139 FERC ¶ 61,238
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ANR Pipeline Company TC Offshore LLC	Docket Nos.	CP11-543-000 CP11-544-000

ORDER GRANTING ABANDONMENT,
DETERMINING JURISDICTIONAL STATUS OF FACILITIES, AND
ISSUING CERTIFICATES

(Issued June 21, 2012)

1. On September 1, 2011, ANR Pipeline Company (ANR) filed an application, in Docket No. CP11-543-000, under section 7(b) of the Natural Gas Act (NGA)[1] for authority 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. Also on September 1, 2011, TC Offshore filed an application, in Docket No. CP11-544-000, under section 7(c) of the NGA[2] for certificate authority to acquire and operate the facilities that ANR proposes to abandon.

2. ANR currently operates all of the subject facilities as jurisdictional facilities for which certificates of public convenience and necessity have been issued, and TC Offshore's certificate application encompasses all of the facilities. In considering TC Offshore's request for a certificate the Commission has applied its primary function test to the subject facilities and has determined that some of the facilities actually perform a gathering function. Therefore, as described and conditioned in this order, we will authorize ANR to abandon its proposed facilities and issue TC Offshore a certificate of public convenience and necessity to acquire and operate those facilities we have determined will primarily function as jurisdictional transmission facilities.

[1] 15 U.S.C. § 717f(b) (2006).

[2] 15 U.S.C. § 717f(c) (2006).

Background

3. 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,[3] engaged in the business of transporting and storing natural gas in interstate commerce.[4] 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. Currently, ANR owns and operates, or has a partial ownership interest in, approximately 600 miles of pipeline and related facilities offshore Louisiana and Texas in the Gulf of Mexico.

4. TC Offshore is a limited liability company formed in Delaware and is operated and wholly owned by ANR. TC Offshore does not currently own any natural gas pipeline facilities, but upon acceptance of the certificate granted herein and the commencement of operations, TC Offshore will be a natural gas company as defined by section 2(6) of the NGA and will be engaged in the business of transporting natural gas in interstate commerce.

Proposals

ANR's Proposed Abandonment: Docket No. CP11-543-000

5. ANR proposes to abandon by sale to TC Offshore all of its offshore facilities in its Southeast Area System (Southeast Area), including facilities in which it holds a partial interest. These facilities consist of approximately 600 miles of pipeline, seven offshore platforms, measurement, compression, separation and dehydration facilities, and appurtenant facilities. Specifically, the 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. In addition, ANR proposes to abandon a number of other lines in the offshore state and federal waters of the Gulf of Mexico (Off-System Facilities) that are not connected to the rest of its system. Together, the facilities proposed for abandonment by sale have a deliverable capacity of up to 2.11 Bcf per day.

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[3] 15 U.S.C. § 717a(6) (2006).

[4] ANR became a subsidiary of TransCanada Corporation in 2007.

Patterson System

6. ANR's Patterson System includes facilities designed to gather and transport gas from the Vermilion Area South Addition, South Marsh Island Area, South Marsh Island South Addition, Eugene Island Area, Eugene Island Area South Addition, and Ship Shoal Area, offshore Louisiana, north to the Patterson Station in St. Mary Parish, Louisiana. The Patterson System pipelines range from 6 to 30 inches in diameter.

Grand Chenier System

7. ANR's Grand Chenier System includes facilities designed to gather and transport gas from the West Cameron Area, West Cameron Area South Addition, High Island Area East Addition South Extension, High Island Area South Addition, and Galveston Area South Addition, offshore Louisiana and Texas, north to the Grand Chenier Station in Cameron Parish, Louisiana. The Grand Chenier System pipelines range from 10 to 30 inches in diameter.

Central Texas Gathering System

8. The Central Texas Gathering System is a jointly-owned system that is operated by Transcontinental Gas Pipe Line Company, LLC (Transco). It extends from points in the Brazos Area South Addition, Matagorda Island Area, and Mustang Island Area East Addition, offshore Texas, to the Markham Plant in Wharton County, Texas.

Off-System Facilities

9. In addition to the Grand Chenier, Patterson, and Central Texas Gathering Systems, the facilities proposed for abandonment include ANR's interests in various off-system facilities in the South Pelto Area, Mississippi Canyon Area, West Cameron Area, West Cameron Area South Addition, Vermilion Area, South Marsh Island North Addition, East Cameron Area, Galveston Area, High Island South Addition, High Island East Addition South Extension, and Ship Shoal Area, offshore Louisiana and Texas.

10. ANR proposes to sell the facilities at their net book value at the time of closing the sale with TC Offshore. ANR estimates the subject facilities' gross plant at approximately $529,700,000, with accumulated depreciation and amortization of $451,760,000, for a net book value of $77,940,000, as of April 30, 2012.

11. ANR does not propose to construct or remove any facilities to effect the proposed abandonment.

TC Offshore Proposal: Docket No. CP11-544-000

12. TC Offshore proposes to acquire and operate the onshore and offshore facilities that ANR is proposing to abandon. Specifically, TC Offshore seeks: (1) a certificate of public convenience and necessity pursuant to NGA Section 7, authorizing TC Offshore to acquire and operate the natural gas pipeline facilities to be acquired from ANR; (2) a blanket construction certificate pursuant to Subpart F of Part 157 of the Commission's regulations, authorizing certain routine construction, operation, and abandonment activities; and (3) a blanket transportation certificate under Subpart G of Part 284 of the Commission's regulations, authorizing it to provide open access-transportation service on behalf of others as proposed in its application.

Notice, Interventions, Comments, Protests, and Answers

13. Notice of ANR's abandonment application in Docket No. CP11-543-000 and TC Offshore's certificate application in Docket No. CP11-544-000 was published in the *Federal Register* on September 20, 2011 (76 Fed. Reg. 58,255). Twenty-nine entities filed timely, unopposed motions to intervene in both dockets. In addition, five entities that did not intervene in Docket No. CP11-544-000 filed timely, unopposed motions to intervene in Docket No. CP11-543-000.[5] The timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations.[6]

14. Energy XXI (Bermuda) Limited (Energy XXI), McMoRan Oil & Gas LLC (McMoRan), Pisces Energy LLC (Pisces), the Producer Coalition,[7] and Stingray Pipeline Company, LLC, filed untimely motions to intervene in both dockets. ANR and TC Offshore filed motions requesting that the Commission deny the untimely interventions.[8] The entities filing the untimely motions to intervene have demonstrated an interest in this proceeding and granting their motions will not delay, disrupt, or unfairly prejudice any parties to the proceeding. Thus, we will grant the untimely motions to intervene.[9]

[5] Appendix B to this order contains a list of all intervenors.

[6] 18 C.F.R. § 385.214 (2011).

[7] The Producer Coalition includes: Century Exploration New Orleans, LLC, Dynamic Offshore Resources, LLC, and Hilcorp Energy Company.

[8] Energy XXI and the Producer Coalition filed answers to ANR and TC Offshore's motions to deny the late interventions.

[9] 18 C.F.R. § 385.214(d) (2011).

15. Apache Corporation (Apache), LLOG Exploration Company, LLC (LLOG), Energy XXI,[10] Indicated Shippers,[11] W&T Offshore, Inc. (W&T), McMoRan, Pisces, and the Producer Coalition[12] filed protests in both dockets. Enterprise Gas Processing, LLC (Enterprise) filed a limited protest in both dockets and Transco filed a limited protest in Docket No. CP11-543-000.[13] Chevron U.S.A. Inc.'s (Chevron) motion to intervene included comments. Hess Corporation filed comments supporting Indicated Shippers protest.

16. Both ANR and TC Offshore filed answers to the protests.[14] Rule 213(a)(2) of the regulations prohibits answers to protests unless otherwise ordered by the decisional authority.[15] We will allow the answers here because doing so will not cause undue delay and they may assist us in our decision-making process. The protests and answers are addressed below.

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[10] Energy XXI raised issues that are identical to those raised by LLOG. When we refer to LLOG's protest later in this order, we incorporate Energy XXI's protest.

[11] Indicated Shippers includes: BP America Production Company, BP Energy Company, Marathon Oil Company, and Shell Offshore Inc., all of which also filed individual motions to intervene. Indicated Shippers also filed comments on ANR and TC Offshore's data responses submitted in this proceeding (April 24, 2012 Filing).

[12] McMoRan, Pisces, and the Producer Coalition adopted the issues raised in W&T's protest. When we refer to W&T's protest later in this order, we incorporate the protests of these three parties as well.

[13] In its limited protest, Transco states that ANR's application misidentified ANR's ownership interest in Line Nos. 6022, 9573, 5740, 10882, 5451, and 4680; did not identify several of Transco's agreements with ANR related to the facilities to be abandoned; and identified agreements with Transco that Transco believes have been terminated. In its supplement submitted on October 24, 2011, ANR corrected Exhibit T of its application to address Transco's concerns. Because Transco made no further comment in response to ANR's supplement, we will dismiss Transco's limited protest as moot.

[14] Indicated Shippers filed an answer responding to ANR's answer to the protests on April 26, 2012.

[15] 18 C.F.R. § 385.213(a)(2) (2011).

Discussion

ANR Abandonment Request: Docket No. CP11-543-000

17. Since ANR proposes to abandon certificated facilities used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of section 7(b) of the NGA.[16]

A. Abandonment Proposal

18. ANR asserts that it no longer wishes to be in the business of transporting offshore gas onshore. Specifically, ANR explains that as a result of changes that have occurred in the natural gas industry, it has experienced a shift in its traditional role from that of a merchant to one of a transporter. ANR further states that recent and dramatic changes in supply patterns and gas flows across its system have caused it to realign its pipeline assets. ANR explains that while the natural gas supplies on its system in the Gulf of Mexico continue to decline, this loss of conventional supply is being offset by significant growth in non-conventional onshore supplies. To illustrate, ANR contends that its offshore receipts have declined significantly from approximately 1,100 MMcf per day in 2004 to its present level of approximately 600 MMcf per day. Notwithstanding the decline in offshore receipts, ANR states that its Louisiana market deliveries have remained relatively flat over this same time frame at roughly 500 MMcf per day. Thus, contends ANR, essentially all the decline is associated with deliveries of offshore volumes to long-haul markets. Further, ANR contends that gas receipts in north Louisiana and Mississippi have continued to grow since 2004, while the receipts upstream of Eunice, Louisiana (i.e., primarily from the Gulf of Mexico) show a large decline. ANR contends that significant growth in onshore supplies, driven by the growth in shale gas and Rocky Mountain gas supplies, has offset offshore receipts as the primary supply source for its customers. As this trend continues, ANR believes that offshore sources, which it states tend to experience higher decline rates and are prone to interruption due to hurricanes, will continue to diminish in importance and reliability. ANR states that it has determined that while access to offshore supply is a benefit to its customers and should be maintained, ANR no longer needs to retain ownership of its offshore facilities (and responsibility for the costs required to maintain them) in order to continue to provide that access.

19. ANR contends that because hurricanes and other issues unique to operating facilities in the Gulf increase both the likelihood of damage and the cost of repairs, it is frequently the case that the immediate abandonment of damaged offshore facilities would

[16] 15 U.S.C. § 717f(b) (2006).

be more economic or expedient than repairing them. ANR contends that its current rates do not accurately reflect the risks and costs associated with such future abandonments of offshore facilities. ANR speculates that downstream shippers, particularly those who do not use the offshore facilities for their gas supply, are likely to resist paying for offshore abandonment costs. ANR argues that these costs are more logically borne by the parties receiving the benefit of the offshore facilities.

20. ANR states it has determined it can best meet the needs of its downstream shippers by moving away from its role as aggregator of offshore supplies and instead focusing its efforts and resources on its onshore system, on which the majority of its customers increasingly rely. ANR contends 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. ANR recognizes that certain costs related to the offshore facilities are included in its current transportation tariff rates and states that any rate impacts resulting from the spin-down of the offshore facilities will be reflected in its next NGA section 4 rate proceeding.

21. ANR does not propose to construct or remove any facilities to effect the abandonment of the facilities. ANR claims that the proposed abandonment will not adversely impact the quality of services it currently provides, nor will it diminish supply options on the ANR system. ANR contends that its proposed abandonment will not reduce the offshore capacity that is currently available to its shippers because the facilities will remain in service, with service being provided by TC Offshore at a Commission approved rate. ANR states that it will add points at Grand Chenier and Patterson to its catalog of receipt points, thus allowing its downstream shippers to have continued access to the offshore supplies accessed through those systems. ANR also states that shippers that currently use pooling service will continue to be able to pool their gas from the new ANR Grand Chenier and Patterson receipt point locations.

22. In conjunction with the proposed abandonment, ANR proposes to cancel Rate Schedule X-64, an agreement with the High Island Offshore System, L.L.C. (HIOS), that provides that ANR will operate and maintain a facility at Grand Chenier, Louisiana, for the separation, storage, or disposal of any water and condensate from the gas stream; the dehydration and measurement of the volume and Btu content of gas; and the delivery of the gas into onshore pipelines for gas delivered to ANR’s Grand Chenier System by the HIOS.

B. <u>Section 7 Abandonment vs. Section 4 Rate Case</u>

23. W&T, Indicated Shippers, and Apache[17] contend that the primary motivation for ANR's proposed abandonment of its offshore facilities by sale to its new, wholly-owned subsidiary interstate pipeline company is to enable the corporate body to charge higher rates without having to make an NGA section 4 rate filing. Specifically, W&T states that ANR is seeking to re-allocate the offshore costs of its pooling service to offshore producers without filing a rate case. Indicated Shippers and Apache assert that ANR and TC Offshore seek to use sections 7(b) and 7(c) to establish new incremental rates that they contend ANR could never justify under section 4. Indicated Shippers contends that by creating a new pipeline company, ANR and TC Offshore will be able to include in the rate base of the new TC Offshore a significant amount of intangible facilities that do not move gas from physical receipt points to physical delivery points. Indicated Shippers also claims that ANR and TC Offshore have tried to inflate the costs, and consequently the future rates, associated with the facilities to be abandoned. Apache notes that ANR has full ownership and control over TC Offshore, that ANR is entitled to all of TC Offshore's distributable cash, whenever ANR determines to take a distribution, and that ANR's intent is for TC Offshore to be disregarded for federal and all relevant state tax purposes.

24. Indicated Shippers cites *Northern Natural Gas Co.* (*MOPS*) in support of the position that a section 4 rate case is the appropriate means to enhance revenue.[18] In *MOPS,* the applicants[19] sought authorization to abandon the Matagorda Offshore Pipeline facilities, contending that costs associated with operating and maintaining the facilities exceeded revenues. Indicated Shippers asserts that the Commission denied the requested abandonment in the *MOPS* order, indicating that if the issue was solely an economic issue, then a rate case filing was the appropriate mechanism to recover costs.

25. Indicated Shippers also points out that despite ANR's proposed transfer of approximately $576 million in gross plant to TC Offshore,[20] there is no proposed

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[17] W&T is an offshore oil and gas producer. Indicated Shippers is a group of offshore shippers and producers. Apache is a producer and shipper on ANR.

[18] 135 FERC ¶ 61,048 (2011).

[19] Northern Natural Gas Company, Southern Natural Gas Company, Florida Gas Transmission Company, Transcontinental Gas Pipeline Company, and Enterprise Field Services, LLC.

[20] The Applicants' December 22, 2011 Data Response revised the estimate of the subject facilities' gross plant to approximately $529 million.

reduction in ANR rates. Apache and W&T similarly contend that ANR's customers will not recognize any of the purported cost savings that may be realized by ANR until ANR files a section 4 rate case. Apache further contends that ANR has not filed a rate case since the mid-1990s, and is not required to do so under any settlement. Apache thus concludes that any alleged rate benefits from the proposed abandonment are limited.

26. ANR acknowledges that prior statements by the Commission have indicated that a section 4 rate case may be a preferable alternative to the abandonment and removal of facilities from interstate service where the main reasons for the proposed abandonment are essentially economic ones. ANR asserts, however, that a pipeline's abandonment application should not be denied because it could make a section 4 rate filing. ANR asserts that its abandonment proposal is motivated by operational considerations, as well as economic considerations, and that the application will not result in the removal of any facilities from the interstate pipeline grid.

27. More specifically, ANR asserts that it has demonstrated why it is no longer operationally or economically appropriate for it to retain ownership of the offshore facilities and that it has provided statistical evidence of the dramatic changes in supply patterns and gas flows on its system, due in large measure to declining production from the Gulf of Mexico and significant growth in nonconventional onshore gas supplies. ANR reasserts that its downstream shippers receive fewer operational benefits from the facilities to be abandoned, while offshore producers increasingly receive the benefit of the facilities at no cost under ANR's Rate Schedule PTS-1 service.

28. Finally, ANR asserts that while filing a section 4 rate case might enable it to temporarily capture the effect of the changing supply patterns and gas flows on its system, such a filing cannot stop the effects from continuing. ANR asserts that as its downstream shippers rely more on onshore supplies and less on offshore supplies, a trend ANR sees as likely to continue in the future, it would need to file frequent rate cases in order to ensure that an appropriate share of the costs of the offshore facilities is being borne by the shippers that actually benefit from their existence. ANR contends that because these costs represent a disproportionately small share of its overall costs, frequent system-wide rate cases are an inefficient and inappropriate way to address rate issues associated with the offshore facilities.

Commission Response

29. W&T, Indicated Shippers, and Apache contend that ANR is inappropriately attempting to enhance revenues through an NGA section 7(b) abandonment proceeding, instead of filing a general NGA section 4 rate case, and that the Commission should not permit it to do so. However, the *MOPS* case does not stand for the proposition that it is inappropriate for a company faced with declining revenues to seek to abandon a portion of its system.

30. As partially noted by W&T, Indicated Shippers, and Apache, the applicants in *MOPS* alleged that the facilities they sought to abandon were "underutilized and uneconomic to operate."[21] However, unlike ANR, which is seeking to abandon its facilities by sale to a newly formed interstate pipeline company, the owner/operators of the MOPS facilities were proposing to retire the facilities, i.e., remove them from entirely from service. The Commission can authorize abandonment under section 7(b) of the NGA upon a finding either "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." In reviewing the *MOPS* proposal, the Commission found that a not insignificant amount of gas was still flowing on the MOPS facilities, that there was continuing well development activity in the vicinity served, that the existing MOPS shippers had no readily-available alternatives to transporting their gas on MOPS, and that the facilities proposed to be abandoned were otherwise capable of continuing to provide service. Thus, while indicating that it was sensitive to the economic realities faced by pipelines, the Commission reaffirmed that "continuity and stability of existing service are the primary considerations in assessing the public convenience or necessity of a permanent cessation of service under section 7(b) of the NGA,"[22] and found that the evidence presented by the applicants did not support a finding that the public convenience or necessity permitted removal of the subject facilities from service. Given that, the Commission observed that "[i]n the absence of Applicants and their shippers agreeing to negotiated rates, the appropriate forum for determining what rates are necessary to provide the Applicants an opportunity to recover their costs in providing services using the MOPS facilities is a section 4 rate case."[23] Here, unlike in *MOPS,* ANR is not proposing to retire its offshore facilities from service. As proposed, continued service will be available from TC Offshore.

31. The fact that ANR is abandoning its facilities to an affiliate is not germane to our consideration of the proposal. TC Offshore will be fully subject to the Commission's jurisdiction as a completely separate natural gas company under the NGA. The Commission will address Indicated Shippers' and Apache's arguments regarding the appropriateness of specific costs proposed to be recovered through TC Offshore's rates below, in our discussion of TC Offshore's application.

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[21] 135 FERC ¶ 61,048 at P 4 (citing Exhibit Z-1 of the application).

[22] *Id.* P 35 (citing *Southern Natural Gas Co.,* 126 FERC ¶ 61,246 (2009) (*Southern*)).

[23] *Id*. P 43.

C. Public Convenience or Necessity Determination

32. Section 7(b) of the NGA[24] allows an interstate pipeline company to abandon jurisdictional facilities or services only if the abandonment is permitted by the "present or future public convenience and necessity." The courts have explained that, in 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.[25] This does not mean, however, that abandonment is not permitted if there is any harm to any narrow interest. Rather, the Commission takes a broad view in abandonment proceedings and evaluates proposed abandonment proposals against the benefits to the market as a whole.[26]

33. We examine abandonment applications on a case-by-case basis. In deciding whether a proposed abandonment is warranted, we consider all relevant factors, but the criteria vary as the circumstances of the abandonment proposal vary. Historically, in reviewing a request for abandonment by sale, we have considered: the needs of the two natural gas systems and the public markets they serve, the environmental effects of the proposed abandonment, the economic effect on the pipelines and their customers, the presumption in favor of continued service, and the relative diligence of the respective pipelines in providing for adequate natural gas supplies.[27] We also weigh the claimed benefits of the abandonment against any detriments.

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[24] 15 U.S.C. § 717f(b) (2006).

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

[26] *See Southern Natural Gas Co.*, 50 FERC ¶ 61,081, at 61,222 (1990). *See also Consolidated Edison Co. v. FERC*, 823 F.2d 630, 643-44 (D.C. Cir. 1987) ("We agree with FERC that the 'public convenience and necessity' language of the NGA's abandonment provision [cite omitted] envisions agency policy-making to fit the regulatory climate.").

[27] *Southern*, 126 FERC ¶ 61,246 at P 27.

1. Impact on Current Customers

a. Firm Service Impacts

34. ANR states that the vast majority of service on the subject facilities is interruptible service.[28] ANR does not anticipate the termination of any firm transportation agreement as the result of the abandonment. ANR states that it has three Rate Schedule PTS-2 contracts with service on the facilities. Rate Schedule PTS-2 is a point-to-point service with firm point and path capacity to a pooling point, for which there is no reservation charge and only a usage charge. ANR states that two of the three PTS-2 shippers have not used their contracts for years – one was last used in November 2007 and the other was last used in June 2006 – and that it is in the process of negotiating revised receipt points with these shippers.

Commission Response

35. No firm shippers or other pipelines in the market area have protested ANR's abandonment application. In addition, ANR states that its abandonment by sale to TC Offshore will not adversely affect the ability of ANR to meet its remaining firm contractual obligations. ANR does not anticipate the termination of any firm transportation agreement as the result of the abandonment. We conclude that ANR's proposed abandonment, when taken in conjunction with TC Offshore's proposal to provide continued service on the facilities after abandonment, will not result in any significant impacts to firm service.

b. Facility Utilization

36. Indicated Shippers argues that ANR's offshore system serves as a core component of the offshore pipeline grid and that it supports access to deepwater lines that extend further out from ANR's lines. Indicated Shippers asserts that offshore reserves recently connected to ANR's Southeast Area System are estimated to add significant volumes on the ANR system and cites orders where the Commission denied abandonment authorization for facilities that were underused but still transporting significant volumes.[29]

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[28] For the months of January 2004 to October 2011, approximately 92 percent of the total throughput on the offshore facilities to be abandoned was interruptible transportation service. See ANR's November 30, 2011 Data Response No. 5.

[29] Indicated Shippers Protest at 9, (citing *Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,118, at P 9 (2003) (*South Texas*) and *Transcontinental Gas Pipe Line*

(continued…)

37. LLOG asserts that ANR has failed to make the case that the offshore production area systems are no longer a vital part of its interstate pipeline system.[30] LLOG urges careful consideration of the proposed abandonment, given the sheer breadth of ANR's proposal to abandon its offshore production facilities.

38. In response to these comments, ANR acknowledges that the facilities it proposes to abandon still have substantial throughput, although it asserts levels have declined significantly since 2004, due to declining supplies in the Gulf of Mexico and increased reliance by ANR's customers on onshore supply sources. Nevertheless, ANR asserts that a showing of underutilization is not required because it is proposing to abandon facilities by sale to another interstate pipeline that will continue to provide interstate natural gas transportation services over those facilities.[31]

Commission Response

39. ANR's proposal to abandon its offshore pipeline facilities by sale to TC Offshore does not raise the specter of the removal from the interstate pipeline grid of any facilities currently performing a jurisdictional transportation function. Once it acquires ANR's offshore transmission facilities, TC Offshore's services over those facilities will be subject to the Commission's jurisdiction under the NGA, with its rates and tariff approved by the Commission. Any new offshore reserves which have been connected to the facilities should continue to have access to the interstate market.

40. The *South Texas* and *Transco* cases cited by Indicated Shippers both involved denials of proposals by Transco to abandon by sale to intrastate pipelines the same facilities in Texas. Both orders did in fact find that significant quantities of gas still flowed on these facilities, even though they were underused. More importantly, however, in both cases Transco was seeking to transfer a portion of its system which, quite notably, was located *between* two other portions of its system, to a largely nonjurisdictional intrastate entity. In each instance the Commission was unable to find on the record before it that "the public convenience and necessity permits customers currently receiving service under NGA section 7 to be forced to discontinue such service or to be required to accept transportation service from another transporter under [Natural Gas

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Corp., 110 FERC ¶ 61,337, at P 33 (2005) (*Transco*)).

[30] LLOG is a producer that delivers gas to ANR's system.

[31] ANR cites *Northern Natural Gas Company*, 117 FERC ¶ 61,117, at P 21 (2006) (*Northern*).

Policy Act] Section 311."[32] Here, neither situation is present. ANR is proposing to abandon its facilities to TC Offshore, a company that will be another interstate pipeline with facilities and services subject to the Commission's same jurisdiction under the NGA. Further, the facilities ANR proposes to abandon are not located upstream and downstream of facilities ANR proposes to retain. Thus, the *South Texas* and *Transco* orders do not support Indicated Shippers position that the abandonment proposal should be denied because significant supplies of gas are flowing on the facilities.

41. The *Northern* case cited by ANR is more analogous to the present situation than the *South Texas* and *Transco* cases. Northern proposed to abandon facilities in Kansas and Oklahoma to WTG Hugoton, LP, a company that would become a natural gas company under the NGA upon acquisition of the facilities. In analyzing the proposal, we did not consider the volume of gas flowing through the facilities as a relevant factor in determining whether to grant the abandonment. Rather, we stated that:

> [T]he subject facilities are not proposed to be abandoned because they are underused and uneconomical. Nor are they deteriorated and being replaced. The applicants intend that the pipeline will remain functioning to transport natural gas in interstate commerce for the same customers… No service is proposed to be discontinued. Here, the pertinent issues are the economic impact on Northern's present customers and whether arrangements have been made for continuation of service.[33]

42. Here, as in *Northern*, ANR is not basing it request for abandonment authorization on the fact that the facilities may be underutilized. Thus, the volume of gas flowing through the facilities is not a relevant factor in our consideration here of whether to grant the abandonment. Rather, ANR asserts that the nature of the services provided offshore receipts in the Southeast Area Zone have changed in combination with a decline in offshore receipts. Specifically, ANR claims that its Southeast Area Zone deliveries are composed of a declining share of offshore receipts, and that primary deliveries upstream of the Eunice Headstation are increasing.[34] ANR is not claiming that its facilities must be abandoned because of lack of throughput.

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[32] *South Texas,* 103 FERC ¶ 61,118 at P 16. *See, also, Transco,* 110 FERC ¶ 61,337 at P 70.

[33] 117 FERC ¶ 61,117 at P 21.

[34] ANR's Application at Attachment Nos. 1 and 2.

c. **Rate Stacking**

43. Indicated Shippers, Apache, Chevron,[35] LLOG, and W&T all express concerns that approval of the proposals before us will result in "rate stacking," to the detriment of existing shippers. Before addressing those concerns, it may be helpful to provide some context. ANR has seven rate zones. The applicable rate for gas transported from the offshore will depend on the location of the delivery point. If the abandonment is permitted, ANR will redefine its Southeast Area Zone to remove all receipt points on the transferred facilities. However, ANR does not propose to change any of its currently-effective base rates to reflect either the abandonment of the offshore facilities or the redefined Southeast Area Zone. The charge for gas received in ANR's Southeast Area Zone from the abandoned offshore facilities would be assessed at the same rates as any other gas received within the Southeast Area Zone. However, if the proposals are approved, shippers of gas flowing on the offshore facilities will also be required to pay TC Offshore for delivery of the gas to an onshore pipeline (in most cases to ANR).

44. LLOG contends that it currently pays nothing to deliver its gas to pooling points on ANR's system and that TC Offshore's rates and terms and conditions of service will not match the cost-free service it is currently receiving. Likewise, Apache asserts that if the abandonment is approved, customers that use the offshore facilities will have to pay higher rates to move gas the same distance. Apache further contends that any customer that currently uses the offshore facilities in conjunction with other services on ANR's system will have to pay additional charges to move gas the same distance on both the TC Offshore system and the ANR system.

45. Indicated Shippers contends that the increase in rates for producers, absent any demonstrated benefit to existing customers, is contrary to the public convenience and necessity. Indicated Shippers, Apache, LLOG, and W&T complain of the economic burden on offshore producers of rate stacking, i.e., having to pay a rate to TC Offshore to get their gas into ANR's system and to its pooling points, where currently ANR imposes no charges under its PTS Rate Schedules. LLOG asserts that producers will be required to pay, or bear through decreased gas sales net backs, these increased costs or will effectively be shut-in.

46. Indicated Shippers cites Commission precedent rejecting requests for pipeline abandonments on the basis of rate stacking.[36] In these cases, according to Indicated

[35] Chevron is a producer and shipper on ANR's pipeline system.

[36] Indicated Shippers Protest at 4-6 (citing *Southern*, 126 FERC ¶ 61,246 at P 27; and *South Texas*, 103 FERC ¶ 61,118 at P 12-13).

Shippers, the Commission found that denial of abandonment authority is appropriate where the abandonment would result in shippers having to pay an intrastate transportation rate on top of an existing rate, and perhaps a gathering rate, especially where there are strong objections from a large number of firm shippers. Indicated Shippers contends that charging higher rates for the same service is an adverse effect the Commission needs to consider.[37]

47. Indicated Shippers also states that the Commission has recognized that rate stacking caused by facility sales can reduce net back prices and reduce incentives for increased gas production.[38] Indicated Shippers believes the same concerns about the impact of rate stacking and its impact on net-back pricing applies to ANR's proposed sale of its offshore facilities.

48. ANR asserts that the Commission's concern with rate stacking should not apply where a shipper does not currently pay a rate for the service at issue. Consequently, ANR maintains that its proposal is distinguishable from the cases cited by Indicated Shippers where the pipeline's existing customers would be required to pay an additional rate for the same service. ANR states that the Commission has recognized that it is appropriate for a pipeline to charge separate rates for separate services and that such a result is not rate stacking.

Commission Response

49. The Commission has in fact expressed concern in instances where a proposed transfer of facilities may result in the imposition of additional costs for the performance of the same transportation services, i.e., rate stacking.[39] Here, the protestors contend that most of the shippers upstream of ANR's pooling points do not currently pay for transportation service over ANR's offshore facilities. Because such shippers will be required to pay for offshore transportation if the proposals are approved, the protestors contend that the new set of rates imposed upon them constitutes rate stacking. However, the fact that offshore shippers have not usually paid for this service does not mean that the service has been provided for free. Under the Commission's pooling policy, pipelines

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[37] Indicated Shippers Protest at 5 (citing *Transco*, 110 FERC ¶ 61,337 at P 44).

[38] *Id*. at 7 (citing *Transco*, 110 FERC ¶ 61,337 at n. 39).

[39] The orders cited by Indicated Shippers also express concern with regard to the level of regulatory review that will be provided over the rates of the acquiring companies. That is not an issue here, as TC Offshore proposes to be an interstate pipeline company under the NGA.

may only charge shippers once for gas transported through a pool.[40] ANR charges the shippers downstream of the pool for upstream services.[41] Thus, while the protesters are correct that they do not currently pay for offshore transportation services, ANR has been billing the shippers downstream of the pool for that upstream service. We do not view a change in revenue responsibility as rate stacking. Thus, we find that a situation where shippers upstream of ANR's pooling points will now pay TC Offshore for the offshore transportation that is currently being paid for by downstream shippers is not rate stacking.[42]

50. ANR's current rates were approved by the Commission and are considered just and reasonable. Below, we review TC Offshore's initial rates under NGA section 7. Under the circumstances presented here, we do not find that the application of the two separate NGA rates constitutes rate stacking.

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[40] *Standards for Business Practices of Interstate Natural Gas Pipelines*, FERC Stats. & Regs., Proposed Regulations 1988-1998 ¶ 32, 527, at 33,351 (1996) (Order No. 587-F) ("[W]hen a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool."). *See also Transcontinental Gas Pipe Line Corp.*, 127 FERC ¶ 61,206, at P 12 (2009) (Order No. 587-F's pooling finding "was simply a finding that pipelines should not charge twice for shipments within a zone. Order No. 587-F did not find that the charge must be imposed solely on the downstream transportation away from the zone … instead of on the upstream transportation to the pooling point.").

[41] Over 99 percent of ANR's pooling services are provided under Rate Schedule PTS-1. (ANR Data Response No. 7b: i-x) Pooling service under Rate Schedule PTS-1 does not provide for a separate charge for transportation upstream of the pooling points, as it derives its transportation service from the transportation capacity of the pool members. *See ANR Pipeline Co.*, 65 FERC ¶ 61,162, at 61,808 (1993); and *5th order on compliance filing*, 68 FERC ¶ 61,009, at 61,047 (1994) where we directed ANR to provide such a one-charge pooling service. *See also* ANR Pipeline Company, FERC NGA Gas Tariff, ANR Tariffs: 5.16 - Rate Schedules, Rate Schedule PTS-1, 0.0.0, Section 3: Charges.

[42] We note that since ANR's existing rates will not change unless and until it files a section 4 rate case, the rates of ANR's downstream shippers will still include costs associated with the facilities and services that will now be provided by TC Offshore. However, we further note that none of those shippers have protested the proposed abandonment.

51. The protestors contend that their net back prices for natural gas will be adversely impacted by the gas being subject to two transportation rates. 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. While the proposal before us involves the abandonment of ANR's offshore facilities by sale to another gas company, we note that the same reallocation of responsibility for the risks and costs associated with those facilities from ANR's downstream shippers to only those shippers actually using the facilities could have been accomplished absent an abandonment. ANR could have retained the subject facilities and instead proposed to create a new, distinct offshore rate zone in an NGA section 4 rate proceeding. Under such a scenario, although ANR would still be the provider of service over the offshore facilities, the rate effect on offshore shippers would be very similar to the result here, i.e., they would be subject to a rate designed to recover all the costs associated with providing service on the facilities. Under either scenario, the gas markets and individual gas contracts will ultimately determine how costs related to the continued maintenance and operation of these facilities will be reflected in the prices customers are willing to pay for production, and, in turn the prices that producers receive at the well-head. These markets and contracts are not subject to the Commission's jurisdiction.

2. Continuity of Service

52. Indicated Shippers claims that the proposals before the Commission will impose substantial additional costs on existing shippers in a manner that will effectively result in the abandonment of Rate Schedule PTS-1 pooling services. Indicated Shippers challenges ANR's position that TC Offshore will be providing a similar service to the one currently available from ANR. Indicated Shippers alleges that to duplicate ANR's existing PTS-1 pooling service, offshore shippers will have to pay TC Offshore for transportation over its facilities in order to reach ANR, and then pay ANR in order to reach its Southeast Area Zone pool. Indicated Shippers argues that any incremental pipeline charge for delivery to the downstream contract undermines the nature of the existing pooling service where the upstream party is using the downstream party's capacity. Indicated Shippers avers that breaking the pooling service's upstream transportation service into two components destroys the continuity of the service currently offered by ANR.

53. Indicated Shippers further contends that ANR's argument that it wants "to move away from its role as aggregator of offshore supplies and focus its efforts on its onshore system" is an excuse for charging shippers who currently use the pooling service under Rate Schedule PTS-1 without charge. Indicated Shippers contends that absent the ability to provide PTS-1 service upon abandonment of the facilities, ANR and TC Offshore are unable to support a finding of the public convenience and necessity.

54. ANR responds that the free pooling service it currently provides under Rate Schedule PTS-1 originated when it was still engaged in a merchant function. ANR asserts that the expectation of continued free service on increasingly costly facilities is both unreasonable and unrealistic in today's offshore environment and the desire for such service by offshore shippers is insufficient justification to warrant rejection of ANR's abandonment proposal.

55. In addition, ANR points out that Indicated Shippers relies heavily on cases involving abandonment proposals where the shippers' ability to continue to receive open-access transportation service was at issue. Here, open-access transportation on the facilities will continue to be provided by TC Offshore, pursuant to Commission-approved rates and a Commission-approved tariff. Finally, ANR argues that the Commission should not give significant weight to the objections of Indicated Shippers, whose members hold inactive and non-firm entitlements, particularly because firm transportation shippers have not protested the applications.[43]

Commission Response

56. Indicated Shippers cites two cases in support of its continuity of service argument in opposition to the proposed abandonment, neither of which is on point. As described above, in the *MOPS* proceeding, the applicants proposed to terminate all services and to retire the facilities proposed to be abandoned.[44] In the *Copano* proceeding, Transco proposed to abandon a pipeline lateral by sale to Copano Field Services/Central Gulf Coast, L.P. (Copano), a gathering company, and Copano requested that the Commission find that facilities to be abandoned by Transco would no longer be subject to the Commission's NGA jurisdiction.[45] The Commission denied Transco's proposed

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[43] ANR and TC Offshore argue that concerns regarding continuation of service are further minimized by the fact that several of its shippers will continue to have alternative means of transporting their gas onshore. Shippers on High Island Offshore System, L.L.C. (HIOS), an interstate pipeline, may deliver their gas into Stingray Pipeline Company, L.L.C. at High Island Area Block A-330 or Tennessee Gas Pipeline Company, L.L.C. (Tennessee) at West Cameron Area Block 167, as well as TC Offshore at West Cameron Area Block 167. Garden Banks Gas Gathering System shippers can deliver to Sea Robin Pipeline Company, LLC at South Marsh Island Area Block 128 and Tennessee or Transco at South Marsh Island Area Block 76, as well as TC Offshore at South Marsh Island Area Block 76. ANR's Data Response No. 14.

[44] *MOPS*, 135 FERC ¶ 61,048 at P 35.

[45] *Transcontinental Gas Pipe Line Co., LLC*, 129 FERC ¶ 61,255 (2009)

(continued…)

abandonment because, among other things, it would have no authority to ensure the applicants' representations regarding continued service to existing shippers because Copano would be a nonjurisdictional gathering company.[46] As in *South Texas* and *Transco,* the Commission stated it was unable to find that the public convenience or necessity permitted customers currently receiving service under NGA section 7 to be forced to discontinue such service and accept service from a nonjurisdictional entity.[47]

57. As opposed to the situations in those cases, here, the facilities to be abandoned that are currently performing a jurisdictional transmission function will nevertheless remain in jurisdictional service and transmission service will continue to be provided, albeit by TC Offshore. Thus, we do not believe the *MOPS* or *Copano* cases are determinative. ANR is not terminating its Rate Schedule PTS-1, and the Southeast Area pool at the Eunice, Louisiana Headstation will remain. The fact that there will be a change in the scope of ANR's existing PTS-1 pooling service (to the extent that the Southeast Area zone in which it is available will be smaller than it currently is) does not constitute an abandonment of that service. Production located on the offshore facilities will continue to have access to ANR's remaining system through a fully jurisdictional pipeline. While shippers on TC Offshore will have to pay a Commission-approved rate for that service, once the gas reaches ANR, there will continue to be only a single rate charged for transportation either into or out of ANR's pool. In addition, a separate pooling service will be available directly from TC Offshore. Transportation over the offshore facilities will remain under the Commission's NGA section 7 jurisdiction, and gathering and transmission rates will remain under the Commission's NGA section 4 jurisdiction.[48] Accordingly, we find that ANR and TC Offshore's proposals will not negatively impact continuity of service.

(*Copano*).

[46] *Id.* P 40.

[47] *Id.* P 41.

[48] The Commission will have jurisdiction over TC Offshore's gathering rates because that service will be provided "in connection with" the transportation of natural gas subject to the jurisdiction of the Commission. *See* 15 U.S.C. 717c(a).

3. Other Issues

a. Contractual Issues

58. Indicated Shippers claims, without elaboration, that the proposed abandonment "will undermine ANR's ability to meet its contractual obligations from both service and rate perspectives."[49] ANR disagrees, asserting that it has no reason to believe that its ability to meet its contractual obligations will be impaired as a result of the proposed abandonment.

Commission Response

59. The Commission finds that neither Indicated Shippers nor any other party has provided any information indicating a contractual issue that will be precipitated by the proposed abandonment.

b. Administrative Burden

60. Indicated Shippers contends that dividing ANR's existing Southeast Area System among different legal entities will result in administrative burdens and attendant delays for shippers. If the abandonment by sale to TC Offshore is allowed, Indicated Shippers asserts that shippers will have to nominate separately on each pipeline, and TC Offshore will add an additional administrative layer to obtaining confirmations on downstream pipelines.

61. Indicated Shippers also contends that splitting ANR's system at the Neptune Plant means that the plant operator will need to separately confirm receipt nominations from TC Offshore and delivery nominations to ANR and asserts that this will complicate the transportation of gas on the Patterson Systems.

62. ANR states that while shippers on TC Offshore's system may need to engage in some minor additional administrative work in order to nominate across an additional pipeline system, the members of Indicated Shippers are sophisticated entities that routinely nominate gas over multiple pipeline systems. In addition, ANR states that TC Offshore will use the same electronic nominations platform as ANR.

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[49] Indicated Shippers Protest at 19.

Commission Response

63. While there will likely be some level of additional administrative complexity upon implementation of these proposals, given that TC Offshore proposes to use the same electronic nominations platform as ANR, we conclude that such burdens should be minimal.

c. Neptune Plant

64. ANR and TC Offshore propose that the terminus of the Patterson System will be located at the Patterson liquid separation facilities. From that point, TC Offshore will, as ANR has, deliver the gas to the Neptune, Calumet, or Pelican processing plants. After processing, the processors may deliver the gas to ANR either at the Patterson Compressor Station or downstream of the compressor station.[50]

65. Enterprise filed a limited protest concerning the potential impact the abandonment could have on the planned upgrade of its Neptune Plant and the eventual closing of its Calumet Plant.[51] Enterprise states that for the Grand Chenier System, ANR and TC Offshore propose a pipeline flange as the terminus of the facilities being transferred to TC Offshore. Enterprise contends that by proposing the Patterson liquid separation facilities as the terminus of the Patterson System, ANR is attempting to alter the Neptune Plant's status as a straddle plant. Enterprise requests confirmation that a February 2010 straddle plant agreement with ANR and related interconnect agreements will remain in full force and effect. Enterprise also requests that the Commission withhold action, and require ANR's parent company to meet with Enterprise and resolve Enterprise's concerns before this proposal goes forward. In the alternative, Enterprise asks that the Commission consider rejecting the applications without prejudice to the submission of a general rate application under section 4.

66. In response to Enterprise's concern, ANR states that it has been consistent in establishing the points of demarcation between its system and TC Offshore's Patterson and Grand Chenier Systems. ANR states that: (1) both systems have condensate facilities located at the first onshore land reasonably accessible to the pipeline; (2) both

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[50] TC Offshore's Exhibit G shows that there may be alternative pipeline delivery points from the Patterson processing complex, including Columbia Gulf Transmission Company, Texas Gas Transmission, LLC, Trunkline Gas Company, LLC, and Louisiana Intrastate Gas Company, L.L.C.

[51] Indicated Shippers states that the Neptune Plant went into service in February 2012. Indicated Shippers April 24, 2012 Filing at 12.

systems have compressor stations located immediately downstream of the condensate facilities; and (3) for both systems, the TC Offshore facilities will end at the gas outlet of the condensate facilities and the ANR facilities begin with the gas line feeding the compressor station inlet.

Commission Response

67. Neither ANR nor TC Offshore propose any facility or operational changes at the demarcation point between the Patterson System and the facilities to be retained by ANR. Enterprise, and the services it performs at the Neptune and Calumet Plants, are not subject to the Commission's NGA jurisdiction. In addition, the proposals herein will not change the status of Enterprise or the processing plants relative to the NGA. It does not appear that whatever concerns Enterprise has regarding the referenced agreements are within the Commission's jurisdiction to address.

D. Conclusion

68. For the reasons discussed above, we find that there will be no significant adverse impacts to existing firm or interruptible services as a result of ANR's abandonment of the proposed facilities by sale to TC Offshore. Because we are concurrently authorizing TC Offshore to acquire and operate the transmission facilities on an open-access basis as a jurisdictional natural gas company, there will be no continuity of service issues. The facilities abandoned by ANR will remain in service and will be available to any shipper who wishes to transport gas at rates, and under terms and conditions, subject to Commission regulation. Accordingly, we find ANR's proposal to abandon the subject facilities by sale to TC Offshore to be permitted by the present or future public convenience or necessity and will grant ANR's request for abandonment authorization. ANR is directed to file tariff records pursuant to Part 154 of the Commission's regulations removing references in its tariff to its offshore facilities and services at least 30 days prior to the effective date of the abandonment.

E. Accounting Issues

1. Accumulated Depreciation

69. Indicated Shippers contends that the level of accumulated depreciation associated with the facilities proposed to be abandoned appears to substantially understate the appropriate level of accumulated depreciation. Indicated Shippers asserts that if accumulated depreciation has been understated, this would have the effect of increasing TC Offshore's net rate base.

70. Specifically, Indicated Shippers contends that the applicable Southeast Area depreciation rates set forth in Appendix C of the Settlement Stipulation and Agreement in Docket No. RP94-43 do not appear to have been applied consistently to ANR's

applicable categories of gas plant in the Southeast Area.[52] Indicated Shippers states that ANR represents that its total Southeast Area gathering gas plant as of June 30, 1992, was $218.9 million, with an accumulated depreciation of $176.3 million, for a net plant of $42.6 million. However, Indicated Shippers contends that if ANR' offshore gathering depreciation rate of 2.80 percent had been applied to the gross gas plant figure, there would have been additional accumulated depreciation over the past 18 years of $110.3 million, leaving a Southeast Area gathering gas plant of minus $67.7 million. Further, Indicated Shippers contends that while TC Offshore proposes an annual depreciation expense of $4.887 million for the Southeast Area gathering facilities it will acquire, ANR's 2010 Form No. 2 shows only $3.176 million of depreciation on its entire Southeast Area gathering gas plant of $199.9 million. Indicated Shippers asserts that this difference appears to result in part from TC Offshore applying the gathering depreciation rate to an adjusted gathering gas plant in service of $176.2 million.

71. Indicated Shippers contends that the Southeast Area gathering gas plant in service is fully depreciated for rate design purposes. Indicated Shippers also contends that ANR and TC Offshore have not offered an explanation as to their proposed gas plant and accumulated depreciation levels, nor have they attempted to reconcile ANR's accounting to reflect the impact on rate base of the applicable depreciation rates. For example, Indicated Shippers contend that despite remaining net depreciable plant balances for ANR's Grand Chenier facilities of $39.5 million (Form 2 at page 552.1), ANR only records depreciation at 0.90 percent versus the settlement depreciation rate of 2.32 percent.

72. Indicated Shippers asserts that ANR proposes to transfer to TC Offshore $430.6 million of transmission gas plant in service, and that TC Offshore has applied a proposed aggregate depreciation of 1.69 percent to derive its proposed depreciation expense of $7.3 million. Based upon this, Indicated Shippers concludes that ANR has not been appropriately calculating the annual depreciation or accumulated depreciation on the Southeast Area transmission plant, but rather calculating depreciation on an adjusted rate base inconsistent with aggregate depreciation rates in ANR's settlement. To illustrate, Indicated Shippers asserts that ANR's 2010 Form No. 2 (page 552.1) indicates that ANR is only calculating annual depreciation based on its remaining depreciable plant balance for Offshore Transmission of $331.76 million (versus using the gross transmission plant of $430.6 million to be abandoned by sale). Indicated Shippers contends that applying the Offshore Transmission depreciation rate of 0.80 percent to the $98.8 million ($430.6 million minus $331.76 million) of transmission gas plant

[52] Indicated Shippers Protest at 15.

apparently excluded from the depreciation expense calculation would add an additional $11 million in accumulated depreciation since ANR's last rate case.

73. In its April 24, 2012 Filing, Indicated Shippers also asserts that the settlement agreement in Docket No. RP07-99-000 (which addressed the rates applicable to Rate Schedule X-64 services) only relates to ANR's charge to HIOS for services at its Grand Chenier facilities and that it does not change the depreciation rate for that portion of the Grand Chenier dehydration and separation facilities not used to provide service to HIOS.

74. ANR counters, stating that Indicated Shippers has based its calculations on erroneous comparisons to ANR's Form No. 2 data. ANR contends that Indicated Shippers cites to Page 552.1 of ANR's 2010 Form No. 2 for the proposition that ANR's remaining depreciable plant balance for offshore transmission plant is $331.76 million. ANR asserts, however, that the cited page reflects the depreciable plant balance as of the period reflected in the Form No. 2 and not the remaining depreciable plant balance which will exist at the time the subject facilities are abandoned. Further, ANR contends that Indicated Shippers has compared the 2010 Form No. 2 amount (reflecting only offshore transmission plant) to the future estimated total transmission plant balance in the filing of $430.6 million, which includes not only offshore transmission plant, but also certain onshore transmission plant to be transferred to TC Offshore, the Grand Chenier plant, the Patterson plant, and an allocation of general plant and intangible plant. ANR concludes that the two amounts are simply not comparable, and thus, that Indicated Shippers' conclusions are invalid.

Commission Response

75. Indicated Shippers asserts that ANR understated the accumulated depreciation associated with the offshore gathering plant to be transferred to TC Offshore. However, Indicated Shippers' approach of taking the gathering plant balance as of the effective date of ANR's rate settlement in Docket No. RP94-43 and calculating the amount of accumulated depreciation that would have accrued over the intervening years ignores the effect on the accumulated depreciation balance of all the additions and retirements that have taken place since Docket No. RP94-43 became effective. Thus, the fact that Indicated Shippers came up with a different number does not indicate that ANR's calculations are incorrect.

76. Next, Indicated Shippers attempts to show that ANR has also understated the amount of accumulated depreciation on transmission plant being transferred to TC Offshore. Indicated Shippers compares amounts for depreciable plant and accumulated depreciation from ANR's 2010 Form No. 2 with that to be transferred to TC Offshore. However, the comparisons are not compatible because Indicated Shippers is comparing plant balances as of December 31, 2010, with future estimated amounts as of April 30,

2012. In addition, the Form No. 2 data used by Indicated Shippers does not include all of the same plant included in balances in the application.

77. Finally, regarding Indicated Shippers' allegation that ANR is failing to use the appropriate rate to depreciate its Grand Chenier plant, we note that since the 2003 settlement agreement in Docket No. RP94-43, a subsequent settlement was approved by the Commission in 2007, in Docket No. RP07-99-000, changing the depreciation rate on the Grand Chenier plant to 0.90 percent.[53] The Docket No. RP07-99-000 settlement stated that ". . . ANR will restate its Grand Chenier depreciation rate to reflect HIOS's current remaining life of 13 years."[54] Despite Indicated Shippers' assertion to the contrary, there is nothing in the settlement agreement to suggest that the settlement agreement did not require changing the depreciation rate for the Grand Chenier system as a whole. Further, an interpretation that would require the maintenance of two different deprecation rates for a single set of facilities would be unreasonable.

78. For these reasons, we find no indication that that ANR has understated the amount of accumulated depreciation being transferred to TC Offshore or that ANR has not properly computed depreciation in accordance with approved Commission rate settlements.

2. Negative Salvage

79. Indicated Shippers contends that ANR's journal entries in its Exhibit Y reflect an account entry of $6,622,551 to remove the negative salvage on its books associated with the facilities proposed to be abandoned by sale to TC Offshore. Indicated Shippers asserts that this amount understates the appropriate level of negative salvage for the Southeast Area. Indicated Shippers asserts that the settlement in Docket No. RP94-43 required ANR to establish negative salvage reserves effective November 1, 1997, by applying 0.23 percent to the gross gathering and offshore transmission plant in the Southeast Area. Indicated Shippers believes that if 0.23 percent is applied to the gross gathering and offshore transmission plant of $574.4 million to be transferred to TC Offshore, consistent with the settlement in Docket No. RP94-43, the negative salvage reserve transferred to TC Offshore should be $18.4 million. Indicated Shippers also argues that if TC Offshore adjusted its rate base by reducing its negative salvage reserve whenever it abandoned facilities, then TC Offshore has improperly adjusted a reserve account which should only be adjusted for the actual incurrence of abandonment costs.

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[53] *ANR Pipeline Co.*, 121 FERC ¶ 61,292 (2007).

[54] *Id.* P 3.

80. ANR contends that Indicated Shippers' arguments are based on an erroneous reading of the data. ANR states that pursuant to the settlement in Docket No. RP94-43, the negative salvage rate of 0.23 percent applies only to offshore gathering and offshore transmission plant and is not applied to other classes of plant, such as onshore transmission, Grand Chenier facilities, intangible plant, and general plant. Further, ANR contends that Indicated Shippers' calculation ignores the fact that additions and retirements have changed the relevant plant balances since the 1997 effective date of the settlement.

Commission Response

81. We agree that Indicated Shippers' calculation of the net salvage value associated with the facilities ANR proposes to transfer to TC Offshore is flawed as it is based on erroneous assumptions. First, Indicated Shippers calculate negative salvage on plant to which negative salvage does not apply, such as intangible and general plant. Second, Indicated Shippers fail to take into consideration plant additions and retirements that have taken place since ANR's negative salvage reserve was established as a result of the settlement in Docket No. RP94-43 in 1997. In addition, 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. ANR indicates that it made adjustments to the amount of accumulated negative salvage on its books as of June 30, 2011 for estimated cost of removal of $8,057,261 for pipe replacements and abandonments for the period July 2011 to April 2012. Cost of removal by definition means the cost of demolishing, dismantling, tearing down or otherwise removing gas plant.[55] Therefore, we find that Indicated Shippers has provided no evidence to support its assertion that ANR has understated the amount of negative salvage being transferred to TC Offshore.

TC Offshore's Proposal: Docket No. CP11-544-000

82. Since a portion of the facilities to be acquired by TC Offshore will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the acquisition and operation of those facilities is subject to subsections (c) and (e) of section 7 of the NGA.

83. TC Offshore proposes to acquire and operate the facilities that ANR proposes to abandon. TC Offshore proposes to acquire these facilities at net book costs as of the time of closing. TC Offshore does not propose to change the manner in which these facilities are currently operated and does not propose to change any facility's functionalization

[55] See definition 10. Cost of Removal, Part 201 (2011).

from that reflected on ANR's books. TC Offshore does not propose any new construction or removal of facilities.

A. Review of the Facilities to be Acquired

84. All of the ANR facilities proposed to be abandoned were constructed or acquired pursuant to certificates issued by the Commission under section 7(c) of the NGA. However, prior to the Commission's open-access policies requiring unbundling of pipeline services, there was no need, as a practical matter, to review applications by pipelines for certificate authority to ascertain whether any of the proposed new facilities may have actually functioned as gathering facilities. Thus, in many instances, gathering facilities were constructed under certificate authority and the costs associated with those facilities were part of the rate base of the pipeline's sales rates. Later, many of those facilities were found by the Commission to perform a gathering function.[56]

85. Having been constructed to access offshore producing areas, it is quite possible that some of the ANR facilities to be abandoned perform a non-jurisdictional gathering function. The only way to definitely determine the jurisdictional status of facilities is to perform a primary function test[57] and the Commission has not previously performed such an analysis of the facilities to be abandoned by ANR. While neither ANR nor TC Offshore has requested a functional analysis of the facilities proposed to be abandoned, and both note that refunctionalization of the subject facilities is not contemplated in their transaction, we nevertheless find it appropriate for the Commission to take this opportunity to analyze the jurisdictional status of the subject facilities to insure that the certificate of public convenience and necessity issued to TC Offshore in this proceeding only encompasses facilities and services over which the Commission actually has jurisdiction under the NGA.

1. Idle Facilities

86. ANR, in its abandonment application and in responses to data requests, identified several particular pipeline segments on which it has not provided transmission or gathering service for at least one year or longer.[58] In addition, Indicated Shippers claims

[56] *See Equitrans, L.P.*, 109 FERC ¶ 61,209, at P 59 (2004).

[57] *CNG Transmission Corp.*, 67 FERC ¶ 61,330, at 62,177 (1994) ("[U]ntil the Commission actually scrutinizes the facilities under the primary function test, the actual jurisdictional status of the facilities cannot be definitively determined.")

[58] ANR's Revised Exhibit T in Applicants' February 2, 2012, Data Response No. 7.

that facilities related to Eugene Island 371 were disconnected and are not in use.[59] These pipeline segments are listed in Appendix A, Table 1. TC Offshore states that it does not expect to transport gas over these facilities to serve any customers or markets.[60] Moreover, TC Offshore did not identify any jurisdictional service it proposes to provide over these facilities or provide any other reason why these facilities are required by the public convenience and necessity. As noted in Indicated Shippers' April 24, 2012 Filing, TC Offshore also indicates that $7.9 million of the $31.2 million proposed facility cost in its proposed rate base are FERC Account 303, Miscellaneous Intangible Plant, costs for the previous contribution in aid of construction payment to Enterprise for an interconnect with ANR's offshore system at Eugene Island 371.[61] However, that interconnect was disconnected and is no longer used. Accordingly, as it does not appear that the Eugene Island 371 facilities and the facilities listed in Appendix A, Table 1, will be used to provide any jurisdictional service, we will not include them in TC Offshore's certificate authorization.[62] This finding does not preclude TC Offshore from acquiring these facilities from ANR and is without prejudice to TC Offshore requesting certificate authority from the Commission at a later date if the facilities are used to provide jurisdictional transmission service in the future.

2. The Primary Function Test

87. Under section 1(b) of the NGA, the Commission's jurisdiction does not extend to facilities used for "the production or gathering of natural gas." The NGA, however, does not define the term "gathering." As a result, the Commission has developed a legal test, known as the "primary function test,"[63] to determine which facilities are nonjurisdictional gathering facilities and which facilities are jurisdictional transmission facilities.

88. The "primary function test" includes consideration of several physical and geographic factors, including: (1) the lengths and diameters of the pipelines at issue;

[59] Indicated Shippers April 24, 2012 Filing at 4.

[60] Applicants' November 30, 2011, Data Response No. 15.

[61] Applicants' November 30, 2011, Data Response No. 18.

[62] Because the idle facilities have no function, it is not necessary for the Commission to analyze them under the primary function test to determine their jurisdictional status.

[63] *See Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990) and *Farmland Indus., Inc.*, 23 FERC ¶ 61,063 (1983).

(2) the extension of the subject facilities beyond the central point in the field; (3) the facilities' geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facilities; and (6) the operating pressure of the lines. The Commission also considers the purpose, location, and operation of the facilities; the general business activity of the owner of the facilities; and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978.[64] The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.[65]

89. When considering the primary function of offshore facilities, the fact that gas volumes are processed at onshore plants does not require a finding that all offshore facilities are gathering.[66] The lack of compression facilities is indicative of a gathering function.[67] On the other hand, a transmission function is usually being provided by compression facilities along a pipeline or on a platform where there is a convergence of pipelines but no wells.[68]

90. In *Sea Robin,*[69] the Commission adopted an additional factor – a central aggregation point criterion – to assist in the analysis of where gathering ends and transportation begins with respect to offshore facilities. In applying its central aggregation point criterion, the Commission looks at whether there is a given point on an offshore system where gas is received from multiple upstream areas and at which there is a marked change in physical attributes, e.g., significantly larger diameter pipe

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[64] 15 U.S.C. §§ 3301-3432 (2006).

[65] *Columbia Gas Transmission Corp.*, 93 FERC ¶ 61,278, at 61,913 (2000).

[66] *Sea Robin Pipeline Co., order on remand*, 87 FERC ¶ 61,384, at 62,425 (1999) (*Sea Robin*) (stating "the 'behind-the-plant' factor is not necessarily determinative when the primary function test is applied to offshore facilities . . . .").

[67] When gas flows through a pipeline solely as the result of wellhead pressures or producer-owner compression facilities that "push" the gas, it is an indication that the pipeline may perform a gathering function. *See, e.g., Transcontinental Gas Pipeline Corp*., 97 FERC ¶ 61,298, at 62,400 (2001).

[68] *See, e.g., High Island Offshore System, L.L.C.*, 128 FERC ¶ 61,292, at P 26 (2009) (*HIOS*).

[69] 87 FERC ¶ 61,384.

downstream of that point, the presence of a production platform, or high horsepower compression facilities.

91. If there is such a central point of aggregation, the Commission still reviews the traditional factors of the primary function test – i.e., the overall geographic configuration of the system, the physical dimensions of the facilities, and the locations of compression facilities and connections with supply laterals, wells, and productions platforms – in deciding whether the identified central point of aggregation is where nonjurisdictional gathering ends and jurisdictional transmission begins.[70] While the courts have sanctioned giving some weight to non-physical factors, e.g., the original purpose of the subject facilities or the general business activities of the owner, and have agreed that they may be relevant considerations in determining the demarcation point between transmission and gathering facilities, such non-physical factors must be secondary to the physical factors. Thus, non-physical factors "generally only come into play if application of the physical factors results in a close call."[71]

92. Indicated Shippers asserts that all of the facilities ANR proposes to abandon should be considered jurisdictional transmission facilities,[72] on the basis of a November 12, 1993, application by ANR in Docket No. CP94-7-000 to refunctionalize "all gathering facilities in the Southeast Area" from gathering to transmission.[73] Indicated Shippers argues that although this application "was subsequently withdrawn by ANR and its [when the concurrent] NGA section 4 rate case [in Docket No. RP94-43-000] was settled . . . , there has been no change in the primary function of the Southeast Area facilities since ANR's Filings in Docket Nos. RP89-16-000 or CP94-7-000 . . . ."[74] Indicated Shippers further contends that "TC Offshore has not explained its gathering throughput projections."[75] Indicated Shippers concludes that the "inconsistencies between ANR's previous representations to the Commission [in the 1993 proceeding] and statements made regarding current functionalization in the two applications [in this

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[70] *Id.* at 62,430-31.

[71] *Transcontinental Gas Pipe Line Corp.*, 121 FERC ¶ 61,157, at P 11 (2007) (*Jupiter*).

[72] Indicated Shippers Protest at 18.

[73] *Id*.

[74] *Id*. at 18-19.

[75] *Id*. at 19.

proceeding render the applications] so unreliable as to be a 'nullity as a matter of substantive law' so as to require rejection of the applications."[76]

93. ANR contends that the supposed inconsistencies between the representations here and those submitted by ANR nearly two decades ago are belied by Indicated Shippers' failure to identify any such inconsistencies. ANR asserts that neither it nor TC Offshore is proposing any change to the jurisdictional status of the facilities, and to the extent that there are issues regarding functionalization, those issues should be addressed based on the functions that the facilities are performing now – not what functions the facilities were performing when ANR filed its application in 1993.

Commission Response

94. Our review of the facilities involved in this proceeding will be based on the functions the facilities are performing now. Our findings on each of the systems to be abandoned are addressed below,[77] and are based on the applications and the responses to data requests.[78]

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[76] *Id*. (citing *Municipal Light Boards of Reading and Wakefield Massachusetts v. FERC*, 450 F.2d 1341, 1346 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 589 (1972); *Transcontinental Gas Pipe Line Corp. v. FERC*, 866 F.2d 477, 480 (D.C. Cir. 1989)).

[77] We note that Transco, among others, co-owns with ANR some of the facilities we find herein to function primarily as nonjurisdictional gather facilities. (ANR's Revised Exhibit T identifies those pipeline segments of which ANR shares ownership.) To the extent that any of the co-owners currently functionalize their interests in the facilities as transmission in conflict with the findings we make in this proceeding, they will need to refunctionalize their facilities as gathering for accounting purposes in their next NGA section 4 general rate proceedings. *See Natural Gas Pipeline Co. of America*, 95 FERC ¶ 61,317 (2001); *Southern Natural Gas Co.*, 79 FERC ¶ 61,076, at 61,380 (1997); and *CNG Transmission Corp*., 67 FERC at 62,178.

[78] *See* Letter dated November 8, 2011, requesting ANR and TC Offshore to file the data requested by November 30, 2011; and Letter dated January 24, 2012, requesting ANR and TC Offshore to file the data requested by January 31, 2012.

3. Application of the Primary Function Test

a. The Grand Chenier System

95. The Grand Chenier System, for the purposes of this discussion, comprises two sets of facilities – a northern set and a southern set. The northern set of facilities comprises a continuous system feeding from an interconnection with HIOS and delivers gas to the Grand Chenier Plant. The southern set of facilities is composed of non-contiguous pipeline segments all feeding into HIOS. We will address the northern set of Grand Chenier System first.

96. The vast majority of the gas transported on the northern Grand Chenier System is received from the interstate pipeline, HIOS. HIOS delivers all of its gas at West Cameron (WC) Block 167 to Line 4659. Lines 2321, 3407, and 30003 are used to transport gas received from HIOS to the Grand Chenier Plant for measurement, dehydration and liquids removal, and ultimate redelivery to ANR's mainline interstate transportation system. For purposes of jurisdiction, these lines currently, and will continue to, perform an interstate transmission function.[79]

97. Line 8827, also part of the northern set of facilities, is a 4.2-mile, 10-inch diameter line that gathers gas from WC Block 165 and delivers it to a subsea tie-in with Line 13646 at WC Block 187. Line 13646 is a 4.9-mile, 16-inch diameter line, which previously gathered gas from WC Block 187 and still delivers gas from Line 8827 to 30-inch diameter Line 4659 at the WC Block 167 platform, for transmission to the Grand Chenier Plant. The 20-inch diameter, 23.2-mile Line 5996 gathers gas from WC Block 239, meanders near or across previously-producing platforms at WC Block 222, WC Block 224, WC Block 205, and WC Block 197, and delivers the gas to the 30-inch diameter mainline at the WC Block 171 platform. The geographic configuration and lengths and diameters of Lines 8827, 13646, and 5996 are consistent with a gathering function in the context of offshore facilities. Although no wells are connected to these lines, we find that a lack of well connections along the length of the facilities is attributable to the nature of offshore drilling, where gas from numerous wells is

[79] At the Grand Chenier Plant, ANR will retain all facilities downstream of the unaffiliated third party electronic measuring system, while all facilities upstream of the electronic measuring system are to be transferred to TC Offshore. The facilities to be transferred were originally constructed as a Section 2.55(a) facility, thus subject to the Commission's jurisdiction but not certificated. *Michigan Wisconsin Pipeline Company*, 4 FERC ¶ 61,028 (1978).

aggregated on individual platforms for delivery onshore.[80] Thus, we conclude that Lines 8827, 13646, and 5996 perform a gathering function, exempt from the Commission's jurisdiction under the NGA.

98. As stated above, the southern set of the Grand Chenier System is composed of non-contiguous pipeline segments all feeding into HIOS. High Island Area (HIA) Block A-264 is the point where the three legs of the HIOS system feed into the central point of aggregation. In *HIOS*, the Commission declared that "the subject pipeline facilities located in and upstream of HIA Block A-264, except for the compression-related facilities located in HIA Block A-264, are gathering facilities exempt from the Commission's jurisdiction pursuant to NGA section 1(b)."[81] All pipeline facilities located upstream of gathering facilities must function as gathering or production facilities, because interstate transmission service cannot feed into a gathering system.[82] Thus, we find that all of the southern Grand Chenier System pipeline segments (other than those idle segments noted on Appendix A, Table 1) are performing a nonjurisdictional gathering function because they are all located upstream of HIOS' gathering system.

99. Our findings concerning the jurisdictional functions of the individual pipeline segments in the Grand Chenier System are summarized in Appendix A, Table 2 of this order.

b. <u>The Patterson System</u>

100. For the purposes of this discussion, we have divided the Patterson System into two parts – the Patterson-West and Patterson-East Systems. The Patterson-West pipeline facilities extend from the Eugene Island Area (EIA) Block 199, across EIA Block 63 without any interconnection, to a subsea interconnect with the 20-inch Line 30002 at EIA Block 34, and then continue to the onshore Patterson Station. In addition, the Patterson-West System is operationally independent because it does not have any connections to the Patterson-East System. The Patterson-East System consists of pipeline facilities feeding into the compressor station at EI-188, and the pipelines that head north to the Patterson Station, passing near the EIA 63 platform, and connecting subsea with the 12-inch gathering Line 30006 from EIA Block 63. The Patterson East System does not interconnect with any of the Patterson-West facilities.

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[80] *See Trunkline Gas Co.*, 67 FERC ¶ 61,256, at 61,859 (1994).

[81] 128 FERC ¶ 61,292 at Ordering Paragraph A.

[82] *See generally Jupiter*, 121 FERC ¶ 61,157 at P 8.

101. In regard to the Patterson-East System, there are compressors on the EIA Block 188-B platform. At that platform, the Patterson-East System takes on the characteristics of the inverted Y configuration common to central points of aggregation. Upstream of the compressors are six lines. Downstream of the compressors are Lines 3550 and 5324, both 30-inch diameter lines, 29.9 and 30.9 miles in length, respectively, which tie in to Line 4246, a 30-inch diameter, 10.8-mile long line at a subsea connection at EIA Block 63 – connected with the facilities at the EI-63 platform only by the 12-inch gathering Line 30006. Line 4246 connects to a final subsea connection at EIA Block 34 with Line 30001, which extends 27.3 miles to the Patterson Station. The only other connections in the 68 miles of 30-inch line from the EIA Block 188-B platform to the Patterson Station are with three third-party gathering lines at EIA Blocks 125 and 146, an ANR 12-inch line from the wells on the EIA Block 63 platform, and a 10-inch line from Ship Shoal Block 105 to a subsea connection at EIA Block 165, all of which are currently and will remain functionalized as gathering.

102. In *Sea Robin*, we found compression facilities located at the central point of aggregation, where two upstream gathering legs delivered gas, to be jurisdictional transmission facilities, stating, "[t]he location of compressors often serves as an indicator of transportation because compression is usually required to transport large volumes of gas over substantial distances."[83] Similarly, in *HIOS*, we stated that the compression on three platforms in HIA Block A-264 has physical and geographical characteristics typical of compression found on large-diameter lines transporting high volumes of gas over relatively long distances. The compression was also located at a central point of aggregation. Thus, we found that HIOS's compression-related facilities located on the three platforms primarily performed a transmission function subject to the Commission's jurisdiction.[84] The *Sea Robin* and *HIOS* circumstances are similar to those here. The EIA Block 188-B platform serves as a central point of aggregation for six lines upstream of the platform: Lines 4254, 4255, 5753, 10822, 15496, and 2315. In addition, the compressor located on that platform performs the compression necessary for further transportation for the substantial 68-mile distance to the Patterson Station. For these reasons, we find that the compressor located on the EIA Block 188-B platform and all the downstream pipeline segments extending to the Patterson Station are performing a jurisdictional transmission function.

103. The Patterson-East System upstream of EIA Block 188, which collects gas at the EIA Block 188 B platform, consists of pipeline segments ranging from 107 feet to

[83] *Sea Robin*, 87 FERC at 62,430.

[84] *HIOS*, 128 FERC ¶ 61,292 at P 26.

43.4 miles in length and 8 to 30 inches in diameter. The upstream lines rely solely on wellhead pressures to move the gas collected to the platform and, at the platform, the line feeds into a compressor which, as discussed above, discharges into a large pipeline that transports the gas aggregated at the platform to shore for processing. The lengths or diameters of these segments are not inconsistent with a gathering function,[85] because there are smaller lines from wells located along the full lengths of those segments. With respect to the 24- to 30-inch diameter lines, the size of the facilities reflects the original productivity of the wells and large volumes of gas that were to be collected at the time the lines were authorized for construction and operation.[86] Thus, we conclude that the size of the facilities is not inconsistent with a gathering function.[87]

104. The Patterson-East facilities contain longer segments that exhibit a spine and rib configuration along their lengths. The applicants identified a minimum of 35 connections consisting of receipt points, ANR gathering facility connections, and third party gathering facility connections.[88] Further, the upstream lines' operating pressure of 700 to 1,300 psig, which is supported by pressures at the wellhead, is not inconsistent with a gathering function.[89] As previously stated, "[w]e adhere to no bright line test regarding size and

[85] Line 4253, the system's largest line upstream of EIA Block 188-B, is a 30.3-mile long, 30-inch diameter line, as large as many offshore pipelines in shallow waters found to be jurisdictional transmission facilities. *See, e.g.*, *Sea Robin Pipeline Co.*, 71 FERC ¶ 61,351, at 62,396-99 (1995), *reh'g denied*, 75 FERC ¶ 61,332 (1996) (stating 20-inch and larger diameter pipes, in the absence of countervailing factors, are generally indicative of a transportation function). However, offshore pipelines in shallow waters that were longer than 22 miles and 30 inches in diameter have also been found to be gathering facilities. *See, e.g.*, *Transcontinental Gas Pipe Line Corp.*, 97 FERC ¶ 61,296, at 32,385-86 (2001) (finding that facilities consisting of over 41 miles of 30-inch pipeline as gathering).

[86] The system was designed to transport over 1.2 Bcf per day.

[87] *See, e.g., Tennessee Gas Pipeline Co*., 124 FERC ¶ 61,128, at P 13 (2008) (finding that a 30-inch diameter line reflected the productivity of the wells and large volumes of gas that were to be collected at the time the line was authorized for construction and was not inconsistent with a gathering function).

[88] Applicants' November 30, 2011 Data Response No. 29.

[89] *Tennessee Gas Pipeline Co*., 124 FERC ¶ 61,128 at P 15 (stating an "operating range of 800 to 1,200 psig is consistent with the higher operating pressure of offshore gathering facilities").

operating pressure of offshore facilities. Facilities as large as typical transmission lines may nevertheless be found to be gathering when other primary function factors demonstrate characteristics consistent with gathering."[90] The lack of compression or processing facilities on this portion of the system is also indicative of a gathering function.[91]

105. In light of the above discussion, we find that all the Patterson-East facilities upstream of the compressors at the EIA Block 188-B platform, including all the pipeline segments listed in Appendix A, Table 3 identified by ANR for abandonment by sale to TC Offshore, but excluding those idle facilities identified in Appendix, A, Table 1 above, to be performing a nonjurisdictional gathering function.

106. Similarly, EIA Block 34 has characteristics indicating that it is a central point of aggregation for the Patterson-West System. That system extends from South Marsh Island Blocks 58, 61, and 76 to EIA Block 34. (Segment 30002 transports gas from EIA Block 34 onshore to the Patterson Station.) The segments upstream of EIA Block 34 range from 6 to 20 inches in diameter and in length from 700 hundred feet to 40.5 miles. The applicants identified 12 receipt points arrayed along the length of this portion of the system, which gives it a spine and rib configuration. As discussed above, the lengths or diameters of the pipeline segments are not inconsistent with a gathering function in an offshore environment. The operating pressures of 700 to 1,100 psig and the lack of compression facilities on the system are also indicative of an offshore gathering function. Thus, we find that all facilities identified by ANR from the EIA Block 34 subsea connection with Line 30002 upstream to and beyond the EIA Block 199 platform to be performing a nonjurisdictional gathering function. Appendix A, Table 3 summarizes our findings concerning the function of those pipeline segments in the Patterson System which are proposed to be abandoned by sale to TC Offshore.

c. <u>The Central Texas Gathering System</u>

107. In *Transcontinental Gas Pipe Line Corporation (Central Texas),*[92] we found that the Brazos Area (Brazos) Block 538 platform on the Central Texas Gathering System is similar to the central point of aggregation described in *Sea Robin*, and functions as an aggregation point that may be interpreted as indicating a demarcation between the gathering and transmission functions. The collection or gathering of gas occurs primarily

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[90] *Trunkline Gas Co.*, 95 FERC ¶ 61,337, at 62,238 (2001).

[91] *See, e.g., Quicksilver Resources, Inc.*, 122 FERC ¶ 61,115, at P 16 (2008).

[92] *Central Texas*, 96 FERC at 61,441.

upstream of the platform, while transportation occurs through the looped 30-inch diameter Lines 7262 and 30007 downstream from that point. Thus, ANR's Central Texas Gathering System facilities upstream of the Brazos Block 538, including Lines 6022 and 9573, perform a nonjurisdictional gathering function. Line 6560, an 8-inch diameter, 2.3-mile long line gathering gas from the Brazos 451 A platform to a subsea tie-in to the 30-inch diameter transmission Line 7262 at Brazos Block 474 also functions as a gathering facility. Appendix A, Table 4 summarizes our findings concerning the jurisdictional function of those pipeline segments in the Central Texas Gathering System, which are identified by the applicants to be abandoned by sale to TC Offshore.

d. Off-System Facilities

108. ANR and TC Offshore have identified a set of non-contiguous facilities, included in Appendix A, Table 1, as Off-System Facilities.[93] All of the facilities listed as Off-System Facilities have been identified by the applicants as not being in use. Thus, there is no basis upon which to perform an analysis of the functions of these facilities. Earlier in this order we indicated we would not be issuing a certificate to TC Offshore that covered these facilities.

B. Certificate of Public Convenience and Necessity

109. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.[94] 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. While TC Offshore does not contemplate any construction of new facilities, the Commission has found it appropriate to apply its Certificate Policy Statement in cases where a company seeks to acquire significant existing facilities.[95]

110. As explained in the Certificate Policy Statement, in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. A proposal to acquire facilities with no related

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[93] TC Offshore Application Exhibit F, Map 5.

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

[95] *See, e.g., Trunkline Gas Co., LLC,* 132 FERC ¶ 61,069 (2010); *BGS Kimball Gas Storage, LLC*, 117 FERC ¶ 61,122, at P 19-23 (2006).

construction of facilities, such as in this proceeding, does not educe the Certificate Policy Statement's concerns with overbuilding, disruptions of the environment, and the exercise of eminent domain.[96]

111. The threshold requirement under the Certificate Policy Statement, that a pipeline must be prepared to financially support the project without relying on subsidization from existing customers, is however equally applicable to acquisitions involving no new construction. Similarly, whether the applicant has made efforts to eliminate or minimize any adverse effects the proposal might have on the applicant's existing customers and existing pipelines in the market and their captive customers is also relevant to our evaluations.

112. As a new natural gas company, TC Offshore has no existing customers who may be affected by the proposal. Thus, there is no subsidization possible and the threshold requirement of the Certificate Policy Statement is satisfied. Further, no firm shippers or other pipelines in the market area have protested TC Offshore's proposal. The proposal will allow offshore supply choices to remain available for other pipelines in the market area and their customers. In addition, TC Offshore states that producers will continue to have access to the network of offshore facilities to attach new supply as well as to maintain existing throughput.

113. Based on the benefits the proposed project will provide to the market (primarily, continued access for offshore supplies) and the lack of adverse effects on existing customers and other pipelines, we find, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires the approval of TC Offshore's proposal to acquire and operate the facilities to be abandoned by ANR, subject to the conditions described in this order.

C. Costs of Service and Initial Rates

1. Rate Base

114. TC Offshore proposes a total jurisdictional rate base underlying its proposed initial rates of approximately $58,484,000. For rate purposes, TC Offshore has functionalized $2,816,000 as gathering and $55,668,000 as transmission. TC Offshore states that the gross plant amount was brought over from and functionalized as it was on ANR's books, and that TC Offshore does not propose any changes to the functionalization.

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[96] *See, e.g., Cimarron River Pipeline, LLC*, 124 FERC ¶ 61,069, at P 40 (2008).

115. Indicated Shippers claims that the bulk of the Net Book Value shown in ANR's abandonment application is reflected in TC Offshore's Net Plant, but that approximately 40 to 53 percent of the Net Plant is unrelated to actual pipeline facilities.[97] Indicated Shippers asserts that if not for these intangible costs, TC Offshore would have no facilities to depreciate. Indicated Shippers questions how TC Offshore allocated intangible plant between gathering and transmission functions, claiming that it does not appear TC Offshore used gross plant as the allocation factor. Indicated Shippers also argues that TC Offshore's proposed capitalization of organization costs, miscellaneous intangible plant, and helicopters does not benefit shippers, is excessive, or is for facilities that are not in use. Indicated Shippers states that the $8.9 million for Organization Cost and Miscellaneous Intangible Plant appears to have been created specifically for the transfer of these assets to TC Offshore, because the costs were newly added to ANR's gas plant. Indicated Shippers states that TC Offshore has failed to explain why it could not have used the commercial system already in place by ANR. Indicated Shippers also states that if TC Offshore's parent company wants to develop new commercial systems, the costs of such systems should be spread across all of the parent company's facilities. Indicated Shippers questions the costs associated with the acquisition of TC Offshore's SCADA system. Indicated Shippers also questions TC Offshore's inclusion of costs related to helicopters used to transport employees to offshore platforms. Specifically, they question whether ownership and operation of the helicopters is the most cost-effective method for employee transportation and assert that TC Offshore has failed to establish that the helicopters are needed for transportation to the platforms transferred to TC Offshore.

116. TC Offshore contends that Organization Cost and Miscellaneous Intangible Plant consists of organization costs to establish TC Offshore as a company and the costs associated with developing its commercial transactional system. TC Offshore asserts that these costs could not have been included in ANR's gas plant, as they did not exist until the creation of TC Offshore. TC Offshore contends that these costs are properly included in its cost of service as they were necessary to the formation of a new Commission-regulated entity.

117. Indicated Shippers and Apache state that TC Offshore has not provided sufficient information to determine how it allocated costs between the gathering and transmission functions of the facilities in determining the rates in its tariff. Apache asks the

[97] In its April 24, 2012 Filing, Indicated Shippers revises its estimate of the portion of TC Offshore's proposed cost of service that is unrelated to pipeline facilities in its initial protest comments upward. ($31.3 million out of the rate base of $58.5 million, or approximately 53 percent.)

Commission to require additional information about where gathering stops and transmission begins.

Commission Response

118. TC Offshore proposes to carry over the gross plant, depreciation, and negative salvage values reflected on ANR's books as of the time it acquires the ANR offshore facilities. As discussed above, we addressed the Indicated Shippers' issues with regard to how ANR maintained these accounts, and found no reason the question ANR's valuations.[98] Therefore, we will accept the values on ANR's books as the basis for TC Offshore's proposed gas plant accounts.[99] We discuss below adjustments to those base numbers.

119. Under the Commission's Uniform System of Accounts, costs incurred in getting an entity ready to do business, such as, preparation of certificates and tariffs and obtaining permits are properly includable in Account 301, Organization. In addition, the costs incurred for the development of a new transactional system for daily business functionality such as contracting, capacity release, nominations, scheduling, allocations, and invoicing are properly includable in Account 303. TC Offshore has properly classified the $8.9 million of costs associated with activities as gas plant in service in accordance with the Commission's Uniform System of Accounts. Further, we find the level of proposed closing costs and additions to plant reasonable, given the cost of starting a new interstate pipeline company.[100]

120. However, as discussed above, we have reviewed the facilities TC Offshore proposes to acquire and find no evidence that the facilities listed in Appendix A, Table 1 to this order will be used by TC Offshore to provide any service. Therefore, TC Offshore cannot include costs related to those facilities in its initial rates. Accordingly, we will require TC Offshore, as part of its initial rate compliance filing, to remove the facilities identified in Appendix A, Table 1, from its rate base. For accounting purposes, these facilities, except for Eugene Island 371, are to be classified in Account 121, Nonutility

[98] Table 2 of its application includes ANR's numbers assuming a May 1, 2012 effective date for TC Offshore.

[99] We address ANR's and TC Offshore's journal entries for the transferred assets below.

[100] *See Iroquois Gas Transmission System, LP.*, 53 FERC ¶ 61,194, at 61,744 (1990) (Commission affirmed project development costs, including legal, financial closing, engineering, design, and overheard costs, are properly included in rate base).

Property, because they are not currently used to provide gathering or transmission services and TC Offshore has not indicated that it has a definite plan to use these facilities to provide gathering or transmission service in the future. The contribution in aid of construction (CIAC) related to Eugene 371 must be removed from plant in service by crediting Account 101, since the interconnect to which this CIAC relates has been disconnected and is no longer used. TC Offshore should assess all available evidence bearing on the likelihood of rate recovery of these costs in periods other than the period that they would traditionally be charged to expense. If, based on such assessment, TC Offshore determines that it is probable[101] that these costs will be recovered in rates in future periods, it may record a regulatory asset in Account 182.3, Other Regulatory Assets, for such amounts.[102] However, if TC Offshore based on available evidence determines that these costs are not probable of future rate recovery, then TC Offshore must retire such costs by charging Account 426.5, Other Deductions, for the unamortized portion of the CIAC and Account 111 with the amortized portion of the CIAC. Further, as also discussed above, we have determined that certain of the facilities which TC Offshore had functionalized for rate purposes as transmission actually perform a gathering function. There, we will require TC Offshore to refunctionalize the original cost of those facilities from transmission to gathering, effective the date of this order. In addition, TC Offshore must transfer the accumulated provision for depreciation associated with the refunctionalized property between functions in accordance with Gas Plant Instruction No. 12 of the Commission's Uniform System of Accounts.

2. **Cost of Service**

121. TC Offshore proposes a $42,204,000 cost of service. TC Offshore states that the cost of service is based on actual and projected cost data through April 30, 2012. TC Offshore states that it used ANR's current capital structure of 68.39 percent equity and

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[101] The term "probable," as used in the definition of regulatory assets refers to that which can reasonably be expected or believed on the basis of available evidence or logic but is neither certain nor proved. *Revisions to Uniform System of Accounts to Account for Allowances under the Clean Air Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2-A*, Order No. 552, FERC Stats. & Regs. ¶ 30,967 (1993).

[102] If rate recovery of all or part of these costs are later disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, in the year of disallowance. TC Offshore must also reassess at each reporting date the recoverability of the regulatory asset and write-off any additional portions which are not probable of future recovery from Account 182.3 to Account 426.5.

31.61 percent debt, as reflected in ANR's second quarter 2011 Form 3Q. TC Offshore proposes a return on equity (ROE) of 12.99 percent and debt cost of 9.05 percent. The cost of service was functionalized between gathering and transmission through direct assignment of costs where applicable. Costs that were not directly assignable were functionalized based upon the gross plant ratio of the respective functions. TC Offshore credited actual and projected liquids revenues of $5,195,000 for the 12 months prior to the in-service date to the cost of service to derive a cost of service of $37,008,000 recoverable through transmission services.

122. Indicated Shippers asserts that TC Offshore has failed to provide sufficient information to support the liquids revenue credits. Because TC Offshore states that liquid revenue credits are functionalized between Gathering and Transmission based on gross plant, Indicated Shippers questions whether a postage stamp rate for all facilities in the Southeast Area is just and reasonable. Indicated Shippers asserts that the bulk of the liquid revenue credits should be allocated to those facilities used to provide the service on a *pro rata* basis. Indicated Shippers also questions whether TC Offshore has indicated what services are included in estimated handling revenues and concludes that TC Offshore has not demonstrated the basis for its separation and dehydration rates. Indicated Shippers states that although the Patterson separation facilities are classified as transmission facilities, TC Offshore argues, without sufficient legal basis, that its rates for liquids separation and dehydration services do not require FERC approval. Indicated Shippers also states that TC Offshore has not established how its liquid and condensate handling charge was determined or indicated whether it applies its liquid transportation rate to the transportation of condensate. Indicated Shippers also raises a concern with whether TC Offshore and ANR could charge a liquids transportation rate on the same liquids.

123. Indicated Shippers states that TC Offshore's data responses raise questions as to whether it has fully credited separation and dehydration revenues to its cost of service, and whether the X-64 revenues received from HIOS fully recover the costs of operating the Grand Chenier separation and dehydration facilities. Indicated Shippers states that Rate Schedule X-64 relates to the gas measurement, liquid separation, dehydration and related services for HIOS at the Grand Chenier facilities. Indicated Shippers asserts that this is a cost of service rate schedule established by a settlement in Docket No. RP08-97 and that the cost of service tariff is intended to cover 66.6 percent of the total Grand Chenier cost of service, and provides HIOS the right to use capacity. Indicated Shippers avers that TC Offshore has not demonstrated that the revenues received from HIOS cover 66.6 percent of the cost of service, and asserts that TC Offshore must bear the cost of operating the Grand Chenier facilities that is not otherwise covered by the revenues received from HIOS.

124. Further, Indicated Shippers states that TC Offshore proposes a rate design where the full cost of service of Grand Chenier facilities is included in its overall transmission

cost of service to which TC Offshore proposes to credit an allocation of revenues received from X-64 and other Liquid revenues. Indicated Shippers states that ANR claimed in its rate case filing in Docket No. RP07-99 that its Grand Chenier cost of service was $6.3 million of which 66.6 percent was attributed to HIOS. Indicated Shippers asserts that TC Offshore has failed to provide any support for the inclusion of Grand Chenier (or at least the 66.6 percent attributable to HIOS) in its overall transmission cost of service.

125. Indicated Shippers also asserts that there is no basis for calculating a negative salvage expense for Net Plant unrelated to actual pipeline facilities. Indicated Shippers also asserts that TC Offshore has failed to provide substantial evidence to support its gathering and transmission negative salvage expenses.[103]

126. Apache asserts that TC Offshore has provided insufficient information describing how it arrived at the cost elements included in the application, including capital structure and ROE. Consequently, Apache requests that the Commission deny the proposed rates or require TC Offshore to provide additional information on the basis for the cost elements. Apache urges the Commission to adjust TC Offshore's proposed 12.99 percent ROE downward, stating that the Commission's decision in *Portland Natural Gas Transmission System*[104] is inapplicable to TC Offshore because the *Portland* decision specifically states that the ROE approved in the order reflects the effects of the financial crisis that occurred in late 2008 and early 2009.

127. TC Offshore states that its proposed ROE is fully consistent with the Commission's policy that the ROE for a pipeline seeking a certificate to operate existing interstate facilities should be set based on the last ROE approved by the Commission in a litigated rate case under section 4 of the NGA.[105]

128. Indicated Shippers states that TC Offshore has not supported its proposed $18.9 million in Operations and Maintenance (O&M) expenses and Administrative and General (A&G) expenses. Indicated Shippers contends that TC Offshore asserts that these expenses are based on "actual and projected" costs for the 12-month period ending April 30, 2012 (Exhibit P at 1), but that TC Offshore does not indicate how "projected" costs were derived. For example, Indicated Shippers asserts that TC Offshore does not

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[103] Indicated Shippers April 24, 2012 Filing at 9.

[104] Apache Protest at 7-8 (citing *Portland Natural Gas Transmission Sys.*, 134 FERC ¶ 61,129, at P 247 (2011) (*Portland*)).

[105] TC Offshore Answer at 3 (citing 15 U.S.C. § 717c (2006)).

indicate whether it will have its own employees or whether it will contract with ANR to operate its system for an administrative fee that includes an additional profit margin for ANR. Indicated Shippers asserts that TC Offshore allocated corporate overhead based on the gross plant ratio of the facilities to be transferred to TC Offshore, but that TC Offshore does not indicate what gross plant the comparison is made against.

129. Indicated Shippers states that between $8 and $9 million of TC Offshore's proposed cost of service of $36.9 million would be related to return, tax allowance, and depreciation on these intangible facilities for which there may be little justification for inclusion in TC Offshore's cost of service.

130. TC Offshore reiterates that its O&M and A&G expenses are based on actual and projected costs for the 12 months ending April 30, 2012. These costs include, among other things, outstanding repair costs to certain offshore facilities damaged by Hurricane Ike and the reasonable costs associated with staff that will be necessary to manage TC Offshore's operations.

131. Indicated Shippers contends that TC Offshore proposed a credit for liquids transportation of $5,195,000, which is based on actual and projected liquids transportation revenues. However, Indicated Shippers continues, these estimates are unsupported because TC Offshore does not indicate what adjustments or projections were made. Indicated Shippers concludes that TC Offshore has not supported its proposed cost of service and rate base and that there is probative data indicating that the proposed rate base and cost of service are unjust and unreasonable.

132. TC Offshore states that its projection is based on historic ANR volumes, as well as recent price fluctuations and expected future transportation volumes.

Commission Response

133. Subsequent to the filing of its application, TC Offshore filed responses to Commission data requests, providing additional details in support of its proposed cost of service.[106] TC Offshore states that it started its estimates using ANR's actual costs, then made various adjustments based on projections through its projected in-service date of May 1, 2012. For O&M and A&G, TC Offshore projected a total of $18,902,000.[107]

[106] In NGA section 7 certificate proceedings, initial rates are set under the less-demanding public convenience and necessity standard and are not adjudicated under NGA section 4's more rigorous just and reasonable standard. *See*, *Atlantic Refining Co. v. Public Serv. Comm'n of New York*, 360 U.S. 378, 390-91 (1959).

[107] TC Offshore Application at Exhibit P, p. 3.

This projection compares to ANR's actuals of $17,879,772 for the 12-month period November 2010 through October 2011,[108] a difference of approximately $1,000,000. TC Offshore identifies approximately $1,000,000 in new O&M and A&G costs, most related to its creation as an independent company.[109] The sum of 12-month actuals and incremental O&M costs approximates TC Offshore's more elaborate cost estimates. Thus, we find TC Offshore's costs estimates to be reasonably supported.[110]

134. TC Offshore proposes negative salvage rates of 3.122 percent for gathering plant and 0.985 percent for transmission plant. Indicated Shippers claim that these figures are unsupported. The Commission agrees. TC Offshore made no attempt to support these negative salvage figures. In TC Offshore's compliance filing, the Commission requires TC Offshore to use the last approved negative salvage rates established for these facilities: 0.23 percent for both gathering and transmission plant.[111]

135. Indicated Shippers also questions TC Offshore's liquid revenue credit of $5,195,000, and questions whether the revenue credits from Rate Schedule X-64 recover the allocable costs. TC Offshore states that it arrived at its projection by starting from actuals and making only minor adjustments to reflect a disconnection from its system and a five percent reduction of liquid transportation and condensate handling revenue for a third of the year.[112] TC Offshore states that it projected Rate Schedule X-64 revenue consistent with the terms of that contract. We accept TC Offshore's liquid revenue credit estimate to be reasonably supported. Indicated Shippers questions whether the Rate Schedule X-64 revenues recover its portion of the Grand Chenier Plant costs. Rate Schedule X-64's rates were established by a settlement in ANR's Docket No. RP07-99. This settlement was a "black box" settlement that determined the parties' cost and revenue responsibility.[113] TC Offshore is proposing to step into ANR's position with

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[108] Applicants' November 11 Data Response No. 1.

[109] *Id.*, specifying $200,000 for additional pipeline integrity costs, $750,000 for additional operations staff, and $126,500 for additional commercial and gas control staff.

[110] As discussed below, TC Offshore will be required 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. Interested persons will have another opportunity to comment on the reasonableness of its costs at that time.

[111] ANR's Docket No. RP94-43 Settlement, Exhibit O.

[112] Applicants' November 11 Data Response No. 2(d).

[113] Applicant's November 11 Data Response No. 19(a)-(d).

regard to Rate Schedule X-64, and TC Offshore does not propose to change the terms of that settlement. Indicated Shippers has not argued that the Rate Schedule X-64 rates are no longer just and reasonable. We accept TC Offshore's proposal to continue applying the terms of the Docket No. RP07-99 Settlement.

136. Apache contends that TC Offshore did not support its capital structure. TC Offshore states that it used ANR's second quarter 2011 Form No. 3-Q information. We accept this source for TC Offshore's capital structure because ANR is the source of all the assets TC Offshore is acquiring, there is no proposal to change or add to these assets that will require contributions of new capital, and TC Offshore will be a wholly owned subsidiary of ANR. Apache also contends that TC Offshore's proposed 12.99 percent ROE should be reduced. Regardless of whether the financial crisis that occurred in late 2008 and early 2009 played a role in setting the ROE in the *Portland* decision, TC Offshore's proposed return on equity is below that recently approved by the Commission for other new pipelines.[114] In addition, TC Offshore forecasts no firm customers. This implies that TC Offshore's cash flow will be entirely dependent on throughput. TC Offshore forecasts that offshore production available to its system will decline. These forecasts provide additional support for TC Offshore's proposed ROE. We accept TC Offshore's proposal.

137. As discussed above, we have reviewed the physical function of the facilities to be acquired by TC Offshore and have found, as shown in Appendix A, Tables 2 through 4, that a number of the facilities that TC Offshore proposed to functionalize as transmission actually function as gathering facilities. Accordingly, we will require TC Offshore, as part of its initial rate compliance filing, to functionalize the costs of service related to its facilities consistent with our findings as identified in Appendix A, Tables 2 through 4.

138. In addition, as we have found no evidence that the facilities listed in Appendix A, Table 1 will be used to provide any service, we will require TC Offshore, as part of its initial rate compliance filing, to remove the costs of service related to the facilities identified in Appendix A, Table 1 from its costs of service.

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[114] *See Central New York Oil and Gas Co., LLC*, 134 FERC ¶ 61,035 (2011) (approving a ROE of 13.5 percent for an entity that, although not a new company, had proposed in its filing significantly transforming the services it provides); *ETC Tiger Pipeline, LLC*, 131 FERC ¶ 61,010 (2010) (providing an ROE of 14 percent); and *Bison Pipeline LLC*, 131 FERC ¶ 61,013 (2010) (providing an ROE of 14 percent).

3. Throughput and Billing Determinants

139. TC Offshore proposes reservation billing determinants of 286,261 Dth per day for gathering and 634,620 Dth per day for transmission. The proposed usage billing determinants are 104,485,427 Dth per year for gathering and 231,636,196 Dth per year for transmission. TC Offshore states that its proposed billing determinants reflect average historical utilization for the 12-month period ending May 31, 2011, as adjusted. All applicable ANR Rate Schedules GF-1, PTS-1, PTS-2, PTS-3, ITS, and FTS-1 throughput data were used for this derivation. TC Offshore states that it made adjustments to reflect known and measurable changes occurring prior to its projected in-service date, including abandonments, contract terminations, and pending settlement agreements. TC Offshore also adjusted capacity utilization downward six percent for forecasted production declines. For cost allocation purposes, TC Offshore also included an additional 50,000 Dth per year for Rate Schedule IPLS. Notwithstanding its imputed firm reservation billing determinants, TC Offshore states that it expects all future transportation on TC Offshore will be provided through interruptible service.

140. Indicated Shippers contends that TC Offshore's Exhibit N and ANR's 2010 Form No. 2 transportation and gathering throughput data shows significant discrepancies. Indicated Shippers asserts that this appears to indicate that ANR's remaining Southeast Area Facilities would continue to transport substantial volumes distinct from the facilities proposed to be abandoned to TC Offshore. Indicated Shippers maintains that this could indicate that all or a substantial portion of the TC Offshore throughput will also need to be transported on ANR's remaining facilities, and thus require payment of TC Offshore's incremental rates on top of ANR's rates. As for the gathering discrepancy, Indicated Shippers speculates that the data could mean that ANR proposes to retain some offshore gathering facilities or that TC Offshore is proposing to functionalize some of the facilities.

141. TC Offshore contends that the supposed discrepancy between gathering throughput data reflected in its Exhibit N and ANR's 2010 Form No. 2 results from different definitions. TC Offshore avers that ANR's Form No. 2 gathering throughput reflects only gathering provided under ANR's Rate Schedule GF-1, and does not reflect gathering throughput associated with Rate Schedules ITS and PTS-3. TC Offshore asserts that it will provide transportation service that will move offshore, unprocessed gas to onshore processing/treating facilities. With regard to the issue of whether ANR is retaining any gathering facilities in the Southeast, ANR states that it will have no gathering facilities in the Southeast Area if the abandonment is approved.[115]

[115] Applicants' Data Response No. 4(a)

142. In response to TC Offshore's statement that ANR's 2010 Form 2 did not include gathering throughput bundled in the 2010 ITS and PTS-3 throughput or gathering throughput moved under Rate Schedule PTS-G, Indicated Shippers asserts that the gathering throughput is 171 percent greater than the design throughput used by TC Offshore in the calculation of its proposed gathering rate.

Commission Response

143. TC Offshore has explained the differences between its proposed billing determinants and ANR's Form No. 2 data. In addition, in response to our data requests, TC Offshore provided actual offshore throughput data by contract and system,[116] and reconciled their proposed billing determinants with actuals.[117] These explanations and data support TC Offshore's proposed billing determinants. We will accept the methods TC Offshore used to derive gathering and transmission billing determinants for calculating its initial rates.

144. Above, we found that several of the facilities that were formerly functionalized as transmission plant must now be functionalized as gathering. While this finding should not change the total reservation and commodity billing determinants for calculating the initial transmission rates, it may increase the gathering determinants. We will require TC Offshore, when it files its actual tariff, to reconcile billing determinants used to recalculate its initial rates consistent with the findings in this order.

4. Rates

145. TC Offshore proposes to offer four open-access transportation services: firm and interruptible transportation under Rate Schedules FTS and ITS, respectively, an interruptible park and loan service under Rate Schedule IPLS, and title transfer tracking under Rate Schedule TTS. TC Offshore projects that virtually all of its transportation services will be provided under its interruptible rate schedules. TC Offshore will provide pooling service under Rate Schedule TTS. TC Offshore proposes to assume ANR's Rate Schedule X-64.

146. TC Offshore proposes a monthly Rate Schedule FTS-1 recourse reservation rate of $2.2459 per Dth for gathering and $3.7275 per Dth for transmission. The resulting Rate Schedule FTS-1 delivery rates are $0.0016 per Dth and $0.0032 per Dth respectively. The Rate Schedule ITS-1 rates of $0.0755 per Dth for gathering and $0.1257 per Dth for

[116] Applicant's Data Response No. 36(a-d) Attachment 1.

[117] Applicants' Data Response No. 36(a-d) Attachment 1.

transmission are based on a 100 percent load factor equivalent of the Rate Schedule FTS-1 rates. The Rate Schedule IPLS rate of $0.1257 per Dth is equal to the ITS-1 rate for transmission. In deriving its billing determinants, TC Offshore states that it projected no firm customers. Thus, TC Offshore used average utilization for the 12 months ending May 31, 2011, as adjusted. All ANR services (GF-1, PTS-1, PTS-2, ITS, and FTS-1) were used for this derivation. TC Offshore states that it made adjustments to reflect changes occurring prior to the anticipated in-service date, including abandonments, contract terminations, pending settlement agreements, and capacity utilization adjusted downward six percent, on an annual basis to reflect forecasted declines in production. For cost allocation purposes, TC Offshore states that an additional 50,000 Dth per year was included in the billing determinants as projected units of service for Rate Schedule IPLS service.

147. Indicated Shippers questions whether a postage stamp rate for all facilities in the Southeast Area is just and reasonable. Indicated Shippers asserts that the bulk of the liquid revenue credits should be allocated to those facilities used to provide the service on a *pro rata* basis. Indicated Shippers asserts that TC Offshore has not justified a single, system-wide gathering rate versus separate gathering rates for each system, e.g. the Central Texas Gathering System. Indicated Shippers also questions whether TC Offshore has indicated what services are included in estimated handling revenues and concludes that TC Offshore has not demonstrated the basis for its separation and dehydration rates. Indicated Shippers states that although the Patterson separation facilities are classified as transmission facilities, TC Offshore argues, without sufficient legal basis, that its rates for liquids separation and dehydration services do not require FERC approval. Indicated Shippers states that TC Offshore has not established how its liquid and condensate handling charge was determined or indicated whether it applies its liquid transportation rate to the transportation of condensate. Indicated Shippers also raises a concern with whether TC Offshore and ANR could charge a liquids transportation rate on the same liquids.

148. Chevron requests that the Commission impose a five-year rate moratorium on TC Offshore. TC Offshore asserts that Chevron's request is fundamentally inconsistent with TC Offshore's right to make such filings pursuant to NGA section 4, and must be rejected.

Commission Response

149. TC Offshore has proposed postage stamp firm service rates based on a Straight Fixed-Variable cost allocation and rate design and unbundled services consistent with the Commission requirements. In addition, for new Rate Schedule IPLS, TC Offshore has also projected units of service. Indicated Shippers argues that TC Offshore has not justified its proposed postage stamp rate design. TC Offshore's postage stamp rate design is similar to ANR's Southeastern Area Zone rates in that there is no rate

distinction depending of the point of receipt within the zone. Postage stamp rate designs are not uncommon for interstate pipelines. Indicated Shippers suggest that separately stated rates for each System may also be just and reasonable. However, simply pointing out that costs could be allocated on a System-by-System basis is not sufficient basis for finding that TC Offshore's proposed postage stamp rate design is not appropriate.

150. Indicated Shippers argues that TC Offshore has not established how its liquid and condensate rates were determined, and whether TC Offshore could charge a liquids transportation rate. The Commission has no jurisdiction over the rates for the handling and transportation of liquids. In *Mobil Oil Corp. v. FPC*,[118] the court ruled that the Commission lacked jurisdiction over the rates for liquids transportation. Thus, while the Commission can allocate costs to liquids transportation for purpose of setting natural gas transportation rates, it cannot set the rates for the liquids transportation. TC Offshore's proposal to credit liquid revenues to the recoverable costs of service does allocate costs to liquid related services. We accept TC Offshore's proposal for recognizing liquid related services in its jurisdictional cost of service.

151. We will approve TC Offshore's proposed rate designs. However, due to our findings above regarding the actual facilities to be certificated, TC Offshore's initial rates will need to be recalculated. We will require TC Offshore, when it files its actual tariff, to recalculate its initial rates consistent with the findings in this order.

152. We deny Chevron's request to impose a five-year rate moratorium. Chevron fails to identify any reason as to why such a requirement is necessary, much less the legal bases for such a condition. Under the NGA, TC Offshore, unless it agrees otherwise, has the right to propose changes to its effective tariff and rates at any time.[119]

D. <u>Tariff Issues</u>

153. TC Offshore filed a *pro forma* FERC Gas Tariff setting forth the terms, conditions, and recourse rates under which it will provide open-access transportation services under Part 284 of the Commission's regulations. As stated above, TC Offshore will provide firm and interruptible services under Rate Schedules FTS and ITS, respectively, a park and loan service pursuant to Rate Schedule IPLS, and a title tracking service through which it proposes to effect pooling under Rate Schedule TTS. TC Offshore also filed FTS, ITS, IPLS, and TTS *pro forma* service agreements. TC Offshore requests negotiated rate authority for all of its services.

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[118] 483 F.2d 1238 (D.C. Cir. 1973).

[119] *See Northern Natural Gas Co.*, 135 FERC ¶ 61,024, at P 24 (2011).

154. We find that TC Offshore will need to make the specific modifications to the tariff as discussed below.

1. Fuel, Lost and Unaccounted For Gas

155. Section 6.29 of TC Offshore's tariff proposes a Transporter's Use charge that will be composed of two components. TC Offshore states that it will compare the actual system Transporter's Use to the Transporter's Use tendered by all shippers for the prior month (including any remaining over or under recovery from the preceding prior period). Separate comparisons will be made for: (1) fuel and other use gas; and (2) lost and unaccounted for gas, which is allocated volumetrically. TC Offshore will use these comparisons to determine the Prior Period Difference for the applicable period. TC Offshore will include the Prior Period Difference, whether positive or negative, in determining the Transporter's Use percentages for the next month. TC Offshore states that it will post the next month's Transporter's Use on its web site and fax the information to any shipper that requests the information. In addition, TC Offshore proposes to file an annual report with the Commission containing the calculations supporting the Transporter's Use charged in each of the past 12 months.

156. Indicated Shippers states that TC Offshore has failed to clearly indicate how its Fuel, Lost and Unaccounted For Gas rate is calculated. Indicated Shippers asserts that TC Offshore did not indicate how its rate of 0.5 percent was calculated or indicate if a shipper is charged a separate FL&U charge for gather and transmission or if the payment of one postage stamp FL&U rate covers both gathering and transmission on any segment of facilities to be transferred to TC Offshore. Indicated Shippers also asserts that TC Offshore has not indicated whether retrograde condensate is included in the liquids receipt volumes used to calculate the volumes received from shippers for the purposes of FL&U and that TC Offshore has failed to explain why its proposed fuel tracker and true-up is necessary.

Commission Response

157. We generally approve TC Offshore's Transporter's Use mechanism. However, TC Offshore does not propose an initial Transporter's Use retention rate for Commission review. Rather, TC Offshore proposes a formula to calculate the Transporter's Use retention percentage. That mechanism, if approved, will never result in TC Offshore proposing a rate change pursuant to NGA section 4. TC Offshore has not provided any documentation as to how it will actually perform the Transporter's Use calculations, including the allocation of actual system use between fuel and other gas and lost and unaccounted for gas, the method by which it will estimate future throughput, and the application of carrying charges on Prior Period Difference accruals. If we were to approve this mechanism as proposed, shippers will not have an opportunity to review or challenge the first or any subsequent Transporter's Use retention percentages or the

monthly estimates or calculation of subsequent retention percentages. There would be no opportunity for shippers to request suspension or the protection of a subject to refund condition. The burden of proof would be shifted away from TC Offshore and any NGA section 5 finding could only apply prospectively.

158. In the absence of any proposed initial Transporter's Use retention percentage, we will approve an initial retention percentage of zero. Tariff provisions providing for fuel, lost and unaccounted for gas tracker mechanisms are often short on the details of how individual components of the mechanism will actually work. Those details are usually seen and reviewed in periodic limited NGA section 4 filings. If TC Offshore wishes to change the approved initial Transporter's Use retention percentage, it may file an out-of-cycle limited NGA section 4 rate case pursuant to section 154.403 of the Commission's regulations.[120]

159. We also reject the proposed annual reporting requirement in section 6.29(d). TC Offshore may, in its tariff compliance filing required below, propose an annual limited NGA section 4 rate filing to re-establish the base Transporter's Use retention percentage.

160. Proposed section 6.29 is not the only place TC Offshore proposes an initial Transporter's Use retention percentage. At proposed section 6.1.55, TC Offshore provides that the Transporter's Use retention percentage will be zero for back haul transportation. TC Offshore does not explain how back haul transportation is factored into the calculations of Transporter's Use proposed at section 6.29, nor does TC Offshore explain why back haul transportation should not be subject to at least the lost and unaccounted for gas component of the Transporter's Use retention percentage. While we have approved rates that exempt shippers from fuel charges for backhauls on the basis that backhauls do not require compression, we have required pipelines to charge all shippers at least the lost and unaccounted for gas component of the fuel charge, even in cases where no fuel component is charged.[121] In *Mississippi River Transmission Corp.*, we rejected the pipeline's proposal to exempt shippers from charges for lost and unaccounted for gas in certain transactions ("Clay County transactions") that did not require compression. We found that the regulations do not permit pipelines to discount

[120] 18 C.F.R. § 154.403 (2011). *See also* 18 C.F.R. § 154.207 (2011) with regard to the timing of such filings.

[121] *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119 (2002) (*MRT*). *See also, Columbia Gas Transmission Corp.*, 101 FERC ¶ 61,378 (2002); *Texas Eastern Transmission, LP*, 101 FERC ¶ 61,120, at P 33 (2002); *Reliant Energy Gas Transmission Co.*, 100 FERC ¶ 61,290 (2002); and *ANR Pipeline Co.*, 99 FERC ¶ 61,240 (2002).

variable costs,[122] and since the charge for lost-and-unaccounted-for gas was a variable cost it could not be discounted.[123] Thus, we will require TC Offshore to assess back haul shippers at least the lost and unaccounted for component of the Transporter's Use retention percentage.

161. Finally, TC Offshore does not list the Transporter's Use or its application by service at proposed tariff sections 4.1 or 4.2 (the rate summary sections) as required by the Commission's regulations.[124] If the monthly Transporter's Use retention percentages are to be incorporated by reference from TC Offshore's web site, that web address should be provided. The web site must satisfy the Commission's requirement for publically accessible information from interstate pipelines.[125]

2. Negotiated Rates and Discounts

162. TC Offshore requests negotiated rate authority in section 6.25 of its tariff. Section 6.25(3) addresses TC Offshore's proposed rate treatment of negotiated rates discounted below the maximum rate. TC Offshore believes that the proposed language conforms in all respects with language previously approved in *Tennessee Gas Pipeline Co.*[126] and *Columbia Gulf Transmission Co.*[127]

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[122] *MRT*, 98 FERC at 61,352 n.6 (stating "In Order No. 436, the Commission announced that it was impermissible for a pipeline to provide service at a rate that would not allow it to recover the variable costs of the service. Section 284.10 of the Commission's regulations now codifies this policy, stating that the minimum rate 'must be based on the average variable costs which are properly allocated to the service to which the rate applies.'") *See also* 18 C.F.R. § 284.10(c)(4) and (5) (2011). *See generally, NorAm Gas Transmission Co.*, 84 FERC ¶ 61,006, at 61,021 (1998); *Koch Gateway Pipeline Co.*, 81 FERC ¶ 61,313, at 62,444 (1997); *Williams Natural Gas Co.*, 75 FERC ¶ 61,023, at 61,075 (1996); and *Florida Gas Transmission Co.*, 68 FERC ¶ 61,270 (1994).

[123] *MRT*, 98 FERC at 61,352.

[124] 18 C.F.R. § 154.108(d) (2011).

[125] 18 C.F.R. § 284.12 (2011).

[126] *Tennessee Gas Pipeline Co.*, 135 FERC ¶ 61,208 (2011) (*Tennessee*).

[127] *Columbia Gulf Transmission Co*., 133 FERC ¶ 61,078 (2010) (*Columbia Gulf*).

Commission Response

163. Section 6.25(3) Of TC Offshore's proposed tariff provides that:

> A discount adjustment to recourse rates for negotiated rate agreements shall be allowed to the extent that Transporter can meet the standards required of an affiliate discount-type adjustment including requiring that Transporter shall have the burden of proving that any discount granted is required to meet competition.[128]

164. Section 6.25(3) varies from tariff provisions approved in *Tennessee* and *Columbia Gulf* in that these tariffs provide that a "discount adjustment to recourse rates for negotiated rate agreements shall **only** be allowed to the extent that Transporter . . . ." (Emphasis added.) TC Offshore contends that the resulting recourse rate calculated by application of TC Offshore's tariff language is the same as that achieved by application of the tariff language previously approved in *Tennessee* and *Columbia Gulf*.[129] We are not assured by TC Offshore's statement. Removing the word "only" permits other standards to be used in achieving a discount adjustment for negotiated rates. As explained in *Tennessee*, the tariff provision establishes the burden of proof a pipeline must satisfy in order to obtain a discount-type adjustment for negotiated rate transactions in a section 4 rate case.[130] TC Offshore made no attempt to support why the Commission's standard should be modified. We will require TC Offshore to either remove section 6.25(3) or modify it consistent with that language accepted in *Columbia Gulf*.

165. Section 6.26 of TC Offshore's proposed tariff also provides the conditions under which TC Offshore may discount its rates below the maximum rates. In addition, at proposed section 7.1.4, TC Offshore proposes:

> Maximum rates, charges, and fees shall be applicable for the entitlements and quantities delivered pursuant to this Agreement unless Transporter and Shipper have agreed otherwise as referenced

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[128] Columbia Gulf Transmission Company's FERC NGA Gas Tariff, *Columbia Gulf Tariffs*, Gen. Terms and Conditions, Discounting, 2.0.0. *See also Tennessee,* 135 FERC ¶ 61,208 at P 162, wherein Tennessee agreed to insert the word "only" into its proposed standard for achieving a discount adjustment for negotiated rates.

[129] TC Offshore's Data Response No. 26.

[130] *Tennessee* 135 FERC at P 184.

> for **Firm Service** in the Further Agreement Section of this Agreement. (Emphasis added.)

166. This provision limits discounting from maximum rates to only firm services.[131] Section 284.10(c)(5) of the regulations requires pipelines to file maximum and minimum transportation rates for both firm and interruptible service.[132] At proposed section 4.1, TC Offshore does reflect maximum and minimum rates for interruptible services. However, proposed section 7.1.4's limitation to firm services forecloses prospective interruptible shippers from even requesting discounted service. If TC Offshore did engage in such negotiations, the resulting agreement for a rate that differs from the maximum rate would be a negotiated rate contract, requiring separate record keeping[133] and a separate filing with the Commission.[134] Thus, we will require TC Offshore to remove the limitation on discounted rates located at proposed section 7.1.4. Of course, TC Offshore may elect not to discount interruptible or any other services, provided it does so on a non-discriminatory basis.

167. TC Offshore's tariff lacks a statement as to the order of discounts for its rates and charges as required by the regulations.[135] We require TC Offshore to provide a statement in its tariff as to the order of discounts that it may provide.[136]

3. Force Majeure and Force Majeure Reservation Charge Credits

168. In section 6.7 of its tariff, TC Offshore proposes to adopt the same *force majeure* language as is currently effective in ANR's tariff. With regard to reservation charge credits in the event of a *force majeure* event, TC Offshore proposes at section

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[131] TC Offshore, in its Data Response 24, confirms this objective.

[132] 18 C.F.R. § 284.10(c)(5)(i) (2011).

[133] Proposed Section 6.25.3.

[134] Proposed Section 6.25.7.

[135] 18 C.F.R. § 154.109(c) (2011); *see in accord ANR Pipeline Co.*, 69 FERC ¶ 61,322, at 62,228 (1994), requiring ANR to place the order of discounts in its tariff.

[136] TC Offshore Data Response No. 24 states that it will provide its order of discounts if directed to do so.

5.1.3(1)(c)(ii) the "Safe Harbor"[137] method where reservation charges must be credited in full to the shippers after a 10-day grace period, during which no credit is due the shipper.

169. Apache protests TC Offshore's proposed *force majeure* definition and its impact on *force majeure* reservation charges credits. Apache contends that TC Offshore's proposed definition for *force majeure* contains items, such as "the necessity for making repairs or alterations to machinery or lines of pipe" which Apache contends are not true *force majeure* events because they are maintenance. Apache notes that, as TC Offshore's proposed tariff contains reservation charge crediting language for *force majeure* situations, the Commission should require TC Offshore to revise its *force majeure* definition to eliminate maintenance from *force majeure*.[138]

170. In its answer, TC Offshore states that it is willing to revise its definition of *force majeure* and remove any tariff reference to planned maintenance, consistent with Commission policy.

Commission Response

171. Section 6.7.1, in pertinent part, provides:

> *Force Majeure* shall also mean shutdowns for purposes of necessary repairs, relocation, or construction of facilities; failure of electronic data capability; breakage or accident to machinery or lines of pipe; the necessity for testing (as required by governmental authority or as deemed necessary by Transporter for the safe operation thereof), the necessity of making repairs or alterations to machinery or lines of pipe; failure of surface equipment or pipe lines; accidents, breakdowns, inability to obtain necessary materials, supplies or permits, or labor to perform or comply with any obligation or condition of service, rights of way; and any other causes, whether of the kind herein enumerated or otherwise which are not reasonably in Transporter's control.

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[137] *See Natural Gas Supply Assoc.*, 135 FERC ¶ 61,055, at P 17 (2011), which explains the two common methods for *force majeure* reservation charge credits.

[138] *Id*. P 20-23.

172. *Force majeure* events are "unexpected and uncontrollable events."[139] The Commission accepts TC Offshore's proposal in its answer to remove any reference to planned maintenance from its definition of *force majeure* as consistent with Commission policy.[140] The Commission notes that we do not consider any testing as required by governmental authority associated with normal and planned maintenance *force majeure*.[141] We require TC Offshore to modify its *force majeure* tariff language to remove references to planned maintenance, including associated testing.

4. Nomination Tolerance Threshold

173. Apache contends that TC Offshore proposes in section 6.5 of the tariff to reduce ANR's tolerance threshold for variations between nominated receipts and allocated receipts from ten to five percent without an adequate explanation as to why such a reduction is necessary.

174. TC Offshore asserts that its proposed five percent tolerance for variations between nominated receipts and allocated receipts is consistent with Commission policy and is operationally necessary on TC Offshore's system, given its lack of access to storage to address operational imbalances.

Commission Response

175. We accept TC Offshore's operational explanation as to why it reduced the operating tolerances from ten to five percent. We also note that in section 6.5(a), TC Offshore provides it will not adjust nominations unless it determines that the operational integrity of the system is threatened and it provides the offending shipper with 20 hours prior notice. Section 6.5 of the tariff provides a less onerous alternative to TC Offshore and the shippers to respond to threats to system integrity, as compared to the proposed Operational Flow Orders in section 6.8.

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[139] *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022, at 61,088 (1996) (Opinion No. 406), *order on reh'g,* Opinion No. 406-A, 80 FERC ¶ 61,070 (1997).

[140] *See Southern Natural Gas Co.*, 135 FERC ¶ 61,056, at P 22-28 (2011).

[141] *Texas Eastern Transmission, LP*, 138 FERC ¶ 61,126, at P 12 (2012); *Orbit Gas Storage, Inc*., 126 FERC ¶ 61,095, at P 68 (2009); *Tarpon Whitetail Gas Storage, LLC*, 125 FERC ¶ 61,050, at P 5 (2008); and *Florida Gas Transmission Co.*, 107 FERC ¶ 61,074, at P 28-29 (2004).

5. **Hurricane Surcharge**

176. TC Offshore's proposed Hurricane Surcharge would recover storm-related repair and maintenance costs over a three-year period from all transmission services. TC Offshore proposes to file a limited NGA section 4 annually for a surcharge to be effective January 1 of each year. The filing would include detailed information of all costs TC Offshore proposes to recover, with an explanation of how each expenditure qualifies for inclusion in the Hurricane Surcharge. Each filing would also include information detailing: (1) all revenues that TC Offshore collected during the prior 12 months; (2) all of the eligible costs that TC Offshore has incurred; and (3) any insurance proceeds or other recoveries, together with supporting work papers. The Hurricane Surcharge account will be credited or debited monthly by a carrying charge set at the Commission-prescribed interest rate. Because TC Offshore is not yet operational, it has not incurred hurricane-related damage. Therefore, TC Offshore proposes an initial Hurricane Surcharge of zero.

177. Indicated Shippers questions whether any of the facilities proposed to be transferred to TC Offshore are being replaced or repaired pursuant to funds already collected under ANR's Hurricane Surcharge Account. Indicated Shippers also questions whether the amounts collected by ANR will be transferred to TC Offshore's Hurricane Surcharge Account and whether ANR's Hurricane Surcharge will be terminated or otherwise reduced.

178. Apache urges the Commission to reject TC Offshore's proposed Hurricane Surcharge, protesting the Hurricane Surcharge mechanism and noting that TC Offshore has not incurred any hurricane repair costs.[142] Apache specifically contends that TC Offshore has provided no explanation for why it chose a 36-month recovery period.[143] Further, Apache continues, TC Offshore would retain the sole discretion to discontinue its hurricane surcharge, and then directly bill its customers for any remaining costs. Chevron also states that a hurricane surcharge, if implemented, should require TC

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[142] Apache cites *Southern Natural Gas Co.*, 127 FERC ¶ 61,003, at PP 28-29 (2009), where the Commission rejected a greenhouse gas cost tracker because the costs were speculative.

[143] Apache cites an Administrative Law Judge's (ALJ) finding for a 21.5 year recovery period in *Sea Robin Pipeline Co., LLC,* 133 FERC ¶ 63,009, at PP 197-198 (2010). However, the Commission overturned the ALJ and found Sea Robin's proposed 36-month period was acceptable. *Sea Robin Pipeline Co., LLC,* 137 FERC ¶ 61,201, at PP 42-51 (2011).

Offshore to act with the utmost urgency to fully restore any storm-damaged facilities and to timely restore service.

179. TC Offshore contends that the proposed hurricane surcharge mechanism is consistent with similar mechanisms approved by the Commission for use by other offshore pipelines. TC Offshore asserts that the mechanism will benefit customers by giving them notice of the intended method of collection of such costs, and by enhancing TC Offshore's ability to make necessary repairs and return its facilities to service promptly in the wake of hurricane damage. TC Offshore states the proposed 36-month recovery period is consistent with the 36-month recovery periods employed by other pipelines with hurricane surcharges and is considerably longer than some recovery periods approved by the Commission in other cases. TC Offshore asserts that longer recovery periods spread out costs, minimizing the impact to shippers as well as effectively recovering the costs from shippers that most immediately benefit from the work done — those on the system for the three years following the incurrence of the costs. TC Offshore asserts that Apache's claim that TC Offshore can at any time discontinue the hurricane surcharge and direct bill the remainder at its own discretion appears to be based on section 6.24(e)(4) of the proposed General Terms and Conditions, which provides that only when the amount in the hurricane surcharge account is less than $100,000, either positive or negative, may TC Offshore opt to direct bill or refund the remainder to shippers. TC Offshore contends that such an option allows for more efficient administrative handling when the credits or charges are small. TC Offshore further asserts that it must provide at least 30 days prior notice to shippers and the Commission before discontinuing the surcharge.

Commission Response

180. We see no reason to disallow the proposed Hurricane Surcharge mechanism just because TC Offshore has to date not incurred any hurricane related costs, given that its proposed Hurricane Surcharge is zero ($0.00 per dth). As for the concept of a hurricane surcharge, such mechanisms for storm related costs have become common in the pipeline industry.[144] TC Offshore is informing the public that it intends to charge a Hurricane Surcharge consistent with the proposed mechanism if such costs are incurred. If such

[144] *See e.g., High Island Offshore System, LLC*, 135 FERC ¶ 61,105 (2011); *Stingray Pipeline Co., LLC*, 127 FERC ¶ 61,308 (2009); *Discovery Gas Transmission LLC*, 122 FERC ¶ 61,099 (2008); *Chandeleur Pipe Line Co*., 117 FERC ¶ 61,250 (2006); *Colonial Pipeline Co.*, Oil Tariff Filing, Docket No. IS02-313-008 (July 2, 2008); and *ExxonMobil Pipeline Co.*, FERC Tariff 255-273, Docket No. IS06-344-000 (May 31, 2006).

costs occur and TC Offshore files a limited NGA section 4 filing to recover those costs, parties will have an opportunity to review the costs and make their positions known. Thus, we will accept TC Offshore's proposed Hurricane Surcharge mechanism.

181. Indicated Shippers argues that ANR should terminate or reduce its hurricane surcharge. However, ANR does not have a hurricane surcharge.[145] As for whether TC Offshore is including costs related to previous hurricane damage in its cost of service that would have been eligible for the Hurricane Surcharge, TC Offshore stated that there were no such costs.[146]

182. Section 6.24(f)(2) provides that, when TC Offshore files to revise its base rates, it may include unreimbursed Hurricane Surcharge costs in its cost of service. We will not make a predetermination in this proceeding that such a proposal is appropriate, or establish the burden of proof that TC Offshore or any protesting parties may have regarding such a proposal. If TC Offshore wishes to make such a proposal when it files to revise its base rates, it may do so. Section 6.24(f)(2) is not necessary to preserve TC Offshore's right to make such a proposal. Thus, we will require TC Offshore to remove section 6.24(f)(2) from its tariff.

183. Section 6.24(f)(4) provides "Any rate discount agreed to by [TC] Offshore shall not be considered a discount of the Hurricane Surcharge." We find that TC Offshore's proposal to make the Hurricane Surcharge not discountable is contrary to the Commission's regulations. Section 284.10(c)(5)(i) of the regulations requires pipelines to file maximum and minimum transportation rates for both firm and interruptible service.[147] Section 284.10(c)(4) of the regulations requires that the pipeline's minimum rate reflect only variable costs (i.e., costs that vary with the volume of throughput) and the maximum rate reflect both fixed (i.e., costs that remain constant regardless of the volume of throughput and are predominantly associated with capital investment in the pipeline system) and variable costs.[148] For discounting purposes, the pipeline is permitted to charge "an individual customer any rate that is neither greater than the maximum rate nor less than the minimum rate."[149] Thus, we will require TC Offshore to

[145] ANR Application at 4; Applicants' Data Response No. 8.

[146] Applicants' Data Response No. 25(a).

[147] 18 C.F.R. § 284.10(c)(5)(i) (2011).

[148] 18 C.F.R. § 284.10(c)(4) (2011).

[149] 18 C.F.R. § 284.10(c)(5)(ii) (2011).

file revised tariff records that provide for a maximum and minimum Hurricane Surcharge and remove any language from its tariff records indicating that the Hurricane Surcharge is not discountable. Of course, TC Offshore may elect not to discount the Hurricane Surcharge with respect to future discount and negotiated rate agreements, provided it does so on a non-discriminatory basis.[150]

6. Net Penalty Revenue Credit

184. Section 6.28 of TC Offshore's proposed tariff provides that it will credit firm customers with the net revenues from daily scheduling penalties, penalty rates from unauthorized overrun services, and penalties assessed for violation of operational flow orders.

185. Apache protests TC Offshore proposal to credit net penalty revenues only to firm shippers, claiming that TC Offshore provided no explanation for this proposal, and that the Commission's regulations merely require that the pipeline return all net penalty revenues to "shippers." Apache requests that the Commission require TC Offshore to credit net penalty revenues to all shippers.

186. TC Offshore contends that the proposal to credit net penalty revenue to firm shippers is consistent with Commission policy and with ANR's existing treatment of net penalty revenues.

Commission Response

187. In Order No. 637, we required that pipelines provide penalty revenue credits as penalty revenues for the purpose of "eliminating any financial incentive on the part of pipelines to impose penalties that would naturally hinder the pipelines' movement toward reliance on the provision of imbalance services, greater imbalance information, and shipper incentives."[151] TC Offshore, in its billing determinants discussion, projects no firm services. The implication of TC Offshore's projection and the proposed tariff language is that there would be no firm shipper to credit net penalty revenues to, and that TC Offshore would retain net penalty revenue. Thus, we will require TC Offshore to

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[150] *Sea Robin Pipeline Co., LLC*, 137 FERC at PP 91-96.

[151] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services,* Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,315-16 (2000).

modify section 6.28 to provide net penalty revenue credits to all non-offending shippers.[152]

7. Pressure Commitments

188. In section 6.11.2, Pressure At Receipt Point(s) And Delivery Point(s), TC Offshore proposes that:

> Unless otherwise agreed to by the parties **as set forth in the Agreement**, Transporter shall redeliver the Gas to Shipper at the Delivery Point(s) hereunder at Transporter's prevailing line pressure as such may vary from time to time. [Emphasis added.]

However, at section 7.1, Form of Service Agreement, there is no provision for enumerating the alternative pressure agreements.

189. Every contract that TC Offshore negotiates with a pressure commitment other than at prevailing pressure will be a non-conforming agreement. These non-conforming contracts must be filed with the Commission.[153] If TC Offshore were to propose to modify section 7.1 to include a section for alternative pressure commitments as an option available to all shippers, we have found such provisions acceptable.[154]

8. Retail Access to Capacity Release

190. TC Offshore's proposed tariff does not address the capacity release rights of marketers participating in a state-regulated retail access program.[155] We will require TC Offshore to include the same provision as contained in ANR's tariff at section 6.20.1.9(4).

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[152] *See in accord High Island Offshore System, L.L.C.*, 97 FERC ¶ 61,156, at 61,691-92 (2001), *order on reh'g*, 98 FERC ¶ 61,081, at 61,245 (2002).

[153] 18 C.F.R. § 154.1(d) (2011).

[154] TC Offshore Data Response No. 27, indicates it will make this change to Section 7.1.

[155] 18 C.F.R. § 284.8(h)(4) (2011).

9. NAESB WGQ Standards

191. The Commission has adopted in its regulations various standards for conducting business practices and electronic communication with interstate pipelines as promulgated by the North American Energy Standards Board (NAESB) Wholesale Gas Quadrant (WGQ).[156] The standards are intended to govern nominations, allocations, balancing measurement, invoicing, capacity release, and mechanisms for electronic communication between pipelines and those with whom they do business. In its pro forma tariff, TC Offshore proposes to comply with the NAESB WGQ Standards. We accept TC Offshore's proposal but direct TC Offshore, at the time it files actual tariff records in this proceeding, to: (1) reflect the latest version of the NAESB Standards adopted by the Commission; and (2) file in their transmittal letter a table of all the NAESB standards incorporated by reference and a cross-reference to the tariff provisions in which that standard is contained. For standards not incorporated by reference, the pipelines should identify the tariff provision that complies with that standard.[157]

10. Tariff and Reporting Compliance Requirements

192. TC Offshore is required to file its actual tariff consistent with the requirements of Part 154 of the Commission's regulations 60 days prior to TC Offshore's in-service date.[158] This compliance filing should contain revised rates reflecting the Commission's findings discussed above, and be supported with work papers in the electronic format required for Part 154 filings. The tariff records should reflect revised tariff language, as discussed above, and the compliance filing should contain documentation that shows the changes in marked format as compared to TC Offshore's *pro forma* tariff. If TC Offshore wishes to propose a Transporter's Use retention rate, that filing should be made separately from the compliance filing.[159]

193. TC Offshore is required to file its actual tariff consistent with the requirements of Part 154 of the Commission's regulations 60 days prior to TC Offshore's in-service

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[156] *See Standards for Business Practices for Interstate Natural Gas Pipelines,* Order No. 587-U, FERC Stats. & Regs. ¶ 31,307, 130 FERC ¶ 61,212 (2010).

[157] *See* Order No. 587-U, FERC Stats. & Regs. ¶ 31,307, 130 FERC ¶ 61,212, at P 39 (2010).

[158] TC Offshore should use Type of Filing Code 580: Compliance.

[159] TC Offshore should use Type of Filing Code 650: Account No. 858 and Fuel Tracker.

date.[160] This compliance filing should contain revised rates reflecting the Commission's findings discussed above, and be supported with work papers in the electronic format required for Part 154 Filings. The work papers should be reconciled with the findings reflected in Appendix A, Tables 1 through 4 of this order. The tariff records should reflect revised tariff language as discussed above, and the compliance filing should contain document that shows the changes in marked format as compared to TC Offshore's *pro forma* tariff. Rate Schedule X-64 should not contain superceded or no longer applicable material. If TC Offshore wishes to propose a Transporter's Use retention rate, that filing should be made separate from the compliance filing.[161]

194. Because we have not previously approved the major cost components reflected in TC Offshore's proposed cost-based rates, we will require TC Offshore 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. In its filing, the projected units of service should be no lower than those upon which TC Offshore's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the regulations to update cost-of-service data.[162] After reviewing the data, we will determine whether to exercise our authority under NGA section 5[163] to establish just and reasonable rates. In the alternative, in lieu of this filing, TC Offshore may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date of its proposed facilities.

11. <u>Gas Quality (Heat Content)</u>

195. Indicated Shippers states that TC Offshore's tariff section 6.13 proposes a heat content gas quality standard that provides that the heat content at each receipt point not be greater than 1200 Btu's per cubic foot, nor less than 967 BTU's. Indicated Shippers asserts that ANR's Data Response No. 23 (a) indicates that gas receipts at several important receipt points are routinely above 1200 Btu's. Indicated Shippers further asserts that although TC Offshore states that it will grant waivers to this provision as ANR previously did, reliance on continuing short term waivers is not a solution to an

[160] TC Offshore should use Type of Filing Code 580: Compliance.

[161] If TC Offshore wishes to make such a filing, it should use Type of Filing Code 650: Account No. 858 and Fuel Tracker.

[162] *See* 18 C.F.R. §154.313 (2011). TC Offshore should use Type of Filing Code 620: Data Response/Supplement the Record.

[163] 16 U.S.C. §717d (2006).

ongoing and known quality issue. Indicated Shippers requests that TC Offshore and ANR be required to change their heat content gas quality standard to 1240 Btu's.

196. We reject Indicated Shippers' proposal. The Applicants' Data Response No. 23(a) shows that, over a year's time, receipts in excess of the proposed heat content of 1200 Btu per cubic foot contributed only 197,732 excess MMBtu out of a total annual projected throughput of 231,636,196 MMBtu, or 0.085 percent. Gas receipts in excess of TC Offshore's proposed 1200 Btu limit are manageable by blending and are not a significant issue.[164]

E. Accounting

197. ANR and TC Offshore propose journal entries to record the contribution of transmission and gathering facilities from ANR to TC Offshore. ANR proposes journal entries to remove the original cost of the transferred facilities ($529,700,016) from Account 101, Gas Plant in Service, and the related accumulated provision for depreciation ($452,668,606), including negative salvage of $6,622,551, from Account 108, Accumulated Provision for Depreciation of Gas Utility Plant. ANR would also remove the related accumulated provision for amortization ($3,414,155) from Account 111, Accumulated Provision for Amortization and Depletion of Gas Utility Plant. Finally, ANR's proposed journal entries clear the transfer of facilities through Account 102, Gas Plant Purchased or Sold, and record the net book value of the facilities transferred as an increase (debit) to Account 123.1, Investment in Subsidiary Companies.

198. TC Offshore proposes journal entries to record the original cost of the facilities acquired: $529,700,016 in Account 101; the related accumulated depreciation of $452,668,606, including negative salvage of $6,622,551, in Account 108; and accumulated amortization of $3,414,155 in Account 111. TC Offshore's proposed journal entries clear the acquisition of facilities through Account 102 and record the net book value of the facilities acquired as an increase (credit) to Account 211, Miscellaneous Paid-In Capital.

199. ANR and TC Offshore's proposed accounting for the disposition and acquisition, respectively, of the facilities, as detailed above, is consistent with Gas Plant Instruction No. 5 and the requirements of the Commission's Uniform System of Accounts.

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[164] Additionally, Apache contends that TC Offshore has not complied with the regulatory requirement to provide 30 days notice to a shipper and the Commission before terminating service on the basis of creditworthiness. TC Offshore asserts that it is willing to revise its tariff to bring it into compliance with the regulations in this respect.

F. Part 284, Subpart G Blanket Transportation Certificate

200. TC Offshore has also applied for a Part 284, Subpart G blanket transportation certificate, which is generally applicable to all interstate pipelines. Part 284, Subpart G blanket certificates provide natural gas pipelines certain automatic NGA section 7 natural gas transportation authorizations for individual customers under the terms of its contract and tariff. Because TC Offshore will become an interstate pipeline with the issuance of a certificate herein, and because a Part 284, Subpart G blanket certificate is required for TC Offshore to offer transportation services, we will issue TC Offshore the requested Part 284, Subpart G blanket certificate authority.

G. Part 157, Subpart F Blanket Construction Certificate

201. TC Offshore has applied for a Part 157, Subpart F blanket construction certificate, which is generally applicable to all interstate pipelines. Part 157, Subpart F blanket certificates accord natural gas pipelines certain automatic NGA section 7 facility and service authorizations and allow them to make several types of simplified prior notice requests for certain section 7 facility and service authorizations. Because TC Offshore will become an interstate pipeline with the issuance of a certificate herein, we will also issue TC Offshore the requested Part 157, Subpart F, blanket certificate.

H. Environment

202. ANR and TC Offshore state that they are not proposing any earth disturbance to effectuate the abandonment by sale, and that they do not propose to perform any material construction or removal in connection with the proposal. ANR further explains that upon the Commission's approval of the proposed abandonment by sale, ANR and TC Offshore will file with the Bureau of Ocean Energy Management, Regulation and Enforcement all remaining required applications for the transfer of ownership of the facilities proposed for abandonment in this proceeding. ANR asserts that its abandonment application does not constitute a major federal action that would significantly affect the quality of the human environment. In an Environmental Assessment Report issued on September 8, 2011, Commission staff explained that TC Offshore's requested certificate involves only the transfer in place of existing facilities and involves no new construction.

203. At hearing held on June 21, 2012, the Commission on its own motion, received and made a part of the record all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of this record,

The Commission orders:

(A) In Docket No. CP11-543-000, permission for and approval of the abandonment by ANR of the facilities found herein to be jurisdictional by sale to TC Offshore, as described in this order and in the application, is granted.

(B) ANR shall notify the Commission within 10 days of the date(s) of its abandonment(s) of facilities as authorized by this order. ANR shall complete authorized abandonments within one year from the date of this order.

(C) The facilities found herein to have a primary function of gathering are exempt from the Commission's jurisdiction under NGA section 1(b).

(D) In Docket No. CP11-544-000, a certificate of public convenience and necessity is issued to TC Offshore under section 7 of the NGA to acquire and operate the facilities determined herein to be jurisdictional transmission facilities under the NGA.

(E) In Docket No. CP11-544-000, a blanket construction certificate is issued to TC Offshore under Subpart F of Part 157 of the Commission's regulations.

(F) In Docket No. CP11-544-000, a blanket transportation certificate is issued to TC Offshore under Subpart G of Part 284 of the Commission's regulations.

(G) TC Offshore is required, as part of its initial rate compliance filing, to:

1) functionalize the costs of service related to the facilities, as identified in Appendix A, Tables 2 through 4;

2) remove the costs related to the facilities identified in Appendix A, Table 1, from its cost of service recoverable through its jurisdictional services; and

3) refunctionalize its rate base consistent with the findings in this order.

(H) TC Offshore must 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 as specified in the body of this order.

(I) TC Offshore is required to make modifications to its proposed tariff as specified in the body of this order.

(J) TC Offshore must file actual revised tariff records incorporating the incremental firm and interruptible transportation rates at least 60 days prior to the in-service date of the facilities acquired from ANR, as discussed above.

(K) ANR and TC Offshore shall adhere to the accounting requirements, as discussed in the body of this order.

(L) ANR and TC Offshore must file their final journal entries to clear Account 102 no later than six months after the completion of the transaction. The accounting submission must provide all the accounting entries related to the transfer, along with narrative explanations describing the basis for the entries.

(M) TC Offshore shall comply with all applicable Commission regulations, particularly Parts 154 and 284 and sections 157.20(a), (d), and (e).

By the Commission. Commissioner Clark voting present.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A: Summary of Functionalization Findings

Table 1
Facility Segments Not in Use

ANR: Permitted to Abandon
TC Offshore: Not Certificated; Without Prejudice to TC Offshore Acquiring These Facilities

	Pipeline Segment No.	Size (in)	Length (mi)	Capacity Utilized	System
1	4616	16	0.6	no	Grand Chenier
2	4835	16	3.0	no	Grand Chenier
3	4835	16	4.3	no	Grand Chenier
4	4835	16	2.8	no	Grand Chenier
5	5451	20	3.1	no	Grand Chenier
6	5451	20	5.4	no	Grand Chenier
7	6340	20	0.9	no	Grand Chenier
8	6340	20	6.1	no	Grand Chenier
9	9400	16	18.6	no	Grand Chenier
10	3761	12	34.0	no *	Off System
11	3961	10	3.3	no	Off System
12	5104	8	4.5	no	Off System
13	5135	12	1.3	no	Off System
14	5137	20	15.1	no	Off System
15	5140	16	33.4	no *	Off System
16	5502	8	1.0	no	Off System
17	5940	10	5.0	no	Off System
18	6057	16	17.0	no	Off System
19	6057	16	17.0	no	Off System
20	16041	10	8.7	no	Off System
21	30005	10	18.1	no	Off System
22	30008	16	9.0	no	Off System
23	30009	18	14.0	no	Off System
24	2303	12	0.3	no	Patterson
25	5139	20	9.3	no	Patterson
26	10760	12	1.8	no	Patterson
27	EI-371			no	Patterson

Appendix A

Table 2
Grand Chenier System's Pipeline Segments' Functions

GRAND CHENIER SYSTEM Segments with Capacity Utilized in 2010					
	Pipeline Segment No.	Size (in)	Length (mi)	Function	Capacity Utilized
1	2321	30	14.0	Transmission	yes
2	3407	30	12.3	Transmission	yes
3	4615	16	2.8	Gathering *	yes
4	4659	30	11.8	Transmission	yes
5	4680	24	6.0	Gathering *	yes
6	4680	24	2.3	Gathering *	yes
7	5470	12	2.9	Gathering *	yes
8	5913	20	7.5	Gathering *	yes
9	5996	20	23.2	Gathering	yes
10	6058	12	0.5	Gathering *	yes
11	6075	20	1.1	Gathering *	yes
12	6757	12	5.2	Gathering *	yes
13	7012	10	4.2	Gathering *	yes
14	8827	10	4.2	Gathering	yes
15	10822	12	1.3	Gathering *	yes
16	10882	12	1.5	Gathering *	yes
17	13646	16	4.9	Gathering	yes
18	30003	30	4.3	Transmission	yes
	* The Commission functionalized these segments 'gathering' in *HIOS,* 128 FERC ¶ 61,292 (2009).				
	** ANR is authorized abandonment of those segments functionalized as 'transmission' with capacity unutilized, but TC Offshore is not granted certification				

Appendix A

Table 3
Patterson System's Pipeline Segments' Functions

PATTERSON SYSTEM Segments with Capacity Utilized in 2010					
	Pipeline Segment No.	Size (in)	Length (mi)	Function	Capacity Utilized
1	1488	18	0.2	Gathering	yes
2	2294	8	0.1	Gathering	yes
3	2296	12	1.1	Gathering	yes
4	2301	12	10.9	Gathering	yes
5	2308	12	13.0	Gathering	yes
6	2310	20	20.3	Gathering	yes
7	2313	12	0.6	Gathering	yes
8	2315	24	31.8	Gathering	yes
9	2316	12	1.6	Gathering	yes
10	3550	30	29.9	Transmission	yes
11	3552	20	40.5	Gathering	yes
12	4246	30	10.8	Transmission	yes
13	4253	30	30.3	Gathering	yes
14	4254	30	1.1	Gathering	yes
15	4255	24	1.3	Gathering	yes
16	4793	16	8.3	Gathering	yes
17	5311	12	0.2	Gathering	yes
18	5324	30	30.9	Transmission	yes
19	5503	24	19.9	Gathering	yes
20	5753	24	23.8	Gathering	yes
21	7540	8	2.7	Gathering	yes
22	7550	6	7.6	Gathering	yes
23	9344	N/A	N/A	N/A	yes
24	9477	16	7.6	Gathering	yes
25	10113	6	0.9	Gathering	yes
26	11480	10	8.2	Gathering	yes
27	12280	16	8.4	Gathering	yes
28	12506	16	11.2	Gathering	yes
29	14620	30	0.2	N/A	yes
30	15495	24	14.4	Gathering	yes
31	15496	24	43.4	Gathering	yes
32	30001	30	27.3	Transmission	yes
33	30002	20	33.6	Transmission	yes
34	30004	8	2.5	Transmission	yes
35	30006	12	0.3	Gathering	yes
*	Segment 9344 is a meter				
**	Segment 14620 is a liquid bypass line				

Appendix A

Table 4
Central Texas Gathering System's Pipeline Segments' Functions

CENTRAL TEXAS GATHERING SYSTEM Segments with Capacity Utilized in 2010					
	Pipeline Segment No.	Size (in)	Length (mi)	Function	Capacity Utilized
1	6022	24	12.9	Gathering	yes
2	6560	8	2.3	Gathering	yes
3	7262	36	16.6	Transmission	yes
4	9573	30	30.2	Gathering	yes
5	30007	36	39.0	Transmission	yes

Appendix B: Interventions

Docket Nos. CP11-543-000 and CP11-544-000

Alliant Energy Corporate Services, Inc.
Anadarko Energy Services Company
Anadarko US Offshore Corporation
Apache Corporation
Arena Energy, LP
BP America Production Company, BP Energy Company, and BP Canada Energy Marketing Corporation (Jointly)
Chevron U.S.A. Inc.
ConocoPhillips Company
Crosstex Energy Services, LP
Energy XXI (Bermuda) Limited
Enterprise Gas Processing, LLC
ExxonMobil Gas & Power Marketing Company
Hess Corporation
Integrys Gas Group: Michigan Gas Utilities Corporation; North Shore Gas Company; The Peoples Gas Light and Coke Company; and Wisconsin Public Service Corporation (Jointly)
LLOG Exploration Company, LLC
Madison Gas and Electric Company
Marathon Oil Company
McMoRan Oil & Gas LLC
Michigan Consolidated Gas Company
New Jersey Natural Gas Company
Nicor Gas
NJR Energy Services Company
Northern Indiana Public Service Company
Northern States Power Company-Minnesota and Northern States Power Company-Wisconsin (Jointly)
Pegasus Offshore Investments, LLC
Pisces Energy LLC
Producer Coalition: Century Exploration New Orleans, LLC, Dynamic Offshore Resources, LLC, and Hilcorp Energy Company (Jointly)
Shell Offshore Inc.
Southern Natural Gas Company, LLC
Stingray Pipeline Company, LLC
Texas Eastern Transmission, LP
Transcontinental Gas Pipe Line Company, LLC

W&T Offshore
Wisconsin Electric- Wisconsin Gas

Docket No. CP11-543-00

Atmos Energy Corporation
Atmos Energy Marketing LLC
Constellation NewEnergy-Gas Division, LLC
ProLiance Energy, LLC
Tennessee Valley Authority