

153 FERC ¶ 61,310  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

American Midstream (Midla), LLC

Docket No. CP15-523-000

ORDER ISSUING CERTIFICATE

(Issued December 17, 2015)

1. On June 29, 2015, American Midstream (Midla), LLC (Midla) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA),<sup>1</sup> Part 157 of the Commission's regulations,<sup>2</sup> and in accordance with section 2.1 of the Stipulation and Agreement (Settlement) approved by the Commission on April 16, 2015 in *Atmos Energy Corp. v. American Midstream, LLC* (Settlement Order).<sup>3</sup> In its application, Midla proposes to construct and operate pipeline facilities in Louisiana and Mississippi (Natchez Pipeline Project). For the reasons discussed below, the Commission will grant the requested authorizations.

**I. Background**

2. Midla, a Delaware limited liability company, is a natural-gas company<sup>4</sup> engaged in the transportation of natural gas in interstate commerce. Prior to the issuance of the Settlement Order, Midla's facilities consisted of (1) the Legacy System (approximately 370 miles of pipeline facilities extending southeast from the Desiard Compressor Station near Monroe, Louisiana, across the Mississippi River near Natchez, Mississippi, and then south to its terminus in East Baton Rouge Parish, near Baton Rouge, Louisiana); (2) the

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<sup>1</sup> 15 U.S.C. § 717f (b), (c) (2012).

<sup>2</sup> 18 C.F.R. pt. 157, Subpart A (2015).

<sup>3</sup> 151 FERC ¶ 61,036 (2015).

<sup>4</sup> 15 U.S.C. § 717a (6) (2012).

T-32 System (pipeline facilities in Ouachita Parish, Louisiana); and (3) the Baton Rouge System (pipeline facilities in East Baton Rouge Parish).

3. In March 2014, Midla initiated the instant proceeding when it filed an application proposing to abandon its Legacy System either in place, by removal, or by transfer. Midla stated that its Legacy System, a 90-year-old pipeline, was deteriorating due to age, causing pipeline safety and integrity issues. Midla also proposed to abandon its T-32 and Baton Rouge Systems by sale to its affiliate, Mid Louisiana Gas Transmission, LLC.

4. Subsequently, interested parties contacted the Dispute Resolution Division of the Office of the Administrative Law Judges to initiate alternate dispute resolution procedures to address the issues raised by the abandonment proposals, as well as other issues. The parties reached a Settlement<sup>5</sup> and, on April 16, 2015, the Commission approved Midla's uncontested Settlement without modification.<sup>6</sup> As relevant to this proceeding, the Settlement Order approved Midla's proposals to abandon its Legacy, T-32, and Baton Rouge Systems.<sup>7</sup> The Settlement Order also required Midla to file an application under NGA section 7(c) to construct and operate a new pipeline from near Winnsboro, Louisiana, to the Natchez, Mississippi area (Natchez Pipeline).<sup>8</sup> Under the provisions of the Settlement, all of Midla's existing customers with delivery points on the Legacy System from Winnsboro, Louisiana to Natchez, Mississippi, will continue to receive service through the proposed Natchez Pipeline. Customers with delivery points on the Legacy System from Monroe to Winnsboro, Louisiana, will receive gas service from another gas provider or by conversion to propane service.<sup>9</sup>

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<sup>5</sup> In addition to Midla, the other settling parties are Atmos Energy Corporation; BASF Corporation; Enbridge Marketing (US) L.P.; Entergy Services, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC and Entergy Arkansas, Inc.; EV Properties, L.P.; Louisiana Public Service Commission; Louisiana Municipal Gas Authority; Mississippi Public Service Commission; and Tunica Pipeline, LLC.

<sup>6</sup> Settlement Order, 151 FERC ¶ 61,036 at P 32.

<sup>7</sup> Section 4.2 of Article IV of the Settlement. Midla has already abandoned its Baton Rouge System and contemplates abandoning its T-32 System in 2016.

<sup>8</sup> Article II of the Settlement.

<sup>9</sup> Section 4.3 of Article IV of the Settlement.

## II. Proposal

5. Midla has filed the Natchez Pipeline application to meet its obligation under section 2.1 of the Settlement.<sup>10</sup> Specifically, Midla proposes to construct and operate approximately 51.96 miles of 12-inch-diameter pipeline and approximately 0.5 mile of 4-inch-diameter lateral pipeline<sup>11</sup> from interconnections with Tennessee Gas Pipeline Company, L.L.C. (Tennessee) and Columbia Gulf Transmission, LLC (Columbia Gulf) in the Winnsboro, Louisiana area, through Franklin, Catahoula, and Concordia Parishes, Louisiana, under the Mississippi River, to a point near Natchez in Adams County, Mississippi. In addition to the receipt points with Tennessee and Columbia Gulf near Winnsboro, Midla states that the Natchez Pipeline will have an additional receipt point at the interconnection with its existing T-17 lateral, which Midla is transferring under terms of the Settlement to Locust Ridge Gas Company, LLC (Locust Ridge), south of Sicily Island, Louisiana.<sup>12</sup>

6. The Natchez Pipeline will have three anchor shippers: Atmos Energy Corporation (Atmos), which serves the cities of Ferriday, Gilbert, and Wisner, Louisiana, as well as the city of Natchez, Mississippi; the Louisiana Municipal Gas Authority (LMGA), which represents the municipal gas systems of Clayton, Jonesville, Sicily Island, and Vidalia, Louisiana; and BASF Corporation (BASF), which has an industrial facility located near Vidalia, Louisiana. The anchor shippers have subscribed to a total of 25,525 dekatherms (Dth) per day of firm transportation service at negotiated rates with non-ratable hourly rights.<sup>13</sup> Midla asserts that the Natchez Pipeline will be capable of providing 48,300 Dth per day of firm transportation service, which is necessary to accommodate the non-ratable hourly rights reflected in the anchor shippers' non-conforming agreements and to allow for increased gas deliveries to support economic growth in the areas of Louisiana and Mississippi served by the pipeline. Midla estimates that the Natchez Pipeline will

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<sup>10</sup> Section 2.1 of the Settlement provides that the existing customers of Midla with delivery points on Midla's system from Winnsboro, Louisiana to the Natchez, Mississippi area must be able to receive service through the Natchez Pipeline.

<sup>11</sup> Midla states that the approximately 0.5 mile of 4-inch lateral pipeline will be installed near Vidalia, Louisiana.

<sup>12</sup> See Article IV of the Settlement, section 4.1(e). The Locust Ridge meter facilities will be designed to operate as both a receipt and delivery meter, depending on the circumstances.

<sup>13</sup> The service agreements with Atmos and LMGA are for primary terms of 15 years. The service agreement with BASF is for a primary term of 10 years.

have capacity to provide approximately 9,600 Dth per day of firm transportation service over and above its obligations to the anchor shippers.

7. Midla states that the capacity of the Natchez Pipeline is dependent on the receipt pressures from Tennessee's and Columbia Gulf, which eliminates the need for Midla to install compression. Midla estimates that the Natchez Pipeline will cost approximately \$62.8 million.

8. Midla seeks approval of a new tariff.<sup>14</sup> Midla also proposes initial recourse rates for service through the Natchez Pipeline under new Rate Schedules FTS-N and ITS-N.

9. Under terms of the Settlement, the Legacy System customers not served by the proposed Natchez Pipeline will continue to receive service from an alternate gas provider or propane service. However, Midla states that some of these customers might need to receive service through the Legacy System after the Natchez Pipeline goes into service due to delays in implementing the alternative gas or propane services.<sup>15</sup> Thus, Midla will retain its existing Rate Schedules FTS and ITS and the corresponding recourse rates in the *pro forma* tariff submitted herein.<sup>16</sup> Consistent with the Settlement, upon the abandonment of service to all customers through the Legacy System, Midla plans to file a revised tariff, and to delete Rate Schedules FTS and ITS, as well as the corresponding rates and any references to Rate Schedules FTS and ITS in the General Terms and Conditions of its tariff and in the forms of service agreements therein.

### **III. Notice and Interventions**

10. Notice of Midla's application was published in the *Federal Register* on July 16, 2015 (80 Fed. Reg. 42,097). The Mississippi Public Service Commission, Atmos, Sequent Energy Management, L.P., EV Properties, L.P., and LMGA filed timely,

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<sup>14</sup> Application at Part II of Exhibit P.

<sup>15</sup> Midla states that the proposed initial rates for service under new Rate Schedules FTS-N and ITS-N will not be applicable to any service through any portion of Midla's Legacy System that might still be in operation after the initial rates are in effect.

<sup>16</sup> In light of the fact that the new terms and conditions of service would also apply to any existing customer that still might need service through the Midla Legacy System, Midla states that when it moves to place the *pro forma* tariff into effect upon commencement of service of the Natchez Pipeline, Midla will, to the extent necessary, file the new tariff records under sections 4 and 7 of the NGA.

unopposed motions to intervene.<sup>17</sup> LMGA's motion to intervene supported Midla's application.

#### **IV. Discussion**

11. Since Midla proposes to construct and operate facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

##### **A. Certificate Policy Statement**

12. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>18</sup> The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

13. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

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<sup>17</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedures. *See* 18 C.F.R. § 385.214 (2015).

<sup>18</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) (Certificate Policy Statement).

14. As stated above, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from existing customers. The Certificate Policy Statement provides that it is not a subsidy for existing customers to pay for projects designed to improve existing service for existing customers, by replacing existing capacity or improving the reliability or flexibility of existing service.<sup>19</sup> Here, the Settlement approved Midla's request to abandon its jurisdictional pipeline, including its Legacy System, subject to, among other things, Midla filing an application to construct and operate the Natchez Pipeline, a pipeline designed to replace old facilities in order to allow Midla to continue to provide reliable service to its existing customers between Winnsboro, Louisiana and Natchez, Mississippi.

15. The Natchez Pipeline will replace pipeline facilities that have deteriorated due to age. No existing customer will be without service, since customers with delivery points on the Legacy System from Winnsboro, Louisiana to Natchez, Mississippi, will continue to receive service through the new Natchez Pipeline, while Legacy System customers not served by the Natchez Pipeline will receive service from another gas provider or propane service. In addition, Midla will continue to provide service using the Legacy System until the Natchez Pipeline becomes operational or until the customers not served by the Natchez Pipeline obtain their alternative services. Thus, we find that Midla's proposal will not degrade service to existing customers.

16. There will be no adverse impact on other pipelines in the region or their captive customers because the proposal is not intended to replace service on other pipelines. In addition, no pipelines or their captive customers have filed adverse comments regarding Midla's proposals.

17. To limit environmental impacts, Midla proposes to construct the Natchez Pipeline on or adjacent to the Legacy System right-of-way for 79 percent of its proposed route. No landowner has filed adverse comments regarding Midla's application. Accordingly, we find that Midla has designed the project to minimize adverse impacts on landowners and surrounding communities.

18. The proposed Natchez Pipeline Project will allow Midla to comply with the Settlement Order to construct the Natchez Pipeline to replace its aging Legacy System, while ensuring that its customers continue to receive natural gas service from Midla, an alternate supplier, or propane service. Based on the benefits the project will provide, the minimal adverse impacts on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of Midla's proposals, as conditioned in this order.

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<sup>19</sup> Certificate Policy Statement, 88 FERC ¶ 61,227 at n.12.

**B. Initial Recourse Rates**

19. Midla proposes an initial firm reservation recourse charge under Rate Schedule FTS-N of \$38.8239 per Dth per month, a usage charge of \$0.0000 per Dth, and an interruptible recourse rate under Rate Schedule ITS-N of \$1.2764, which is the 100 percent load factor daily derivative of the proposed FTS-N reservation charge. The FTS-N reservation recourse charge was derived using an estimated project cost of \$66,204,428; an initial cost of service of \$12,126,304; and 306,300 Dth billing determinants, the amount of subscribed transportation capability, rather than 579,600 Dth, reflecting the design capacity of the project. Finally, the reservation recourse charge is designed utilizing an overall return of 10.60 percent, including a 14.00 percent return on equity; a capitalization consisting of 52.31 percent debt and 47.69 percent equity; and an overall transmission plant depreciation rate of 2.5 percent based on a 40-year depreciable life.

**Commission Response**

20. We approve Midla's proposed initial rates as reasonable and consistent with Paragraph 7.3 (Rates Applicable to Service on the Natchez Line) of the Settlement, which states as follows:

The Settling Parties have agreed that the initial and subsequent recourse rates applicable to service on the Natchez Line may include, in Midla's rate base: (a) the net book value of any existing facilities of Midla, including those identified in Section 2.2 hereof, that will be or have been used as part of the Natchez Line; (b) the costs of the additional facilities at the southern terminus of the Natchez Line . . . which will be installed by Atmos, . . . and for which Midla will reimburse Atmos as described in Section 5.5 hereof; (c) the costs to remove the unused Midla facilities located in the rights-of-way to be used for the Natchez Line; and (d) *the capital cost of the 12-inch pipeline that will comprise the Natchez Line even if the full capacity of the line is not fully subscribed by firm shippers.* Except as specifically provided in this Settlement, the recourse rates applicable to service on the Natchez Line will not include any costs associated with implementation of Articles IV [Abandonment Filings] and V [Other Facilities Reconfigurations] hereof and any costs associated with additional compression or facilities reconfigurations required at the Desiard Compressor Station. *The Settling Parties will not contend that the Natchez Line was over-sized for the purpose of determining the capital costs of the 12-inch pipeline reflected in Midla's rate base. All other positions of Midla and the other Settling Parties, on [sic] among other things the proper level of other capital costs, AFUDC, billing determinants,*

*and all other cost of service elements, are preserved for the purposes of Midla's initial and subsequent recourse rates applicable to service on the Natchez Line and nothing contained in this Settlement shall prejudice the right of Midla and the other Settling Parties to argue these other positions in any proceeding. [Emphasis Supplied.]*

21. In its Application, Midla explained the rate derivation as follows:

*Rate Derivation.* . . . Midla's proposed rates are based on billing determinants reflecting the maximum daily quantities of the Anchor Shipper agreements and a credit to the cost of service for projected revenues from Locust Ridge. The proposed derivation of Midla's initial rates for service through the Natchez Pipeline is reasonable in light of the unique facts surrounding the Natchez Pipeline: (i) the Anchor Shippers were granted non-ratable hourly rights taking up additional capacity; (ii) any additional capacity resulting from the required 12-inch diameter design of the Natchez Pipeline beyond the Anchor Shipper and Locust Ridge requirements is uncertain as a result of the varying delivery pressures of Tennessee Gas Pipeline and Columbia Gulf; and (iii) any additional market that may ever want to be served by Natchez Pipeline is truly speculative.[Citation omitted]

22. While Midla's rate design proposal departs from the Commission's general rate design practice with respect to the level of billing determinants utilized, such departure reflects the terms of the Settlement approved by the Commission. We also note that Midla's application indicates that for the first three years of operation, the revenues from the Anchor Shipper Agreements, even with the possible addition of revenues from Locust Ridge, are projected to be significantly less than the cost of service associated with the project.<sup>20</sup> Further, as provided in Section 7.5 of the Settlement and as required by this order, within three years of the in-service date of the Natchez Pipeline, Midla must file a cost and revenue study consistent with the provisions of section 154.313 of the Commission's regulations to justify the initial rates approved herein. Finally, we note that Paragraph 7.3 of the Settlement states that the Settlement does not prejudice the rights of Midla and the parties to argue positions other than the positions that have been preserved by the Settlement with respect to "the proper level of other capital costs, [allowance for funds used during construction], billing determinants, and all other cost of service elements for the purposes of Midla's initial and subsequent recourse rates applicable to service on the Natchez Line" in any proceeding. In this regard, we consider the fact that no protests have been filed in this proceeding regarding Midla's proposed

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<sup>20</sup> See Application at Exhibit N and Exhibit P, Part I, at 3.

rates as an indicator that the parties to the Settlement view the rate design proposed in this proceeding as consistent with the Settlement.<sup>21</sup> We therefore approve the proposed initial rates for service on the Natchez Pipeline.

**C. Recovery of Fuel and Lost-and-Unaccounted-For Quantities**

23. Article XXXI of the General Terms and Conditions (GT&C) of the proposed *pro forma* tariff permits Midla to recover, through an in-kind retention percentage, any fuel and lost-and-unaccounted for (FL&A) quantities associated with transporting gas on the Natchez Pipeline. This article also contains a mechanism for tracking and adjusting FL&A through an annual filing by Midla which will also true-up the previous year's FL&A recovery. Paragraph 31.5 permits Midla to waive the fuel component of the FL&A for any transportation path that does not require the use of fuel. Since the Natchez Pipeline will not include compression, Midla proposes an initial retention percentage of 0.50 percent to recover only lost-and-unaccounted for gas. Given the pipeline's configuration and lack of compression, we will approve 0.50 percent as a reasonable initial FL&A projection.

**D. Negotiated Rates and Non-Conforming Agreements**

24. GT&C Article XXX of the *pro forma* tariff permits Midla to enter into negotiated rate agreements with shippers. Article III of the Settlement sets forth the annual revenue responsibilities for each of the anchor shippers under firm non-conforming and negotiated rate service agreements whose terms will range from 10 to 15 years. This article provides that each anchor shipper's annual revenue commitment will be phased in over a four-year period until reaching 100 percent for the remainder of the respective contract. This article also sets forth each anchor shipper's non-ratable hourly transportation rights, which will differ from the pipeline's generally applicable uniform flow requirements.<sup>22</sup>

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<sup>21</sup> We also note that Paragraph 7.5 of Article VII of the Settlement requires Midla to file a cost/revenue study "on the 3<sup>rd</sup> anniversary of the Natchez Line Commencement Date based on the most recent 12-month period available consistent with Section 154.313 of the Commission's regulations." When Midla makes this filing, it should use Type of Filing Code (TOFC) 580 and include, as part of the eFiling description, a reference to Docket No. CP15-523-000 and the cost and revenue study. *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

<sup>22</sup> The generally applicable uniform hourly flow requirements for firm and interruptible services are set forth in GT&C Paragraphs 2.8 and 3.10 of the *pro forma* tariff, respectively.

25. In the application, Midla requests Commission approval of the unexecuted negotiated rate and non-conforming transportation service agreements with the three anchor shippers, which are included in Exhibit I. The service agreements, which are attached to the anchor shippers' precedent agreements, contain the same rates and non-conforming terms of service as described in Articles II and III of the Settlement.<sup>23</sup> Since the negotiated rates and non-conforming terms of the anchor shippers' agreements were expressly agreed to in the Commission-approved Settlement, we approve such agreements as consistent with the Settlement.

26. Also, consistent with Commission policy, GT&C Articles XXXV and XXXIV of the *pro forma* tariff describe the anchor shippers' negotiated rates and identify their non-conforming service agreements, respectively. We direct Midla, when filing actual tariff records to comply with this order, to revise GT&C Article XXXV by filling in the execution dates of the service agreements described therein.

27. With respect to any additional contracts for service on the Natchez Pipeline, in order to comply with the Alternative Rate Policy Statement and our decision in *NorAm Gas Transmission Co.*,<sup>24</sup> the Commission directs Midla to file any negotiated rate contracts within 30 days of the commencement of service on the pipeline.<sup>25</sup> Commission policy also requires that if a pipeline files a tariff record reflecting the terms of a negotiated rate agreement, the tariff record summary must fully describe the essential elements of the transaction, including the name of the shipper, the negotiated rate, the type of service, the receipt and delivery points applicable to the service and the volume of natural gas to be transported. Midla must disclose all consideration received that is associated with the agreement. Midla must also affirm that the affected service agreements do not deviate in any material respect from the form of service agreement in the tariff. Midla is also required to file any additional service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in any other separate agreements that survive the execution of the service agreement.

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<sup>23</sup> The service agreements with Atmos and LMGA will be for primary terms of 15 years. The service agreement with BASF will be for a primary term of 10 years.

<sup>24</sup> *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011, at 61,037 (1996).

<sup>25</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996). *Natural Gas Pipeline Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *order dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

**E. Pro Forma Tariff**

28. As previously stated, Exhibit P of the application includes a *pro forma* tariff for the Natchez Pipeline, which we approve as generally consistent with Commission policy and with the Settlement.

29. Finally, we note that records constituting the *pro forma* tariff filed by Midla appear to have a linear relationship to one another, rather than utilizing a root (parent) and child type of record format. When it files actual tariff records to comply with this order, we require that Midla reorganize the format of its tariff to reflect the use of “parent and child” relationships between tariff records, where appropriate, to organize the tariff records consistent with the form and composition of the tariff<sup>26</sup> in order to enhance the accessibility of the tariff.<sup>27</sup>

**F. Environmental Analysis**

30. On July 24, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was published in the *Federal Register*<sup>28</sup> and mailed to approximately 275 parties including federal, state, and local government officials; agency representatives; environmental and public interest groups; local libraries and newspapers; and property owners affected by construction of the pipeline facilities.

31. We received environmental comments from the Louisiana Department of Wildlife and Fisheries and the U.S. Environmental Protection Agency. The Louisiana Department of Wildlife and Fisheries stated concerns regarding wetland and waterbody impacts; impacts due to forest clearing; implementing appropriate erosion and sediment control measures; and potential impacts on the Louisiana black bear, the pallid sturgeon, and the bigeye shiner. The U.S. Environmental Protection Agency provided comments concerning the purpose and need for the project; alternatives; water quality; wildlife resources; hazardous waste; air quality; coordination with Tribal governments; cultural resources; environmental justice; and coordination of land use planning activities.

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<sup>26</sup> *E.g.*, 18 C.F.R. §§ 154.102 through 112 (2015).

<sup>27</sup> For an example of the recommended format, please see the currently effective tariff of Transcontinental Gas Pipe Line Company, LLC <http://etariff.ferc.gov/TariffBrowser.aspx?tid=988> in the eTariff public viewer.

<sup>28</sup> 80 Fed. Reg. 46259 (2015).

32. To satisfy the requirements of the National Environmental Policy Act of 1969,<sup>29</sup> our staff prepared an environmental assessment (EA) that was placed into the public record on November 6, 2015. The EA addresses geology and soils, water resources, vegetation and wildlife, fisheries, land use, recreation and visual resources, cultural resources, air quality and noise, reliability and safety, cumulative impacts, and alternatives. The EA addresses all the comments filed in response to the NOI.

33. The EA concludes, based on the environmental analysis, Midla's application and supplemental filings, implementation of Midla's proposed mitigation, and the mitigation recommended in the EA, that approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. No comments have been filed following issuance of the EA.

34. We have reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effect of the Natchez Pipeline Project. Based on our consideration of this information, we agree with the conclusions presented in the EA and find that if constructed and operated in accordance with Midla's application, as supplemented, and the conditions imposed herein, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

35. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction and operation of facilities approved by this Commission.<sup>30</sup>

36. At a hearing held on December 17, 2015 the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, and all comments submitted herein, and upon consideration of the record,

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<sup>29</sup> 42 U.S.C. §§ 4321-4370f (2012).

<sup>30</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir 2013) (holding state and local regulation is preempted by the Natural Gas Act to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by FERC); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Midla to construct and operate the Natchez Pipeline Project, as described more fully in this order and in the application.

(B) The certificate authorized in Ordering Paragraph (A) above is conditioned on:

(1) Midla's completion of the authorized construction of the proposed facilities and making them available for service within one year of the date of this order pursuant to section 157.20(b) of the Commissions regulations;

(2) Midla's compliance with all applicable Commission regulations including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and

(3) Midla's compliance with the environmental conditions listed in Appendix A of this order.

(C) Midla's proposed initial rates and *pro forma* tariff are approved, as conditioned in this order.

(D) Midla is directed to file actual tariff records for the Natchez Pipeline not less than 30 days, and not more than 60 days, prior to the commencement of service. That filing should be made as a compliance filing under TOFC 580 and will be assigned an RP docket. It will be processed separately from the instant certificate proceeding in Docket No. CP15-523-000.

(E) Midla is directed to file not less than 30 days, and not more than 60 days, prior to the commencement of service on the Natchez Pipeline executed copies of all non-conforming agreements, disclosing and reflecting all non-conforming language.

(F) Within three years after the in-service date of the Natchez Pipeline, Midla shall make a filing to comply with the Settlement to justify its existing cost-based firm and interruptible recourse rates. The cost and revenue study should be filed through the eTariff portal using a TOFC 580. In addition, Midla is advised to include, as part of the eFiling description, a reference to Docket No. CP15-523-000 and the cost and revenue study.

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix A**  
**American Midstream, (Midla), LLC**  
**The Natchez Pipeline**  
**Docket No., CP15-523-000**

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

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

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

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

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

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

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

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and before construction begins**, Midla shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Midla must file revisions to the plan as schedules change. The plan shall identify:

- a. how Midla will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
  - b. how Midla will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions Midla will give to all personnel involved with construction and restoration (initial and the refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of Midla's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Midla will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - i. the completion of all required surveys and reports;
    - ii. the environmental compliance training of onsite personnel;
    - iii. the start of construction; and
    - iv. the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Midla shall file updated status reports with the Secretary on a **weekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Midla's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, and work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints that may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Midla from other federal, state, or local permitting agencies concerning instances of noncompliance, and Midla's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Midla shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
  9. Midla must receive written authorization from the Director of OEP **before placing the pipeline facilities into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
  10. **Within 30 days of placing the authorized facilities in service**, Midla shall file an affirmative statement with the Secretary, certified by a senior company official:
    - a. that the respective facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
    - b. identifying which of the Certificate conditions Midla has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
  11. **Prior to construction**, Midla shall file with the Secretary its revised Noxious and Invasive Species Control Plan to include: a statement of how it would comply with the Commission's regulations at 18 C.F.R. 380.15(f)(3) regarding landowner authorization for herbicide application, clarification on its use of certified herbicide applicators, and clarification on its use of appropriate Environmental Protection Agency approved herbicides.
  12. **Prior to construction**, Midla shall file with the Secretary evidence of landowner concurrence with the site-specific residential construction plans for any residences within 25 feet of the proposed construction workspace.

13. Midla shall not begin construction of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
  - a. Midla files with the Secretary:
    - i. an addendum report(s) for Louisiana for the denied access areas, access roads, horizontal directional drill (HDD) extra work space, and the area identified for resurvey by the State Historic Preservation Office (SHPO), and the Louisiana SHPO's comments on the report(s);
    - ii. an updated "Blanket Clearance" letter agreement with the Louisiana SHPO, applicable to Midla's planned 2016 construction activities; and
  - b. the Commission staff reviews and the Director of OEP approves the cultural resources report(s), and notifies Midla in writing that construction may proceed.

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

14. If 24-hour drilling activities are required at any of the HDD sites, Midla must file the following **in the weekly construction status reports**:
  - a. notice that 24-hour drilling activities would commence by the next weekly construction status report;
  - b. the noise measurements at the nearest noise-sensitive areas, obtained at the start of 24-hour drilling operations;
  - c. the noise mitigation that Midla implemented at the start of 24-hour drilling operations; and
  - d. any additional mitigation measures that Midla would implement if the initial noise measurements exceeded a day-night noise level of 55 decibels on the A-weighted scale at the nearest noise-sensitive area and/or increased noise is over ambient conditions greater than 10 decibels.

**Appendix B**

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

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

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

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

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

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