capacity lease itself.

capacity is inappropriate where the lessor pipeline retains operational control of the pipeline facilities. To the contrary, the Commission has approved numerous operational leases where the lessor retains operational control of the facilities while the capacity subject to the lease is governed by the terms of the lessee's tariff.<sup>85</sup> Although Gulf South will maintain operational control of its facilities, under the terms of the lease, Gulf Crossing will provide service under its own open-access tariff.

127. Gulf Crossing could have entered into an FTS agreement for the same capacity on Gulf South, as BP suggests; however, Gulf Crossing chose not to do so for its own business purposes. As indicated above, we find no reason for the Commission to second guess that business decision.

### **Conclusion**

128. Based on the benefits the proposed leases will provide to the market and the lack of adverse effect on existing customers, we find that the public convenience and necessity requires approval of the proposed lease agreements. Gulf Crossing has designed incremental firm and interruptible rates based on the lease charges it will pay to Enogex and Gulf South under the leases to recover the costs of the leased capacity from only those shippers that will use the leased capacity. We approve Gulf Crossing's proposed incremental recourse rates for the leased capacity.

129. To enable Enogex to carry out its responsibilities under the lease agreement, we will issue Enogex a limited-jurisdiction certificate. The Commission looks closely at proposals that would create dual jurisdiction facilities, i.e., facilities that would be subject to state and federal jurisdiction, in order to avoid duplicative and/or potentially inconsistent regulatory schemes over the same facilities. However, the Commission has found that such arrangements are possible if they are in the public interest and can be structured to preserve the respective roles of state and federal regulation that Congress delineated in the NGA.<sup>86</sup> Here, although federal regulation of Enogex will be "limited," Enogex and Gulf Crossing will both be subject to federal regulation regarding the lease and any issues that may arise thereunder. The limited jurisdiction certificate will enable Enogex to operate the leased capacity to provide NGA jurisdictional services subject to the terms of the lease, and subject to Gulf Crossing's open-access tariff. The limited jurisdiction certificate will require Enogex to operate the leased capacity on an open-access, non-discriminatory basis. We have approved a similar lease in the past involving

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<sup>85</sup> See, e.g., *Rockies Express Pipeline LLC*, 119 FERC ¶ 61,069, at P 41 (2007); *Trunkline Gas Company*, 80 FERC ¶ 61,356 (1997); and *Trunkline Gas Company*, 64 FERC ¶ 61,142, at p. 62,147 (1993).

<sup>86</sup> *Tristate Pipeline, L.L.C.*, 88 FERC ¶ 61,328 (1999).

Enogex's predecessor, Transok.<sup>87</sup> Our finding that Enogex is NGA-jurisdictional is limited to its role as lessor-operator of capacity used by Gulf Crossing to provide Gulf Crossing's interstate services. Enogex will remain non-jurisdictional as to its intrastate activities and may continue to provide NGPA section 311 transportation services on its system.

### **Accounting**

130. Gulf Crossing proposes to calculate its Allowance for Funds Used During Construction (AFUDC) based on its proposed debt and equity capital structure. Consistent with Commission precedent, we will require Gulf Crossing to capitalize the actual costs of borrowed and other funds for construction purposes not to exceed the amount of debt and equity AFUDC that would be capitalized based on the overall rate of return approved.<sup>88</sup> This will ensure that the amounts of AFUDC are properly capitalized in this project consistent with the Commission's requirements for newly created companies approved in other cases.

131. As part of the project, Gulf Crossing will lease 90,000 Dth a day of upstream capacity on the intrastate pipeline system of Enogex, and 1.05 Bcf a day of capacity on Gulf South. We will accept Gulf Crossing's proposal to treat the capacity leases with Gulf South and Enogex<sup>89</sup> as operating leases and to record the monthly lease payments in Account 858, Transmission and Compression of Gas by Others. Additionally, we will accept Gulf South's proposal to treat the capacity lease with Gulf Crossing as an operating lease and to record the monthly lease receipts in Account 489.2, Revenues from Transportation of Gas of Others Through Transmission Facilities. This accounting

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<sup>87</sup> See *Transok*, 97 FERC ¶ 61,362 (2001).

<sup>88</sup> See, e.g., *Ingleside Energy Center, LLC*, 112 FERC ¶ 61,101 (2005); *Mill River Pipeline, LLC*, 112 FERC ¶ 61,070 (2005); and *Cheyenne Plains Gas Pipeline Company*, 105 FERC ¶ 61,095 (2003).

<sup>89</sup> Enogex seeks only a limited-jurisdiction certificate under section 7(c) of the NGA authorizing it to make the leased capacity available for transportation of natural gas in interstate commerce, as such Enogex is not required to submit proposed accounting entries recording the capacity lease to Gulf Crossing.

treatment is consistent with similar capacity lease agreements approved by the Commission.<sup>90</sup>

### **Engineering**

132. The Commission has conducted an analysis of the engineering information submitted by Gulf South and Gulf Crossing in the June 19 application for the Gulf Crossing Project, and an additional analysis of the information provided with the October 16 amendment relating to the compression associated with the project. The facilities Gulf Crossing proposes will enable it to transport up to 1.721 Bcf per day. With the new facilities Gulf South proposes, Gulf South will be able to transport an additional 259 MMcf per day from the Tallulah Compressor Station for a total of 3 Bcf per day. Our analyses confirm that the facilities proposed for the Gulf Crossing Project can support the services proposed by the applicants.

### **Environment**

133. The potential environmental impacts of Gulf Crossing and Gulf South's proposed Gulf Crossing project were evaluated in the draft and final environmental impact statements (EIS) to satisfy the requirements of the National Environmental Policy Act (NEPA).<sup>91</sup> The U.S. Fish and Wildlife Service (FWS), Natural Resources Conservation Service (NRCS), Louisiana Department of Wildlife and Fisheries (LDWF), Louisiana Department of Environmental Quality (LDEQ), and the Texas Parks and Wildlife Department (TPWD) served as cooperating agencies in the preparation of the draft and final EIS.

134. The Commission approved the Gulf Crossing and Gulf South's request to use the Pre-Filing Review Process for the proposed Gulf Crossing Project on November 30, 2006, in Docket No. PF07-1-000. As part of our Pre-Filing review we issued a *Notice of Intent to Prepare an Environmental Impact Statement, Request for Comments on Environmental Issues and Notice of Public Scoping Meetings* (NOI) on April 2, 2007. On July 12, 2007 we issued a *Supplemental Notice of Intent to Prepare an Environmental Impact Statement, Request for Comments on Environmental Issues and Notice of Public Site Visit* because of modifications in the Gulf South portion of the Project. These notices

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<sup>90</sup> See, e.g., *Gulf South Pipeline Company*, 119 FERC ¶ 61,281 (2007); *Rockies Express Pipeline LLC*, 119 FERC ¶ 61,069 (2007); *Natural Gas Pipeline Company*, 118 FERC ¶ 61,211 (2007); *Discovery Producer Services LLC*, 117 FERC ¶ 61,243 (2006); and *Midwest Gas Transmission Company and Trunkline Gas Company*, 73 FERC ¶ 61,320 (1995).

<sup>91</sup> 42 U.S.C. §§ 4321-4347 (2007).

were published in the *Federal Register*<sup>92</sup> and sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries; newspapers; and, other interested parties.

135. In response to our NOIs, five public scoping meetings held along the proposed route, and two public site visits, we received numerous written and verbal comments from landowners, concerned citizens, public officials, and government agencies concerning project impacts on land uses, soils, wetlands and waterbodies; water quality; vegetation and wildlife; threatened and endangered species; air quality, noise impacts; visual impacts, future development; property values; tribal lands and cultural resources; use of eminent domain; timber production; the project purpose and need; environmental justice; safety; state- and federally-managed lands; and potential alternatives to the proposed route and planned facilities.

136. The Commission issued a draft EIS on November 9, 2007. Public notice of the availability of the draft EIS was published in the *Federal Register*.<sup>93</sup> The draft EIS was mailed to federal, state, and local government agencies; elected officials; Native American tribes; local libraries and newspapers; intervenors; and other interested parties (i.e., affected landowners, miscellaneous individuals, and environmental groups that provided scoping comments or asked to remain on the mailing list). In addition, affected landowners who were added to the mailing list after the NOI was issued, and landowners potentially affected by some of the alternatives under consideration, were sent the draft EIS. The public was given 45 days from the date of publication in the *Federal Register* to review and comment on the draft EIS. Five public meetings were held in the project area to solicit comments, and in addition, written and electronic comments were submitted directly to the Commission.

137. During this period and at the public comment meetings we received numerous comments. Specifically, we received comment letters from the FWS, NRCS, TPWD, LDWF, the U.S. Environmental Protection Agency (EPA), the National Oceanic and Atmospheric Administration's (NOAA) National Geodetic Survey, Choctaw Nation of Oklahoma, Oklahoma Department of Transportation, and the Texas Historical Commission, as well as 16 potentially affected property owners or coalitions. Concerns were raised regarding pipeline safety, impacts on future developments, farmland, use of state eminent domain, Gulf Crossing's communication with landowners, route and siting alternatives, air quality, visual impacts, waterbodies, soils, and wetland mitigation.

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<sup>92</sup> 72 Fed. Reg. 17,153 (April 6, 2007), and 72 Fed. Reg. 39,617 (July 19,2007).

<sup>93</sup> 72 Fed. Reg. 63,566 (Nov. 9, 2007).

138. The Commission issued the final EIS on March 21, 2007. Public notice of the availability of the final EIS was published in the *Federal Register*.<sup>94</sup> The final EIS was mailed to the same parties as the draft EIS, as well as to parties that commented on the draft EIS. The distribution list is provided as Appendix A of the final EIS.

139. The final EIS considers and responds to the concerns expressed. The final EIS concludes that construction and operation of Gulf Crossing and Gulf South's proposed project will result in limited adverse environmental impacts. The limited impacts will be most significant during the period of construction. The final EIS finds that, if constructed and operated in accordance with applicable laws and regulations, Gulf Crossing and Gulf South's proposed mitigation plans, and the recommended mitigation measures set forth in the final EIS, the proposed expansion project will be an environmentally acceptable action.

### **Landowner Comments on the Final EIS**

140. We received one comment on the final EIS from a landowner who is upset about the state eminent domain proceedings that Gulf Crossing has undertaken. He is concerned that even though the final EIS recommends limiting the permanent ROW to 50 feet and the construction ROW is proposed at 100 feet, the easement contract states that Gulf Crossing has rights to a wider ROW. He also has concerns about multiple pipeline ROW and safety due to multiple pipelines.

141. In this Order we are requiring Gulf Crossing to comply with a 50 foot permanent ROW and a 100 foot construction ROW. We are aware of the burden that multiple pipeline easements have on individual landowners. We evaluated each landowner's concerns and, where practical, analyzed route alternatives to reduce impacts to the environment and to landowners. To reduce impacts to landowners with easements already on the property, we are requiring that Gulf Crossing utilize 10 feet of adjacent pipeline ROW as part of its 100 foot nominal construction ROW and for any additional temporary workspaces where needed.

142. Multiple pipelines in an area may cause an incremental risk for any resident in proximity; however, this risk is slight and is insufficient to justify alternative routing solely on that basis. Additionally, any benefit of rerouting the pipeline may be negated by the proximity of homes and businesses along the alternative route.

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<sup>94</sup> 73 Fed. Reg. 16,663 (March 28, 2008).

### **Alternatives**

143. The final EIS addressed alternatives, including major alternatives, and our analysis found no reasonable major route alternatives that would be environmentally preferable to the proposed route. We also evaluated the No Action Alternative, the Postponed Action Alternative, alternative energy sources, and the potential effects of energy conservation, system alternatives, route alternatives, route variations, and aboveground facility site alternatives to determine whether they would be technically and economically feasible and environmentally preferable to the proposed action. Additionally, due to the large number of comments regarding the location of the Sherman Compressor Station, the Commission's Office of Energy Projects (OEP) staff conducted a Public Site Visit on September 25, 2007 to view potential alternative sites. During the Pre-filing, scoping, and draft EIS comment periods, public and agency comments resulted in Gulf Crossing's adopting 113 route variations. The final EIS recommends the adoption of three additional route variations that we believe will result in further environmental benefits compared to the proposed project.

### **Waterbodies and Wetlands**

144. Construction of the proposed pipeline would temporarily affect 896 surface waterbodies. Conventional open-cut waterbody construction techniques, flume crossings, horizontal bores, or horizontal directional drills (HDD) would be used to complete all waterbody crossings. Most significant waterbodies are proposed or recommended to be crossed using the HDD method or an alternative dry crossing method (flume or horizontal bore), including: 16 of the 22 major waterbody crossings (six stock ponds would be open cut); all navigable waterbodies; two designated Louisiana Natural and Scenic Rivers; three Nationwide Rivers Inventory (NRI) listed streams; ecologically sensitive resource waters; fisheries of special concern; the rivers most likely to contain habitat for federally-listed fish species; and the majority of the impaired waterbodies that would be crossed by the proposed pipeline.

145. Construction of the proposed pipeline would affect 164 wetlands, disturbing approximately 144.3 acres. Special-status wetlands, including wetlands in the NRCS-administered Wetland Reserve Program (WRP), and several high-quality forested wetlands would be temporarily and permanently affected by construction and operation of the proposed project.

### **Vegetation and Wildlife**

146. The main vegetative communities that would be affected include agricultural land (1,964 acres, or 43 percent) and hardwood forests (1,810 acres, or 40 percent). Open land (477 acres, or 11 percent), and pine/pine plantation (286, or 6 percent) represent the other vegetation communities affect by construction. Several extensive forested tracts would

also be crossed by the proposed pipeline route, as well as vegetative communities of special concern. Gulf Crossing and Gulf South will restore all disturbed vegetated areas in accordance with their Plan and Procedures. Gulf Crossing and Gulf South will finalize consultations with applicable state and federal agencies regarding seed mixtures and final restoration measures prior to construction.

147. Construction and operation of the proposed project would not significantly affect wildlife and aquatic habitats. The clearing of wildlife habitats would affect wildlife at or near the time of construction, but such impacts would be temporary and many habitats would generally recover quickly following construction. Gulf Crossing and Gulf South will minimize impacts to wildlife habitats through collocation with existing rights-of-way to the extent practicable, the use of HDD crossing methods, and the implementation of measures described in their Plan and Procedures. They will further reduce impacts to significant wildlife habitats, waterbirds, and migratory birds through consultation with applicable federal and state agencies, pre-construction surveys, and a Migratory Bird Mitigation Plan, all of which would be completed prior to construction.

148. Impacts on fisheries and aquatic habitats would result from increased sedimentation and turbidity, loss of cover, introduction of pollutants into the aquatic environment, and disruptions of fish movements. These impacts will be minimized through adherence with Gulf Crossing and Gulf South's Procedures, the use of HDD and dry crossing methods to cross fisheries of special concern, the terms of any applicable federal or state permits, and the environmental conditions attached to this Order.

### **Threatened and Endangered Species**

149. In consultation with the FWS, we identified 15 federally-listed threatened and endangered species that could be affected by the proposed project. Based on our review of these 15 species, we determined that construction and operation of the proposed project may affect, but are not likely to adversely affect, 11 federally-listed threatened and endangered species and would not affect the remaining four federally-listed threatened and endangered species. We are recommending that Gulf Crossing use qualified biologists to survey for interior least tern nesting habitat should construction occur within the nesting season. The FWS concurred with our findings regarding the American burying beetle; however, FWS Tulsa requires additional information be filed with the survey report that was submitted. Therefore, we are recommending that the necessary information be filed with FWS prior to construction. Additionally, consultations with the TPWD regarding the Louisiana black bear are ongoing; and we are recommending that those consultations be completed prior to any construction.

### **Land Use and Visual Impacts**

150. Construction and operation of the proposed project would temporarily and permanently affect several land uses, resulting in short- and long-term impacts to agriculture, forests, timber production, and special use areas. To minimize impacts to land uses, we find that Gulf Crossing and Gulf South must utilize or maintain permanent rights-of-way no greater than 50 feet in width and that the proposed pipelines overlap with existing rights-of-way in areas of collocation for at least 10 feet.

151. Approximately 6,109 acres of land would be used during construction of the proposed project. Following construction, all affected areas outside the permanent pipeline right-of-way and aboveground facility sites would be restored and allowed to revert to preconstruction conditions and uses. During operation of the proposed project, the 50-foot-wide permanent pipeline right-of-way, aboveground facilities, and permanent access roads would require the use of approximately 2,336 acres of land. Twelve residential structures would be located within 50 feet of construction work areas; the closest residence is 25 feet from the construction work area. Gulf Crossing and Gulf South have proposed general construction procedures for the residential structures within 50 feet in order to avoid or minimize potential impacts to the residents. We find these procedures acceptable.

152. Visual resources along the proposed project route would be affected by the installation of certain aboveground facilities and through the alteration of existing vegetative patterns associated with the clearing and maintenance of the construction and permanent pipeline rights-of-way. We are requiring Gulf Crossing to develop site-specific screening plans for the Paris and Sherman compressor stations, to ensure that the physical presence of these structures does not adversely affect the aesthetics of the area and/or residences in proximity to the compressor stations.

### **Cultural Resources**

153. Gulf Crossing and Gulf South have initiated cultural resource surveys and prepared reports covering 344.5 miles (97 percent) of the proposed project. Surveys are currently being completed along 8.2 miles of recently proposed route variations and access roads. Access to the remaining 3.6 miles has been denied by the landowners. Of the 78 identified eligible sites, only one of the sites surveyed is considered eligible for listing in the NRHP; however, the site would be avoided by realignment of the pipeline route.

154. Gulf Crossing and Gulf South have submitted Phase I Survey reports to the State Historic Preservation Officers (SHPOs) for review. Concurrence was received from the Mississippi SHPO. Comments are still pending from the Oklahoma, Texas, and Louisiana SHPOs. Gulf Crossing and Gulf South have stated that they will complete and file all their outstanding survey reports. We are requiring that Gulf Crossing and Gulf South defer construction until all surveys and evaluations are completed, all survey reports and any necessary treatment plans have been reviewed by appropriate parties, and the Director of OEP provides written notification to proceed.

### **Air Quality and Noise Impacts**

155. Operation of the proposed project compressor stations would permanently affect both the air quality and noise environment near the compressor stations. However, we have determined that there would be no significant impacts resulting from air emissions from the compressor stations or from construction activities. We are requiring Gulf Crossing and Gulf South to restrict noise from the compressor stations and HDD activities to minimize noise impact for local residents.

### **Conclusion**

156. We have reviewed the information and analysis contained in the final EIS regarding the potential environmental effect of the project. Based on our consideration of this information, we agree with the conclusions presented in the final EIS and find that Gulf Crossing and Gulf South's project is environmentally acceptable, if the project is constructed and operated in accordance with the recommended environmental mitigation

measures in the appendix to this order. The Commission adopts the findings and conclusions of the final EIS. We are including the environmental mitigation measures recommended in the final EIS as conditions to the authorizations issued to Gulf Crossing and Gulf South in this order.

157. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>95</sup>

158. The Commission on its own motion, received and made a part of the record all evidence, including the application,(s) as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) In Dockets No. CP07-398-000 and CP07-401, respectively, certificates of public convenience and necessity are issued to Gulf Crossing and Gulf South pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations to construct, install, and operate natural gas facilities as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority in Ordering Paragraph (A) shall be conditioned on the following:

- (1) Gulf Crossing and Gulf South's completing the authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order pursuant to paragraph (b) of section 157.20 of the Commission's regulations;
- (2) Gulf Crossing and Gulf South's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20;

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<sup>95</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

- (3) Gulf Crossing and Gulf South's compliance with the environmental conditions listed in the appendix to this order; and
- (4) Gulf Crossing's executing firm service agreements equal to the level of service represented in its precedent agreements with its customers for service prior to construction.
- (5) During the term of the lease, Gulf Crossing shall not be permitted to shift any of its costs associated with the leased capacity to customers that do not use the leased capacity.
- (6) During the term of the lease, Gulf South will not be allowed to reflect in its system rates any of the costs (i.e., the fully-allocated cost of service, including actual fuel costs) associated with the capacity it has leased to Gulf Crossing or will construct in conjunction with the lease.

(C) Gulf Crossing and Gulf South shall notify the Commission's environmental staff by telephone, email, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Gulf Crossing or Gulf South. Gulf Crossing and Gulf South shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(D) Gulf Crossing's initial rates and tariff are approved, as conditioned and modified herein in the body of this order.

(E) Gulf Crossing must file actual tariff sheets that comply with the requirements contained in the body of this order not less than 60 days and not more than 90 days prior to the commencement of interstate service.

(F) Gulf Crossing is directed to file its negotiated rate agreements no less than 30 days or more than 60 days before service commences.

(G) In Docket No. CP07-402, authority is granted to Gulf South under section 7(b) of the NGA to abandon by lease the subject capacity described in the body of this order to Gulf Crossing.

(H) A certificate of public convenience and necessity is issued to Gulf Crossing authorizing it to lease the subject capacity from Gulf Crossing, as described and conditioned herein.

(I) A certificate of public convenience and necessity is issued to Gulf Crossing authorizing it to lease the subject capacity from Enogex, as described and conditioned herein.

(J) Gulf Crossing's incremental recourse rates for the capacity leases are approved as initial section 7 rates as discussed in the body of this order.

(K) Within three years after its in-service date, as discussed herein, Gulf Crossing must make a filing to justify its existing cost-based firm and interruptible recourse rates. In the alternative, in lieu of such filing, Gulf Crossing may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

(L) In Docket No. CP07-403-000, a limited jurisdiction certificate of public convenience and necessity is issued to Enogex to lease capacity on its intrastate system to Gulf Crossing. Enogex shall not be allowed to shift any unrecovered costs of its leased capacity from its customers for which it is providing jurisdictional interstate services under section 311 of the NGPA.

(M) In Docket No. CP07- 399-000, Gulf Crossing is issued a blanket transportation certificate under Subpart G of Part 284 of the Commission's regulations.

(N) In Docket No. CP07-400-000, Gulf Crossing is issued a blanket construction certificate under Subpart F of Part 157 of the Commission's regulations.

(O) Applicants shall adhere to the accounting requirements discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

### Appendix—Environmental Conditions

As recommended in the EIS, this authorization includes the following conditions:

Gulf Crossing and Gulf South (the Companies) shall follow the construction procedures and mitigation measures described in their application, supplemental filings (including responses to staff information requests), and as identified in the EIS, unless modified by the Order. The Companies must:

- a. request any modification to these procedures, measures, or conditions in a filing with the 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 OEP **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the Project. This authority shall allow:
- a. the modification of conditions of the Commission's Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from Project construction and operation.
3. **Prior to any construction**, the Companies shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, EIs, and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility location(s) shall be as shown in the EIS, as supplemented by filed alignment sheets, and shall include all of the staff's recommended facility locations. **As soon as they are available, and prior to the start of construction**, the Companies shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. The Companies shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and 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 **prior to construction** in or near that area.

This requirement does not apply to route variations required herein or minor field realignments per landowner needs and requirements, which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or would affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this certificate and prior to construction**, the Companies shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how the Companies will implement the mitigation measures required by the Order. The Companies must file revisions to the plan as schedules change. The plan shall identify:
    - a. how the Companies 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;
- b. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - d. what training and instructions the Companies will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change), with the opportunity for OEP staff to participate in the training session;
  - e. the company personnel (if known) and specific portion of the Companies' organization having responsibility for compliance;
  - f. the procedures (including use of contract penalties) the Companies will follow if noncompliance occurs; and
  - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (i) the completion of all required surveys and reports;
    - (ii) the mitigation training of onsite personnel;
    - (iii) the start of construction; and
    - (iv) the start and completion of restoration.
7. The Companies shall employ one or more EIs per construction spread. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigative 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 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. The Companies shall hire and fund a third-party compliance inspection contractor to work under the direction of the Commission Staff for the sole purpose of monitoring compliance with environmental conditions and mitigation measures. The Companies shall develop a draft monitoring program and obtain proposals

from potential contractors to provide monitoring services and file the program and proposals with the Secretary for review and approval of the Director of OEP. The monitoring program shall include:

- a. the employment by the contractor of one full-time, on-site monitor per construction spread;
  - b. the employment by the contractor of a full-time compliance manager to direct and coordinate with the monitors, manage the reporting system, and provide technical support to the FERC Staff;
  - c. a systematic strategy for the review and approval by the contract compliance manager and monitors of variances to certain construction activities as may be required by the Companies based on site-specific conditions;
  - d. maintenance of files for the daily and/or weekly inspection reports submitted by both the third-party monitors and the Companies' environmental inspector; and
  - e. a discussion of how the monitoring program can incorporate and/or be coordinated with the monitoring or reporting that may be required by other federal and state agencies.
9. The Companies shall file updated status reports with the Secretary on a **weekly** basis **until all construction-related activities, including restoration, are complete for each phase of the Project**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other 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 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 that 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 the Companies from other federal, state or local permitting agencies concerning instances of noncompliance, and the Companies' response.

10. The Companies must receive written authorization from the Director of OEP **before commencing service** from the Project. Such authorization will only be granted following a determination that rehabilitation and restoration of areas affected by the Project are proceeding satisfactorily.
11. **Within 30 days of placing the certificated facilities in service**, the Companies shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions the Companies have complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. The Companies shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the Project and restoration of the right-of-way. Prior to construction, the Companies shall mail the complaint procedures to each landowner whose property would be crossed by the Project.
  - a. In their letter to affected landowners, the Companies shall:
    - (1) provide a local contact that the landowners should call first with their concerns; the letter shall indicate how soon a landowner should expect a response;
    - (2) instruct the landowners that, if they are not satisfied with the response, they should call the Companies' Hotline; the letter shall indicate how soon to expect a response; and
    - (3) instruct the landowners that, if they are still not satisfied with the response from the Companies' Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030, or at [hotline@ferc.gov](mailto:hotline@ferc.gov).
  - b. In addition, the Companies shall include in their weekly status report a copy of a table that contains the following information for each problem/concern:
    - (1) the date of the call;
    - (2) the identification number from the certificated alignment sheets of the affected property and approximate location by MP;

- (3) the description of the problem/concern; and
  - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
13. The Companies shall not utilize or maintain a permanent right-of-way greater than 50 feet in width. **(Section 2.2.2)**
14. **Prior to construction**, the Companies shall file with the Secretary, for review and written approval by the Director of OEP, revised alignment sheets, and plans, and associated agreements indicating the use of at least 10 feet of adjacent pipeline rights-of-way as part of their 100 foot-wide nominal construction right-of-way and for any additional temporary workspaces that are needed. Where this is not possible, the Companies shall identify the locations by milepost and provide site-specific justification explaining why the adjacent right-of-way cannot be used. **(Section 2.2.2)**
15. **Prior to construction**, the Companies shall revise their Spill Prevention, Containment, and Countermeasures (SPCC) Plan to include:
  - a. the restriction of refueling areas to a limited number of designated areas within wellhead protection areas;
  - b. the use of signs to mark each designated refueling area within wellhead protection areas; and
  - c. the labeling of each designated refueling area within wellhead protection areas by milepost on the construction alignment sheets. **(Section 3.3.1.1)**
16. **Prior to construction**, the Companies shall file with the Secretary for review field-delineated locations for all affected wetlands. **(Section 3.4.1.2)**
17. **Prior to construction**, the Companies shall finalize consultations with, MDWFP, ODWC, TPWD, LDWF, the Nature Conservancy, NRCS; local soil conservation agencies; and other appropriate agencies regarding seeding and vegetation restoration practices for the proposed Project. The Companies shall file with the Secretary for review a report that describes the outcome of these consultations and identifies the agency-recommended seeding and vegetation restoration practices. **(Section 3.5.2.1)**
18. The Companies shall finalize the Migratory Bird Plan in consultation with FWS in order to determine pre-construction survey requirements, impacts, right-of-way maintenance procedures, and mitigation for migratory birds, including bald eagles and any nests that may be encountered within or in close proximity to the construction right-of-way. The finalized document shall be filed with the Secretary prior to construction. **(Section 3.6.1.5)**

19. The Companies shall defer implementation of any treatment plans/measures (including archaeological data recovery); construction of facilities; and use of all staging, storage, or temporary work areas and new or to-be-improved access roads until:
  - a. The Companies file with the Secretary cultural resources survey and evaluation reports; any necessary treatment plans; and the Texas, Oklahoma, Louisiana, and Mississippi SHPO comments on the reports and plans; and
  - b. The Director of OEP reviews and approves all cultural resources survey reports and plans, and notifies the Companies in writing that treatment plans/procedures may be implemented and/or construction may proceed.

All material filed with the Secretary 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.”** (Section 3.10.4)

20. **Prior to the start of construction**, the Companies shall file with the Secretary, for review and approval by the Director of OEP, a finalized noise mitigation plan for the HDD #14 Entry, HDD #22 Exit, and HDD #35 Exit. This plan shall identify all noise mitigation which the Companies will implement during drilling activity to reduce noise at the NSAs. Specifically, during HDD operations the Companies shall monitor noise and make all reasonable efforts to restrict noise increases from HDD operations to no more than 10 dBA above ambient if the resulting impact is above 55 dBA Ldn. In addition, the Companies shall file a finalized Noise Mitigation Plan for the HDD sites identified in Table 3.11.2-1 demonstrating that they will meet the mitigated noise levels. (Section 3.11.2.3)
21. **Prior to construction**, Gulf Crossing shall prepare a site-specific mitigation plan for Slough Creek that details the measures that would be used to stabilize and support revegetation of the banks of the creek following construction activities. (Section 3.2.3.1)
22. **Prior to construction**, Gulf Crossing shall file with the Secretary for review and approval of the Director of OEP an evaluation for alternative construction approaches or route variations to minimize impacts to high quality forested wetland crossings at MPs Z176.6, 217.0, 217.6, two forested wetlands at MPs 235.1 and 235.4 associated with and including Bayou D’Abornne at MP 235.3, and the two forested wetland crossings at MPs 273.1 and 273.2 associated with and including Cypress Creek at MP 273.3. The evaluations shall consider route variations, the use of HDDs, reduced construction rights-of-way, or other methods to minimize impacts. (Section 3.4.2.1)

23. **Prior to construction**, Gulf Crossing shall file with the Secretary for review and approval of the Director of OEP, and NRCS for review the construction and operational impacts to high quality cypress-tupelo forest associated with the route variation to avoid WRP lands located between MP AR295.6 to MP AR297.9. If high quality cypress-tupelo forest impacts are identified, Gulf Crossing shall evaluate alternative construction approaches or route variations to minimize impacts to the high quality forested wetland crossings. **(Section 3.4.2.1)**
24. Gulf Crossing shall complete its consultation with the COE on construction methods through the Bodcau WMA and file documentation of the results to the Secretary **prior to construction within the WMA. (Section 3.6.1.5)**
25. **Prior to construction across the Caddo Black Bayou Preserve**, Gulf Crossing shall complete its consultation with the Nature Conservancy regarding impacts and mitigation within the Preserve and file documentation of the results with the Secretary. **(Section 3.6.1.5)**.
26. Gulf Crossing shall perform a pre-construction survey to determine if colonial nesting waterbird rookeries are occupied during the construction period and file the results with the Secretary for review and written approval by the Director of OEP. Gulf Crossing shall avoid construction activities within 1,000 feet of occupied rookeries during the period of February 15 through September 1. **(Section 3.6.1.5)**
27. Gulf Crossing shall **not begin** construction activities **until**:
  - a. the staff completes Section 7 consultations with the FWS; and
  - b. Gulf Crossing has received written notification from the Director of OEP that construction or use of mitigation may begin. **(Section 3.7.1)**
28. Gulf Crossing shall use qualified biologists to survey appropriate interior least tern nesting habitat found within 650 feet of any construction areas, should construction activities occur during the nesting season of May 15 to August 31. If any nesting sites are observed, Gulf Crossing shall immediately notify the Secretary and reinitiate consultation with the FWS. **(Section 3.7.1)**
29. **Prior to construction**, Gulf Crossing shall finalize consultations with the TPWD Tyler Regional Complex to determine the need for additional surveys or mitigation that would further minimize or avoid potential impacts to the Louisiana black bear. Gulf Crossing shall file the results of this consultation with the Secretary. **(Section 3.7.1)**

30. **Prior to construction**, Gulf Crossing shall file the complete American burying beetle survey report with the Tulsa FWS and the Secretary. **(Section 3.7.1)**
31. **Prior to construction**, Gulf Crossing shall file with the Secretary the applicable levee crossing permits and authorizations issued by the Red River, Ouachita River, and Little Boeuf Bayou Levee Districts, Louisiana Levee Board, Louisiana Department of Transportation and Development, and COE. **(Section 3.8.4)**
32. **Prior to construction**, Gulf Crossing shall file with the Secretary the applicable documentation of meetings, special considerations, and agreements reached as a result of consultation with the Louisiana Management District regarding methods used to traverse the Richard Adcock and W.W. Farms tracts. **(Section 3.8.4)**
33. **Prior to construction**, Gulf Crossing shall continue to consult with the NRCS and FWS regarding special considerations and agreements for crossing the affected WRP special project area from MP 340.4 to MP 341.1. Gulf Crossing shall file with the Secretary for review all applicable documentation of meetings, special considerations, and agreements reached as a result of consultation with the FWS and NRCS regarding construction activities on the this WRP in Madison Parish. **(Section 3.8.4)**
34. **Prior to construction**, Gulf Crossing shall file with the Secretary for review and written approval by the Director of the OEP, final site screening plans for the Sherman and Paris Compressor Stations. Include copies of any screening plan agreements and correspondence with community groups. **(Section 3.8.6.2)**
35. Gulf Crossing shall file with the Secretary **no later than 60 days after placing the Sherman, Paris, Mira, and Sterlington Compressor Stations into service** compressor station noise surveys. If the noise attributable to the operation of the Sherman, Paris, Mira, or Sterlington Compressor Stations at full load exceeds an Ldn of 55 dBA at any nearby NSAs, Gulf Crossing shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year of the in-service date**. Gulf Crossing shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days after it installs the additional noise controls**. **(Section 3.11.2.3)**
36. Gulf Crossing shall incorporate the Everhart Route Variation II (MP 27.7 to 29.8) into the Gulf Crossing pipeline route. Gulf Crossing shall file with the Secretary for written review and approval by the Director of OEP, revised construction alignment sheets that show the modified route and workspaces, **prior to construction** in this area. **(Section 4.4.3)**

37. Gulf Crossing shall incorporate the Fannin County WRP Route Variation (MP 45.1 to 48.7) into the Gulf Crossing pipeline route. Gulf Crossing shall file with the Secretary, for written review and approval by the Director of OEP, revised construction alignment sheets that show the modified route and workspaces, **prior to construction** in this area. Further, Gulf Crossing shall consult with the NRCS regarding proposed crossing methods and mitigation measures for the Fannin County WRP located between MPs 46.7 and 47.8. Gulf Crossing shall file for review all applicable documentation of meetings, special considerations, and agreements reached as a part of consultation. **(Section 4.4.5)**
38. Gulf Crossing shall incorporate the Stonebridge Estates II Route Variation (MP 295.5 to 297.8) into the Gulf Crossing pipeline route. Gulf Crossing shall file with the Secretary, for written review and approval by the Director of OEP, revised construction alignment sheets that show the modified route and workspaces, **prior to construction** in this area. **(Section 4.4.9)**
39. Gulf South shall file with the Secretary **no later than 60 days after placing the authorized units at the Harrisville Compressor Station into service** compressor station noise surveys. If the noise attributable to the operation of the authorized units exceeds an Ldn of 55 dBA at any nearby NSAs, Gulf South shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year of the in-service date**. Gulf South shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days after it installs the additional noise controls**. **(Section 3.11.2.3)**