

143 FERC ¶ 61,225
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ANR Pipeline Company
TC Offshore LLC

Docket Nos. CP11-543-001
CP11-543-002
CP11-544-001
CP11-544 -002

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

(Issued June 7, 2013)

1. On June 21, 2012, the Commission issued an order granting ANR Pipeline Company's (ANR) request under section 7(b) of the Natural Gas Act (NGA)¹ to abandon by sale to its wholly owned subsidiary, TC Offshore LLC (TC Offshore), all of its offshore pipeline facilities in the Gulf of Mexico, as well as certain onshore pipeline facilities in Louisiana and Texas.² In the June 21 Order, the Commission also granted TC Offshore a certificate of public convenience and necessity under section 7(c) of the NGA³ to acquire and operate the portion of the facilities proposed to be abandoned by ANR that the Commission determined primarily function as jurisdictional transmission facilities.

2. On July 23, 2012, Apache Corporation (Apache); Arena Energy, LP (Arena); Indicated Shippers;⁴ LLOG Exploration Company, LLC (LLOG); the Producer

¹ 15 U.S.C. § 717f(b) (2006).

² *ANR Pipeline Co.*, 139 FERC ¶ 61,238 (2012) (June 21 Order).

³ 15 U.S.C. § 717f(c) (2006).

⁴ Indicated Shippers consists of BP America Production Company, BP Energy Company, Marathon Oil Company, and Shell Offshore Inc.

Coalition;⁵ and TC Offshore filed timely requests for rehearing of the June 21 Order.⁶ Also, on July 23, 2012, the American Forest & Paper Association, the American Public Gas Association, the Independent Petroleum Association of America, Natural Gas Supply Association, and the Process Gas Consumers Group (Association Group) filed a joint motion to intervene out-of-time and request for rehearing.

3. For the reasons set forth below, the Commission will deny the requests for rehearing addressed in this order. The Commission will also deny the Association Group's motion to intervene out-of-time and dismiss the accompanying rehearing request.

Background

4. ANR, a corporation organized and existing under the laws of Delaware, is a natural gas company, as defined by section 2(6) of the NGA, engaged in the business of transporting and storing natural gas in interstate commerce. ANR's approximately 10,600-mile interstate pipeline extends from Texas and Oklahoma, as well as producing areas in the Gulf of Mexico, to points in Wisconsin and Michigan. TC Offshore is a limited liability company formed in Delaware and is operated and wholly owned by ANR. Prior to the June 21 Order, TC Offshore did not own any natural gas pipeline facilities.

5. Prior to the June 21 Order, ANR owned and operated, or had a partial ownership interest in, approximately 600 miles of pipeline and related facilities in the Gulf of Mexico, offshore Louisiana and Texas.⁷ The pipeline and related facilities primarily comprise three discrete gathering and transmission systems: (1) the Patterson System, extending upstream of the Patterson Station located in St. Mary Parish, Louisiana; (2) the Grand Chenier System, extending upstream of the Grand Chenier Station located in Cameron Parish, Louisiana; and (3) the Central Texas Gathering System, extending upstream of an onshore terminus in Wharton County, Texas.

⁵ The Producer Coalition consists of Century Exploration New Orleans, LLC, Dynamic Offshore Resources, LLC, Energy XXI (Bermuda) Ltd., Hilcorp Energy Company Inc., McMoRan Oil & Gas LLC, Pisces Energy LLC, and W&T Offshore, Inc.

⁶ The rehearing requests filed by the Producer Coalition, LLOG, and Arena are substantially similar. When referring to the Producer Coalition's rehearing request later in this order, the Commission incorporates the rehearing requests of LLOG and Arena.

⁷ The related facilities include seven offshore platforms, measurement, compression, separation and dehydration facilities, and appurtenant facilities.

6. On September 1, 2011, ANR filed an application to abandon by sale to TC Offshore its Patterson, Grand Chenier, and Central Texas Gathering Systems, including facilities in which it held a partial interest. In addition, ANR proposed to abandon a number of other pipelines in the offshore state and federal waters of the Gulf of Mexico that are not connected to the rest of its system. On September 1, 2011, TC Offshore filed an application to acquire and operate the facilities ANR proposed to abandon.

A. The June 21 Order

7. The June 21 Order authorized ANR's and TC Offshore's proposals. In evaluating the abandonment proposals, the Commission concluded that the present or future public convenience or necessity permitted ANR's abandonment by sale to TC Offshore.⁸ In making this determination, the Commission found that there will be no significant adverse impacts to existing firm or interruptible services as a result of ANR's proposed abandonment. The June 21 Order rejected rate stacking concerns, reasoning that a change in cost responsibility does not amount to impermissible rate stacking.⁹ Further, because the Commission concurrently authorized TC Offshore to acquire and operate the transmission facilities on an open-access basis as a jurisdictional natural gas company, the Commission found that there will be no continuity of service issues.¹⁰

8. In considering TC Offshore's request for a certificate to acquire and operate the facilities proposed to be abandoned by ANR, the June 21 Order stated that the Commission will only authorize TC Offshore to acquire facilities over which the Commission has jurisdiction under the NGA.¹¹ The Commission declined to include in the certificate authorization issued to TC Offshore several pipeline segments because those segments were idle, and TC Offshore did not assert that it would use the facilities to provide jurisdictional service.¹² The Commission also evaluated the primary function of the facilities to be abandoned, and found that a portion of the facilities functioned primarily as non-jurisdictional gathering facilities under section 1(b) of the NGA.¹³ The

⁸ June 21 Order, 139 FERC ¶ 61,238 at P 68.

⁹ *Id.* P 49.

¹⁰ *Id.* P 57.

¹¹ *Id.* P 85.

¹² *Id.* P 86.

¹³ *Id.* PP 87-108.

Commission did not include these non-jurisdictional facilities in the certificate authority issued to TC Offshore.

9. On August 1, 2012, in Docket No. RP12-908-000, TC Offshore submitted its baseline tariff to comply with the Commission's June 21 Order. The Commission accepted certain tariff records, subject to modifications and further review.¹⁴ On October 9, 2012, in Docket No. RP12-908-001, TC Offshore filed revised tariff sections in compliance with the Commission's order on TC Offshore's initial compliance filing. That filing is pending before the Commission.

10. On November 8, 2012, ANR and TC Offshore filed letters, in compliance with Ordering Paragraph (B) of the June 21 Order, notifying the Commission that on November 1, 2012, ANR abandoned by sale to TC Offshore the authorized facilities and that TC Offshore acquired the facilities.

B. The September 28 Order

11. On September 28, 2012, the Commission issued an order on rehearing and clarification that addressed two discrete issues raised by the parties seeking rehearing of the June 21 Order.¹⁵ Specifically, the September 28 Order addressed (1) the functionalization determination for a portion of the pipeline facilities acquired by TC Offshore, and (2) the treatment of TC Offshore's proposed negative salvage rates. The September 28 Order stated that all other issues raised on rehearing of the June 21 Order would be addressed in a separate order.¹⁶ On October 31, 2012, TC Offshore requested rehearing of the September 28 Order.¹⁷

¹⁴ *TC Offshore LLC*, 140 FERC ¶ 61,261 (2012).

¹⁵ *ANR Pipeline Co.*, 140 FERC ¶ 61,260 (2012) (September 28 Order).

¹⁶ The September 28 Order also clarified the June 21 Order's descriptions of certain pipeline segments proposed to be acquired by TC Offshore.

¹⁷ TC Offshore's rehearing request is considered timely filed by operation of Rule 2007, since the Commission was closed on October 29 and 30 due to adverse weather. 18 C.F.R. § 385.2007(a)(2) (2012).

Procedural Issues

A. Answers

12. ANR and TC Offshore (jointly) filed an answer to Apache, Independent Shippers and Producer Coalition's requests for rehearing and Association Group's late motion to intervene and request for rehearing. Apache filed an answer to ANR and TC Offshore's answer. In addition, Stingray Pipeline Company, L.L.C. (Stingray) filed an answer to TC Offshore's request for rehearing. Our regulations prohibit answers to requests for rehearing and answers to answers unless otherwise ordered by the decisional authority.¹⁸ We will allow the answers here because doing so will assist us in our decision-making process.¹⁹

B. The Association Group's Motion to Intervene Out-of-Time and Rehearing Request

13. On July 23, 2012, more than nine months after the intervention deadline of October 4, 2011,²⁰ and one month after issuance of the Commission's June 21, 2012 order on the merits, the Association Group filed an untimely motion to intervene.²¹ On August 7, 2012, ANR and TC Offshore filed an answer to the Association Group's pleading, stating that the Commission should deny the untimely motion to intervene.

14. In considering whether to grant an untimely motion to intervene, the Commission may apply the criteria set forth in Rule 214(d) and consider whether: (1) the movant had

¹⁸ Rule 213(a)(2) provides that "[a]n answer may not be made to . . . an answer . . . or a request for rehearing, unless otherwise ordered by the decisional authority."

¹⁹ The issues raised by Stingray were addressed in the September 28 Order.

²⁰ 76 Fed. Reg. 58,255 (2011).

²¹ The Natural Gas Supply Association represents integrated and independent companies that produce and market natural gas on issues that broadly affect the natural gas industry. The Independent Petroleum Association of America represents independent oil and natural gas producers and associated service companies. The Process Gas Consumers Group is an association of industrial consumers of natural gas. The American Public Gas Association is an association for publicly owned natural gas distribution systems. The American Forest & Paper Association is a forest products trade association, representing pulp, paper, packing, and wood products manufacturers, and forest landowners.

good cause for failing to file the motion within the time prescribed; (2) any disruption of the proceeding might result from permitting the intervention; (3) the movant's interest is adequately represented by other parties in the proceeding; (4) any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention; and (5) the motion describes in adequate detail the movant's interest in and right to participate in the proceeding.²²

15. When late intervention is sought after the issuance of a dispositive order, the prejudice to the other parties and the burden upon the Commission of granting the late intervention may be substantial.²³ Thus, the Association Group bears a higher burden to show good cause for granting such intervention after issuance of an order addressing the merits of an application.

16. The Association Group contends that they could not have expected that the June 21 Order would allow abandoned facilities to remain in ANR's rate base, despite protests alleging pipeline over-recovery. The Commission has previously explained that:

[a] key purpose of intervention deadlines is to determine, early in the proceeding, who the interested parties are and what information and arguments they can bring to bear. Interested parties are not entitled to hold back awaiting the outcome of the proceeding or relying on a particular outcome, only to intervene once events take a turn not to their liking.²⁴

17. The Association Group presents no new information or arguments that have not been raised by other parties to this proceeding. The Commission concludes that the Association Group has not shown good cause justifying late intervention. Further, allowing late intervention at this point in the proceeding brings little benefit and potentially would create prejudice and additional burdens on the Commission, other parties, and the applicants. Accordingly, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, the Commission will deny the Association Group's motion to intervene out-of-time for failure to demonstrate good cause warranting late intervention.

²² 18 C.F.R. § 385.214(d) (2012).

²³ *Bradwood Landing LLC*, 126 FERC ¶ 61,035, at P 14 (2009).

²⁴ *PJM Interconnection, LLC*, 132 FERC ¶ 61,265, at P 18 n.20 (2010).

18. Under section 19(a) of the NGA and Rule 713(b) of the regulations, only a party to a proceeding has standing to request rehearing of a Commission decision. Because the Association Group is not a party to this proceeding, the Commission will reject its request for rehearing. In any event, the issues raised by the Association Group were also raised by the Producer Coalition and Apache. These issues are discussed below.

Discussion

A. Public Convenience or Necessity Determination

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

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.²⁵

20. When considering the criteria for abandonment under section 7(b), two important principles apply: (1) a pipeline which has obtained a certificate of public convenience and necessity to serve a particular market has an obligation, deeply embedded in the law, to continue to serve; and (2) the burden of proof is on the applicant to show that the public convenience or necessity permits abandonment, that is, that the public interest will in no way be disserved by abandonment.²⁶

21. The Commission examines abandonment applications on a case-by-case basis.²⁷ In deciding whether a proposed abandonment is warranted, the Commission considers all

²⁵ 15 U.S.C. § 717f (2006).

²⁶ See *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204, 214 (D.C. Cir. 1960); *Transcontinental Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1328 (D.C. Cir. 1973).

²⁷ *Transwestern Pipeline Co. L.L.C.*, 140 FERC ¶ 61,147, at P 12 (2012).

relevant factors, but the criteria vary as the circumstances of the abandonment proposal vary. Among the factors that the Commission has considered in reviewing a request for abandonment by sale are: (1) the needs of the two natural gas systems and the public markets they serve; (2) the economic effect on the pipelines and their customers; and (3) the presumption in favor of continued service.²⁸ The central focus of a NGA section 7(b) abandonment evaluation is not whether there is any harm to any narrow interest. Rather, the Commission takes a broad view in abandonment proceedings and evaluates proposed abandonment applications against the benefits to the market as a whole.²⁹

1. The Needs of the Two Natural Gas Systems

22. Apache,³⁰ Indicated Shippers,³¹ and the Producer Coalition³² (collectively referred to as the Rehearing Parties) contend that the Commission inadequately balanced the benefits and detriments in determining whether the proposed abandonment was in the public convenience or necessity and failed to articulate any benefits to granting the abandonment proposal. The Producer Coalition also claims that “the Commission gave substantial weight to the fact that ANR’s firm shippers did not oppose the proposed abandonment...”³³ Similarly, Apache states that “in analyzing potential harm to ANR’s shippers, the Commission relied on the fact that there were no protests or objections filed by ANR’s long-haul or firm shippers, and assumed on this basis that long-haul shippers would be unharmed by the abandonment.”³⁴ The Producer Coalition states that the Commission failed to meaningfully examine the significant impacts on producers delivering gas into the facilities ANR proposed to abandon.

²⁸ *Southern Natural Gas Co.*, 126 FERC ¶ 61,246, at P 27 (2009) (*Southern*).

²⁹ *See Southern Natural Gas Co.*, 50 FERC ¶ 61,081, at 61,222 (1990). *See also Consolidated Edison Co. v. FERC*, 823 F.2d 630, 643 (D.C. Cir. 1987) (“We agree with FERC that the ‘public convenience or necessity’ language of the NGA’s abandonment provision envisions agency policy-making to fit the regulatory climate.”).

³⁰ Apache is a producer and shipper on ANR.

³¹ Indicated Shippers is a group of offshore shippers and producers.

³² The Producer Coalition is a group of offshore exploration and production companies.

³³ Producer Coalition Rehearing Request at 6.

³⁴ Apache Rehearing Request at 17.

23. There is evidence of potentially significant benefits in this record. ANR states that it determined it can best meet the needs of its downstream shippers by moving away from its role as an aggregator of offshore supplies and instead focusing its efforts and resources on its onshore system, on which the majority of its customers increasingly rely.³⁵ ANR explains that the divestiture of the offshore facilities is in the best interest of its shippers because it will eliminate hurricane risk exposure, remove the future abandonment liability associated with these facilities, and reduce operation and maintenance expenditures.³⁶ Based on these benefits identified in the record, it was reasonable for the Commission to conclude, as it did in the June 21 Order, that approving ANR's abandonment proposals was permitted by the public convenience and necessity.

24. In analyzing the potential impact of ANR's proposed abandonment on current customers, the June 21 Order stated that "no firm shippers or other pipelines in the market area have protested ANR's abandonment application."³⁷ Indicated Shippers argues that this finding "presumes that PTS-1 and PTS-2 are not firm services."³⁸ Shippers and producers who use ANR's Southeast Area System (Southeast Area), which includes the offshore facilities it proposed to abandon, use rate schedules PTS-1 and PTS-2, among others.³⁹ PTS-1 and PTS-2 are pooling services that allow shippers to aggregate their supplies at the Eunice Headstation.⁴⁰ PTS-1 service allows for transportation of gas from receipt points in the Southeast Area to the Eunice Headstation for no charge.⁴¹ PTS-1 service takes on the priority of the downstream shipper and can take on a firm priority.⁴² PTS-2 service is a point-to-point service with firm point and path capacity to the headstation.⁴³ When the June 21 Order stated that no firm shippers

³⁵ June 21 Order, 139 FERC ¶ 61,238 at P 20.

³⁶ *Id.*

³⁷ June 21 Order, 139 FERC ¶ 61,238 at P 35.

³⁸ Indicated Shippers Rehearing Request at 6-7.

³⁹ ANR's Application in Docket No. CP11-543-000 at 3.

⁴⁰ *Id.* at 3-4.

⁴¹ *Id.* at 12.

⁴² *Id.*

⁴³ *Id.*

or other pipelines *in the market area* have protested the abandonment, the order was referring to the fact that no firm shippers downstream of the Eunice Headstation or any other downstream pipeline protested the abandonment application.

25. The Commission is justified in relying on the lack of opposition from firm, downstream customers as persuasive evidence that there will be no detriments to such shippers from granting the abandonments.⁴⁴ Firm customers pay most of a pipeline's fixed costs through reservation charges, regardless of whether the shipper uses their reserved capacity or not. In return, pipelines are under an obligation to give primary service to firm customers that may be abridged only in very limited circumstances. Interruptible customers, on the other hand, are under no obligation to pay a pipeline if they do not require service, and the pipeline's obligation to serve interruptible customers is secondary to firm shippers. Similar to the findings in previous Commission orders,⁴⁵ the lack of downstream firm customer protesters is evidence that they do not believe they will be harmed by the abandonment proposals. While it is true that ANR's downstream rates will not reflect the removal of costs associated with the abandoned facilities until ANR's next NGA section 4 general rate case – a point Apache and the Producer Coalition stress – customers may nevertheless enjoy benefits from the removal of costs at that time.⁴⁶ It is also true, as asserted by Apache and the Producer Coalition, that ANR is not required to file a NGA section 4 general rate case now and that the Commission cannot require a pipeline to file a rate case. Notwithstanding this fact and as noted by the June 21 Order, as an NGA-jurisdictional company, ANR remains subject to the full scope of NGA ratemaking and regulations, in particular NGA section 5.⁴⁷ In addition, the Commission may, on its motion, institute a NGA section 5 proceeding if it has reason to believe that a pipeline's existing rates are no longer just and reasonable. Any interested

⁴⁴ See *Panhandle Eastern Pipe Line Co., LP*, 141 FERC ¶ 61,119, at P 23 (2012) (“Based [on] the absence of protests from any shippers bearing the costs of operating and maintaining the facilities proposed to be abandoned, it appears that downstream shippers do not place a high value on the service being provided by those facilities i.e., assuring ready access to the production upstream of the facilities.”).

⁴⁵ *Id.*

⁴⁶ It is not necessarily the case that, if the costs of the ANR's offshore facilities were removed from ANR's costs of service, then ANR's rates would also be reduced. However, abandonment will immediately eliminate ANR's incurrence of operation, maintenance, and repair costs.

⁴⁷ 15 U.S.C. § 717 (2006).

entity may also file a properly supported complaint pursuant to NGA section 5 to review a pipeline company's rates. Customers filing a NGA section 5 complaint may rely on data and reports the Commission requires to be filed pursuant to its NGA section 10 authority.

2. Impacts on Current Customers

a. Increased Rates

26. The Rehearing Parties argue that granting the proposals will significantly increase their costs and, in turn, will negatively impact the competitiveness of the gas connected to the abandoned facilities. The Producer Coalition states that the Commission cannot square its findings in this case with the findings in *Tennessee Gas Pipeline Co. (Tennessee)*,⁴⁸ contending that the Commission should have placed greater emphasis on the potential that shippers will be charged higher rates for the same service they are currently receiving.⁴⁹

27. It is appropriate to consider rate impacts when evaluating whether abandonment is in the public interest,⁵⁰ and the Commission has not ignored the rate impacts of granting the abandonment in this case. The June 21 Order acknowledged that granting the abandonment may result in higher rates for the Rehearing Parties. The order found this result was not controlling, however, stating that the fact that offshore shippers were not paying for transportation service over ANR's offshore facilities did not mean that the transportation service was free, i.e., other transportation customers, downstream of the pooling points, were paying for and subsidizing that transportation.⁵¹ Granting the proposals will result in offshore shippers paying for the use of those facilities, an outcome that ANR could similarly achieve through an NGA section 4 filing.⁵² Further,

⁴⁸ Producer Coalition Rehearing Request at 10-12 (citing *Tennessee*, 137 FERC ¶ 61,105 (2011)).

⁴⁹ *Id.*

⁵⁰ *Tennessee*, 137 FERC ¶ 61,105 at P 27 n.24 (“The protestors’ concerns with respect to rate impacts which would result from such an abandonment are thus a significant consideration in our decision-making process.”).

⁵¹ June 21 Order, 139 FERC ¶ 61,238 at P 49.

⁵² *Id.* P 51.

granting the proposals levels the playing field on which the Rehearing Parties compete to serve the downstream market.⁵³

28. Prior to the abandonment of ANR's offshore facilities to TC Offshore, ANR's PTS-1 service allowed for the aggregation and transportation of gas production from receipt points in ANR's Southeast Area tariff zone, including the offshore facilities, to the Eunice Headstation pool for no charge. Thus, for the most part, the Rehearing Parties' contention that they were not subject to a transportation charge for service over ANR's offshore facilities is correct. As explained in the June 21 Order, under the Commission's pooling policy, ANR charged the customers downstream of the pooling points for the transportation of gas both to and away from pooling points. Thus, ANR was not providing offshore transportation service to the offshore shippers for free. Rather, ANR was assessing the transportation rate on shippers other than the Rehearing Parties. The Commission does not agree with Producer Coalition and Apache's claim that the TC Offshore transportation rate is an additional charge for the same service formerly rendered by ANR. TC Offshore's transportation rate simply changes who is responsible for paying for the offshore transportation service.

⁵³ The following are examples of Commission jurisdictional pipelines in the Gulf of Mexico charging a rate solely to transport gas from offshore production areas to onshore processing plants: Black Marlin Pipeline Co. (\$0.9000 per Dth interruptible rate); Discovery Gas Transmission, LLC (\$0.2845 per Dth mainline, plus expansion interruptible rate); High Island Offshore System, L.L.C. (\$0.3950 per Dth interruptible rate); Stingray Pipeline Co., L.L.C. (\$0.595 per Dth interruptible rate); Venice Gathering System, L.L.C. (\$0.3500 per Dth interruptible rate). Shippers transporting gas on each of these pipelines incur further transportation expense following delivery onshore. In its compliance filing in Docket No. RP12-908-000, TC Offshore proposed interruptible gathering rates of \$0.2810 per Dth and interruptible transportation rates of \$0.0653 per Dth, which would require a shipper using both TC Offshore's gathering facilities and its transmission facilities to pay a total of \$0.3463 per Dth. The Commission accepted TC Offshore's rates subject to the condition that it recalculate its rates using the June 21 Order's approved negative salvage rate of 0.23 percent, which is lower than the negative salvage rates TC Offshore used to calculate the rates in its compliance filing, and subject to the Commission's further examination to determine if TC Offshore has complied with the June 21 Order's proposed cost allocations between gathering and transmission functions and calculation of certain derivative costs such as depreciation expenses, arithmetic errors, and billing determinants. 140 FERC ¶ 61,261 at PP 26 and 27.

29. The Rehearing Parties contend that approval of the abandonment negatively impacts the competitiveness of offshore gas supplies. In the June 21 Order, the Commission noted that the extent to which the price of transportation affects the price of natural gas at either the well head or the end-use market in a competitive natural gas market cannot be gauged precisely. As noted above, the cost of offshore transportation was paid by downstream customers, thus the service was never free but was rather subsidized by others. The Rehearing Parties compete with other offshore producers. Not all offshore producers, however, enjoy the benefits of transportation service paid for by others, such as was available to the Rehearing Parties. There are many NGA jurisdictional pipelines that provide only offshore transportation service such as TC Offshore provides. The Rehearing Parties do not justify the perpetuation of their competitive advantage. As a result of the June 21 Order and the contemporaneous orders for Trunkline Gas Company, LLC⁵⁴ and High Point Gas Transmission, LLC,⁵⁵ most Gulf of Mexico offshore producers will face comparable service options to move their supply to market.

30. The June 21 Order squarely placed cost responsibility for the offshore facilities on those producers and shippers that actually use those facilities—an outcome that is consistent with basic cost-causation principles.⁵⁶ Nothing in the filings of the Rehearing Parties rebuts the finding that the rate imposed will be consistent with the cost-causation principle.

31. Citing to *Tennessee*, the Rehearing Parties assert that the Commission should have placed greater emphasis on the potential that shippers will be charged higher rates.⁵⁷ Indeed, the Commission does review the impact abandonments may have on customers' revenue responsibility, but it is only one factor that the Commission uses when it evaluates such proposals on a case-by-case basis. *Tennessee* is a good example of the Commission's case-by-case approach. In that proceeding, rates were an issue. However, the Commission did not deny Tennessee authority to abandon the non-jurisdictional

⁵⁴ *Trunkline Gas Co., LLC*, 139 FERC ¶ 61,239 (2012).

⁵⁵ *Southern Natural Gas Co., L.L.C.*, 139 FERC ¶ 61,237 (2012).

⁵⁶ The U.S. Court of Appeals for the District of Columbia Circuit defined the cost-causation principle as follows: “[s]imply put, it has been traditionally required that all approved rates reflect to some degree the costs actually caused by the customer who must pay them.” *KN Energy Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992).

⁵⁷ *Tennessee*, 137 FERC ¶ 61,105.

gathering facilities based on rate considerations.⁵⁸ As for the facilities found to be jurisdictional transmission facilities, the Commission denied the requested abandonment, not because of rate issues, but because the would-be purchaser, Kinetica Partners, had not filed a certificate application to acquire and operate the jurisdictional transmission facilities subject to the Commission's NGA jurisdiction and open-access policies.⁵⁹

32. The June 21 Order did evaluate whether potential shippers will be charged higher rates for the same service they are currently receiving on ANR's offshore facilities. However, the Commission does not agree with the Rehearing Parties' argument, in essence, that this factor should be a controlling factor in the Commission's abandonment decision, and they cite to no case to support their position. The June 21 Order found that the proposed TC Offshore transportation rate was an appropriate change in customer revenue responsibility, that the change was consistent with cost-causation principles, and that the change in responsibility could have been achieved through other means, such as ANR filing under section 4 to change its rate design to allocate its costs associated with its facilities upstream of the pooling points on its system to customers that rely on those facilities. The Commission found that these considerations outweighed the fact that higher rates will have to be paid by shippers that rely on these offshore facilities, including producers that heretofore have been able to use the facilities at no charge.

⁵⁸ In *Tennessee*, at n.24, the Commission stated:

Yet, the cases cited by Tennessee with respect to the charging of separate rates on abandoned facilities are mostly inapplicable here, because in those cases the Commission found that the facilities at issue were performing a gathering function at the time the applications were filed and thus were excluded by NGA section 1(b) from Commission jurisdiction. The issue before us here is the proposed abandonment of facilities that we find are currently performing a jurisdictional transmission function. The protestors' concerns with respect to rate impacts which would result from such an abandonment are thus a significant consideration in our decision-making process.

⁵⁹ *Id.* P 28, and *Tennessee Gas Pipeline Co.*, 138 FERC ¶ 61,179, at P 5 (2012). Kinetica Partners subsequently filed a certificate application to acquire and operate the facilities that the Commission found jurisdictional in *Tennessee*. The Commission is currently reviewing Kinetica Partners' application in Docket No. CP12-489-000.

Thus, the Commission fully considered this factor in its evaluation of the proposed abandonment, and gave it appropriate weight in the decision-making process.

33. The Producer Coalition also contends that the Commission improperly gave interruptible service less protection than firm service. The Commission does not agree that interruptible customers merit the same amount of protection as firm customers. Firm customers pay reservation charges to reserve capacity for the term of their contract even if they do not ship gas. Firm customers have taken on a financial obligation in return for an agreement from the pipeline to have capacity available for the life of the contract. Further, under the Commission's cost of service rate making principles, firm shippers are often required to pay for a pipeline's excess capacity and to return to the pipeline unrecovered rate base for plant removed from service prior to the end of its amortization life. Conversely, if interruptible customers do not want to ship gas, they do not have to pay for transportation. In addition, if the transportation rate goes up, interruptible customers are not obliged to pay the higher rate, as they can simply stop shipping gas. Because interruptible shippers do not obligate themselves to pay rates under a long-term service agreement, interruptible service is not comparable to firm service in terms of rights and obligations, and the Commission has not and does not treat firm and interruptible service agreements as giving shippers equivalent rights. Thus, the Commission has given much greater weight to how a pipeline's proposed abandonment will affect its ability to meet its firm service obligations and the quality of its firm services.⁶⁰

34. Further, even if the Commission were to view interruptible and firm customers as equal for the purposes of evaluating abandonment, it is unlikely in this proceeding the

⁶⁰ In *Trunkline Gas Company*, 94 FERC ¶ 61,381 (2001), Trunkline proposed to abandon a 720-mile-long loop segment of its main transmission line by sale to a company that would convert the pipeline to transport petroleum products. The Commission approved the abandonment only after finding that it would not adversely affect Trunkline's ability to meet its firm service obligations. The Commission also considered the concerns of interruptible shippers that were receiving service at discounted rates and had protested on the ground, *inter alia*, that Trunkline's sale of the loop would reduce the amount of capacity available for interruptible service and, thus, Trunkline's incentive to discount its interruptible rate as steeply in the future. The Commission did not dispute the possibility that Trunkline would no longer have sufficient capacity to satisfy all interruptible service requests. However, after finding that alternative pipeline transporters were available, the Commission approved Trunkline's abandonment proposal, observing that investors "do not construct an interstate pipeline or continue it in operation to serve only interruptible customers at discounted rates." *Id.* at 62,421.

outcome would be different. Here, as the Commission explains below, there is no continuity of service issue. Therefore, whether the service was firm or interruptible, shippers would still be receiving the firm or interruptible service, simply rendered by a different jurisdictional pipeline.

35. The Producer Coalition states that the *Tennessee* case addressed arguments made by shippers that were receiving no-fee service to Tennessee's pooling points, just as in the present case.⁶¹ While the Commission in the *Tennessee* order considered the concerns that shippers using a no-fee pooling point rate might be subject to a non-jurisdictional rate, the Commission did not seek to shelter those shippers receiving no-fee service from a NGA just and reasonable rate based on the costs of those facilities. Rather, the Commission denied abandonment of the jurisdictional facilities because, as a threshold matter, no entity had filed for a certificate to acquire them. In finding harm with the proposal of ANR and TC Offshore, the Producer Coalition ignores the protections offered by their continued access to NGA jurisdictional service, i.e., just and reasonable rates.⁶² As an NGA regulated company, TC Offshore will charge the initial cost-based rate that was found to be in the public convenience and necessity and approved by the Commission. The Producer Coalition is not entitled to something more favorable.

b. Rate Stacking

36. Indicated Shippers and Apache assert that, after ANR has abandoned the facilities to TC Offshore, ANR's rates will be unjust and unreasonable because ANR will continue to collect costs associated with abandoned facilities. Apache states that the proposed abandonment will not reallocate the costs of the offshore facilities until ANR files a NGA section 4 rate case. The June 21 Order acknowledged that ANR's existing rates will not change unless and until it files a NGA section 4 rate case.⁶³ ANR and TC Offshore respond stating that it is well-settled that in a NGA section 7 proceeding, existing rates

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

⁶² See *UGI Storage Co.*, 134 FERC ¶ 61,239, at P 50 (2011).

⁶³ June 21 Order, 139 FERC ¶ 61,238 at P 49, note 42.

for other previously-certificated services that are not the subject of the proceeding cannot be modified.⁶⁴

37. TC Offshore will provide an offshore transportation service on the facilities that move offshore gas to onshore processing and treating facilities. ANR, for its part, will transport the processed gas to delivery points further onshore. Thus, TC Offshore and ANR will provide separate services. Moreover, the rates TC Offshore will charge for the facilities will be based on the combined cost of service of the Patterson, Grand Chenier, and Central Texas Gathering system facilities, and it is consistent with cost-causation principles for the offshore producers to pay those costs. As explained in the June 21 Order, “[w]e do not view a change in revenue responsibility as rate stacking.”⁶⁵ The Commission acknowledges that it is concerned with the imposition of additional costs in abandonment proceedings, but it is satisfied that there is no impermissible rate stacking here.

38. ANR will continue to collect rates based on the costs agreed to in its last settlement until it files a NGA section 4 general rate case or the Commission finds, pursuant to NGA section 5, that ANR must change its rates. ANR’s downstream customers, i.e. the parties that stand to gain by removing the abandoned facilities from ANR’s rate base, have not protested.⁶⁶ Their lack of protest is evidence that they do not value the offshore production and no longer want to continue subsidizing use of the abandoned facilities.

39. Apache states that in *Millennium Pipeline Co., L.L.C.*, the Commission authorized Columbia Gas Transmission Corporation (Columbia) to abandon certain pipeline facilities to Millennium Pipeline Company, L.L.C. (Millennium) and lease capacity on Millennium to continue providing service to its transmission customers.⁶⁷ Apache further states that in *Millennium*, the Commission found that “to avoid the potential for double recovery,” Columbia could not include the costs of the leased capacity in its rates until it had “[submitted] a section 4 filing to remove the costs of the [abandoned] facilities from

⁶⁴ ANR and TC Offshore Answer at 14 (citing *Panhandle Eastern Pipe Line Co. v. FERC*, 613 F.2d 1120 (D.C. Cir. 1979)).

⁶⁵ June 21 Order, 139 FERC ¶ 61,238 at 49.

⁶⁶ *Id.* P 55.

⁶⁷ Apache Protest at 26 (citing *Millennium Pipeline Co. L.L.C.*, 117 FERC ¶ 61,319, at PP 8-9 (2006) (*Millennium*)).

its base rates.”⁶⁸ Apache thus argues that, at a minimum, consistent with *Millennium*, the Commission should not approve the abandonment proposals until ANR agrees to submit a NGA section 4 filing to remove the costs of the transferred facilities from its rates.

40. Apache misunderstands the procedural situation in *Millennium*. The Commission did not require Columbia to file a NGA section 4 general rate case to remove abandoned facilities from its base rates. In its application, Columbia recognized that the costs from the abandoned facilities were in its base rates. As a result of the abandonment and the replacement capacity Columbia acquired from *Millennium* through a lease, Columbia could have been in a double recovery cost position if it were to request to recover the lease costs as permitted in its periodic Account No. 858 tracker.⁶⁹ Columbia proposed not to double recover the costs, and the Commission simply affirmed that proposal.⁷⁰ Columbia did not promise when it would make a NGA section 4 general rate case filing to remove the abandoned facility costs from its base rates, and the Commission did not require as a condition of abandonment that Columbia file a NGA section 4 general rate case to remove the abandoned facilities.

41. The Commission will not grant Apache’s request to condition the timing of the abandonment to the date when ANR would submit a NGA section 4 general rate case. As the Commission noted above, the outcome of a comprehensive rate review for ANR may have uncertain results for revenue responsibility. While delaying the effective date of the abandonment would likely benefit Apache, the delay would not benefit ANR or necessarily its downstream customers. If ANR’s customers determine ANR is over recovering as a result of continuing to recover costs of facilities that have been abandoned, these customers can file a NGA section 5 complaint.⁷¹

c. Contract Agreements

42. Indicated Shippers asserts that the June 21 Order fails to recognize that shippers have firm agreements on upstream offshore pipelines that are tied to life of lease agreements.⁷² Specifically, Indicated Shippers criticizes the order for the failure to

⁶⁸ *Id.* at 26-27.

⁶⁹ Account 858 includes costs incurred for the transmission and compression of gas by others.

⁷⁰ *Millennium*, 117 FERC ¶ 61,319 at P 118.

⁷¹ 18 C.F.R. § 385.206 (2012).

⁷² Indicated Shippers Rehearing Request at 7-8.

address how ANR and TC Offshore are to divide responsibility for discounted service when the abandonment will necessitate service across both pipelines. Indicated Shippers contends that the abandonment will “directly interfere with BP’s PTS-2 agreement and reserve dedication agreement for the use of ANR’s Grand Chenier system from the interconnection with the High Island Offshore System to the Eunice Headstation and for subsequent transportation from Eunice to all other points in ANR’s Southeast Area system.”⁷³ Indicated Shippers states that the abandonment will also adversely impact firm agreements that shippers have on upstream pipelines that connect to the facilities to be abandoned and adversely impact all Rate Schedule PTS-1 agreements and all ITS agreements, as well as existing discount agreements. Indicated Shippers claims that TC Offshore intends to nullify ANR’s Rate Schedule PTS-1 and PTS-2 agreements and that this is a violation of the Commission’s policy of promoting contract stability by rejecting attempts by a regulated entity to unilaterally change the terms of its contracts with shippers. In support, Indicated Shippers cites the *Mobile-Sierra* doctrine,⁷⁴ which precludes the Commission from allowing a regulated entity to unilaterally change the terms of its contracts with shippers, unless the Commission determines that the contract adversely affects the public interest.

43. The June 21 Order noted that ANR asserted it has no reason to believe that its ability to meet its contractual obligations will be impaired as a result of the proposed abandonment.⁷⁵ With regard to Rate Schedule PTS-2 agreements, ANR stated that it has three PTS-2 contracts with service on the facilities proposed to be abandoned. ANR stated that two of the three PTS-2 shippers have not used their contracts for years and that it was in the process of negotiating revised receipt points with these shippers. In its answer to the rehearing requests, TC Offshore reiterates the assertion that neither ANR nor TC Offshore anticipates any disruption of firm service as a result of the abandonment. ANR and TC Offshore state “there will be no interference with service that existing shippers have on upstream pipelines that connect to the Southeast Area facilities being abandoned.”⁷⁶ Because Indicated Shippers has not provided contradictory

⁷³ *Id.* at 9.

⁷⁴ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *Federal Power Comm’n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

⁷⁵ June 21 Order, 139 FERC ¶ 61,238 at PP 58-59 (finding that neither Indicated Shippers nor any other party has provided any information indicating a contractual issue that will be precipitated by the proposed abandonment).

⁷⁶ ANR and TC Offshore Answer at 10-11.

information detailing a contractual alteration, the Commission denies rehearing on this issue.

d. Treatment of ANR and TC Offshore as Separate Entities

44. Apache argues that the June 21 Order erred by not treating TC Offshore and ANR as one entity.⁷⁷ The Commission will treat affiliates as a single entity when 1) the corporate form functions to frustrate statutory or regulatory purposes, or 2) it would be in the interest of the public convenience, fairness, or equity.⁷⁸ Apache states that ANR's proposal to transfer its offshore facilities to its wholly owned affiliate without removing the costs from its own rates undermines the Commission's ratemaking tenets and thus serves to frustrate the Commission's statutory and regulatory purposes. In their answer, ANR and TC Offshore accurately assert that Apache's argument blurs the distinction between the Commission's NGA section 7 and NGA section 4 authority.⁷⁹ Because TC Offshore will remain under our jurisdiction, the concern that the transaction is designed to frustrate regulatory oversight is alleviated.

3. Continuity of Service

45. The Producer Coalition claims that continuity of service necessarily means continuity of service by the applicant, rather than merely continuity of service by an NGA jurisdictional company. In support, the Producer Coalition cites *Tennessee*⁸⁰ and *Transcontinental Gas Pipe Line Corp. v. FPC*⁸¹

46. The ownership of the facilities that ANR proposed to abandon and TC Offshore proposed to acquire is merely being transferred from one NGA jurisdictional entity to another NGA jurisdictional entity. The facilities will not be taken out of service and will continue to provide the same level of service to the same customers. Under TC Offshore's tariff, TC Offshore will offer both firm and interruptible transportation service at Commission-approved initial rates that were found to be in the public convenience and

⁷⁷ Apache Rehearing Request at 15.

⁷⁸ *Town of Highlands, N.C. v. Nantahala Power & Light Co.*, 37 FERC ¶ 61,149, at 61,356 (1986).

⁷⁹ ANR and TC Offshore Answer at 26.

⁸⁰ *Tennessee*, 137 FERC ¶ 61,105.

⁸¹ 488 F.2d 1325 (D.C. Cir. 1973) (*Transcontinental*).

necessity immediately available to shippers. While TC Offshore may offer service at a higher rate, the rate will be cost-based and permitted under the NGA. Therefore, the Commission finds that the consolidation of facilities subject to this proceeding in TC Offshore, an offshore, NGA-jurisdictional entity that will continue offering the same level of service, presents no continuity of service issue.

47. The argument that NGA section 7(b) necessarily precludes abandonment by one entity where service is continued by another is flawed. In *Tennessee*, Tennessee requested NGA section 7(b) authority to abandon by sale to Kinetica Partners, LLC (Kinetica) offshore and onshore facilities located in the Gulf of Mexico and Louisiana.⁸² At the same time, Kinetica filed a petition asking the Commission to find that the facilities it sought to acquire from Tennessee would perform a non-jurisdictional gathering function under NGA section 1(b). The Commission analyzed the facilities proposed to be abandoned under the primary function test and determined that some of the facilities performed a gathering function under NGA section 1(b) and that the remainder of the facilities performed a jurisdictional transmission function. Therefore, the Commission denied Tennessee's request to abandon those facilities that were performing a jurisdictional function because Kinetica had not sought a certificate to acquire and operate the jurisdictional facilities as a natural gas company.⁸³

48. In denying Tennessee's abandonment proposal, however, the Commission contemplated that Tennessee could enter into an alternative abandonment arrangement when it stated that its denial was "without prejudice to Kinetica or another company seeking to acquire and operate the facilities as fully jurisdictional, open-access facilities under the NGA."⁸⁴ Thus, to the extent *Tennessee* stands for anything applicable to the proposals herein, *Tennessee supports* the Commission's view that there is no continuity of service issue when the abandonment involves the transfer of facilities from one NGA jurisdictional company to another.

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

⁸² *Tennessee*, 137 FERC ¶ 61,105 at P 1.

⁸³ *Id.* P 3.

⁸⁴ *Id.* P 28.

basing its holding on the proposition that Transco's contract had expired, "abdicated its statutory responsibility to guarantee that the overall public interest 'will in no way be disserved' by abandonment."⁸⁵ The court further held that the Commission must examine all factors relevant to determining the public interest, including the presumption in favor of continued service. The *Transcontinental* case does not imply that continuity of service means continuity of service from the existing certificate holder. The court did not require the La Gloria field area producers to continue selling gas to Transco but merely required the Commission to not limit its examination to private contracts in deciding if the abandonment was in the public convenience or necessity. The Commission here has followed its established criteria for examining an abandonment proposal and determined, among other things, that there are no continuity of service issues in the proposals herein. Thus, the *Transcontinental* case is not relevant.

50. Indicated Shippers asserts that the June 21 Order overlooked the fact that abandonment authority was denied in *Northern Natural Gas Co.*⁸⁶ The June 21 Order cited *Northern* to explain that the volume of gas currently flowing is not a relevant factor in determining whether to grant an abandonment where, as here, the abandonment proposal was not justified on the basis of underused and uneconomical facilities.⁸⁷ As stated in *Northern*, in such situations the pertinent issues are the economic impact on current customers and continuity of service.⁸⁸ The Commission's denial of abandonment authority in *Northern* was based on the finding that shippers could be subject to stacked rates and the fact that Northern had not reached an agreement with shippers holding the vast majority of firm capacity rights on the subject facilities. Since neither of these findings holds true for the present case, the denial of abandonment authority in *Northern* is not relevant.

51. Apache argues that to the extent that the abandonment increases offshore shippers' rates to such a degree that it renders further production uneconomical and effectively shuts in production, natural gas markets will be harmed and diminished royalty revenues will be collected by the federal government. Apache asserts that the fact that TC Offshore would continue to provide Commission-regulated transportation service over the abandoned facilities is of little comfort when the rate charged for the transportation may render offshore natural gas production uneconomical.

⁸⁵ 488 F.2d at 1328.

⁸⁶ 117 FERC ¶ 61,117 (2006) (*Northern*).

⁸⁷ June 21 Order, 139 FERC ¶ 61,238 at P 41.

⁸⁸ *Northern*, 117 FERC ¶ 61,117 at 21.

52. As we noted in the June 21 Order, the extent to which the price of transportation affects the price of natural gas at either the well-head or the end-use market in a competitive natural gas environment is speculative. Gas markets and individual gas contracts ultimately determine how costs will be reflected in the prices customers are willing to pay for production. These markets and contracts are not subject to the Commission's jurisdiction.⁸⁹

4. Abandonment Conclusion

53. The Rehearing Parties contend that the Commission erred by failing to apply properly the NGA section 7(b) public interest standard. Specifically, Apache argues that the June 21 Order is fatally flawed because ANR failed to demonstrate the benefits of the abandonment to ANR's shippers and downstream customers. Apache asserts that Commission precedent requires weighing benefits against harms, and in a situation such as here where, according to Apache, there is only evidence of harms the abandonment application must, by definition, be denied. Apache emphasizes that while the Commission acknowledged harm to producers, the Commission failed to articulate any benefits that would result from the proposals.

54. The Commission's role, however, is clear. "An applicant under NGA section 7(b) has the burden of making a factual showing that the public interest will not be disserved by the abandonment and need not show actual benefit."⁹⁰ The section 7(b) public convenience or necessity standard does not allow the Commission to approve any abandonment that will cause the public interest to be disserved by the abandonment, but does not require a showing of benefits.⁹¹ In any event, the Commission stands by the

⁸⁹ June 21 Order, 139 FERC ¶ 61,238 at P 51.

⁹⁰ *Trunkline*, 94 FERC ¶ 61,381 at 62,419. See *Pennsylvania Public Util. Comm'n v. FERC*, 881 F.2d 1123, 1127 (D.C. Cir. 1989) (observing that "affirmative proof of benefit to the public interest is not necessary to justify an abandonment.").

⁹¹ *Transcontinental Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1328 (D.C. Cir. 1973) (citing *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204, 214 (D.C. Cir. 1960)) summarized the following principles:

- (1) a pipeline which has obtained a certificate of public convenience and necessity to serve a particular market has 'an obligation, deeply embedded in the law, to continue service,'
- and (2) the burden of proof is on the applicant for abandonment to show that the 'public convenience and

(continued...)

observation in the June 21 Order that the public interest evaluation is not a myopic one that focuses on the interest of a particular group. The Rehearing Parties are but one segment of an overall natural gas market that is continuously evolving.

55. Consistent with the analytical framework set forth by the Commission's precedents, the Commission in the June 21 Order analyzed the benefits, harms, and continuity of service factors in the context of the ANR and TC Offshore proposal. Nothing cited by the Rehearing Parties calls into question the holding in the June 21 Order. Thus, the June 21 Order properly found that the public interest will not be disserved by the abandonment.

B. Sua Sponte Decision to Apply Primary Function Test

56. The Producer Coalition takes issue with the Commission's application of the primary function test to determine the jurisdictional status of the facilities. The Commission applied the primary function test in connection with the overall evaluation of TC Offshore's request for a NGA section 7 certificate to acquire and operate the facilities to be abandoned. The Producers Coalition specifically asserts that the Commission arbitrarily and capriciously deprived them of their procedural and substantive due process rights and violated the Administrative Procedure Act (APA) because the Commission reviewed the jurisdictional status of the facilities ANR proposed to abandon without providing interested parties with notice and an opportunity for comment.⁹² The Producer Coalition states that the Commission's record for its jurisdictional finding "consisted entirely of the Commission's own findings based on a review of data responses provided by the applicants."⁹³

57. The Supreme Court has explained that "the touchstone of due process is protection of the individual against arbitrary action of government."⁹⁴ Constitutional due process

necessity' permits abandonment, that is, that the public interest 'will in no way be disserved' by abandonment.

⁹² The APA requires agencies to give interested parties an opportunity for "the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit... ." 5 U.S.C. § 554(c)(1) (2006).

⁹³ Producer Coalition Rehearing Request at 14.

⁹⁴ *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)).

thus requires certain procedural safeguards, including the requirement that a party affected by government action be given “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action,”⁹⁵ and also “the opportunity to be heard at a meaningful time and in a meaningful manner.”⁹⁶ However, circumstances vary and the sufficiency of the procedures supplied must be decided in light of the circumstances of each case.⁹⁷ The Commission assesses due process claims case-by-case based on the totality of the circumstances.⁹⁸

58. In this case, on September 20, 2011, the Commission issued a notice of ANR’s abandonment application and TC Offshore’s certificate application, pursuant to sections 7(b) and 7(c) of the NGA, wherein they proposed no change in transmission or gathering facility functionalization. In Commission staff’s November 8, 2011 data request, Commission staff asked ANR and TC Offshore to identify “each pipeline segment and each discrete piece of ancillary equipment proposed for abandonment as to functional classification – gathering or transmission.” The Producer Coalition was served with a copy of the data request, and they were served with a copy of the applicants’ February 2, 2012 response providing information about the jurisdictional status of the facilities.⁹⁹ Thus, it is not the case that the Producer Coalition did not get notice that the Commission was considering the functionalization of the facilities. Although this request for information and accompanying response were public, were part of the record to this proceeding, and were served on the entities on the service list, including the Producer Coalition, no party commented on the jurisdictional status of the facilities.¹⁰⁰

⁹⁵ *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (citation and quotation omitted).

⁹⁶ *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citations and quotation omitted).

⁹⁷ *Id.* at 334 (“[D]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.”) (citation and quotation omitted).

⁹⁸ *See Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (“[D]ue process is flexible and calls for such procedural protections as the particular situation demands.”).

⁹⁹ Applicant’s February 2, 2012 Data Response.

¹⁰⁰ *See Equitrans, L.P.*, 109 FERC ¶ 61,209, at P 31 (2004) (allowing a protestor’s answer to a data request response because doing so will ensure a complete and accurate record).

59. Given the circumstances here, the Commission's application of the primary function test did not deprive the Producer Coalition of their opportunity to be heard, under either the Fifth Amendment's Due Process Clause or the APA. The notice referenced NGA section 7(c), which contains the Commission's statutory authority to issue certificates for NGA jurisdictional facilities. However, for purposes of determining what sort of facilities the Commission has statutory jurisdiction to certificate, the Commission must look to NGA section 1(b) because the Commission cannot certificate facilities that are not performing a jurisdictional function. As we have stated before, "fundamentally, the Commission's statutory obligation to correctly ascertain and assert its jurisdiction is a continuing obligation that does not and cannot hinge on the positions or pleadings of any party. Jurisdiction arises directly from the Act."¹⁰¹ Further, as we recently stated, the Commission is not required to give notice that it is not going to do what it does not have statutory jurisdiction to do.¹⁰²

60. The Commission has wide discretion in selecting its procedures. In any case, the Producers Coalition has had the opportunity to review our findings in the June 21 and September 28 Orders and has presented no substantive argument related to the jurisdictional status of the facilities, identified no errors the Commission made in its jurisdictional analysis, and otherwise provided no reason to persuade the Commission to change its determination about the functionalization of the facilities to be abandoned.¹⁰³ The Commission thus rejects the Producer Coalition's claims that reviewing the

¹⁰¹ *Commonwealth Gas Pipeline Corp.*, 28 FERC ¶ 61,223, at 61,416 (1984) (responding to an argument that the Commission is precluded from investigating allegations by a third party that challenges a Hinshaw exemption holder's status).

¹⁰² *Trunkline Gas Co.*, 142 FERC ¶ 61,133 (2013).

¹⁰³ See *Blumenthal v. FERC*, 613 F.3d 1142, 1146 (D.C. Cir. 2010) (finding that, where Connecticut had the opportunity on rehearing to respond to ISO New England's filings and where the Commission considered Connecticut's arguments on rehearing, Connecticut was not denied due process); *State of California ex rel. Lockyer v. FERC*, 329 F.3d 700, 711 (9th Cir. 2003) (Commission provided "all the procedural protections required" when it considered the claims made in requests for rehearing); *accord CNG Transmission Corp. v. FERC*, 40 F.3d 1289, 1293 (D.C. Cir. 1994) (where petitioner had, among other things, opportunity to make its case on rehearing, it had "ample notice and opportunity to be heard").

jurisdictional status of ANR's facilities proposed to be abandoned violated due process or that the Commission's determination was arbitrary, capricious, or otherwise in error.¹⁰⁴ The Commission fully considered all evidence contained in the record and all arguments made by the Producer Coalition, including in their rehearing request.¹⁰⁵ Accordingly, the Commission denies the requests for rehearing on this issue.¹⁰⁶

C. Other Certificate Issues

1. Return On Equity

61. Apache contends that the June 21 Order is in error because the most recently litigated NGA section 4 rate case is Kern River Gas Company's Period Two rate case,¹⁰⁷ which was approved in Opinion No. 486-E on July 21, 2011, not the *Portland Natural*

¹⁰⁴ *Pacific Gas and Electric Co. v. FERC*, 746 F.2d 1383, 1386 (9th Cir. 1984) (“We must allow the [Commission] wide discretion in selecting its own procedures . . . and must defer to the [Commission] interpretation of its own rules, unless the interpretation is plainly erroneous.”) (citations omitted).

¹⁰⁵ *See Mkt St. Ry. Co., v. R.R. Comm'n of California*, 324 U.S. 548, 559 (1945) (“[E]ven if a more convincing showing were made that the Company had relevant evidence to be heard, we find no adequate excuse for the failure to offer it in the proceeding.”).

¹⁰⁶ The Producer Coalition cites *Tennessee Gas Pipeline Co.*, 131 FERC ¶ 61,127 (2010) (*Tennessee I*) and *Tennessee Gas Pipeline Co.*, 134 FERC ¶ 62,274 (2011) (*Tennessee II*) as examples of abandonment proceedings where the Commission declined to address the primary function of facilities to be abandoned because neither applicant had requested such an analysis. In the *Tennessee I* and *Tennessee II* proceedings, Tennessee Gas Pipeline Company requested authorization to abandon by sale to Tauber Pipeline, L.L.C. (Tauber) certain natural gas supply laterals and associated facilities. In contrast to the instant proceeding, where TC Offshore requested certificate authority to operate the facilities abandoned by ANR, Tauber proposed to operate the laterals in non-jurisdictional service. The Commission finds that since the certificate of public convenience and necessity issued to TC Offshore could only encompass facilities and service over which the Commission has jurisdiction, the primary function analysis in the June 21 Order was appropriate.

¹⁰⁷ *Kern River Gas Transmission Co.*, Opinion No. 486-E, 136 FERC ¶ 61,045 (2011) (*Kern River*).

Gas Transmission System case cited in the order.¹⁰⁸ Apache argues that precedent clearly establishes that the Commission uses the most recent return on equity (ROE) approved in a litigated NGA section 4 general rate case, regardless of the test period dates. Apache asserts that since *Kern River* was issued five months after *Portland*, *Kern River* is the most recently approved ROE in a litigated NGA section 4 general rate case, and that the Commission should require TC Offshore to use the 11.55 percent decided in *Kern River* as the ROE, instead of the 12.99 percent decided in *Portland*.

62. While it was decided after *Portland*, *Kern River* did not determine a new ROE but merely affirmed an ROE that was first established in Opinion No. 486-B, on January 15, 2009.¹⁰⁹ As the Commission asserted in Opinion No. 486-E, the starting point for calculating *Kern River*'s Period Two rates is the cost of service already determined for Period One which is based upon 2004 test year data.¹¹⁰ Since *Kern River*'s 11.55 percent ROE for Period Two rates was based on 2004 test year data, *Kern River* is not representative of the most recently approved ROE in a litigated NGA section 4 general rate case. The Commission affirms that TC Offshore's rates be designed on an ROE of 12.99 percent.

2. Hurricane Amortization Period

63. Apache asserts it is unreasonable for the Commission to determine a 36-month amortization period for the recovery of hurricane-related costs and expenses without knowing what costs will be amortized, as there is no way to determine if the resulting surcharge will be just and reasonable. In addition, Apache argues that the Commission's approval of the proposed amortization period is in error because the Commission relied upon orders approving settlements (which are not precedential by their own terms), and decisions affecting oil pipelines, which are regulated under a different statutory scheme. Apache concludes that this support is not relevant and the Commission should have denied the 36-month amortization period.

¹⁰⁸ *Portland Natural Gas Transmission System*, Opinion No. 510, 134 FERC ¶ 61,129 (2011). (*Portland*). The Commission affirmed its *Portland* ROE finding at 142 FERC ¶ 61,198 (2013).

¹⁰⁹ *Kern River Gas Transmission Co.*, Opinion No. 486-B, 126 FERC ¶ 61,034, at P 1 (2009).

¹¹⁰ *Kern River*, 136 FERC ¶ 61,045 at P 16.

64. The Commission has approved amortization periods for Hurricane Surcharges ranging from one to four years.¹¹¹ TC Offshore's proposed 36-month amortization period is within that range. Should we establish in the future a limited NGA section 4 proceeding to deal with a proposed hurricane surcharge, parties will have the opportunity to challenge the surcharge at that time. The June 21 Order merely established the opportunity for TC Offshore to charge a Hurricane Surcharge at some point in the future if such costs occur; the order did not dictate the level for that one rate surcharge. Providing TC Offshore the ability to recover these costs benefits its customers by improving the likelihood that TC Offshore may resume full service as quickly as possible following a catastrophic event. The Commission will deny Apache's request for rehearing on this issue.

3. Cost and Revenue Study

65. Apache asserts that the June 21 Order should have directed TC Offshore to file a cost and revenue study after the first full year of service because TC Offshore proposed initial rates reflecting ANR's actual operating costs, as well as significant adjustments for start up costs. ANR and TC Offshore contend that the three-year period of time approved in the June 21 Order is consistent with Commission precedent. Further, ANR and TC Offshore challenge Apache's assertion that many of the costs included in its initial rates

¹¹¹ See *Sea Robin Pipeline Co.*, Opinion No. 516, 137 FERC ¶ 61,201, at P 51 (2011) (approving 4-year recovery period for a hurricane surcharge, finding such surcharge to be just and reasonable); *High Island Offshore System, L.L.C.*, 131 FERC ¶ 63,007, at P 17 n.6 (2010) (Administrative Law Judge certified a settlement that provided for a 36-month storm damage recovery period); *Stingray Pipeline Co., LLC*, 127 FERC ¶ 61,308 (2009) (approving tariff provisions that allowed up to 36 months to amortize hurricane-related costs); *Discovery Transmission LLC*, 122 FERC ¶ 61,099 (2008) (approving a 12-month recovery period for a hurricane surcharge with any uncollected amounts recovered in a subsequent period); *Colonial Pipeline Co.*, Oil Tariff Filing, Docket No. IS02-313-008 (July 2, 2008) (24-month recovery period for a hurricane surcharge); *Chandeleur Pipe Line Co.*, 117 FERC ¶ 61,250 (2006) (approving 12-month hurricane surcharge recovery period that was subsequently extended to 24 months); *ExxonMobil Pipeline Co.*, FERC Tariff 255-273, Docket No. IS06-344-000 (May 31, 2006) (12-month recovery period for a hurricane surcharge).

are non-recurring costs, maintaining that the vast majority of these costs are capital costs and therefore are collected once over the depreciable life of the asset.¹¹²

66. Commission policy provides that new pipelines such as TC Offshore file cost and revenue studies to justify their rates after three years of operation.¹¹³ TC Offshore, similar to other new pipelines, needs adequate time to gain valuable operating experience before filing its cost and revenue study. The three-year cost and revenue study provides TC Offshore and its shippers with sufficient operating history so that TC Offshore can generate more representative costs and operations data that will include more than the costs associated with the start-up of a new interstate pipeline.¹¹⁴ Further, TC Offshore will be required to make annual FERC Form No. 2 filings which will give all interested parties, including Apache, the necessary information to determine whether TC Offshore's rates remain in the public convenience and necessity. Apache has not presented a good reason here to deviate from established Commission policy.

4. Investment in New Software Systems

67. Indicated Shippers asserts that the Commission erred when it permitted TC Offshore to include costs associated with developing new software systems, since ANR and TC Offshore stated that they will use the same electronic nomination platform.¹¹⁵ In their answer, ANR and TC Offshore explain that although TC Offshore will utilize a

¹¹² ANR and TC Offshore Answer at 16 (citing ANR Pipeline Company and TC Offshore LLC Submission of Responses to Data Requests Nos. 18, 36, and 37 (Docket Nos. CP11-543-000 and CP11-544-000, November 30, 2011)).

¹¹³ ANR and TC Offshore Answer at 16, (citing *Cent. New York Oil & Gas Co., LLC*, 134 FERC ¶ 61,035, at P 31 (2011) (“[W]e will require Central NY to file a cost and revenue study at the end of its first three years of actual operation to justify its existing approved cost-based recourse rates.”); *Bison Pipeline LLC*, 131 FERC ¶ 61,013, at P 29 (2010) (“Consistent with precedent, the Commission will require Bison 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.”); *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, at P 34 (2008) (“Consistent with Commission precedent, the Commission will require MarkWest 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.”)).

¹¹⁴ June 21 Order, 139 FERC ¶ 61,238 at P 194.

¹¹⁵ Indicated Shippers Rehearing Request at 2.

software system like ANR's, the current ANR system is not a multi-pipeline system and the ANR system is not capable of handling transactions for more than one pipeline. The Commission accepts this explanation and denies Indicated Shippers' request for rehearing.

5. Throughput and Billing Determinants

68. Indicated Shippers asserts that TC Offshore's proposed gathering rate is not supported because the billing determinants used in calculating the rate differ from actual throughput.¹¹⁶

69. The June 21 Order explained that TC Offshore started its billing determinant calculation from actuals. Thereafter, it made a series of adjustments.¹¹⁷ During the certificate proceeding, Indicated Shippers questioned TC Offshore's figures,¹¹⁸ and the Commission issued a data request asking ANR and TC Offshore to reconcile the actual data provided with the proposed billing determinants in TC Offshore's application. ANR and TC Offshore submitted a response that reconciled actual throughput with billing determinants and explained all adjustments.¹¹⁹ The June 21 Order found that TC Offshore had reconciled the data.¹²⁰

70. Indicated Shippers did not, prior to the June 21 Order, and does not, on rehearing, point to any billing determinant data TC Offshore did not reconcile. Therefore the Commission denies the rehearing request.

6. O&M and A&G Expenses

71. Indicated Shippers argues that TC Offshore's proposed Operation & Maintenance Expenses (O&M) and Administrative & General Expenses (A&G) lack sufficient justification and asserts that ANR's actual costs "appear to be related to its entire Southeast Area, not simply offshore facilities."¹²¹ In addition, Indicated Shippers asserts

¹¹⁶ *Id.* at 26.

¹¹⁷ June 21 Order, 139 FERC ¶ 61,238 at P 139.

¹¹⁸ *Id.* P 140.

¹¹⁹ December 9, 2011 Data Response to Question Nos. 1(i), 2(b), 2(c), and 32.

¹²⁰ June 21 Order, 139 FERC ¶ 61,238 at P 143.

¹²¹ Indicated Shippers Rehearing Request at 28.

that outstanding hurricane repair costs were not justified. ANR and TC Offshore respond, indicating that ANR's actual costs do not include costs for the entire Southeast Area and only include costs for the offshore facilities. TC Offshore further states that ANR provided actual cost data and the adjustments for O&M and A&G expenses for the offshore facilities only. With respect to costs associated with repairing certain offshore facilities damaged by Hurricane Ike, ANR and TC Offshore assert that data response 2(b) identified the O&M adjustments made, which included \$2.7 million for the South Marsh Island Block 122 restoration project.¹²²

72. Indicated Shippers, in the underlying proceeding, questioned TC Offshore's projected O&M and A&G expenses,¹²³ and the Commission issued a data request asking TC Offshore to provide additional support.¹²⁴ The June 21 Order found, under two different methodologies, TC Offshore's costs estimates to be reasonably supported.¹²⁵ TC Offshore's answer to the request for rehearing indicates that it did make adjustments for O&M and A&G expenses for the offshore facilities only. For new pipeline companies, estimates are the best that can be provided. In TC Offshore's case, it started with data better than what is available for most companies in its situation. Notwithstanding, its proposal is still an estimate. The June 21 Order found that TC Offshore reasonably supported that estimate, and Indicated Shippers has not shown why that estimate is unreasonable. Further, in recognizing that these were estimates, the June 21 Order imposed upon TC Offshore a requirement to provide a cost and revenue study after three years of operating experience. The Commission believes it has adequately addressed concerns regarding the use of cost estimates. Thus, the Commission will deny Indicated Shippers' request for rehearing.

7. Accumulated Depreciation

73. Indicated Shippers asserts that two depreciation rates apply to the Grand Chenier plant – one that reflects ANR's X-64 rate to High Island Offshore System (HIOS) approved by settlement, and one that reflects ANR's previously approved higher depreciation rate. Additionally, Indicated Shippers contends that the June 21 Order accepts TC Offshore's proposed adjustment of \$8,057,261 to ANR's accumulated negative salvage reserve in the July 2011 to April 2012 time period for "Cost of

¹²² ANR and TC Offshore Answer at 21-22.

¹²³ June 21 Order, 139 FERC ¶ 61,238 at PP 128-129, 131.

¹²⁴ December 9, 2011 Data Response to Question No. 2.

¹²⁵ June 21 Order, 139 FERC ¶ 61,238 at P 133.

Removal-Pipe Replacement” (\$1,538,593.47) and “Cost of Removal-Abandonments” (\$6,518,668.42). However, Indicated Shippers asserts that there is no record evidence to indicate these costs were actually incurred.¹²⁶ ANR and TC Offshore respond that the specific language approved by the Commission in the settlement in Docket No. RP07-99 required ANR to restate the depreciation rate applicable to the Grand Chenier facilities to reflect HIOS's remaining service life of 13 years.¹²⁷

74. The June 21 Order fully addressed the appropriate depreciation rate for Grand Chenier facilities and rejected the Indicated Shippers’ arguments.¹²⁸ Indicated Shippers has not shown that that finding was in error. Further, Indicated Shippers inaccurately characterizes our accounting requirements related to the transfer of facilities between jurisdictional entities. In Exhibit Y of the application, ANR provided an estimate of the amount of negative salvage as of April 30, 2012 that it proposed to transfer to TC Offshore. ANR and TC Offshore are required in Ordering Paragraph (L) of the June 21 Order to provide their final accounting entries for the transfer of facilities within six months of completion of the transaction. At that time, ANR must provide for Commission approval the actual amount of negative salvage reserves, among other things, to be transferred to the books and records of TC Offshore as a result of the abandonment.

75. In addition, as stated in the June 21 Order, Indicated Shippers has not provided any support for reaching a conclusion that ANR is improperly adjusting its accumulated negative salvage reserve without incurring costs for the removal of property. Also, Indicated Shippers has not provided any evidence to support its assertion that ANR has understated the amount of negative salvage being transferred to TC Offshore. Further, at least three ANR officials have stated that its numbers are reliable.¹²⁹ There is no indication that ANR’s figures are incorrect. Thus, there is no need for the Commission to require a separate accounting for negative salvage reserves, as requested by Indicated Shippers.

¹²⁶ Indicated Shippers Rehearing Request at 26-27.

¹²⁷ ANR and TC Offshore Answer at 22 (citing *ANR Pipeline Co.*, 121 FERC ¶ 61,292, at P 1 (2007)).

¹²⁸ June 21 Order, 139 FERC ¶ 61,238 at P 77.

¹²⁹ ANR’s Application in Docket No. CP11-543-000: Robert D. Jackson; Data Responses, Question No. 2: Greg Barry; ANR’s 2011 Form 2: Thomas P. Janish.

8. Postage Stamp Rate Design

76. Indicated Shippers states that the approved postage stamp rate design for both gathering and transportation services was not justified. As the June 21 Order stated, “simply pointing out that costs could be allocated on a System-by-System basis is not sufficient basis for finding that that TC Offshore’s proposed postage stamp rate design is not appropriate.”¹³⁰ The Commission’s determination that TC Offshore’s postage stamp rate design is consistent with the public convenience and necessity standard was reasonable, and Indicated Shippers has offered nothing here to make us reconsider that holding.

9. Fuel, Lost and Unaccounted For Gas Tracker and Tune-Up

77. Indicated Shippers notes that TC Offshore indicated in data responses that ANR was abandoning compression at Eugene Island Block 188 and West Cameron Block 560 but had not yet proposed a Fuel, Lost and Unaccounted For (FL&U) rate. Indicated Shippers argues that there is “no basis to approve [TC Offshore’s] proposed tariff until it has clarified this issue.”¹³¹ In its compliance tariff filing, TC Offshore clarified that its base FL&U rate is zero consistent with the Commission’s June 21 Order.¹³² In its answer to Indicated Shippers’ request for rehearing, TC Offshore states that it will use a true-up mechanism to reconcile for gas actually lost and unaccounted for.¹³³

78. Pipelines commonly have FL&U rates and tracking mechanisms. TC Offshore proposed, and the Commission approved, an initial FL&U rate of zero. However, TC Offshore was clear in its application and *pro forma* tariff that it intended to have a FL&U tracker. The fact that TC Offshore may not have any active compressor stations does not mean that it will not incur any fuel, lost and unaccounted for gas costs. The June 21 Order approved the use of a FL&U tracker, but required modification of the mechanism to ensure that, should TC Offshore propose a change to the FL&U rate, parties, such as Indicated Shippers, would have the opportunity to protest and request that the proposed

¹³⁰ June 21 Order, 139 FERC ¶ 61,238 at P 149.

¹³¹ Indicated Shippers Rehearing Request at 28.

¹³² TC Offshore LLC Compliance Filing (Docket No. RP12-908 August 1, 2012).

¹³³ Further, as explained in its compliance tariff filing, TC Offshore states that it will file a limited NGA section 4 case annually to detail the results of its true-up mechanism.

rate be suspended.¹³⁴ Thus, the Commission will deny Indicated Shippers' request for rehearing.

D. The September 28 Order's Negative Salvage Determination

79. The June 21 Order rejected TC Offshore's proposed negative salvage rates for gathering and transmission plant, stating that TC Offshore had failed to support its proposed negative salvage figures. The order required TC Offshore to use a negative salvage rate of 0.23 percent. In the September 28 Order, the Commission denied TC Offshore's request for rehearing of the negative salvage determination made in the June 21 Order. The request for rehearing of the June 21 Order also included an alternative request to accept a newly submitted negative salvage study as a certificate amendment or supplemental filing in support of the requested negative salvage rate. TC Offshore alleges that the Commission erred in rejecting its certificate amendment because the amendment was substantively and procedurally adequate and had been filed before TC Offshore had commenced service.

80. As stated in the September 28 Order, once TC Offshore has commenced service, its initial rates cannot be amended in a NGA section 7 proceeding.¹³⁵ Because TC Offshore commenced operations on November 1, 2012, the request for an amendment to the NGA section 7 certificate proceeding is dismissed as moot. TC Offshore may file to propose to change its negative salvage rates at any time pursuant to NGA section 4.

The Commission orders:

(A) The Association Group's motion to intervene out-of-time is denied and the request for rehearing is dismissed.

¹³⁴ June 21 Order, 139 FERC ¶ 61,238 at PP 157-161.

¹³⁵ The Commission notes that at the time of the September 28 Order, TC Offshore's proposed in-service date was October 1, 2012. TC Offshore's Application in Docket No. RP12-908-000 at 1.

(B) As discussed above, Apache, Arena, Indicated Shippers, LLOG, the Producer Coalition, and TC Offshore's rehearing requests are denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.