

124 FERC ¶ 61,058
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Natural Gas Company
Magnolia Enterprise Holdings, Inc.

Docket No. CP08-5-000

ORDER ISSUING CERTIFICATES AND GRANTING
ABANDONMENT AUTHORITY

(Issued July 17, 2008)

1. On October 5, 2007, Southern Natural Gas Company (Southern) and Magnolia Enterprise Holdings, Inc. (Magnolia) jointly filed an application under section 7 of the Natural Gas Act (NGA) for approval for Southern to abandon an undivided interest in certain pipeline facilities by sale to Magnolia, for Magnolia to acquire those facilities, and for Magnolia to lease those facilities and other pipeline facilities it will acquire from its parent company, AGL Resources, to Southern. As part of the proposal, Southern requests authorization to construct and operate a new 7,700 horsepower (hp) compressor unit on Southern's Cypress Pipeline at the new Riceboro Compressor Station, which was authorized as part of Southern's Cypress Project,¹ and to abandon by retirement its Jackson Meter Station in Laurens County, Georgia.

2. As discussed below, we are granting the requested authorizations, subject to conditions.²

Background and Proposal

3. Southern is a natural gas company engaged in the operation of an interstate pipeline system for the transportation of natural gas in the states of Texas, Louisiana,

¹ See *Southern Natural Gas Company*, 115 FERC ¶ 61,328 (2006).

² As part of this order, we are also authorizing the construction of two meter stations Southern planned to build under its Part 157 blanket certificate authority.

Mississippi, Alabama, Georgia, South Carolina, Tennessee, and Florida. Magnolia is a wholly-owned subsidiary of AGL Resources and an affiliate of Atlanta Gas Light Company (Atlanta Gas), organized to acquire and hold property interests in interstate pipeline assets used for the transportation of natural gas in the states of Georgia, South Carolina, and Florida. Atlanta Gas is an intrastate distributor of natural gas throughout Georgia and a Hinshaw pipeline with blanket certificate authority to transport and sell gas in interstate commerce pursuant to section 284.224 of the Commission's regulations.³ Magnolia is not a natural gas company as defined by the NGA.

4. The applicants propose a complex system of sale, lease, abandonment, and construction transactions and activities described below that they say are part of a capacity supply plan designed to facilitate the transportation of gas from Southern LNG's facility at Elba Island, Georgia, to the Atlanta, Georgia area for Atlanta Gas. The applicants state that these transactions will enhance supply opportunities and provide infrastructure to support anticipated growth in demand for natural gas service in Georgia.

5. Specifically, Southern requests authorization to construct a new 7,700 hp compressor unit at the Riceboro Compressor Station on Southern's Cypress Line. The compressor unit will create an additional 82,000 Mcf of capacity on Southern's system.

6. Southern also requests authorization to abandon by sale to Magnolia an undivided interest equal to a percentage equivalent of 82,000 Mcf in the following Southern pipeline and measurement facilities (Sales Facilities):

- The Twin 30s Pipelines extending from Southern's interconnection with the Elba Island LNG facility at milepost 0.0 to milepost 13.161;⁴
- 10 miles of Southern's 20" Wrens to Savannah Second Loop Line from the interconnection with the Twin 30s Pipelines at or near milepost 104.649 at Port Wentworth, Georgia, to the Rincon Gate at or near milepost 95.106 in Effingham, County, Georgia;
- The Cypress Pipeline from milepost 95.106 on the Wrens to Savannah Lines to the interconnection with Atlanta Gas's Brunswick Pipeline in Glynn County, Georgia, including new compressor facilities to be constructed as part of this project at the Riceboro Compressor Station; and

³ See *Atlanta Gas Light Company*, 82 FERC ¶ 62,045 (1998).

⁴ The Twin 30s Pipelines are two 30-inch diameter parallel pipelines connecting Southern LNG's Elba Island LNG facilities with the rest of Southern's pipeline system.

- Southern's Brunswick Pipeline extending from its Jackson Measurement Station at milepost 53.8 to milepost 0.0.

The undivided interest in the Sales Facilities shall also include an interest in the East Brunswick measurement station at the interconnection of Southern's Cypress Line and Atlanta Gas' Brunswick Line in Glynn County, Georgia.

7. The new compression facilities will allow gas volumes to flow from the Elba Island LNG terminal through the existing Southern facilities described above for delivery into the existing Atlanta Gas Brunswick Line.

8. The applicants state that because the interest to be transferred to Magnolia is so small (approximately four percent of the Twin 30s Pipelines, for example), Southern will retain ample capacity to provide service to its existing firm customers. Southern proposes to sell the interest in the Sales Facilities to Magnolia at the net book value, which it estimates to be \$20,300,000. In addition, Southern proposes to sell the undivided interest in the Riceboro compressor station to Magnolia at an estimated cost of \$21,209,535.⁵

9. In a separate transaction, not subject to the Commission's jurisdiction, Atlanta Gas will sell to Magnolia 107.5 miles of Atlanta Gas's intrastate Brunswick Line extending west from the interconnection with Southern's Cypress Line to the interconnection with Southern's Brunswick Line.

10. Under the proposal before the Commission, Magnolia would lease back the undivided interest in the Sales Facilities described above (including the new compressor), along with the described portion of Atlanta Gas's Brunswick Line to Southern, so that Southern could operate all the involved facilities (referred to as the Lease Facilities) as an integral part of Southern's system under the terms of Southern's tariff.

11. Southern also proposes to construct two new meter stations under its blanket certificate authority. The first, to be located at or near the interconnection of Southern's Cypress Pipeline with Atlanta Gas's Brunswick Pipeline in Glynn County, Georgia, would provide measurement for gas volumes delivered to Atlanta Gas on the eastern portion of the Atlanta Gas Pipeline (the East Brunswick Delivery Point).⁶ The second meter station would be located at or near milepost 4.76 on Southern's Brunswick Line to the west of Atlanta Gas's Brunswick Line (the MM3 Delivery Point). Because, as a

⁵ See Exhibit K to the application.

⁶ Atlanta Gas is selling only that portion of its Brunswick Line extending west from the interconnection with Southern's Cypress Line. The portion of its Brunswick Line extending to the east of that point will remain part of the Atlanta Gas system.

result of this proposal, it will no longer be needed, Southern also proposes to abandon by retirement its Jackson Meter Station located at the interconnection of Southern's Brunswick Line and Atlanta Gas's Brunswick Line.

12. In conjunction with the negotiations leading to the proposed sale and leasing of facilities, Atlanta Gas has agreed to subscribe from Southern the additional 82,000 Mcf per day of incremental capacity which will be available on the Lease Facilities by means of an amendment to its existing master service agreement under Southern's Rate Schedule FT.⁷ Atlanta Gas will contract for the 82,000 Mcf per day of firm transportation capacity from Southern's Elba Island receipt point to delivery points along the Leased Facilities and the new MM3 delivery point in Jones County (FT Package).⁸ The full contract path for the incremental service is an intrazone service within Southern's Zone 3 boundaries. The FT package will have a primary term of 15 years and will run concurrently with the term of the capacity lease.

13. Southern proposes a maximum incremental reservation rate based upon a levelized lease payment (the lease payment is based on a 15-year term coinciding with the 15-year term of the FT Package) paid by Southern to Magnolia under the Capacity Lease Agreement, plus Southern's operation and maintenance (O&M) expenses for the Lease Facilities, and other taxes attributable to such O&M expenses, and all applicable surcharges, including the Zone 3 to Zone 3 fuel retention percentage, as set forth in the tariff.⁹

⁷ Firm Transportation Service Agreement under Rate Schedule FT and/or Rate Schedule FT-NN, Service Agreement No. FSNG4, dated September 1, 2005 between Southern Natural Gas Company and Atlanta Gas Light Company.

⁸ The Commission notes that the service to be provided by Southern under the FT Package is part of Atlanta Gas's Capacity Supply Plan, which was approved by the Georgia Public Service Commission (GPSC). The Capacity Supply Plan provides for Atlanta Gas to obtain storage services and/or transportation services from several interstate pipelines (Southern, Transcontinental Gas Pipe Line Corporation, Petal Gas Storage LLC, ANR Pipeline Company, ANR Storage Company and Dominion Cove Point LNG, LP) and sell the storage and transportation capacity to Georgia marketers through capacity release. The Capacity Supply Plan also contemplates the use of segmentation of the FT Package for the delivery of gas from Elba Island to the Atlanta Pool Group at Southern's South Main, near Macon, Georgia. The GPSC order notes that segmentation allows shippers to essentially double the use of contract capacity at certain delivery points. Magnolia provided a copy of the GPSC's September 27, 2007 order approving Atlanta Gas's Capacity Supply Plan in its response to a staff data request. Atlanta Gas's Capacity Supply Plan can be found at www.psc.state.ga.us.

⁹ See Exhibit U, Umbrella Agreement, section 4 on page 3.

14. Southern states that the incremental FT reservation rate will insulate recourse ratepayers from the lease transaction, and is appropriate in this situation because the transportation service provided to Atlanta Gas under the FT Package is confined to the Lease Facilities. Southern proposes that the incremental rate apply only to firm transportation service on the Lease Facilities.¹⁰ Southern further states that the incremental rate is designed to track costs explicitly associated with the lease payment so that there will be no gaps in recovery of the lease payment to be made by Southern during the entire term of the capacity lease. Southern states that it did not hold an open season because the additional incremental capacity was made available solely as a result of the terms of the capacity lease.

15. Magnolia requests pregranted abandonment authority for the Atlanta Gas Brunswick Pipeline to coincide with the termination of the capacity lease.

Interventions

16. Notice of the application was published in the *Federal Register* on October 26, 2007 (72 Fed. Reg. 60,834). Alabama Gas Corporation; the Alabama Municipal Distributors Group;¹¹ Atmos Energy Corporation; Austell Gas System; BG Energy Merchants, LLC; Carolina Gas Transmission Corporation; Board of Water, Light, and Sinking Fund Commissioners of the City of Dalton, Georgia; Florida Power Corporation, dba Progress Energy Florida, Inc.; Municipal Gas Authority of Georgia; Peoples Gas System (a division of Tampa Electric Company); Scana Energy Marketing, Inc. and South Carolina Electric & Gas Company; Southeast Alabama Gas District; Southern

¹⁰ Southern explains that, as the new service will be performed under an existing master contract with Atlanta Gas, in the event Atlanta Gas uses alternative receipt and delivery points that are part of the master contract outside of the Lease Facilities, it will have to pay the maximum rate applicable for such services.

¹¹ The members of this group include Boaz Gas Board; Brookside Gas System; City of Childersburg; Water Works & Gas Board of the City of Cordova; Cullman-Jefferson Counties Gas District; DeKalb-Cherokee Counties Gas District; Gas Board of the Town of Dora; Fultondale Water & Gas Board; Utilities Board Town of Gordo; City of Graysville; Huntsville Utilities; City of Jacksonville; Marshall County Gas District; Northwest Alabama Gas District; Utilities Board of the City of Oneonta; Pickens County Natural Gas District; Piedmont Water and Gas Board; Scottsboro Water, Sewer and Gas Board; the Southeast Alabama Gas District; Gas Board of the Town of Sumiton; Utilities Board of the City of Sylacauga; Utilities Board of the City of Trussville; Town of West Jefferson Gas System; and Wilcox County Gas District, Alabama.

Cities;¹² and Southern Company Services,¹³ 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.¹⁴

17. Chevron U.S.A. Inc., BP America Production Company and BP Energy Company, and ExxonMobil Gas & Power Marketing Company, division of ExxonMobil Corporation (collectively, Indicated Shippers); the Georgia Public Service Commission; Atlanta Gas; and Mary Solanik (a landowner), filed motions to intervene out-of-time. Each has 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.¹⁵

18. Atlanta Gas filed comments with its intervention request. Indicated Shippers, separately, and the Alabama Municipal Distributors Group, Austell Gas System, the Municipal Gas Authority of Georgia, and the Southeast Alabama Gas District (jointly, Municipals) filed protests along with their interventions. Southern and Magnolia filed motions for leave to answer and answers to the protests. Although our rules do not permit this kind of responsive pleading,¹⁶ our rules do provide that we may, for good cause, waive this provision.¹⁷ We find good cause to do so in this instance because Southern's and Magnolia's answers provide information that will assist us in our decision-making. We will address the comments and protests below.

Discussion

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

¹² Southern Cities include Tallahassee, Florida, and Cordele, Dublin, Cartersville, Cuthbert, Hawkinsville, La Grange, and Tallapoosa, Georgia.

¹³ Southern Company Services filed as the agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company.

¹⁴ 18 C.F.R. § 385.214 (2007).

¹⁵ 18 C.F.R. § 385.214(d) (2007).

¹⁶ 18 C.F.R. § 385.213(a)(2) (2007).

¹⁷ 18 C.F.R. § 385.101(e) (2007).

Certificate Policy Statement

20. 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.¹⁸ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement 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.

21. 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.

22. 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 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.

Subsidization

23. The proposal satisfies the threshold requirement that the pipeline must be prepared to support the project financially without relying on subsidization from its existing customers because, as more fully explained below in the discussion relating to the lease, there will be no presumption of rolled-in rate treatment for this project's costs in future rates cases.

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

Impact on Existing Pipelines and Shippers

24. The Indicated Shippers question the allocation of the capacity to be created by this proposal without the benefit of an open season. The Indicated Shippers claim that Atlanta Gas appears to have been granted discriminatory access to capacity, as the capacity that Southern is selling to Atlanta Gas has not been offered to other shippers. Additionally, the Indicated Shippers state that the incremental and levelized rate offered to Atlanta Gas appears to provide Atlanta Gas with discriminatory access to the LNG at Elba Island, and with possible market power regarding the purchase price of LNG, especially if Atlanta Gas were permitted to increase its ownership of pipeline facilities to Elba Island. The Indicated Shippers state that the structure of the transaction could provide Atlanta Gas's marketing affiliates with anti-competitive marketing advantages, as compared to other marketers. The Indicated Shippers state that the producers, marketers, shippers, and consumers which are not involved with the lease transaction will be detrimentally impacted, unless it can be demonstrated that the proposal does not provide Atlanta Gas with unfair advantages now and in the future.

25. The Indicated Shippers aver that granting this proposal will establish a precedent under which a portion of an interstate pipeline can be sold and abandoned from open-access service, under terms that appear to provide an unduly discriminatory benefit to the purchaser. The Indicated Shippers acknowledge that the Commission has previously approved the sale of an interest in Southern's Twin 30s pipelines, but assert that, unlike the circumstances here, the transaction involved in that proceeding did not involve a lease back to Southern or transportation by Southern for the purchaser.

26. In its reply to the Indicated Shippers, Southern states that it has readily made capacity from Southern LNG's Elba Island terminal available to its shippers. Prior to proposing to sell an undivided interest in its facilities to Magnolia, Southern states that it in fact held several open seasons for service utilizing available Zone 3 capacity, as recently as August 2007 and October 2007. Southern also avers that its tariff does not require specific open-season procedures to be followed for the sale of facilities.¹⁹ Contrary to the assertions made by the Indicated Shippers, Southern contends that this situation is not distinguishable from its sale of facilities either to SCG, or to Elba

¹⁹ Southern Response to Staff's February 11, 2008 Data Request (Southern's Data Response), Data Request No. 6. Southern's Open Season procedures are found in section 2.1(b) of the General Terms and Conditions of its FERC Gas Tariff, Seventh Revised Volume No. 1.

Express.²⁰ On neither occasion did it hold an open season relating to its sale of an interest in the pipelines, states Southern. Southern emphasizes that the compression facilities which will create the additional capacity on its system are to be paid for by Magnolia, and will be constructed only if the terms of the underlying arrangements, including the awarding of the incremental capacity to Atlanta Gas, are approved.²¹

27. Southern states, moreover, that given the small amount of capacity on the Twin 30s Pipelines proposed for sale to Magnolia (approximately 4 percent of the Elba Island total send out capacity of 2.1 Bcf per day), the sale should not affect Southern's existing shippers' ability to transport gas from the Elba Island interconnection. Likewise the additional compression on the Cypress Line will create sufficient incremental capacity to provide the proposed service while assuring that there will be no adverse impact on existing customers.

28. Magnolia replies that neither it nor Atlanta Gas will have discriminatory access to Elba Island LNG supplies or any type of market power with respect to those supplies. Magnolia and Atlanta Gas state that under Atlanta Gas's Capacity Supply Plan approved by the Georgia Public Service Commission (GPSC) on September 27, 2007, all of the firm transportation capacity contracted for by Atlanta Gas from Elba Island would be released directly to the Georgia certificated marketers that sell gas to Georgia customers as part of the state's retail access program.²² Atlanta Gas's method of allocating capacity to the Georgia certificated marketers was approved by the GPSC on July 24, 2003,²³ and Atlanta Gas will play no part in the marketers' acquisition of LNG supplies. Magnolia and Atlanta Gas state that Southern would operate and maintain the Sales Facilities as part of Southern's interstate natural gas pipeline system under the terms of Southern's Commission-approved tariff, and no marketing affiliate²⁴ of Atlanta Gas will receive any

²⁰ Southern has in fact sold undivided interests in its Twin 30s Pipelines on two other occasions. Carolina Gas Transmission Corporation (formerly SCG) and Elba Express Company, LLC each hold undivided interests in the Twin 30s Pipelines extending from Elba Island. *See Southern Natural Gas Company and SCG Pipeline, Inc.*, 100 FERC ¶ 61,284 (2002), and *Southern Natural Gas Company and Elba Express Company, LLC*, 120 FERC ¶ 61,258 (2007).

²¹ Southern's Data Response, Data Request No. 7.

²² Atlanta Gas and Magnolia state that Atlanta Gas's 2007 Capacity Supply Plan was approved by the GPSC on September 27, 2007, in Docket No. 24960-U.

²³ *Proceeding to Consider Plans for the Assignment of Interstate Capacity Assets as Required by O.C.G.A. §46-4-155(e) (13)*, Docket No. 16682-U (2003), July 24, 2003.

²⁴ Atlanta Gas states that based on the FERC's definition of marketing affiliate in 18 C.F.R. § 358.3, it does not have any marketing affiliates.

of the capacity in question, nor will any affiliate of Atlanta Gas obtain any anti-competitive advantage as a result of the proposed transaction. Further, like Southern, Magnolia and Atlanta Gas also emphasize that the 82,000 Mcf/d of capacity Atlanta Gas will receive under this proposal represents less than four percent of total send out capacity of Elba Island.

29. We find no evidence that Atlanta Gas has been granted discriminatory access to the capacity at issue in this proceeding. Southern has recently held open seasons for Zone 3 capacity in accordance with its tariff, and the Indicated Shippers make no allegation that Southern did not follow applicable tariff provisions, nor is there any suggestion that any party desiring capacity on Southern has been unable to acquire such capacity. Thus, we find that Southern was not required to hold another open season for this capacity before awarding that capacity to Atlanta Gas.

30. The Indicated Shippers question how capacity on the Lease Facilities would be allocated between Atlanta Gas and other shippers if compression should go down. All services over the Lease Facilities will be provided under Southern's tariff; hence any necessary allocations would be made pursuant to the provisions of the tariff in compliance with Commission regulations.

31. Our engineering analysis confirms that Southern's proposal is properly designed to provide the proposed incremental transportation service without adversely impacting Southern's ability to meet its contractual obligations to its existing shippers. In addition, there should be no adverse impact on other existing pipelines and their captive customers. The proposed project is designed to provide incremental service to an existing Southern customer. Therefore, the services to be provided by Southern will not replace firm transportation on other pipelines.

Impact on Landowners

32. The proposed project will have minimal impact on landowners. There will be no new pipeline construction, and the compressor station and two meter stations will be located in areas previously authorized by the Commission for Southern's Cypress Project or adjacent to other existing pipeline and distribution facilities. Southern will continue to communicate with landowners in construction areas regarding the specifics of the project.

Public Convenience and Necessity

33. For the reasons discussed above, we find, consistent with the criteria set forth in the Certificate Policy Statement, that the proposed project is required by the public convenience and necessity. As noted above, this project can proceed without subsidization from existing customers. No existing usable capacity on Southern is proposed to be abandoned, and the capacity that is abandoned will be leased back to Southern for use in interstate commerce under the jurisdiction of the Commission.

Moreover, the proposal will provide Atlanta Gas and its customers direct access to Elba Island LNG, affording them greater supply security and diversity to support anticipated growth in natural gas demand in Georgia, with no adverse impact on Southern's existing customers and avoiding the need for Atlanta Gas to construct its own facilities to connect to Elba Island.

Southern's Proposed Initial Recourse Rates

34. Southern proposes an incremental FT Package reservation rate of \$6.31 per Dth per month, derived from an annual cost of service of \$6,344,390, consisting of a \$5,978,591 lease payment and \$365,799 of other operations and maintenance expenses, and billing determinants of 82,000 Mcf. Applying a 40 percent load factor to the billing determinants, Southern proposes a firm transportation charge of \$0.01 per Dth.

35. Southern's proposed lease payment is based upon a levelized cost of service for Magnolia. Magnolia's cost of service is composed only of plant-related costs. These costs are derived using Southern's approved cost-of-service components, such as Southern's Deferred Income Taxes,²⁵ Depreciation Reserve Balance, Other Taxes, depreciation rate of 1.55 percent²⁶ and pre-tax return rate of 14.6 percent.²⁷

²⁵ Southern's federal and state income tax rates as reflected in Southern's currently effective jurisdictional rates multiplied by the difference between lease and book and tax accounting procedures for the recognition of income and expenses associated with the leased facilities. *See* Application, Exhibit U, Appendix C, Note 1.

²⁶ Southern states that 1.55 percent is Southern's currently effective onshore transmission plant depreciation rate as set forth in the settlement approved in an unpublished Commission Letter Order issued on July 13, 2005 in Docket No. RP04-523.

²⁷ In the application, Exhibit P's Explanatory Statement states that Southern's most recent rate settlement in Docket No. RP04-523 did not specify a pretax return used in calculating the settlement rates or specify any individual components of a pretax return. However, 14.6 percent was identified as the pretax rate of return to use in calculating the maintenance capital surcharge established as part of the Docket No. RP04-523 settlement on Sheet No. 199 in section 31.2 of Southern's tariff. The rate case prior to the Docket No. RP04-523 rate case was also settled. The settlement in Docket No. RP99-496 (91 FERC ¶ 61,206 (2000)) was approved by the Commission on May 31, 2000 and contained the components of the underlying pretax return of 14.6 percent used in deriving the Docket No. RP99-496 settlement rates. The return on equity was 12 percent with a 57.9 percent equity level. The debt cost was 7.81 percent with a 42.10 percent debt level and the grossed up income tax factor was 4.36 percent. These components produce a pretax return of 14.6 percent.

36. Southern states that its proposed incremental rate for service over the Lease Facilities is designed to track costs directly associated with the lease payment. Southern avers that an incremental rate will insulate recourse rate payers from the lease transaction, as the proposed transportation service provided to Atlanta Gas under the FT Package is confined to the Lease Facilities. Furthermore, Southern maintains that, since the rate is designed to track costs associated with the lease payment, there will be no gaps in recovery of the lease payment during the entire term of the capacity lease. Additionally, because both the primary receipt and delivery points are located in Southern's Zone 3, Southern proposes to apply the currently effective Zone 3 commodity rate as its proposed incremental commodity rate and the current fuel retention rate for a Zone 3 intrazone forward haul service as the proposed incremental fuel retention rate. Southern proposes that the incremental reservation rates and the underlying lease agreement be recalculated in each Southern rate case occurring over the fifteen-year term of the associated FT contract.

Commission's Rate Determination

37. Southern has proposed to charge an incremental rate for service under the FT Package, with such service to be limited to the Lease Facilities, such that in the event Atlanta Gas uses alternative receipt and delivery points that are part of the master contract outside of the Leased Facilities, it will have to pay the maximum rate applicable for such services. However, the Lease Facilities consist, in large part, of an undivided interest in existing Southern Zone 3 facilities. Consequently, the proposed FT Package service shares common mainline transmission facilities and receipt and delivery points with existing Southern Zone 3 services. Although the Atlanta Gas Brunswick Line will provide access to new market areas, these new markets are within the geographic definition of Zone 3.²⁸ The Atlanta Gas Brunswick Line was, in fact, once part of Southern's system within Zone 3. Further, Southern's Cypress Pipeline, the same line that provides capacity from the Elba Island LNG facility to the Brunswick Line, also extends Southern's geographic reach within Zone 3. Southern's Zone 3 rates apply to the Cypress Pipeline.²⁹ As proposed in this application, Southern will operate the Lease Facilities as part of its current system, not as a separate or segmented portion of its system. Thus, there will be no operational distinction for either the Lease Facilities or the services rendered for the FT Package. Under such circumstances, the Commission does

²⁸ Southern's Seventh Revised Volume No. 1, Second Revised Sheet No. 13, Original Sheet Nos. 13A, 13B, and 13D, and First Revised Sheet Nos. 13C and 13D provide the technical definition, and Third Revised Sheet No. 12 shows the boundaries on a map for Zone 3.

²⁹ *Southern Natural Gas Company*, 113 FERC ¶ 61,199, at P 35 (2005).

not generally permitted incremental plus pricing.³⁰ Therefore, we will modify Southern's proposal as discussed below.

38. For largely integrated mainline expansions like the one proposed here, the Commission has permitted pipelines to charge an incremental rate for service utilizing such facilities if such rate is higher than the generally applicable firm transportation rate.³¹ However, where the cost-based incremental rate is lower than the existing system rate, the Commission has required pipelines to charge their generally applicable transportation rate.³² Southern's Zone 3 rates are substantially higher than the proposed \$6.31 per Dth per month incremental rate proposed by Southern. Thus, we find that the maximum initial recourse reservation charge for service over the Lease Facilities should be Southern's existing Zone 3 rate of \$11.89 per Dth per month, not the \$6.31 per Dth per month incremental rate proposed by Southern.

39. One would normally expect that if the cost-based incremental rate associated with an expansion is lower than the existing system rate, rolling in the costs and revenues associated with the expansion would result in lower system rates for all customers. Here, however, we note that Southern and Magnolia have imputed Magnolia's pro forma cost of service as a basis for the initial lease cost, and under the terms of their agreement that formula will be the basis of future increases in the lease costs. The Commission is not here approving that formula or the lease costs that may result from that formula in future Southern rate cases. Southern must support all its costs in any general section 4 rate case. The Commission is not making any predetermination as to what Magnolia lease costs, Southern may recover in the future.

40. In addition, Southern's currently effective rate design for reservation charges is a form of city-gate zone rate design. This is unlike an additive zone whereby shippers pay for each zone through which gas is transported. A city-gate zone system establishes rates based upon the zone of delivery. Under such a system, intrazone transportation service far downstream can cost as much as a transportation service through multiple upstream zones. The Commission is aware that Southern has recently experienced many facility, operational and market changes. These changes may result in either Southern or others proposing a change in rate design in some future rate case.³³ Most changes away from a

³⁰ See *Gulf South Pipeline Company, L.P.*, 120 FERC ¶ 61,291, at P 25 (2007).

³¹ See *East Tennessee Natural Gas Company*, 98 FERC ¶ 61,331 (2002).

³² See *Trunkline Gas Company*, 119 FERC ¶ 61,331 (2007).

³³ Southern is required to file a rate case no later than March 31, 2010. See unpublished Commission Letter Order in Southern Natural Gas Company's Docket No. RP04-523-000, dated July 13, 2005, at P 7.

city-gate zone rate design will likely reduce costs allocated to transportation services in the current Zone 3. The Commission cannot ignore the changes that have occurred on Southern's system and the potential it may hold for future cost shifts to existing customers. Therefore, we will not make a predetermination at this time regarding future rate treatment for the costs associated with this proposal. When Southern files a future section 4 proceeding to recover the costs associated with the Lease Facilities, it will have to demonstrate that its proposed rate treatment will not result in subsidization of this expansion by existing shippers. We will also require Southern to maintain and report cost and revenue data related to this proposal on an incremental basis (i.e., comply with the reporting requirements of section 154.309 of our regulations and page 217 of Form No. 2, so that information will be available to customers in the next general section 4 proceeding. Southern is directed to keep separate accounting books for this incremental leased capacity.

Lease Agreement

41. 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.³⁴ 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 for use by the lessee's customers. The lessor no longer has any rights to use the leased capacity.³⁵ Magnolia, the lessor in the proposed lease arrangement, is not currently an NGA jurisdictional entity, nor will it become one as a result of the lease arrangement. As a passive owner, Magnolia does not require a certificate.³⁶

42. 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 on the same facilities; and (3) the lease arrangement does not adversely affect existing customers.³⁷ We find that approval of this proposed lease agreement is consistent with Commission policy.

43. The Commission has found that capacity leases in general have several potential benefits. Leases can promote efficient use of existing facilities, avoid construction of

³⁴ *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at p. 61,530 (2001).

³⁵ *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005).

³⁶ *See Northwest Pipeline Corporation*, 121 FERC ¶ 61,158, at P 11 (2007).

³⁷ *Colorado Interstate Gas Company*, 122 FERC ¶ 61, 256, at P 30 (2008); *Gulf South Pipeline Company, L.P.*, 119 FERC ¶ 61,281, at P 37 (2007).

duplicative facilities, reduce the risk of overbuilding, reduce costs, minimize environmental impacts, and result in administrative efficiencies for shippers.³⁸ Approval of this lease arrangement will provide Atlanta Gas and its customers with seamless access to the Elba Island LNG facility, will avoid the need for Atlanta Gas to construct its own, duplicative facilities to obtain such access, thus minimizing potential environmental impacts.

44. The Commission's second criterion involves a comparison of the lease payments to the costs of taking firm transportation service from the lessor instead. In this context, that analysis is of little use, since Southern is the only entity that has provided transportation service over the bulk of the leased facilities, prior to selling them to, and leasing them back from, Magnolia. Moreover, the entity taking service over the leased facilities is an affiliate of the purchaser/lessor. As discussed above, Southern is selling an undivided interest in its facilities to Magnolia at net book value and we are requiring that Southern use its existing Zone 3 rates as initial recourse rates for service over the Leased Facilities. Accordingly, there should be no negative economic consequences to Southern or its expansion shipper, Atlanta Gas, as a result of the lease.

45. Third, we find that the lease arrangement will not adversely affect Southern's existing customers. The proposed lease of capacity will use either available unsubscribed capacity or, with respect to the Cypress Line, the new capacity created by the additional compression. Therefore, the lease arrangement will not result in adverse operational impacts on existing Southern customers or any other pipeline's customers.

Pregranted Abandonment Request

46. Southern and Magnolia request pregranted authority for Magnolia to abandon what is now the Atlanta Gas Brunswick Line back to its original owner, Atlanta Gas, at the expiration of the lease of that line to Southern. When the lease expires, they say, Southern will not need the Atlanta Gas Brunswick Line to bring firm gas supplies from Elba Island for Atlanta Gas. Magnolia has the option to sell the line back to Atlanta Gas at net book value so that Atlanta Gas could again use the line to serve its customers. Magnolia states that at that time there will be no adverse impact on or abandonment of Southern's firm or interruptible service resulting from removal of the Atlanta Gas Brunswick Line from Southern's operation. Atlanta Gas would add the pipeline back into its rate base and operate the pipeline as it currently does to serve its customers. Magnolia avers that pregranted abandonment authorization is in the public interest because it would provide certainty for the future of the line and allow for a seamless transition from Magnolia's ownership and Southern's operation of the pipeline to Atlanta Gas.

³⁸ See, e.g., *Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003).

47. Indicated Shippers and the Municipals protest Magnolia's request for pregranted abandonment authority. They argue that pregranted abandonment authority for the Atlanta Gas Brunswick Line is premature and contrary to longstanding Commission policy. They contend that it is too early to determine the appropriate use of the line at the end of the 15-year term of the lease. In reply, Magnolia and Southern state that actual abandonment of the line back to Atlanta Gas would occur only after the Commission approves abandonment of the Magnolia/Southern lease, and in so doing, addresses impacts from the termination of the lease, which, they suggest, will be the same as, and will dispose of, the issues related to abandonment of the line back to Atlanta Gas.

Commission Determination

48. We will deny Southern and Magnolia's request for pregranted abandonment authority. Although the Commission has granted pregranted abandonment authority for short-term transactions or in special circumstances, the general policy of the Commission weighs against such requests.³⁹ The Commission has explained that it is not possible for the Commission to determine whether abandonments may be in the public interest many years in the future,⁴⁰ and we cannot predict or assess what may be the appropriate disposition of the facilities at issue here at the end of the lease term. As illustrative of this premise, Indicated Shippers assert that abandonment could impact other shippers' deliveries because the line will have been integrated into and operated with Southern's system for at least the initial 15-year term of the lease. The Municipals note, moreover, that the lease contract itself reserves to Magnolia the option of selling the line to Southern, with the result that the line would remain under Commission jurisdiction and Southern's operational control.

49. The applicants assert that the issues related to abandonment of the involved facilities will be addressed in the proceeding it would file for the Commission's approval of abandonment of the lease. The applicants are correct that these matters are directly related. Accordingly, we will defer our consideration of the potential abandonment of the facilities until the lease terminates, because not until that point will all the relevant facts be before the Commission to determine the future of not only the Atlanta Gas Brunswick Line, but also Southern's Brunswick Line and the other Sales Facilities involved in the

³⁹ See *Colorado Interstate Gas Company*, 77 FERC ¶ 63,311 (1996).

⁴⁰ *Id.*

transactions approved in this order.⁴¹ There are no special circumstances presented here would lead us to find otherwise.

The Meter Stations

50. Southern proposes to construct the two meter stations under its Part 157 blanket certificate, and, in accordance with its tariff, to roll the costs of those meter stations (estimated at \$0.8 million) into its existing rates. The Municipals object to Southern's rolling in these costs, which would result in Southern's existing customers, including the Municipals, paying for them. The Municipals argue that under the Commission's Certificate Policy Statement, Southern must demonstrate that existing customers will not subsidize a proposed project. The Municipals also assert that the rate treatment proposed for the two meter stations is inconsistent with the rate treatment proposed for the remainder of the project. Southern cannot, they argue, roll the costs of the meter stations into its system rates, while at the same time apply an incremental rate for the other services and facilities proposed for Atlanta Gas.

51. Southern states that it should be allowed to construct the meter stations under its blanket certificate and roll the costs of the meter stations into its system rates because the meter stations satisfy the net benefit test of Southern's tariff. Section 6 of Southern's Rate Schedule FT provides that, if a shipper does not agree to pay the cost of installing interconnection facilities, Southern may construct such facilities if the proposed transportation service to be provided through the interconnection facilities will produce a net revenue gain. Southern states that the cost of service for the two stations will be a total of \$1.3 million over 10 years, but that revenue from contracts with Atlanta Gas will provide nearly \$13.9 million over the terms of its contracts, thus easily satisfying the section 6 requirement. Because the new meter stations will be physically and operationally integrated with Southern's existing facilities, Southern states, they "may be used" for the benefit of all shippers on Southern's system.

Commission Determination

52. While Southern argues that the cost of service for the two meters stations will be only \$1.3 million over 10 years, whereas its revenue from its contracts with Atlanta Gas will be nearly \$13.9 million over the terms of its contracts, this argument is flawed. The meter stations are necessary for Southern to provide its proposed service for Atlanta Gas

⁴¹ In that context, we note that section 7.2 of the Form of Capacity Lease Agreement (Application, Exhibit U, Exhibit D), acknowledges that "[Southern] shall have operational control of the Leased Facilities for which [Southern] shares an undivided interest with [Magnolia] until [Southern] has received abandonment authority by the Commission to retire its interest in the Leased Facilities. This Section 7.2 shall survive termination of the Lease."

over the lease facilities, and the meter stations' cost of service therefore should be taken into account in calculating Southern's total cost of service in providing the service for Atlanta Gas. The revenue to which Southern refers, moreover, is revenue that will not necessarily recover system costs. We agree with the Municipals that the costs of the meter stations should not be entitled to the usual presumption of rolled-in treatment for facilities constructed by a pipeline under its Part 157 blanket certificate, as we have specifically declined to make any decision here regarding what rate treatment may be found to be appropriate for these facilities and services in a future rate proceeding. The two proposed meter stations have already been reviewed by our staff as part of the environmental assessment of this project.

53. In view of these considerations, we find that it is appropriate that the certificate authority granted to Southern by this order include authorization for the two meter stations to ensure that the costs of the meter stations will not be recovered from existing Southern shippers unless such treatment is found to be appropriate in a future rate case. Addition of the costs of the meter stations does not impact the Commission's analysis that Southern's proposed incremental rate would be significantly below the system rate. Thus, the system rate is the appropriate initial rate for the proposed service.

Fuel Rates

54. The Indicated Shippers state that the impact of the new compression facilities on system fuel rates is unclear. They state that, other than a reference that Atlanta Gas will pay an incremental fuel retention rate that is the current fuel retention rate for a Zone 3 intrazone forward haul service, Southern has not adequately explained whether the fuel used by the new compression will be paid for solely by Atlanta Gas or rolled in to the system fuel rate.⁴² The Indicated Shippers state that the Commission has determined that there should be no cross-subsidies regarding fuel costs between recourse rate and incremental rate shippers.⁴³ Southern has not made this showing here, they assert.

Commission Determination

55. Southern proposes to use the current fuel retention rate for Zone 3 intrazone forward haul service for the proposed incremental service.⁴⁴ Southern states that the proposed incremental compressor fuel relates to the anticipated fuel use at the new compressor station on the Cypress Line to provide the incremental service. Southern

⁴² See Application, Exhibit P.

⁴³ Citing *PG&E Transmission Northwest Corporation*, 96 FERC ¶ 61,194 at 61,840 (2001); and *El Paso Natural Gas Company*, 104 FERC ¶ 61,303, at P 19 (2003).

⁴⁴ See Southern Response to Data Request, Request No. 25, March 3, 2008.

states that the Cypress Line has a higher load factor in the summer than during the remainder of the year (103 Mcf per day vs. 96 Mcf per day) because of electricity generation in Florida. As a result, Southern states that the fuel use is expected to total 0.49 percent, with 0.30 percent attributed to the additional compressor fuel used on the incremental facilities, and 0.19 percent to lost and unaccounted for gas (LAUF).⁴⁵ For the incremental firm transportation service, Atlanta Gas will be paying Southern's current Zone 3 intrazone fuel rate of 0.50 percent. Therefore, Southern expects the amount of gas retained for this incremental service to be slightly more than the amount of fuel and lost and unaccounted for gas consumed.

56. We will allow Southern to charge its intrazone fuel rate for Zone 3 as its initial fuel charge for service over the Lease Facilities. In addition, we will require Southern to delineate the actual fuel use and the LAUF associated with the project in its annual fuel tracker filing required by section 35 of the GT&C of its tariff. Existing shippers can review the costs included in Southern's tracker filings. This provides protection to existing customers and ensures that they will not subsidize the leased facilities. The Commission makes no predetermination of roll in for the fuel costs associated with the leased facilities.

Accounting

57. As described above, Southern proposes to abandon by sale to Magnolia a capacity interest in certain facilities called the Sales Facilities located in South Carolina and Georgia. Southern proposes to clear the sale of the Sales Facilities through Account 102, Gas Plant Purchased or Sold. Southern's proposed accounting treatment to remove the original cost and related accumulated depreciation from its books is consistent with Gas Plant Instruction No. 5 Paragraph F⁴⁶ and is therefore approved.

58. Additionally, upon closing of the sale, Magnolia will lease to Southern the capacity interest in the Sales Facilities, including the compression facilities to be constructed by Southern and the Brunswick Pipeline sold by Atlanta Gas to Magnolia, under a 15 year operating lease. Southern will operate and maintain these facilities as part of its interstate natural gas pipeline system under the terms of Southern's tariff and will award lease capacity directly to Atlanta Gas.

Southern proposes to record the lease payments it will make to Magnolia in Account 860, Rents, and its lease receipts from Atlanta Gas in Account 489.2, Revenues from

⁴⁵ The current LAUF amount of 0.19 percent reflects Southern's recent LAUF experience as derived from the 2007 Fuel Sharing Refund Report filed by Southern on April 30, 2007, in Docket No. RP07-440-000.

⁴⁶ 18 C.F.R. Part 201 (2007).

Transportation of Gas of Others Through Transmission Facilities. Southern's recording of the lease receipts to Account 489.2 is consistent with previous orders.⁴⁷ Southern's proposal to record the lease payments in Account 860, however, conflicts with the accounting treatment the Commission has prescribed in previous orders related to capacity leases.⁴⁸ Consistent with the Commission requirements, Southern must record the costs incurred under the capacity lease in Account 858, Transmission and Compression of Gas by Others.

Environment

59. On January 2, 2008, we issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed AGL-Brunswick Project and Request for Comments on Environmental Issues* (NOI). We received one response to the NOI from a landowner. The landowner, Ms. Solanik, expressed concern over the installation of an odorizer at the Brunswick Tap, and requested that Southern and Magnolia retain the integrity of the equipment crossing over the Brunswick Line on her property. Southern stated that the odorizer would be state-of-the-art, employing control and safety systems, and that the equipment crossing would continue to be maintained in the same manner as in the past. In a data response filed February 12, 2008, Southern documented that its representatives had met with Ms. Solanik and resolved her concerns. By telephone conversation with staff on February 14, 2008, Ms. Solanik confirmed that Southern had addressed her issues with the odorizer and equipment crossing.

60. Our staff prepared an environmental assessment (EA) for the proposal and placed it in the public record on March 17, 2008. The EA addresses land use, threatened and endangered species, cultural resources, air and noise quality, reliability and safety, cumulative impacts, and alternatives. Based on the discussion in the EA, we conclude that if constructed and abandoned in accordance with the application submitted by Southern and Magnolia and supplements filed January 22 and 25, February 12 and 19, 2008, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

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

⁴⁷ *Midwestern Gas Transmission Company and Trunkline Gas Company*, 73 FERC ¶ 61,320 (1995); and *Colorado Interstate Gas Company*, 76 FERC ¶ 61,291 (1996).

⁴⁸ *Id.*

this Commission.⁴⁹ Southern Natural Gas Company (Southern) shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Southern. Southern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

62. At a hearing held on July 17, 2008, the Commission on its own motion received and made a part of the record all evidence, including the application, as supplemented, and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued under section 7(c) of the NGA authorizing Southern to construct and operate a 7,700 hp compressor unit at Southern's Riceboro Compressor Station, and two meter stations at the East Brunswick and MM3 delivery points, as more fully described in the application and this order.

(B) Southern is granted permission under section 7(b) of the NGA to abandon an undivided interest in certain of Southern's pipeline facilities by sale to Magnolia, as described more fully in the body of this order and in the application. Southern shall notify the Commission within 10 days of the abandonment.

(C) A certificate of public convenience and necessity is issued under section 7(c) of the NGA authorizing Southern to lease capacity from Magnolia, as described more fully in the body of this order and in the application.

(D) Southern is granted permission under section 7(b) of the NGA to abandon its Jackson Meter Station in Laurens County, Georgia, by retirement. Southern shall notify the Commission within 10 days of the abandonment.

(E) The certificate in Ordering Paragraph (A) is conditioned on Southern's compliance with Part 154 and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations.

(F) Southern must complete the construction of the facilities authorized in Ordering Paragraph (A) and make them available for service within one year of the

⁴⁹ 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., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

issuance of this order pursuant to paragraph (b) of section 157.20 of the Commission's regulations.

(G) Southern must comply with the environmental conditions set forth in the appendix to this order.

(H) Southern 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 Southern. Southern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(I) Southern must record the costs incurred under the capacity lease in Account 858, Transmission and Compression of Gas by Others.

(J) Southern is required to maintain separate accounting and reporting for the lease facilities, including separate accounting of the fuel costs due to compression, as explained in the body of this order, in a manner to comply with the requirements of section 154.309 of the Commission's regulations.

(K) Magnolia's request for pregranted abandonment authority is denied.

(L) An initial reservation rate equivalent to Southern's Zone 3 rate and applicable surcharges is approved for service over the Lease Facilities.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX – ENVIRONMENTAL CONDITIONS

As recommended in the EA, this authorization contains the following conditions:

1. Southern shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment, unless modified by this Order. Southern must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation, and activities associated with abandonment of the project. This authority shall allow:
 - a. the modification of conditions of this 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**, Southern shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), 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. Southern shall make all reasonable efforts to assure its predicted noise levels from the Riceboro Compressor Station are not exceeded at any nearby noise-sensitive area (NSA) and file noise surveys showing this with

the Secretary **no later than 60 days** after placing the Riceboro Compressor Station in service. However, if the noise attributable to the operation of the Riceboro Compressor Station at full load exceeds a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any nearby NSA, Southern shall file a report on what changes are needed and shall install additional noise controls to meet the level **within 1 year** of the in-service date. Southern shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.