121 FERC ¶ 61,267
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

AES Ocean Express LLC	Docket Nos.	RP04-249-006
v.		CP05-388-002
Florida Gas Transmission Company		CP06-1-003
Southern Natural Gas Company		
Florida Gas Transmission Company		CP06-1-005
		CP06-1-007
		CP06-1-008

OPINION NO. 495-A
ORDER ON REHEARING

(Issued December 20, 2007)

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1. On April 20, 2007, the Commission issued an order, Opinion No. 495, in the above-captioned proceeding.[1] Timely requests for rehearing or clarification of that order were filed by Florida Gas Transmission Co., LLC (Florida Gas or FGT), jointly by the Florida Generators[2] and Florida Power Corporation d/b/a/ Progress Energy Florida, Inc. (Florida Generators), Florida Power & Light Co. (Florida Power), the LNG Suppliers Coalition (LNG Suppliers),[3] and Tampa Electric Company (Tampa Electric). In addition, the Florida Generators and Progress Energy filed a motion to reject a portion of the request for rehearing of the LNG Suppliers, and the LNG Suppliers filed an answer to the motion. As discussed below, the requests for rehearing are generally denied. However, upon further consideration, the Commission will grant rehearing and accept Florida Gas's proposed sulfur limit of 2 grains per cubic foot.

[1] 119 FERC ¶ 61,075 (2007).

[2] The Florida Generators are Florida Power & Light Co., Florida Gas Utility, and Seminole Electric Cooperative, Inc.

[3] The LNG Suppliers are BP Energy Company, ConocoPhillips Company, Chevron U.S.A., Inc., ExxonMobil Gas & Power Marketing Company, and Shell NA LNG, LLC.

I. Background

2. A detailed discussion of the background of this proceeding is contained in Opinion No. 495 and will not be repeated here.[4] Briefly, on April 11, 2006, the Presiding Administrative Law Judge (ALJ) issued an Initial Decision[5] in this proceeding addressing issues related to establishing gas quality and interchangeability tariff standards to accommodate the introduction of re-gasified natural gas (LNG) into the Market Area of Florida Gas. In Opinion No. 495, the Commission affirmed the ALJ's decision to accept as just and reasonable Florida Gas's proposed standards, but found that these standards should be applied to all gas entering the Market Area, not just to LNG. Further, the Commission affirmed the ALJ's conclusion that any mitigation costs downstream gas users may incur as a result of the introduction of LNG onto the Florida Gas system are speculative. However, the Commission went beyond this finding and further determined that even if such costs were not speculative, it would not provide for recovery of mitigation costs because it lacks jurisdiction with respect to the costs identified in the record, except in unusual circumstances. Finally, the Commission affirmed the ALJ's conclusion that Florida Power does not have a contractual right that guarantees delivery of low Btu gas to its Dry Low Nox (DNL), also referred to as Dry Low Emissions (DLE), turbines.

II. Discussion

3. On rehearing, the parties have raised issues with regard to the burden of proof, the appropriate Wobbe Index range, the appropriate Wobbe Index rate of change, constituent limits with regard to propane, ethane, and sulfur, the application of the gas quality and interchangeability standards to gas entering the Market Area from the Western Division, and mitigation costs. In addition, Florida Power seeks rehearing with regard to its alleged right to receive low Btu gas. These issues are discussed below.

A. Burden of Proof

4. In Opinion No. 495, the Commission explained that this proceeding was initiated when AES filed a complaint against Florida Gas under sections 5 and 7 of the Natural Gas Act (NGA), and that in its answer to the complaint, Florida Gas acknowledged that the gas quality and interchangeability standards of its tariff were inadequate. In its order

[4] *See* Opinion No. 495 at P 2-15.

[5] *AES Ocean Express LLC v. Florida Gas Transmission Company*, 115 FERC ¶ 63,009 (2006).

on the complaint,[6] the Commission agreed with Florida Gas that the tariff was inadequate in this respect and invoked its section 5 authority to require Florida Gas to file tariff revisions that included just and reasonable gas quality and interchangeability standards that would accommodate the introduction of LNG into its system.

5. As the Commission also explained in Opinion No. 495, when a pipeline makes a filing to comply with a Commission order under section 5, that filing is processed under section 5. Thus, when Florida Gas made its filing to comply with the Commission's order on the complaint, that filing was made under section 5, not section 4, of the NGA. However, the Commission further stated, citing *ANR I*,[7] that it was proper for the ALJ to find that if Florida Gas showed that its proposed remedial tariff provisions are just and reasonable, its proposal should be accepted even if there are other just and reasonable remedies.

6. On rehearing, the Florida Generators[8] argue that the Commission erred in deferring to Florida Gas's proposed interchangeability standards rather than crafting its own remedy based on the best approach presented. They state that the presumption in favor of a pipeline-promulgated remedial proposal is contrary to the requirements of the NGA because it delegates some portion of the Commission's responsibility to craft a just and reasonable remedy under section 5 to the pipeline by assigning the pipeline preferential status in the evidentiary and decision-making hierarchy. Further, they argue, it creates an additional evidentiary burden on parties making section 5 remedial proposals because it requires them to show that the pipeline's proposal is effectively unjust and unreasonable in order for the Commission to consider their proposals. The Florida Generators argue that this approach blurs the distinction between sections 4 and 5, and creates a strong likelihood that section 5 remedies adopted by the Commission will not be the best possible remedy, but simply the one proposed by the pipeline. The Florida Generators argue that the Commission should reject the application of the *ANR* policy in this case and reconsider its substantive findings by treating all competing proposals on an equal basis in order to provide the best solution to the issues.

7. The allocation of the burden of proof in this proceeding is appropriate and consistent with Commission policy. The Commission correctly stated its policy as set

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[6] *AES Ocean Express, LLC v. Florida Gas Transmission Co.*, 107 FERC ¶ 61,276 (2004).

[7] *ANR Pipeline Co.*, 109 FERC ¶ 61,138 at P 28 (2004), *order on reh'g*, 111 FERC ¶ 61,113 at P 19 (2005)(*ANR I)*.

[8] Tampa Electric incorporates the arguments of the Florida Generators on this issue.

forth in *ANR I*. Consistent with the structure of the NGA, it is appropriate in circumstances where the pipeline acknowledges that its current tariff is unjust and unreasonable and agrees to remedy the situation by proposing just and reasonable terms and conditions, to give the pipeline the initiative in proposing remedial tariff provisions under section 5. The Commission held in *ANR I* that to the extent the pipeline's section 5 proposal was just and reasonable, the Commission would approve it even if other just and reasonable remedies might exist.[9] This policy does not blur the distinction between sections 4 and 5, but is consistent with the structure of the NGA in delegating to the pipeline the primary initiative to propose rates, terms, and conditions of for services on its system. Florida Generators have provided no reason for the Commission to deviate from its policy here.

8. In any event, in this proceeding, the Commission has provided all parties with an opportunity to present evidence on their proposals and to cross-examine other parties on theirs. The Commission has considered and evaluated all the evidence on all the proposals presented, including those of the Florida Generators, on an equal basis, and did not limit its evaluation to a consideration of whether Florida Gas had presented just and reasonable standards. This evaluation of Florida Gas's proposals and the evidence resulted in the Commission making several changes to Florida Gas's proposals. The Florida Generators have sought rehearing on three of the Commission's substantive rulings, *i.e.*, the Wobbe Index range, the sulfur limit, and the recovery of mitigation costs. On each of these issues, the Commission considered all evidence and arguments presented by Florida Generators and accepted or rejected their positions on the merits. The burden of proof was not a factor in the resolution of these issues.

9. With regard to the proposed Wobbe Index range, Florida Gas proposed a range of 1340-1396, while the Florida Generators proposed a far more narrow range of 1346-1371, or approximately plus or minus 1 percent from the historical mean.[10] The ALJ carefully evaluated all of the evidence presented by all of the parties on this issue, including the evidence presented by Florida Generators, on an equal basis.[11] In affirming

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[9] *See also, e.g., PJM Interconnection, LLC*, 117 FERC ¶ 61,331 at P 85 (2006) ("[W]hen choosing between competing just and reasonable options, the Commission has previously stated that it will accept the proposal of a utility if it is just and reasonable, rather than other competing just and reasonable proposals, even in the context of a filing under section 5 of the Natural Gas Act …"); *applying ANR Pipeline Co.*, 110 FERC ¶ 61,069 at P 49 (2005).

[10] LNG Suppliers advocated a much broader range of 1302-1400.

[11] Initial Decision at P 140-174.

the ALJ's finding that the narrow range proposed by the Florida Generators was overly restrictive and would preclude the importation of substantial amounts of LNG available on the world market that could be imported without jeopardizing safety and the environment,[12] the Commission also carefully evaluated all the evidence presented on the various Wobbe Index range proposals,[13] including the evidence[14] and testimony[15] presented by Florida Generators. Based on this extensive evaluation of all of the evidence, the Commission affirmed the ALJ's conclusion that the Florida Generators' proposed Wobbe Index range was too restrictive and was therefore unjust and unreasonable.

10. Thus, this issue was not resolved on the basis of the burden of proof. The Commission did not accept Florida Gas's proposal over other just and reasonable proposals in deference to Florida Gas, but carefully evaluated all the proposals and concluded that Florida Generators' proposed Wobbe Index range was unjust and unreasonable. The Commission stated that the evidence relied on by the Florida Generators did not support their more stringent Wobbe Index range.[16] The Commission accepted Florida Gas's proposal because it was consistent with the DLN turbine manufacturer's specifications, would permit the safe operation of the turbines without violating environmental standards, and at the same time would permit the importation of a substantial amount of LNG. Therefore, the Commission evaluated all of the proposals before it, and its section 5 remedy in this case adopts the Commission's evaluation of the best approach presented at the hearing.

11. Similarly, with regard to the issue of mitigation cost recovery, the Commission considered and evaluated the ALJ's findings and all of the arguments of the parties.[17] This issue was resolved on legal grounds and the burden of proof did not determine the outcome on this issue.

12. Finally, as discussed more fully below, with regard to the sulfur limits, the Commission has considered Florida Generators' argument on rehearing and, upon further

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[12] *See* Opinion No. 495 at P 40.

[13] *Id.* at P 34-130.

[14] *Id.* at P 64-88.

[15] *Id.* at P 89-115.

[16] *Id.* at P 47.

[17] *Id.* at P 253-294.

consideration of this issue, has changed its prior ruling and will grant Florida Generators' request for rehearing. The Florida Generators' request for rehearing on the burden of proof issue is denied.

B. Gas Interchangeability Standards

1. The Wobbe Index Range

13. In Opinion No. 495, the Commission affirmed the ALJ's finding that Florida Gas's proposed Wobbe Index range of plus or minus 2 percent from a midpoint value of 1,368, or a range of 1,340 to 1,396, is just and reasonable. The Commission found that the ALJ's decision is supported by substantial evidence, including warranty specifications for the GE and Siemens-Westinghouse DLN turbines, the testimony of the expert witnesses, and the characteristics of the Florida Gas system and is consistent with the NGC+ Interim Guidelines[18] and the Commission's Policy Statement.[19]

14. The Florida Generators and the LNG Suppliers seek rehearing of this ruling. The Florida Generators argue that the Commission should have adopted a narrower Wobbe Index range,[20] while the LNG Suppliers argue that the Commission should have adopted a broader range. For the reasons discussed below, the Commission denies the requests for rehearing.

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[18]On February 28, 2005, the Natural Gas Council filed two technical papers in the Commission's Docket No. PL04-3-000, *Natural Gas Interchangeability* proceeding, including one entitled *Natural Gas Interchangeability and Non-Combustion End Use*, referred to here as the NGC+ Interchangeability Report. *Id.* at P 14. The NGC+ Interchangeability Report is in this record at Ex. FGT-6. Within the NGC+ Interchangeability Report at 27 are the NGC+ Interim Guidelines.

[19]*Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325 (2006).

[20]The Commission notes that Florida Power Corporation d/b/a/ Progress Energy Florida, Inc. (Progress Energy) is one of the Florida Generators. Progress Energy is the sole known end use purchaser of revaporized LNG and it is a firm and long-term shipper of that gas into Florida Gas's Market Area and over Florida Gas's system. Opinion No. 495 at P 9. Progress Energy's purchase of revaporized LNG and its transportation to and in the Market Area was preapproved by the Florida Public Service Commission. *Id.* at P 285.

a. The Manufacturer's Specifications for the DLN Turbines

15. In establishing the appropriate Wobbe Index range in Opinion No. 495, the Commission evaluated all of the evidence presented on this issue, including the testimony of the witnesses,[21] available test results,[22] and the manufacturer's specifications. The Commission concluded that the manufacturer's specifications[23] are the most reliable evidence in the record as to the allowable Wobbe Index range of gas that the DLN turbines may burn without operational problems.[24] The Commission stated that the specifications are intended to inform the users of the turbines how to operate them safely and reliably and in a manner that will protect the turbines.[25] The Commission also stated that the specifications are public documents that customers rely on for ordering and operating their equipment and that they have legal significance with regard to warranties.[26]

16. The Commission found that the GE specifications state that, after GE's turbines are built, they have the capability of burning gas in an efficient and trouble free manner with a Modified Wobbe Index (MWI) range of plus or minus 5 percent from the center point for which they were built.[27] Therefore, if the GE generators were built to a center point anywhere near the Florida Gas's average historic Wobbe Index of 1,356, those turbines should be able to manage a Wobbe Index range of approximately 1,288 to 1,423. Florida Gas's proposed Wobbe Index range of 1,340 to 1,396 is well within these parameters. The Commission further stated that the GE turbine center points could be as low as 1,330, and the turbines could still operate within their specifications.

17. The Commission found that the Siemens-Westinghouse specifications state that those turbines can burn gas with a MWI range of plus or minus 2 percent, while

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[21] Opinion No. 495 at P 89-115.

[22] *Id.* at P 192.

[23] The GE specifications for its DLN turbines were introduced as Ex. FGT-4, and the Siemens-Westinghouse specifications were introduced as Ex. FGT-5.

[24] Opinion No. 495 at P 47.

[25] *Id.* at P 53.

[26] *Id.* at P 54.

[27] *Id.* at P 48-51 and 54.

maintaining their emissions standards and without the need for auto-tuning.[28] The Siemens-Westinghouse DLN turbines are likely tuned to the historical 1,356 Wobbe Index on Florida Gas's system. This means that, if delivered gas were to fall at the maximum 1,396 Wobbe Index proposed by Florida Gas, the gas would be outside the manufacturer's plus or minus 2 percent range for satisfying emissions standards. However, the Commission found that these generators can be re-centered. The Commission concluded that, if the turbines were re-centered to a Wobbe Index of 1,368, Florida Gas's proposed limits of 1,340 to 1,396 would allow the turbines to operate safely and satisfy the emissions standards.

18. The Commission also reviewed the testimony of the witnesses on this subject, and concluded that the testimony of the Florida Generators' witness, Dr. Klassen, was not as reliable as the manufacturers' specifications on this issue. The Commission explained that Dr. Klassen was not able to offer any specific permissible Wobbe Index range, and further that while Dr. Klassen testified that there is insufficient information available upon which to base Wobbe Index limits, he had not reviewed the relevant information on this issue.[29]

19. On rehearing, the Florida Generators argue that the Commission improperly relied on the manufacturers' published specifications in determining the appropriate Wobbe Index range. They allege that the specifications are unreliable because they conflict with the uniform testimony of all the parties' expert witnesses that no reliable prediction could be made at this time about how DLN turbines would perform, and that further testing was necessary to determine whether the equipment would perform over a broader Wobbe Index range than has been historically experienced.[30] The Florida Generators state that

[28] *Id.* at P 52-53 and 55.

[29] *Id.* at P 95-99.

[30] The Florida Generators cite Ex. FG-1 at 12, Ex. PE-1 at 10, and Ex. FG-1 at 15. They state that Witness Driebe testified that there is a lack of data showing how turbines operate over a wide range of fuels (Tr. 612-13) and Witness Fitzgerald stated that only very limited testing has been done on DLN equipment to evaluate whether such equipment can operate safely, reliably, efficiently, and in conformity with Florida environmental requirements while being exposed to varying gas quality. Ex. PE-1 at 10:20-23.

even the advocates of broader standards could not testify that their proposed quality standards pose no threat to existing DLN equipment.[31]

20. The Commission considered all the testimony on this issue, including the testimony cited by the Florida Generators, and recognized that additional testing is necessary. As the Commission stated in Opinion No. 495, "there is no disagreement that additional testing on gas quality and interchangeability issues should be performed."[32] However, the Commission also explained that, despite the recognized need for additional testing, the NGC+ Work Group issued the NGC+ Interim Guidelines to be applied until additional testing is completed. The Commission properly rejected the notion that until all testing can be completed, no LNG should be permitted to enter the Florida Gas system unless it has the same characteristics as the historical domestic gas supply. The Commission explained that this would essentially eliminate LNG as a gas supply, contrary to the Commission's policy goals, that such a strict application of an historical standard ignores the lack of guarantees that current domestic gas composition and variation would remain the same, and would be completely unnecessary because the record establishes that the DLN turbines can handle the variations in supply approved by the Commission in this proceeding.[33] Further, the Commission noted that the proposed

[31]The Florida Generators cited the testimony of the LNG Suppliers' witness, Dr. Marshland, that he could not guarantee that performance issues will not arise with the introduction of LNG and that DLN combustion systems are too complex to guarantee absolute performance. Ex. LNG-12 at 8:11-15. Further, they state that Dr. Marshland was unable to predict how the equipment would react under various scenarios. *Citing* Ex. LNG-12 at 8:18-22, 9:6-12. They also cite the testimony of LNG Suppliers' witness Santavicca stating that he was not aware of any data characterizing the effect of fuel composition variability typical of that found in LNG gasses on DLE combustors (Ex. FG-26 at 2, Tr. 1415, Ex. FG-24 at 12, Tr. 1441) and that additional testing is necessary. Tr. 1441. The Florida Generators state that these conclusions were echoed by witness for FGT, Staff, and Southern. *Citing* Ex. LNG-12 at 8:18-22, 9:6-12. Finally, the Florida Generators state that GE and Siemens-Westinghouse themselves recognized that field testing is needed to evaluate the impacts of specific changes in gas composition on installed DLN equipment. The Florida Generators cite Ex. FPL-38; Ex. LNG-73 at 7. The Florida Generators argue that the Commission did not explain why this more recent evidence should be entirely discounted.

[32]Opinion No. 495 at P 127.

[33]*Id.*

standard did reflect publicly available test data for the Siemens-Westinghouse DLN turbines. This test data did not contradict the manufacture's specifications.[34]

21. In addition, the Florida Generators argue, the Commission's reliance on the manufacturer's published specifications is unreasonable because the Commission failed to consider other probative documents originated by the manufacturers. Specifically, they cite confidential Exhibit Nos. FG-3 and FPL-29.[35] The Florida Generators assert that the Commission criticized these exhibits as ambiguous and stated that the documents are hearsay not supported by the direct testimony of the parties who drafted them. They argue that these same criticisms are equally applicable to the manufacturer's specifications, and that the Commission did not explain why the hearsay evidence prepared by the same party (the manufacturer), subject to different interpretations by the parties offering the evidence, and not supported by the direct testimony of the author is compelling in one instance and unreliable in the other. They allege that these documents evidence the manufacturers' "discomfort" with the existing fuel specifications, and state that the Commission failed to address this issue. Further, the Florida Generators state that while the Commission criticized these documents because they are not public, the fact that the manufacturers face significant contractual exposure related to the performance of their equipment in the face of LNG supplies, explains why they would be cautious about the language and dissemination of these documents.

22. The Florida Generators also assert in a footnote that "the significance of these confidential exhibits lies as much in the fact that they exist at all as with the truth of the matters set forth therein. The mere fact than a [manufacturer] felt it necessary or appropriate to ***publish*** a document that called into question the reliability of or explained its published fuel specifications, which the Confidential Exhibits plainly do, creates a strong inference that the [manufacturer] does not believe that its published fuel specifications remain viable in the face of newly expanded fuel variability on the FGT system." (Emphasis added.)[36]

23. The ALJ, who presided at the hearing and observed the witnesses, reasonably found that the manufacturers' specifications provide more reliable evidence concerning the parameters within which the turbines may safely operate, than confidential Exhibit

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[34] *Id.* at P 192.

[35] As the Commission stated in Opinion No. 495, the record in this proceeding indicates that these two documents are letters, one to an attorney. Because of the confidential nature of the documents, the Commission discussed them only in general terms. *Id.* at P 64-65.

[36] Florida Generators Request for Rehearing at p. 19, n.28.

Nos. FG-3 and FPL-29. The manufacturers' specifications are published standards that are relied upon by users and potential purchasers of the equipment The specifications state clearly and unambiguously the parameters within which the DLN turbines can operate safely and reliably.[37] The specifications are intended to give notice of the equipment's capabilities, and they have legal significance with regard to the manufacturer's warranties.[38]

24. By contrast, the confidential documents appear to have been created solely for the purposes of this litigation. There is no evidence that the manufacturers have published these documents, or made them available in any manner, to turbine users or potential purchasers outside of this proceeding. Thus, contrary to the Florida Generators' statement, no manufacturer has ***published*** any document that calls into question the validity of the published fuel specifications.

25. Moreover, the Commission explained that these documents are ambiguous and internally inconsistent and that the very fact that they are confidential indicates that they were not intended to contradict GE's published specifications for its DLN turbines.[39] We find the Florida Generators' statement that the documents are confidential because the manufacturers were cautious about disseminating the documents because they face significant contractual exposure related to the performance of their equipment unconvincing. This is pure speculation on the part of the Florida Generators. As the Commission noted, we will not question how the manufacturers wish to disseminate information related to their equipment.[40] But the issue of delivering and consuming revaporized LNG in the Market Area did not just develop overnight. It involved at least one of the Florida Generators (Progress Energy) engaging in long term commitments for purchasing revaporized LNG and its transportation to and through Florida Gas's Market Area. The certificate applications to construct the significant amount of new pipeline facilities require considerable preparation before the applications where filed with the Commission,[41] and included pre approval by the Florida Public Service Commission. And while many owners of the DLN generators in this proceeding have expressed reservations about the use of revaporized LNG (within the proposed parameters

[37] Opinion No. 495 at P 49, 52.

[38] *See, e.g.*, Ex. FGT-5 at 6 ("specific limits are placed on fuel gas properties to ensure operability and maintainability").

[39] Opinion No. 495 at P 64-71.

[40] *Id.* at P 71 with regard to GE and P 192 with regard to Siemens-Westinghouse.

[41] *Id.* at P 9. The first of the applications was filed on May 31, 2002. *Southern LNG Inc.*, 101 FERC ¶ 61,187 at P 1 (2002).

applicable to Florida Gas's Market Area) in their turbines, there is nothing from the manufacturers that confirms or supports those concerns.

26. The Commission concludes that the evidentiary qualities and the reliability of the manufacturers' published specifications and those of the confidential exhibits for determining the operational capabilities of the DLN turbines are not at all similar, and the Commission properly relied on the published specifications, rather than the confidential documents.

b. Re-Tuning the DLN Turbines

27. The Florida Generators also argue that the Commission erred in establishing the Wobbe Index range because it made incorrect conclusions about tuning the DLN turbines. They state that witnesses Driebe and Fitzgerald testified that full operability over the entire Wobbe Index range specified in the fuel specifications did not automatically follow the tuning of a DLN turbine to the existing gas supply and that retuning and/or the addition of auto-tuning equipment would be necessary to make DLN equipment work over a variable gas stream. They state that once re-vaporized LNG is introduced into the system, the Wobbe Index of gas at any given time will be a function of the quantity of re-vaporized LNG being received, and there is no evidence to show that gas characteristics would remain static once LNG has been introduced. If gas constituents and the Wobbe Index are dynamic and changing over time, they argue, then a single retuning of DLN turbines would not work. They cite the testimony of Klassen that a single retuning would be required only if the natural gas composition, not just the Wobbe Index, can be assumed to be stable and constant year round.[42]

28. While the gas quality entering the Florida Gas system will not remain static,[43] the Commission has adopted a Wobbe Index range of plus or minus 2 percent, and therefore the variability is limited to a range that the DLN turbines, after an initial re-centering, should be able to accommodate without re-tuning. However, the Commission has not suggested that retuning will never be required, and the Commission does not find that it must adopt a Wobbe Index range or midpoint and constituent limits so narrow as to assure that retuning of the DLN turbines will never be necessary. The record indicates that, even without the introduction of LNG into the system, tuning DLN turbines is a

[42]The Florida Generators cite Ex. FG-7 at 19:6-8.

[43]As we have pointed out, this is true regardless of whether LNG enters the system since domestic gas characteristics also vary over time. *See* Opinion No. 495, Appendix A. Appendix A shows that the gas composition on Florida Gas does change within the span of time identified by the Exhibits, and, further, in more recent years the ranges of individual constituents of delivered gas has increased.

common practice. For example, Florida Power and FPC routinely tune their turbines at least once a year.[44] Further, the record shows that tuning is relatively inexpensive and can cost as little as $15,000 to $100,000 per unit.[45] Tuning must be performed when a turbine first goes on line and periodically thereafter, as determined by schedules or performance standards.[46] Thus, the record shows that tuning is a part of normal operating requirements regardless of whether re-vaporized LNG is introduced onto the system.

29. The Florida Generators also argue that the Commission's approval of the Wobbe Index range of 1,340 to 1,396 is premised on the erroneous finding that existing turbines can be retuned to a new midpoint of 1,368. The Florida Generators argue that the DLN turbines cannot be retuned to this point because tuning can be accomplished only with the gas supply that is provided at the time of the tuning. They state that recently the Wobbe Index of the gas on the system has not reached 1,368 and the average Wobbe Index is significantly lower.[47] Therefore, they conclude that the Commission's "fix" for what they allege is a violation of the published Siemens-Westinghouse fuel specification is speculative and contrary to the evidence of record.

30. The Commission finds no basis for the Florida Generators' assertion that the turbines could not be retuned to a midpoint of 1,368. The record shows that historically, gas flowing in Florida Gas's market area has a Wobbe Index of 1,346 to 1,371, with a mean of 1,356.[48] Therefore, historically, gas with a Wobbe Index of 1,368 has flowed on the system and the turbines can be retuned to a midpoint of 1,368 to this flowing gas. In any event, if the Wobbe Index of the gas increases within the accepted range when re-vaporized LNG is introduced into the system, then the turbines can be retuned with that flowing gas. There is no impediment to retuning the DLN turbines to a midpoint of 1,368

[44] Tr. 666-68, Ex. PE-4 at 6, Tr. 980, and Ex. LNG-51 at 215.

[45] Ex. SNG-1 at 13:1; Tr. 980:18.

[46] Tr. 781-782:21-3; 807:13-18; 942:2-3; 985; Ex. SNG-1 at 12:17; Tr. 979:13-24; 980-981:22-21.

[47] They cite Ex. FGT-7 at 1-7, which, they assert, states that the average Wobbe Index on the FGT system was approximately 1,355 over the five year period ending July 2005, and that the maximum Wobbe Index experienced on the Florida Gas system since 2003 has not exceeded 1,360.

[48] Initial Decision at P 122.

if gas flowing on the system is within the range adopted by the Commission, i.e., 1,340 to 1,396.[49]

31. In addition, the Florida Generators assert that the evidence shows that DLN turbines operating on the system were designed and built for a Wobbe Index that is lower than the historic average Wobbe Index of gas delivered on the Florida Gas system. The Florida Generators assert that, therefore, the upper range over which the GE turbines can be re-centered to operate is more limited than it would be if the DLN equipment had been designed and constructed for a higher Wobbe Index, and that the upper limit of 1,396 exceeds what the manufacturers themselves have indicated their equipment can withstand. They argue that Opinion No. 495 gives "perfunctory" treatment to this issue[50] and state that the Commission never addressed the merits of their argument. Further, they argue, there is no record evidence that disputes Witness Fitzgerald's testimony, which demonstrates that DLN design points have a limiting effect on the variability of the gas stream that can be safely used on this equipment. If the Commission dismisses Fitzgerald's evidence, they assert, then there is no record evidence whatsoever concerning the design point of existing DLN turbines on Florida Gas's system.

32. Contrary to the Florida Generators' assertion, the Commission's treatment of this issue was not "perfunctory." The Commission thoroughly considered the testimony of Progess Energy's Witness Fitzgerald on this point and clearly explained why it affirmed the ALJ's finding that this evidence is not credible.[51] As the Commission explained, Mr. Fitzgerald's testimony was based on unsubstantiated verbal communications, and Mr. Fitzgerald confused the concepts of "design" and "tuning," and contradicted his prior

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[49]The Florida Generators also imply that retuning to a Wobbe Index of 1,368 will be required for all Market Area DLN generators. As explained in Opinion No. 495 at P 61, modifications to the generators – if needed to achieve the full +/- 2 percent range of the turbines – may not be necessary for many turbines. Depending on the flow of the gas and the location of the generators, there will no change or only small changes in the variability and range of Wobbe Index for delivered gas.

[50]The Florida Generator quote Opinion No. 495 at P 54, where the Commission affirmed the ALJ's finding that the allegations that the GE DLNs were built with center points below Florida Gas's historic Wobbe Index were unsupported, and further stated that even if true, any discrepancy between what the customers ordered and what the manufacturer allegedly supplied should not control the outcome of the interchangeability standards for Florida Gas.

[51]Opinion No. 495 at P 101-110.

testimony several times.[52] The Florida Generators' assertion that "[i]n this case, based on ***anecdotal*** information provided to Mr. Fitzgerald by representatives from GE and Siemens, the existing DLE turbines on the Florida Gas system ***appear*** to have been designed for fuel having a lower Wobbe value than the historic Florida Gas average"[53] hardly provides an evidentiary basis for the Commission to conclude that any DLN turbines were designed or tuned to a lower than average Wobbe Index. As the Commission pointed out in Opinion No. 495, the unreliable character of this evidence was further confirmed in the transcript of the hearing where Mr. Fitzgerald stated that this information was given to him verbally and that "[t]here's nothing in writing that confirms that specifically."[54]

33. The Commission also explained why, even if it were to accept Mr. Fitzgerald's assertion as true, it would not impact the decision on the adoption of the appropriate Wobbe Index range in this case. If Florida Generators' turbines are not properly constructed to accommodate the gas flowing on the Florida Gas system, that is a self-imposed restraint and a matter to be resolved between that company and the turbine manufacturers, not a basis for establishing gas quality and interchangeability standards on Florida Gas applicable to all of Florida Gas's customers.

34. The Florida Generators also take issue with the Commission's statement that the operating characteristics of the existing DLN equipment should not dictate interchangeability standards on the Florida Gas system, and state that interchangeability means that gas must operate on existing equipment without operational difficulties. They state that the NGC+ Working Group defined interchangeability as "the ability to substitute one gaseous fuel for another in a combustion application without materially changing operational safety, efficiency, performance, or materially increasing air pollutant emissions."[55] Florida Generators assert that gas that cannot meet these standards is by definition not interchangeable.

35. The Commission has taken the operating characteristics of the existing equipment into account and has adopted standards that are compatible with existing equipment and that fit the NGC+ definition. That is not the same thing as establishing standards that

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[52] *Id.*

[53] Florida Generators Brief on Exceptions at 37 (emphasis added) (*citing* Tr. 945:13-946:7).

[54] Tr. 945:23-25.

[55] *Citing* Policy Statement at P 16.

require no adjustments or retuning on equipment that was allegedly constructed for lower than actual gas quality levels.

36. Finally, the Florida Generators argue that the Commission erred in relying on its non-expert interpretation of the manufacturer's standards, and that its action is prompted by a policy preference for approving pipeline tariff changes economically beneficial to LNG importers and thereby encouraging expanded gas supplies. However, they assert, reliance on policy objective cannot trump the requirements of reasoned decision-making, and the Commission's decision is not supported by substantial evidence.

37. The Commission properly evaluated the evidence on the capabilities of the DLN turbines. Our finding that the turbines can safely and reliably operate within a Wobbe Index range of 1,340 to 1,396 is based on substantial evidence. In its Policy Statement, the Commission set forth principles to guide decisions on the gas quality and interchangeability issues, including the principle that pipeline tariff provisions on gas quality and interchangeability need to be flexible to allow pipelines to balance safety and reliability concerns with the importance of maximizing supply, as well as recognizing the evolving nature of the science underlying gas quality and interchangeability specifications. Thus, contrary to the Florida Generators' assertion, the Commission's policy does not include a preference for approving pipeline tariff changes economically beneficial to LNG importers,[56] but provides for balancing supply concerns with issues of safety and reliability. The Commission has applied this policy to the facts here and has adopted a Wobbe Index range that will permit increased supply within the current limitations of the DLN turbines.

c. The Impact of Heat on the Wobbe Index Range

38. The LNG Suppliers state that the Commission correctly concluded that the manufacturer's specifications for the gas turbines are the most reliable evidence in the record as to the allowable Wobbe Index range. However, the LNG Suppliers argue that the Commission erred in reaching its ultimate conclusion based on these specifications because it failed to properly distinguish between the Wobbe Index, the Modified Wobbe Index (MWI), and the Gas Index, and failed to recognize the impact of heating on the Wobbe Index range under these indices. The LNG suppliers state that the Wobbe Index dictates the heat flux through a burner and thus provides the most efficient measure of interchangeability. However, they assert, the manufacturer's warranty specifications discuss not the Wobbe Index, but the Modified Wobbe Index which differs from the

[56]The LNG Suppliers would not agree that the Commission's decision here is to their economic benefit and in fact argue that the Commission has been overly restrictive in adopting a Wobbe Index range of plus or minus 2 percent of the historical average.

Wobbe Index in that it is temperature dependent. The LNG Suppliers argue that the Commission erred in stating that the Gas Index is a variation of the Wobbe Index[57] when it is instead a variation of the MWI. In addition, they state that the Gas Index is an interchangeability index unique to Siemens-Westinghouse's fuel specifications, and that the Gas Index of a volume of gas, like MWI, depends on the gas temperature. Thus, they state, a turbine operator can control the MWI and the Gas Index by controlling the temperature of the gas at the inlet to the turbine.

39. Contrary to the assertion of the LNG Suppliers, the Commission clearly explained the differences between the Wobbe Index, the MWI, and the Gas Index.[58] The Commission stated that the MWI, or the Gas Index, is derivative of the Wobbe Index, and differs from the Wobbe Index in that it includes temperature as a variable. For example, the Commission noted the LNG Suppliers' Exhibit LNG-72, showing that a 54 MWI is equivalent to a maximum Wobbe Index of approximately 1,368 at 60 degrees F and would reach 1,400 if heated to 85 degrees F. Significantly, no party in this proceeding identified the differences in the indices as a major concern. Thus, in the context of this record which focused on percentage ranges of the Wobbe Index and Modified Wobbe Index, the differences between the three indices were considered by all parties to be so minor that they could be considered virtually interchangeable. Nonetheless, the Commission acknowledged and discussed the differences between the three indices.

40. Further, the LNG Suppliers' suggestion that the Commission erred by stating that the Gas Index is a variation of the Wobbe Index is incorrect. The record shows that the Siemens-Westinghouse's specifications stated that the MWI and Gas Index are the same.[59]

41. The LNG Suppliers argue that as a result of this alleged error regarding the differences between the indices, the Commission equated Florida Gas's proposed plus or minus 2 percent Wobbe Index range with the plus or minus 2 percent Gas Index range cited in the Siemens-Westinghouse specifications. They argue that this error is further compounded by the Commission's failure to acknowledge that Siemens-Westinghouse

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[57] Opinion No. 495 at P 53.

[58] *Id.* at P 49 & n.79 , P50—53, 120 n.184 .

[59] Ex. FGT-5 at 6 states:

> In order to determine fuel system requirements, heating value and specific gravity are the characteristics of natural gases which must be considered. These are combined into a convenient term called Gas Index (GI), which is also referred to as the "Modified" Wobbe Index.

turbine owners can control the Gas Index of the incoming gas stream by using existing plant facilities without the addition of active tuning equipment. They state that with fuel gas heating, the Siemens-Westinghouse plus or minus 2 percent Gas Index window will not be breached just because the Wobbe Index variation exceeds a plus or minus 2 percent range. The LNG Suppliers argue that the Siemens-Westinghouse warranty specifications would be met by the NGC+ Interim Guidelines' Wobbe Index range based around plus or minus 4 percent of the historical Wobbe Index range, capped at 1,400, or a range of 1,320-1,400. In a footnote supporting of their assertion, the LNG Suppliers cite to their Joint Protest in Docket No. CP06-1-002 (May 11, 2007) and to Siemens-Westinghouse materials attached to that protest. The LNG Suppliers state that these materials describe commercially available auto-tuning equipment, which, they state, would alleviate the Commission's concerns over the availability of auto-tuning equipment, and which would allow for greater variations in MWI.

42. The Florida Generators filed a motion to reject the paragraph containing the footnote referencing the Siemens-Westinghouse material as constituting extra-record evidence. In response to the Florida Generators' motion, the LNG Suppliers acknowledge that the footnote refers to material that is not part of the record in this proceeding, but assert that the citations are not extra-record evidence. They state that footnote 35 merely provides a "*But see*" reference to the LNG Suppliers' protest in Docket No. CP06-1-002.

43. The Commission agrees with the Florida Generators that it would be improper to consider the Siemens-Westinghouse documents referenced in footnote 35 of the LNG Suppliers' request for rehearing, and the Commission has not considered those documents in reaching its decision here. As the Florida Generators state, the Commission has consistently held that new factual information cannot be presented in a request for rehearing, particularly in a case where a hearing has been conducted before an ALJ for the purpose of developing a factual record.[60] But, we also find that there is no basis for rejecting the entire paragraph containing the footnote as extra-record evidence. The paragraph simply sets forth the LNG Suppliers' argument on rehearing and cites to Opinion No. 495 and exhibits introduced into evidence at the hearing.[61]

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[60] *E.g., Transcontinental Gas Pipe Line Corp*., 94 FERC ¶ 61,066 at 61,278 (2001); *See also, Office of Consumers Counsel, Ohio v. FERC*, 783 F.2d 206, 232 (D.C. Cir. 1986); *Tennessee Gas Pipeline Co.,* 80 FERC ¶ 61,070 at 61,222 (1997)*;*

[61] Below the Commission rejects the LNG Suppliers' documents filed in Docket No. CP06-1-002.

44. The evidence in this record indicates that fuel preheaters can be used as a tool to manage MWI variations. The LNG Suppliers focus on the fact that not all generators have preheaters installed on their DLN generators.[62] But the Commission's decision was not solely based on the lack of preheaters on some generators. Preheaters are certainly an established technology, but there is no record as to why some generators do not have them installed. Opinion No. 495 noted that there is a range of possible equipment that can impact the acceptable Wobbe Index range, but that the decisions made to invest in the equipment and the use of the equipment have been the result of business needs that predate the subject gas quality issue.[63] Further, the Commission found that, at least in this record, auto-tuning equipment may not be available.[64] In the end, the Commission concluded that Florida Generators can operate both the GE and Siemens-Westinghouse turbines using gas with the Wobbe Index variability allowed by Florida Gas's proposed standard, without incurring costs beyond what can reasonably be expected in operating sophisticated equipment with special needs as to the fuel it burns.[65] Therefore, we affirm our finding that Florida Gas's proposed plus or minus 2 percent Wobbe Index range is just and reasonable, given the facts presented in the record. The Commission anticipates that tariff gas quality and interchangeability standards may change in the future in recognition of changing requirements and technology.[66] The Commission's affirmation of the ALJ's findings was not a limitation on Florida Gas's ability to propose a change in the Wobbe Index range once the equipment becomes available.[67]

d. The Approved Wobbe Index Range Will Not Limit Available Domestic Supplies

45. The LNG Suppliers further state that while the Commission stated that the LNG Suppliers appeared to be primarily concerned with the upper Wobbe Index range limit,[68] in fact, they are also concerned about the lower limit. They state that the Commission's decision to apply the proposed standards to all gas receipts into the Market Area,

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[62] Opinion No. 495 at P 62.

[63] *Id.* at P 59-62.

[64] *Id.* at P 121 and 130.

[65] *Id.* at P 63.

[66] Policy Statement at P 27.

[67] Opinion No. 495 at P 130.

[68] *Citing* Opinion No. 495 at P 122.

regardless of source, increases their concerns. The LNG Suppliers assert that if the Commission does not change its decision adopting a plus or minus 2 percent Wobbe Index range, the bottom of that range would limit availability of domestic supplies to the Florida Gas Market Area.

46. In support of this assertion, the LNG Suppliers cite their Joint Protest in Florida Gas's compliance filing, Docket No. CP06-1-002 at Attachment 2 (May 11, 2007). Attachment 2, entitled "FGT Gas Chromatograph Measurement Report Showing Western Division Measurements for May 9, 2007," consists of material that the LNG Suppliers state that they obtained from a review of information posted on Florida Gas's web site detailing gas constituent measurements as of the posted date of May 7, 2007.

47. The LNG Suppliers further assert that if the Commission establishes a Wobbe Index range of plus or minus 4 percent of Florida Gas's historical average, then existing, connected domestic supplies will be available for the Market Area. The LNG Suppliers state that the Commission did not change the gas quality standards for the Western Division, even if the gas flows into the Market Area, and did not consider the harm that might occur if domestic gas were shut out of the Market Area. They argue that changing the Wobbe Index range to plus or minus 4 percent of the historical average, capped at 1,400, would take into account the flexibility required by the Policy Statement, the existing realities of the current gas supply, and the lack of any evidence of harm from continuing to use the existing gas supply to Florida Gas's Market Area.

48. The Commission finds no basis for concluding that a lower Wobbe Index range limit of 1,340 will limit the domestic supplies of gas entering the Market Area. First, we find it inappropriate for the LNG Suppliers to cite to material not in evidence in this proceeding as support for this contention. As we have explained above, the Commission's regulations[69] as well as court and Commission precedent[70] prohibit the submission of additional factual information in a request for rehearing after a hearing has been conducted. Therefore, the reliance of the LNG Suppliers on the extra-record evidence contained in Attachment 2 to its Joint Protest in Florida Gas's compliance filing is not permissible.

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[69]Rule 510(c), 18 C.F.R. § 385.510(c) (2007), and Rule 716, 18 C.F.R. § 385.716 (2007).

[70]In addition to the precedent cited in fn. 61, *supra*, *see Pacific Gas and Electric Co.*, 108 FERC ¶ 61,304 at P 9 (2004); *Iroquois Gas Transmission System, L.P.*, 86 FERC ¶ 61,261 at 61,949 (1999); *Koch Gateway Pipeline Co.*, 75 FERC ¶ 61,132 at 61,456 (1996); *Philadelphia Electric Co.*, 58 FERC ¶ 61,060 at 61,133 (1992).

49. In any event, we also point out that the information in this document does not support the LNG Suppliers' contention that the lower Wobbe Index would be a constraint on supplies tendered to the Market Area. The data on Attachment No. 2 shows only receipt point averages. There is no volume information that would indicate whether the tendered supplies are significant in determining the Wobbe Index number for the Western Division gas delivered to the Market Area. Nor is there any information in the document or the record that locates these Florida Gas receipt points in the Western Division. Further, the data for one (ID 8022) of the only four points that the LNG Suppliers identify as threatened by the Commission's finding is clearly meaningless. The data for this receipt point shows that all hydrocarbon constituent percentages are zero.[71]

50. Moreover, Western Division gas delivered to the Market Area is a commingled stream of numerous upstream receipts. The historical average Wobbe Index for Western Division gas delivered to the Market Area is 1356.[72] The LNG Suppliers have shown nothing in the record that would indicate Western Division gas delivered to the Market Area will significantly change, much less fall to a Wobbe Index of 1,340. There is no basis for the LNG Suppliers' contention that a lower Wobbe Index range limit of 1,340 will limit the domestic supplies that can flow into the Market Area, and the Commission will deny the request for rehearing

2. Wobbe Index Rate of Change

51. Florida Gas proposed, and the ALJ accepted, a Wobbe Index rate of change for re-vaporized LNG gas at Market Area receipt points of 2 percent or less during a six minute interval. This would require upstream shippers to tender gas in a manner that is consistent with this requirement. In Opinion No. 495, the Commission affirmed the ALJ in part, but found that this rate of change should also apply to domestic gas as well as to LNG.[73] The Commission recognized that Florida Gas's proposal is a limited solution consistent with the limits of its operational ability to monitor and implement.[74] The

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[71] Below the Commission rejects the LNG Suppliers' documents filed in Docket No. CP06-1-002.

[72] Ex. FGT-7 at 1.

[73] Opinion No. 495 at P 139-144.

[74] There were three scenarios discussed in the record: Market Area segments with a gas stream composed of 100 percent re-vaporized LNG, node movements at the displacement interface; and blended gas streams including both re-vaporized LNG and domestic gas. Of those three, Florida Gas's proposed solution only addressed those parts of its system where the re-vaporized gas constitutes 100 percent of the throughput on the pipeline segment. *Id.* at P 140.

Commission accepted Florida Gas's statement that it has the capability of monitoring the Wobbe Index changes of the gas that it receives. In response to parties questioning Florida Gas's monitoring capabilities, the Commission found that even if Florida Gas does not have the capability of measuring the rate of change at each receipt point, the result would be that there would be no basis for Florida Gas to cut deliveries under this standard, and this result is not harmful to suppliers of revaporized LNG.

52. On rehearing, the LNG Suppliers argue that the Commission erred in accepting Florida Gas's unsupported statement that it is capable of measuring the Wobbe Index rate of change. The LNG Suppliers state that if Florida Gas is unable to measure this standard, the appropriate action for the Commission is rejection. They assert that there is no evidence in this record showing that Florida Gas is capable of measuring a Wobbe Index rate of change of plus or minus 2 percent in a six minute interval.

53. The LNG Suppliers repeat their initial arguments rejected in Opinion No. 495, and the Commission rejects them again. At issue are Wobbe Index monitors at certain Market Area receipt points. As noted by the LNG Suppliers, there is no record as to the number, location or capabilities of Wobbe Index monitors Florida Gas has in service at this time. But the record shows that the Commission's findings are well supported. The monitoring requirement is of limited scope. As explained in Opinion No. 495, only receipt points receiving 100 percent revaporized LNG would likely be affected by this requirement.[75] As noted in Opinion No. 495, that means only one receipt point, the interconnection with Southern's Cypress Pipeline, will be initially impacted.[76] Installation of these meters does not require Commission authorization, as they are considered nonjurisdictional under the NGA.[77] The record shows the cost of Wobbe Index meters is approximately $33,000.[78] It thus appears that the cost of installing these meters, especially on new construction, would be *de minimus*. Therefore the Commission does not consider whether Florida Gas had Wobbe Index monitoring capability in place at the time of the hearing in this case is a controlling or significant impediment to approving the Wobbe Index rate of change tariff condition. If the monitors are in place, then Florida Gas can implement the terms of the tariff. If they are not in place, the costs appear to be minimal and Florida Gas does not have to come to the Commission for their installation. And if Florida Gas chooses not to install the monitors, then it cannot enforce the tariff condition as there will be no data to act upon.

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[75] *Id.* at P 140, 215-16.

[76] *Id.* at P 11.

[77] *Id.* at P 143, fn. 222.

[78] *Id.* at P 60.

54. Also lacking in this record, the LNG Supplies assert, is any evidence that the upstream interconnecting pipelines and/or LNG terminal operators would be capable of receiving this type of information from Florida Gas in a manner that would allow them to react before violating the standard. They argue that for a gas quality standard to be meaningful, technology must exist that will allow the shipper and pipeline to measure and react to the characteristics of the flowing gas. The LNG Suppliers state that this is the only gas quality standard in Florida Gas's tariff that contains a time element, so that shippers must respond not only to changes in gas quality, but also must do so within the limited timeframe allotted in the tariff. They assert that there is no evidence in the record that addresses shippers' requirements on receipt of information about the changing Wobbe Index either from Florida Gas or their own meters and the time necessary to respond to that data in a manner that would positively affect the Wobbe Index within the six-minute limit. The LNG Suppliers assert that there is nothing in the record that would suggest that shippers have this ability, and, without it, they may find themselves with stranded gas rejected by Florida Gas without the opportunity to manage supply. In addition, the LNG Suppliers state that the NGC+ Interim Guidelines do not contain a Wobbe Index rate of change specification. The LNG Suppliers conclude that in these circumstances, the Commission should have rejected Florida Gas's proposal.

55. The Commission rejects these arguments, with a clarification. The LNG Suppliers are correct that the record in this proceeding did not inquire into pipeline operations and suppliers' gas tendering practices upstream of the Florida Gas Market Area. That was not the purpose of this proceeding. The purpose of this proceeding was to determine the receipt point gas quality requirements for Florida Gas, and, as the record developed, for just the Market Area. What upstream pipelines and suppliers have to do to meet Florida Gas's tariff gas quality standards was beyond the scope of this proceeding. But Opinion No. 495 did not ignore the issue. It noted "that Florida Gas's receipt gas quality requirements do not control the upstream pipelines' receipt requirements, only their delivery gas quality requirements. Just as Florida Gas's operations are complex, upstream pipelines' operations may be complex. Their receipt requirements need only take into account Florida Gas's receipt requirements."[79]

56. The LNG Suppliers are correct that the NGC+ Interim Guidelines do not contain a Wobbe Index rate of change specification. But the NGC+ Interchangeability Report did not ignore the issue.[80] The LNG Suppliers are again suggesting that the NGC+ Interim

[79] *Id.* at P 142, fn. 220.

[80] Ex. FGT-6. The NGC+ Interchangeability Report stated that rate of change in gas composition appears to be an important parameter for some end uses. Fluctuations in composition beyond the limits that the equipment was tuned to receive, particularly if the changes occur over a short period of time, are likely to reduce the ability of some

(continued…)

Guidelines define the limits that the Commission should impose on gas quality. As explained in Opinion No. 495, the Policy Statement did not mandate the use of the NGC+ Interim Guidelines, and other limits may be necessary on a case-by-case basis.[81]

57. The LNG Suppliers argue that there is nothing in the record as to how affected parties will receive Florida Gas's Wobbe Index rate of change information so that they can react to it. Florida Gas did not address this issue, nor did the ALJ or Opinion No. 495. Florida Gas's tariff is in compliance with the North American Energy Standards Board's (NAESB) gas quality reporting standard 4.3.90, which requires a minimum posting of daily average data for previous days.[82] This NAESB standard, however, is not adequate for a data stream that is near real-time with flow consequences if the gas quality standards are breached. The Commission noted in Order No. 587-S that in individual cases pipelines may be required to exceed the minimum NAESB gas quality posting requirements.[83] In *ANR II*, the Commission noted that the gas for which the pipeline was collecting data was not the pipeline's, but rather it was the shippers' gas.[84] As the Commission provided in *ANR II*, the Commission clarifies that Florida Gas's customers and affected interconnecting pipelines have the right to this information if and where available. The Commission requires Florida Gas to work with shippers and pipelines affected by the Wobbe Index rate of change standard for the transmittal of this real time data if and where available. Elsewhere the Commission has asked NAESB to endeavor to develop a uniform set of standards regarding the posting of rapidly changing gas

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equipment to perform as designed by the manufacturer. *Id.* at 11. The time rate of change of fuel composition changes is problematic for some end use applications, including combustion turbines. As a practical matter, in general, the work group found that gas composition variability rate of change should not be a significant issue and should meet existing turbine manufacturers' requirements. *Id.* at 20. The Interchangeability Report noted that some some OEM's have expressed some reservations to the plus or minus 4 percent Wobbe Index limits as being too broad to control emissions and meet current fuel specification guarantees. *Id*. at 247.

[81]Opinion No. 495 at P 126, 181, 182. *See also* P 183-184.

[82]Florida Gas's FERC Gas Tariff, Fourth Revised Volume No. 1, Original Sheet No. 203.

[83]*Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-S, 70 Feg. Reg. 28204, 70 Fed.Reg. 37031, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,179 at P 19-22 (2005).

[84]*ANR Pipeline Company*, 109 FERC ¶ 61,358 at P 7 (2004) (*ANR II*).

quality information applicable to those pipelines which are required under their tariffs to do so.[85]

3. Constituent Limitations

58. Florida Gas proposed specific constituent limitations for hydrocarbons and other constituents, including sulfur, carbon dioxide (CO2), and nitrogen (N2). The ALJ found Florida Gas's proposed limits to be just and reasonable and accepted them. In Opinion No. 495, the Commission noted that the NGC+ Interchangeability Report indicates that constituent limitations may be necessary to address manufacturer concerns until research and data are available to better understand the impact on operability of equipment. The Commission stated that Florida Gas had based its constituent limitations on a review of manufacturer's specifications, consistent with the NGC+ standards. The Commission generally affirmed the ALJ's decision with regard to constituent limitations, but reversed his decision with regard to the methane number and sulfur.

59. The Florida Generators and the LNG Suppliers seek rehearing of the Commission's ruling on constituent limitations. The LNG suppliers argue that the individual limits on methane, ethane, propane, pentanes-plus, and inerts (i.e., CO2 and N2) are unnecessary and will restrict LNG imports from many producing regions without providing any additional gas quality protections. They argue that the NGC+ Interim Guidelines require only a butanes-plus ($\leq$ 1.5 mole percent) limitation and a total inerts ($\leq$ 4 mole percent) limitation. The LNG Suppliers argue that when applied to the Florida Gas system, these guidelines produce just and reasonable gas quality standards. Further, they assert that there is no need to adopt additional detailed and restrictive constituent limits for the Market Area because these separate compositional limits address only non-combustion feedstock issues, which do not exist in Florida. The Florida Generators argue that the Commission erred in not adopting a lower limit on sulfur content.

60. The LNG Suppliers' contention that compositional limits address only non-combustion feedstock issues is not accurate. Compositional limits are also important to the safe operation of the DLN turbines.[86] As explained more fully below, we will deny the LNG Suppliers' request for rehearing with regard to the propane and ethane limits. Further, as explained below, we will grant the request for rehearing of the Florida Generators with regard to the sulfur limit.

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[85] *Algonquin Gas Transmission, LLC*, 121 FERC ¶ 61,152 at P 10 (2007).

[86] Exs. FGT-4 at 5 and FGT-5 at 19.

a. Propane (C3)

61. In Opinion No. 495, the Commission explained that in proposing a limit for propane of less than 2.75 mole percent, Florida Gas started with the manufacturer's turbine fuel specifications, and then took into account test results from Siemens-Westinghouse showing that its turbines could operate with somewhat higher levels of propane (C3) and butane+ (C4+).[87] The Commission found that it was appropriate for Florida Gas to take into account results of the Siemens-Westinghouse tests concerning the impact of these constituents on its turbines.

62. The Commission also addressed the LNG Suppliers' concern that this limit would exclude many LNG sources of supply, and noted that the LNG Suppliers' Exhibit No. LNG-30 indicted that many LNG trains delivering an LNG supply with propane (C3) levels in excess of the 2.75 mole percent limit would have Wobbe Index values in the range of 1,422 to 1,437 and HHVs of 1,127 to 1,157 Btu/scf, which would require some processing or inert injection, regardless of whether the Florida Gas proposal or the NGC+ Interim Guidelines applied.[88] The Commission stated that the proposed propane limit did not represent a serious impediment to either domestic or LNG supplies and thus upheld the ALJ's decision to accept Florida Gas's proposed propane limit.[89]

63. On rehearing, the LNG Suppliers argue that the Commission erred in concluding that the propane limitation will not limit the importation of LNG. They assert that while the first page of Exhibit LNG-30 does show that many of the LNG sources referenced by the LNG Suppliers would exceed the Wobbe Index and HHV limits, this is not a reason to support a propane (C3) limit of less than 2.75 mole percent. The LNG Suppliers argue that the Commission's analysis ignores the impact of nitrogen injection on a gas stream's Wobbe Index and HHV, as shown on page 2 of Exhibit No. LNG-30. The LNG Suppliers state that page 4 of Exhibit No. LNG-30 shows that injecting nitrogen of approximately 1.8 percent will bring supplies from Nigeria, Oman, Sakhalin, RasGas, Malaysia, Skikda, Bontang, Abu Dhabi, Angola, NWS, Libya, Brunei, and Arun into compliance with a 1400 Wobbe Index maximum limit and a 1110 Btu/scf HHV maximum limit. They further assert that this exhibit also shows that this level of nitrogen injection has virtually no impact on the propane (C3) content of these gas streams, reducing them only from 3.00 percent to 2.95 mole percent. Thus, they conclude, the 2.75 mole percent propane (C3) limit will be the limiting factor, and thus will be a serious impediment that will preclude imports from the Tier 3 and Tier 4 existing sources. The

[87] Opinion No. 495 at P 189.

[88] *Id.* at P 194.

[89] *Id.* at P 196.

LNG Suppliers further state that these Tier 3 and Tier 4 sources represent more than two-thirds of the world's LNG plants.

64. In addition, the LNG Suppliers argue that the Commission relied too heavily on the precise numbers included in Exhibit No. LNG-30. They state that the compositional amounts are not guarantees from the LNG supply projects, but are only expected ranges. They assert that setting individual hydrocarbon constituent limits could have the unintended consequence of blocking even more LNG than Exhibit No. LNG-30 would suggest, since other LNG markets do not set these same hydrocarbon constituent limits. The LNG suppliers state that the Commission must act on rehearing to reject the individual hydrocarbon constituent levels, or Florida will be unable to attract LNG supplies away from competitors in Europe and Asia.

65. The Commission's decision was based primarily on the evidence showing that the propane (C3) limitation is required to insure the safe operation of the Siemens-Westinghouse turbines. The Commission explained that Florida Gas started with Siemens-Westinghouse's specification for propane of less than 2.5 mole percent. Florida Gas then took into account test results from Siemens-Westinghouse, the only publicly available test data, showing that its turbines could operate within reasonable limits utilizing somewhat higher levels of propane (C3) in its fuel.[90]

66. The LNG Suppliers argue that if there were no propane limit, then more LNG supplies could be imported and placed into the pipeline system with less processing beforehand. This may well be true. But, as we have explained above, while one of the goals of the Commission policy is to maximize the availability of supplies, that goal must be balanced with the goal of assuring the safety and reliability of the system.[91] The evidence in this proceeding shows that the Siemens-Westinghouse turbines may not operate safely with propane levels above the 2.75 mole percent limit. The Commission has properly balanced the concerns for safety and for supply by adopting this propane standard. Further, the current concerns may not be future concerns. The NGC+ Interim Guidelines are specifically titled as "Interim." As additional testing is performed and new techniques and equipment become available, the tariff gas quality standards can be revisited. The LNG Suppliers' estimate that up to two-thirds of the Tier 3 and 4 LNG supplies may be available to the Florida market is speculation. There is no record evidence as to how much of that LNG production capacity is already committed to long-term contracts elsewhere in the world or the United States. Nor is there any analysis of whether the Florida market's demand will make competitive bids for the Tier 3 and 4

[90] *Id.* at P 189, 191-192.

[91] Policy Statement at P 2.

LNG that is available. In addition, the LNG Suppliers only discuss nitrogen injection as a solution to reducing high Wobbe Index and HHV content LNG to meet pipeline tariff standards. The record shows that there are multiple means to manage high Wobbe Index and HHV gas.[92] The Commission did not decide that nitrogen injection is the preferred method, and it is beyond our jurisdiction to decide among those methods.

b. Ethane (C2)

67. In Opinion No. 495, the Commission stated that Florida Gas's proposed ethane limit of ≤ 10 mole percent was based upon a review of fuel specifications of turbines in the generators' fleet and that the proposed ethane level is within the parameters identified in the GE and Siemens-Westinghouse documents. Therefore the Commission upheld the ALJ's decision accepting this proposed limit.[93]

68. On rehearing, the LNG Suppliers argue that the Commission erred in accepting this ethane limit because both the GE and Siemens-Westinghouse fuel specifications limit the ethane concentration to ≤ 15 mole percent.[94] They assert that there is no evidence to support the lower limit, and that Exhibit No. LNG-30 shows that an ethane limit of ≤ 10 mole percent could block a significant portion of potential LNG and domestic supplies without any demonstrated benefit to end-users. The LNG Suppliers state that the Commission should have rejected the ≤ 10 mole percent limit in favor of no stated limit.

69. The LNG Suppliers' position therefore, is that the Commission should adopt no limits on the ethane content of the gas, and, in any event, should adopt a limit no lower than that contained in the manufacturer's specifications. The manufacturer's specifications do not support approval of a standard that imposes no limit at all on the amount of ethane (C2) that may be in the fuel. Both the GE and the Seimens-Westinghouse specifications include a recommended limit. The GE specifications provide for a maximum ethane level of 15 mole percent,[95] and the Siemens-Westinghouse specifications provide for a maximum ethane level of less than 16 mole percent.[96] However, these percentages are maximum numbers and their significance must be viewed in the overall context of all of the constituent specifications. The GE

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[92] *See, e.g.*, Ex. FPL-7, slide 16.

[93] Opinion No. 495 at P 187.

[94] The LNG Suppliers cite Ex. FGT-4 at 5 and Ex. FGT-5 at 11.

[95] E. FGT-4 at 5.

[96] Ex. FGT-5 at 11.

specifications provide that the fuel must be composed of at least 85 mole percent methane (C1). The remaining 15 mole percent is a limit not just on the ethane content, but on all non-methane constituents. This would include ethane mixed with propane (C3), higher hydrocarbons (C4+), hydrogen, oxygen and inerts. These manufacturer specifications constitute limits on the possible solution sets to the Interchangeability Box,[97] which is inconsistent with the LNG Suppliers' position of imposing no limits.

70. While Florida Gas initially proposed a $\leq$ 15 mole percent limit on ethane (C2),[98] it later explained that its initial proposal was based upon only two sources of information: the manufacturers' specifications and Florida Gas's historic minimum and maximum Btu content in the Market Area.[99] Subsequently, in its Prepared Rebuttal Testimony, Florida Gas proposed a tightened ethane (C2) limit of $\leq$ 10 mole percent.[100] In so doing, Florida Gas recognized the possible impact broader constituent standards could have on mitigation costs.[101] Florida Gas's narrowing of the ethane (C2) limits had the effect of reducing the number of possible solutions to the Interchangeability Box, and therefore reduces the operating complexity of the turbines and places less of a burden on the electric generators.

71. The LNG Suppliers' suggestion that the Commission adopt the limit contained in the specification is based solely on a literal reading of one manufacturer's specification, and does not recognize that changing one constituent level impacts other constituents, and changes the risks the DLN generators would face. The reduced limit was not opposed either at the Initial Decision level or on rehearing of Opinion No. 495 by the Florida Generators.

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[97] Because of the nature of the Interchangeability Box, any floor or cap on a single constituent has implications for the other constituents. As the Commission explained in Order No. 495, this is because each one of the hydrocarbon constituents (in this proceeding typically C1 through C5+, but can include through C9 or higher if present and known) adds a different heat contribution to the gas stream. Inerts, while not adding to the heat content, affect the specific gravity of the gas stream, and thus the Wobbe Index. The resulting set of gas composition solutions, at least in this proceeding, is referred to as the "Interchangeability Box." *See* Opinion No. 495 at P 145.

[98] Ex. FGT-1 at 6:18.

[99] *Id.* at 9:20-22.

[100] Ex. FGT-11 at 4:23.

[101] *Id.* at 3:20-22.

72. We also find, for the reasons discussed above with regard to the limit on propane, that this limitation will not have a significant impact on access to supplies of LNG. By reducing operating complexity, and therefore possible mitigation costs, for the generators without placing significant restraints on supply, the Commission has appropriately balanced the concerns for supply with the concerns for safety and reliability of turbine operations. The LNG Suppliers' request for rehearing is denied.

c. Sulfur

73. In Opinion No. 495, the Commission rejected Florida Gas's proposed maximum total sulfur standard of 2 grains per 100-feet cubic foot in delivered gas as unsupported, and stated that nothing in the record shows why the 2 grain standard is required for Florida Gas's operations or is of concern to its end users. Therefore, the Commission held that the existing 10 grain standard will remain applicable to gas delivered to both the Western Division and the Market Area.

74. On rehearing, the Florida Generators argue that given the nature of the limited objection to the proposed 2 grains per 100 cf total sulfur standard, the Commission improperly rejected that standard. They assert that the only party objecting to the proposed standard, BG LNG, did not object to the standard on technical, engineering, or other grounds. Instead, they argue, BG LNG objected to the application of the proposed standard to LNG entering the Market Area while other gas transported into the Market Area from domestic sources would be subject to a different sulfur limit of 10 grains per 100 cf. The Florida Generators argue that the Commission responded improperly to the criticism of the total sulfur standard by eliminating an unopposed total sulfur limit instead of simply requiring Florida Gas to apply that standard uniformly for all deliveries of gas into the Market Area.

75. The Florida Generators argue that the Commission's gas quality Policy Statement urges customers and pipelines to work together to develop agreed upon gas quality specifications and to resort to Commission adjudication when consensual resolution cannot be obtained. The Florida Generators state that when Florida Gas first submitted its revised gas quality standards, Florida Gas proposed 10 grains per 100 cf total sulfur limit, and several power generators protested this limitation as threatening their ability to comply with air quality permits. As a result, Florida Gas submitted revised gas quality provisions accompanying its rebuttal testimony that proposed 2 grains per 100 cf total sulfur limit for the Market Area. No party objected to a 2 grain standard if it were applied uniformly. BG LNG's only complaint was that it singled out LNG gas for disparate treatment from other gas entering an operationally distinct area. In these circumstances, they argue, the proper and on this record only logical response was to adopt the 2 grains per 100 cf total sulfur limit for the Market Area.

76. Upon further consideration, the Commission will grant the Florida Generators' request for rehearing and will adopt 2 grains per 100 cf total sulfur limit. Consistent with Opinion No. 495, this standard will apply to all gas entering the Market Area, both LNG and domestic gas. As the Florida Generators point out, no party objected to 2 grains per 100 cf total sulfur limit per se. The Commission encourages pipelines and customers to work together to develop agreed upon gas quality specifications based upon sound science, and to resort to Commission adjudication when consensual resolution cannot be obtained. Consistent with this policy, we will accept the unopposed sulfur standard.

C. Mitigation

77. In Opinion No. 495, the Commission recognized that the interchangeability standards adopted for Florida Gas's Market Area could require owners of downstream appliances to incur some expenses to enable their equipment to use the gas delivered off the Florida Gas system. The Commission explained that whether parties will incur mitigation expenses depends on a variety of factors, including the capabilities of individual appliances, their location on the Florida Gas system relative to the point re-vaporized LNG is received, and the likelihood that delivered gas will reach the extremes of the approved interchangeability standards. The Commission affirmed the ALJ's finding that any such costs in this proceeding are speculative and indefinite and that no mechanism should be established here for gas users to recover any costs they may incur as a result of the introduction of LNG into Florida Gas's system.

78. In addition, the Commission further found that no such mechanism should be established in any future Florida Gas proceeding. The Commission explained that in cases involving pipeline proposals to change their gas quality and interchangeability tariff standards, all parties have an opportunity to contest the pipeline's proposed standards and may argue that the pipeline's proposed standards are not just and reasonable because they will place excessive cost burdens on existing customers. However, the Commission stated, once it has considered those contentions, and approved just and reasonable gas quality and interchangeability standards, it will not act further to provide for the recovery of any mitigation costs incurred by non-jurisdictional downstream gas users. The Commission stated that this is primarily because the Commission lacks jurisdiction with respect to such matters, except in unusual circumstances.

79. The Commission carefully analyzed its authority under the NGA, and concluded that it has no jurisdiction over the purchases and sales that may bring LNG into the Florida market or over the entities that may incur mitigation costs. The Commission

explained that since Order No. 636,[102] Florida Gas has not performed any sales service,[103] and thus will not be purchasing LNG for sale to its customers. Further, the Commission stated that it has no jurisdiction over LNG suppliers' sale of LNG to shippers and has no jurisdiction over local distribution companies (LDCs). In addition, the Commission explained that end-use customers, whether generators or others, do not come under the Commission's NGA jurisdiction because they do not engage in interstate transportation or interstate sale for resale of natural gas. Therefore, the Commission found that its only relevant jurisdiction in this case is with respect to the rates, terms, and conditions of Florida Gas's transportation service.

80. The Commission stated that, consistent with the NGA, it must ensure that Florida Gas's proposed interchangeability standards governing the gas it accepts onto its system and redelivers to its customers are just and reasonable. In making that determination, one factor the Commission must consider is the effects those standards will have on downstream gas transporters and users, including whether those standards may impose excessive cost burdens on downstream entities. The Commission further explained that in adopting interchangeability standards in this proceeding, it considered the evidence and arguments presented by all interested parties on this issue. In recognition of the special needs of the electric generators attached to Florida Gas's system, the Commission approved interchangeability standards for gas received onto Florida Gas that are more stringent than would otherwise be permitted by the NGC+ Interim Guidelines. Specifically, the Commission stated, it approved a variation in the Wobbe Index of only plus or minus 2 percent with a maximum of 1,396, rather than the plus or minus 4 percent with a maximum of 1,400 permitted by the NGC+ Interim Guidelines. As a result, the Commission stated, while electric generators may incur some mitigation costs, those costs are not so excessive as to render Florida Gas's proposed standards unjust and unreasonable.

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[102] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 57 Fed. Reg. 13,267 (April 16, 1992), FERC Stats. and Regs., Regulations Preambles January 1991 - June 1996 ¶ 30,939 at 30,446-48 (April 8, 1992); *order on reh'g*, Order No. 636-A, 57 Fed. Reg. 36,128 (August 12, 1992), FERC Stats. and Regs., Regulations Preambles January 1991 - June 1996 ¶ 30,950 (August 3, 1992); *order on reh'g*, Order No. 636-B, 57 Fed. Reg. 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (1992); *reh'g denied*, 62 FERC ¶ 61,007 (1993); *aff'd in part and remanded in part, United Distribution Companies v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996); *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

[103] *Florida Gas Transportation Co.*, 70 FERC ¶ 61,017, at 61,057 (1995).

81. The Commission also found that, in order to have jurisdiction to establish a mechanism for the recovery of the electric generators mitigation costs, the Commission would have to find some basis to find that the mechanism we approved was necessary to enable Florida Gas to recover its costs of providing jurisdictional service in a just and reasonable manner. The Commission found that in this case there was no basis for such a finding, unlike in *Columbia Gas Transmission Corp.*,[104] where the Commission approved a pipeline's proposal to compensate two sales customers for the costs of modifying their equipment to accommodate the pipeline's purchase of LNG to serve all of its customers. The Commission explained that *Columbia* was decided before implementation of open access transportation service at a time when pipelines still made jurisdictional bundled sales of gas and that Columbia had chosen to purchase LNG as a supply source for its pre-existing jurisdictional sale-for-resale services. As the Commission stated, in *Columbia*, the pipeline brought the LNG onto its system and needed the LNG to render its jurisdictional service. In contrast, the Commission explained, Florida Gas does not own the gas it transports on its system, is not bringing LNG onto its system, and does not need LNG to satisfy its jurisdictional service obligations. The Commission concluded that in the circumstances here, there is no nexus between the mitigation costs and Florida Gas's costs of providing jurisdictional service as there was in *Columbia*.

82. The Commission further explained that it does not have authority under section 7 of the NGA to impose conditions on the issuance of a certificate to require Florida Gas to establish a mitigation cost recovery mechanism. The Florida Generators[105] seek rehearing of the Commission's decision on the issue of mitigation costs.

1. The Commission's Decision in *Columbia* Does Not Require or Justify Recovery of Mitigation Costs in this Proceeding

83. On rehearing, the Florida Generators argue that the differences between the circumstances in *Columbia* and those in this proceeding as described by the Commission in Opinion No. 495 are distinctions without a difference. They argue that, contrary to the Commission's conclusion, the fundamental principles underlying *Columbia* remain unchanged, and that *Cove Point LNG Limited Partnership* [106] makes clear that *Columbia* remains relevant in the post-pipeline restructuring era. They assert that Columbia's

[104] 13 FERC ¶ 61,102 at 61,219 (1980) (*Columbia*), *opinion and order denying reh'g*, 14 FERC ¶ 61,073 (1981), *aff'd sub nom., Corning Glass Works v. FERC*, 675 F.2d 392 (1982).

[105] Tampa endorses and incorporates the arguments of the Florida Generators on this issue.

[106] 97 FERC ¶ 61,276 at 62,268 (2001) (*Cove Point)*.

position as an importer of LNG is analogous and is relevant, and that consistent with this prior decision, the costs associated with the introduction of regasified LNG should be borne by the parties responsible for its introduction, in this case, the LNG suppliers who will benefit from the sale of LNG. The Florida Generators state that this can be accomplished either by insuring that the equipment necessary to protect the customers has been installed upstream of or on the delivery system, or by charging the system or upstream entities with responsibility for any customer mitigation costs.

84. The differences between the circumstances in *Columbia* and those in this proceeding pointed out by the Commission in Opinion No. 495 are not, as suggested by the Florida Generators, distinctions without a difference, but are significant differences in both the facts of the case and the regulatory framework that make the result in *Columbia* inappropriate here. As the Commission explained, the fact that the *Columbia* decision involved jurisdictional bundled sales and this case involves open access transportation service is significant. In *Columbia*, the pipeline had a contractual obligation to supply its jurisdictional sales customers with gas and the pipeline made the decision to purchase LNG to meet those obligations. In those circumstances, the pipeline was responsible for any processing necessary to render the gas of the same quality as that it had previously sold to its customers. It was that nexus between the pipeline's costs of providing jurisdictional sales service and the shippers' mitigation costs that made the acceptance of the pipeline's proposal for mitigating the costs of introducing LNG onto its system reasonable in those circumstances.

85. The importance of Columbia's status as the jurisdictional seller of the imported LNG in that proceeding is further emphasized by the Initial Decision in *Columbia*, as well as to the court's decision in *Corning Glass Works v. FERC*[107] upholding the Commission's ruling. In the Initial Decision,[108] the ALJ made a distinction between Columbia's direct customers and its indirect customers, and held that customers that did not purchase their gas directly from Columbia could not seek rate relief from the Commission. The ALJ stated that the Commission's jurisdiction extends only to purchases by wholesale customers, *i.e.*, those who purchase gas directly from Columbia in a sale in interstate commerce for resale. The Commission affirmed the ALJ on this issue.[109] Thus, it was the jurisdictional sale of gas by the pipeline that was crucial to the

[107]675 F.2d 392, 395 n.10 (D.C. Cir.1982).

[108]10 FERC ¶ 63,065 at 65,505 (1980). The Commission affirmed the ALJ's analysis of the jurisdictional issue.

[109]13 FERC at 61,221.

Commission's decision, and customers who received LNG gas, but did not buy directly from Columbia could not receive relief.

86. In affirming the Commission's decision in *Columbia*, the court also found this to be a significant factor. Thus, the court stated:

> Columbia decided to introduce the Algerian LNG into its pipeline system. Further, Columbia decided not to modify the LNG itself. Unquestionably, it was Columbia's decisions, in the first instance, that triggered the burden on all distributors immediately or ultimately charged with the payment of conversion costs. [110]

Therefore, the Commission's finding that the *Columbia* decision is not controlling here because it was issued prior to open access and involved jurisdictional sales rather than open access transportation is not based on a distinction without a difference, but instead focuses on the essential basis of the Commission's decision and the court's affirming the decision.

87. Further, while in *Columbia*, the pipeline was the importer of the LNG and in this case the LNG suppliers are the importers of LNG, this does not make the two situations analogous as the Florida Generators suggest. In fact, it underscores how different the two cases are. In *Columbia*, the pipeline subject to the Commission's jurisdiction was the importer, and it used the imported LNG to meet its obligations to its jurisdictional customers. Here the pipeline is not engaged in the sale of gas and the parties importing the LNG are nonjurisdictional. As we pointed out in Opinion No. 495, Florida Gas does not sell gas, does not need the LNG to render any jurisdictional service, and is not bringing LNG onto its system. The shippers, and not the pipeline, are responsible for finding their source of supply and they own the gas Florida Gas is transporting.

88. Further, as the Commission explained in Opinion No. 495, allocating costs to the LNG importer-suppliers and marketers, as the Florida Generators request, would go well beyond what the Commission approved in *Columbia*. The mitigation cost recovery mechanism the Commission approved in *Columbia* allocated the mitigated costs solely to Columbia's sales customers, all of whom purchased Columbia's system supply of which the LNG was one component. The Commission did not allocate any of the mitigation costs to Columbia LNG Corporation, Columbia, or any other entity involved in supplying the LNG to Columbia. Indeed, the Commission explained, absent a Commission finding that Columbia and/or any upstream entities subject to the Commission's jurisdiction had acted imprudently in purchasing the LNG, any requirement that such an upstream entity absorb a portion of the costs would have violated the Commission's obligation under the

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[110] *Corning Glass Works v. FERC*, 675 F.2d 392, 395, n.10 (D.C. Cir.1982).

NGA to provide an opportunity for natural gas companies to recover their prudently incurred costs. The decision in *Cove Point* cited by Florida Generators is not to the contrary. In that case, the Commission did not provide for the recovery of any mitigation costs resulting from the introduction of LNG and specifically stated that it "made no finding regarding what costs will be appropriate for reimbursement if Washington Gas or any other party must convert its facilities to accommodate LNG."[111]

89. In addition, the Florida Generators cite the recent decision in *Transcontinental Gas Pipeline Corp. v. FERC* (*Transco*).[112] They argue that this decision supports their contention that the Commission erred in finding that it lacks jurisdiction to evaluate and assign responsibility for the mitigation of costs incurred by downstream customers as a result of the importation of LNG under the gas quality and interchangeability standards adopted in this proceeding. They argue that in *Transco* the court rejected the pipeline's contention that the Commission had attempted to regulate indirectly the provision of non-jurisdictional gathering services by forcing Transco to reimburse Sunoco for the costs of gathering services it was effectively required to purchase from Williams after a FERC-authorized spin-down of facilities. They state that the court found that the Commission's actions were consistent with precedent which authorizes the Commission to require FERC-regulated companies to reimburse customers when the company increased customers' costs by altering its earlier commitment to provide certain specified services. The Florida Generators argue that this is essentially the same circumstances the parties are confronting here, where Florida Gas's actions in accepting regasified LNG directly into its system will be the direct cause of the mitigation costs to be incurred by its affected customers.

90. Contrary to the Florida Generators' assertion, the circumstances in this case are not analogous to those in the *Transco* case and do not support the view that the Commission should establish a mechanism for gas users to recover any costs associated with enabling their equipment to use gas from Florida Gas's system. In *Transco,* the pipeline and a shipper had entered into a 20-year contract pursuant to which the pipeline agreed to provide the shipper with transportation and gathering services[113] from the Outer Continental Shelf to the shipper's refinery in Pennsylvania at a single rate. During the

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[111] *Cove Point,* 97 FERC at 62,267.

[112] 485 F.3d 1172 (D.C. Cir. 2007).

[113] At the time of the agreement, Transco's gathering services were within the Commission's jurisdiction because Transco provided the gathering service in connection with its interstate transmission of gas. 485 F.3d at 1175 (citing *Williams Gas Processing – Gulf Coast Co. v. FERC*, 373 F.3d 1335, 1337 (D.C. Cir. 2004)).

term of the contract, Transco applied to the Commission for authority to sell the facilities used to provide the gathering service for the shipper to an affiliated company. The shipper argued that the costs for the services it had previously received under the terms of the agreement would be higher when it was required to purchase the gathering services from the affiliate. The Commission approved the application for the transfer of the gathering facilities, but also held that in transferring the facilities, Transco had breached its 20-year agreement with the shipper. As a remedy for Transco's breach of its agreement, the Commission ordered Transco to reimburse the shipper for any additional costs that it may incur as a result of the breach.

91. In affirming the Commission's remedy, the court stated that the NGA gives the Commission broad authority to remedy violations of the Act, and that authority includes ordering monetary remedies for violations of contractual obligations. (slip op. at 6). The court further noted that the Commission had traditionally provided reimbursement in circumstances similar to those in *Transco*, and cited *Office of Consumers' Counsel v. FERC*, 808 F.2d 125 (D.C. Cir. 1987), where the pipeline abandoned a stretch of pipeline used to provide jurisdictional service and the Commission ordered the pipeline to reimburse customers for the cost of replacing the terminated service. The court stated that in both cases, the Commission required "a FERC-regulated company to reimburse customers when the company increased customers' costs by altering its earlier commitment to provide certain specified services." (slip op. at 7). The court stated that in *Transco,* the Commission remedied a violation of a contract regarding jurisdictional services.

92. In contrast here, there has been no breach of a contract or a settlement or of the pipeline's service obligation to its shippers. No shipper on Florida Gas has a contractual right to gas of a specific quality and Florida Gas has not violated any obligation it has to any customer. Therefore, there is no basis for the Commission to exercise its remedial authority to remedy a breach of contract, and the *Transco* decision is inapposite.

2. The Proposals for Cost Mitigation

93. In Opinion No. 495, the Commission also found that the proposals presented by the parties for allocating mitigation costs would involve the Commission in matters that are outside the responsibilities assigned to us under the NGA. The Florida Generators had argued that those responsible for bringing re-vaporized LNG into Florida should be responsible for the mitigation costs, since those are the parties benefiting from the importation of LNG. In addressing the proposal of the Florida Generators, the Commission stated that there are three identified ownership classes of LNG in liquid or re-vaporized form to whom the mitigation costs would be allocated under this proposal: (1) the importers of the LNG upstream of Florida Gas (the LNG importers located at Southern LNG's Elba island); (2) the shipper-end-user (Progress Energy); and (3) the shipper-marketer of LNG (BG LNG).

94. In explaining that the Commission lacked jurisdiction to allocate mitigation costs in the manner requested by Florida Generators, the Commission stated that imported LNG is not subject to the Commission's price regulation, and there is no statutory basis for the Commission to assess costs to the importers' sales of imported LNG into the market. Among other things, the Commission pointed out that the Energy Policy Act of 1992 amended NGA section 3 to provide that the importation of natural gas and LNG would be treated as a first sale under the NGPA, so that like first sales of domestic gas the imported gas supplies are not subject to our jurisdiction.[114] Therefore the Commission has no statutory authority to assess costs to the importers' sales of imported LNG into the market. Moreover, any effort to impose the mitigation costs on the LNG importer-suppliers would run up against the further obstacle that there must be a NGA jurisdictional service contract between the pipeline and the party to be allocated the costs, in order for the Commission to authorize the pipeline to recover the costs. Here, there is no indication that all the LNG importer-suppliers to whom the Florida Generators and LDCs seek to allocate their mitigation costs currently have contracts for service on Florida Gas. If the upstream (or downstream parties) are not customers or only intermittent customers of Florida Gas, the Commission has no other means to require the collection of mitigation costs from these parties. The Commission also pointed out that, to the extent any upstream entity involved in the importation of the gas was subject to the Commission's jurisdiction, the Commission could not require that entity to absorb the mitigation costs, absent a finding that it had acted imprudently in purchasing the LNG. That is because the Commission is obligated under the NGA to provide an opportunity for natural gas companies to recover their prudently incurred costs.

95. With regard to recovery of mitigation costs from the end-user, the Commission noted that the only such entity with a purchase contract is Progress Energy, an electric generator regulated by the Florida Public Service Commission (FPSC). The Commission explained that Progress Energy's purchase of re-vaporized LNG and its use in its generators are not subject to the Commission's jurisdiction, and further, that Progress Energy specifically sought and received pre-approval from the FPSC for its purchase of imported LNG under a 20-year contract and its recovery of associated costs.[115] The Commission concluded that the proposal of the Florida Generators would involve the Commission in authorizing some state-regulated companies, i.e., the generators and the LDCs, to recover their costs from another state-regulated entity, i.e., Progress Gas, on the grounds that a purchase by the latter entity approved by the FPSC caused the former entities to incur additional costs. The Commission concluded that this is a matter more appropriately within the jurisdiction of Florida regulatory bodies. The Commission also

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[114] Opinion No. 495 at P 282.

[115] Exs. SNG-20 and SNG-21.

explained that it has no authority to either review or impose terms on sales by BG LNG, the shipper-marketer of the gas.

96. The Commission also explained that if it were to adopt any of the proposed mitigation proposals, including the proposal of Staff to allocate the costs solely to shippers on Florida Gas, the Commission would have to decide numerous issues concerning the eligibility of the costs for recovery and the justness and reasonableness of the proposed allocation of the costs, which are generally matters outside our NGA jurisdiction and our areas of expertise.

97. Finally, the Commission rejected the arguments of the LDCs that the Commission should establish a mitigation cost recovery mechanism through the exercise its authority under section 7(e) of the NGA to impose conditions on the issuance of a certificate. The LDCs contended that the Commission should impose such a condition on the certificate issued Florida Gas to construct the additional facilities necessary to interconnect with Southern's Cypress Pipeline and transport the re-vaporized LNG received from that pipeline. The Commission, however, cited *AGA v. FERC*, 912 F.2d 1496, 1510-1 (D.C. Cir. 1990), where the court stated that "[t]he Commission may not use its § 7 conditioning power to do indirectly (1) things that it can do only by satisfying specific safeguards not contained in § 7(e) (in the case of reducing previously approved jurisdictional rates, by meeting its burden under § 5), or (2), *a fortiori*, things that it cannot do at all [citations omitted]." The Commission found that conditioning any certificate issued to Florida Gas on its including a mitigation cost recovery mechanism in its rates would fall into the category of "things that [the Commission] cannot do at all."

98. On rehearing, the Florida Generators assert that the Commission erred in finding that it lacked the authority to address mitigation cost recovery issues pursuant to its NGA section 7 conditioning authority. They assert that the Commission retained jurisdiction under section 7 of the NGA to modify its certificate authorizations for Florida Gas's Phase VII Expansion Project and Southern's Cypress Pipeline Project. They argue that the Commission has the obligation under the public interest standard in section 7 of the NGA to consider downstream impacts resulting from its approval of the construction of jurisdictional facilities in these proceedings. The Florida Generators argue that the Commission has ample authority under section 7 to establish cost mitigation mechanisms, and that its refusal to address this issue constitutes reversible error.

99. The Florida Generators state that the Commission's reliance on *AGA v. FERC* is inapposite because the cost mitigation issues in the present case arise from the Commission's approval of the Southern and Florida Gas certificate applications, not because of the Commission's ruling on Florida Gas's tariff standards. Instead, the

Florida Generators state that the decision in *Henry v. FPC,*[116] which states that the Commission's powers under section 7 extend "generally to a consideration of all factors bearing on the public interest, and specifically extends to matters that are excluded from the direct regulatory jurisdiction of the Commission," is relevant here. The Florida Generators also cite broad language in several other decisions[117] which, they assert, supports their position that the Commission may impose conditions on the issuance of a certificate that go beyond what it could require under sections 4 or 5 of the NGA. Therefore, the Florida Generators argue that the Commission erred in finding that in order to allocate mitigation costs, it would have to first determine that the selected cost mitigation method is necessary to insure that Florida Gas recovers its cost of service in a just and reasonable manner and that the costs would have to be deemed to be costs incurred by the pipeline and recoverable in a rate filing of the pipeline. In addition, the Florida Generators state that under section 16 of the NGA, the Commission has the authority to "perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act …," and suggest that the Commission could impose a mitigation plan under section 16.

100. The Commission recognizes that NGA section 7(e) gives it the authority to "attach to the issuance of a certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require." In the June 15, 2006 order issuing certificates to Florida Gas and Southern for the construction of the pipeline facilities through which the re-vaporized LNG at issue in this proceeding will be transported, we stated that this proceeding "is expected to determine the gas standards applicable to LNG volumes at the Southern-FGT interconnect."[118]

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[116] 513 F.2d 395 at 403 (D.C. Cir. 1975).

[117] Specifically, the Florida Generators cite *Missouri Public Service Comm'n v. FERC*, 337 F.3d 1066 (D.C. Cir. 2003) ("both the Supreme Court and [the D.C. Circuit] have made clear that the Commission has a duty to use its § 7 power to protect consumers"); *Office of Consumers' Counsel v. FERC*, 655 F.2d 1132, 1147 (D.C. Cir. 1980) ("FERC's authority to consider all factors bearing on the public interest when issuing certificates means authority to look into those factors which reasonably relate to the purposes for which FERC was given certification authority."); *American Gas Ass'n v. FERC*, 912 F.2d 1496, 1511 (D.C. Cir. 1990) (Commission may go so far as to "establish certificate conditions with an eye to inducing changes in transactions that are beyond its direct grasp").

[118] *Southern Natural Gas Company and Florida Gas Transmission Company*, 115 FERC ¶ 61,328 at P 46.

Therefore, we stated that, "argument based on gas quality and interchangeability issues should receive a full hearing in the *AES v. FGT* proceeding."[119] Accordingly, we determined not to consider those issues in the certificate proceeding, and instead conditioned the certificates on "Southern delivering gas to FGT that complies with FGT's tariff's gas standards, subject to the determination in the *AES v. FGT* proceeding."[120]

101. Thus, the Commission did include a condition in the relevant certificates requiring compliance with Florida Gas's gas quality tariff provisions established in this proceeding. In this proceeding, we have held that in determining the justness and reasonableness of Florida Gas's gas quality standards, one factor we must consider is the effects those standards will have on downstream gas transporters and users, including whether those standards may impose excessive cost burdens on downstream entities. Thus, we have carefully analyzed the needs of the electric generators by, among other things, reviewing the manufacturers' specifications for their gas turbines to determine the quality of gas necessary for those turbines to be operated safely. Based on that analysis, we have approved interchangeability provisions which are more stringent than would otherwise be permitted by the NGC+ Interim Guidelines, including a limit on the variation in the Wobbe Index of only plus or minus 2 percent, instead of the broader plus or minus 4 percent variation permitted by the NGC+ Interim Guidelines. We have also approved limits on other gas constituents, including propane, which the LNG Suppliers contend will prevent certain LNG supplies from being transported on Florida Gas.[121] We have concluded that, while the electric generators may incur some mitigation costs, those costs are not so excessive as to render the approved standards unjust and unreasonable.[122]

102. On rehearing, the Florida Generators ask that, instead of just conditioning the certificates on compliance which the gas quality provisions approved in this proceeding, we further condition the certificates so as to "reassign the cost impact of introducing LNG into FGT's Market Area either by (1) ordering planned LNG terminals to process supplies either by adding facilities at the terminal site or by adopting standards that would require processing at the production site, or (2) reallocating the mitigation costs of FGT's end users to the appropriate upstream parties."[123] The Commission does, of course, have

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[119] *Id*.

[120] *Id*. at P 46 and Ordering Paragraph (C)(3) on p. 62,200.

[121] *See* LNG Suppliers' Request for Rehearing at 5-6, 14-15, 16-17.

[122] In the next section of this order, we address the Florida Generators' contention that Opinion No. 495 underestimated the mitigation costs they may incur as a result of the standards approved in this proceeding.

[123] Florida Generators' Rehearing for Request at 50.

the authority to approve gas quality tariff standards in a pipeline's tariff that may have the effect of requiring shippers, including the LNG Suppliers in this case, to process their gas before the pipeline will accept the gas onto its system. In fact, the LNG Suppliers have asserted that certain of the standards approved in this proceeding will have just that effect.[124]

103. However, the Commission continues to find that its section 7 authority to condition the certificates issued to Florida Gas and Southern for the construction of transportation facilities does not give it the authority to go further and order LNG terminals to process gas or reallocate end-user mitigation costs to "appropriate upstream parties," presumably the LNG importers or marketers, as requested by the Florida Generators. First, contrary to the Florida Generators' assertion, the Commission's discussion in Opinion No. 495 of the decision in *AGA v. FERC* is not inapposite and in fact the Florida Generators themselves cite this case in their request for rehearing on this issue.[125] In *AGA v. FERC*, the court affirmed the Commission's exercise of its NGA section 7(e) conditioning authority in order to permit pipelines to refuse to provide certificated open access transportation service to a shipper unless the shipper agreed to offer credits against any take-or-pay liability the pipeline might have under its gas purchase contracts with that shipper. The court stated that "the Commission may not use its 7 conditioning power to do indirectly . . . things that it cannot do at all." Therefore, the court stated that, if the certificate condition concerning take-or-pay crediting modified a non-jurisdictional take-or-pay contract, "it would be, as we have just seen, an act the Commission cannot perform at all." However, the court found that the crediting condition did not modify non-jurisdictional contracts. It simply gave pipelines increased bargaining power to negotiate settlements of take-or-pay liabilities they were incurring as a result of providing the certificate service, and thus was directly related to the open access transportation service being certificated. In short, the Commission can create a condition "with an eye to inducing changes in transactions that are beyond its direct

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[124]The LNG Suppliers contend that some of the interchangeability standards adopted by the Commission in this proceeding will have the effecting of excluding from importation certain LNG trains that do not meet the standards. *See* LNG Suppliers' Request for Rehearing at 5-6, 14-15, 16-17. While we have concluded, as discussed above, that the impact of these standards will not be as detrimental as the LNG Suppliers contend, it is the case that some LNG supplies will require processing if they are to be imported for transportation on the Florida Gas system. Thus, while the Commission cannot order the suppliers to process the LNG, the standards adopted here could have that effect.

[125]Florida Generators' Request for Rehearing at p. 37, n.72.

grasp," but cannot use its conditioning order to directly order actions that are beyond the Commission's jurisdiction.

104. Our decisions with respect to the conditions in the Southern and Florida Gas certificates at issue here are entirely consistent with the court's discussion in *AGA v. FERC* of our section 7 conditioning authority. By including a condition in the certificates that all gas delivered by Southern to Florida Gas must satisfy the gas quality provisions established in this proceeding, we are permitting Florida Gas to refuse to provide certificated transportation service to any gas, re-vaporized LNG or other, that does not satisfy those standards and thus may cause the Florida Generators to incur excessive mitigation costs. This could have the effect of inducing the LNG Suppliers or other upstream parties to install some degree of processing capability in order to increase the amount of LNG supplies which can satisfy Florida Gas's approved gas quality standards. However, any condition in the Florida Gas and Southern certificates that directly ordered planned LNG terminals to add processing facilities at the terminal site or ordered LNG importers or marketers to pay mitigation costs to the Florida Generators, as they request, would be "an act the Commission cannot perform at all," and thus beyond our section 7 conditioning authority.

105. The authorizations at issue here are solely for the construction by Southern and Florida Gas of pipeline facilities to transport re-vaporized LNG from the Southern LNG terminal to Florida Gas. The Commission issued a separate authorization to Southern LNG Inc. for the expansion of the relevant terminal facilities.[126] The Commission cannot include a condition in the certificates issued to Florida Gas and Southern for the construction of their pipelines that the holder of separate certificate involving a different service must construct facilities.[127] With regard to requiring the LNG importers or marketers to bear any mitigation costs, the Florida Generators do not contest our finding in Opinion No. 495 that we do not have jurisdiction over the importation of LNG or the sale of re-vaporized LNG. Neither the LNG importers and marketers nor the Florida Generators are natural gas companies subject to our NGA jurisdiction. Thus, our only rate jurisdiction in either this proceeding or the Florida Gas certificate proceeding is with respect to the rates charged by Florida Gas for its jurisdictional transportation service. Above, we have reaffirmed our holding in Opinion No. 495 that the mitigation costs lack a sufficient nexus to Florida Gas's jurisdictional transportation service for us to have jurisdiction under NGA sections 4 and 5 to include those costs in Florida Gas's rates. It follows that we lack any authority under the NGA to order the LNG suppliers and importers to pay any mitigation costs to the Florida Generators. Because such an order

[126] *Southern LNG Inc.*, 101 FERC ¶ 61,187 (2002).

[127] *See Panhandle Eastern Pipe Line Co. v. FERC*, 613 F.2d 1120 (D.C. Cir. 1987).

would be "an act the Commission cannot perform at all," it is beyond our section 7 authority to condition the issuance of the Florida Gas and Southern certificates.

106. Finally, the various cases cited by the Florida Generators concerning the Commission's ability to consider the "public interest" when issuing certificates do not support their request for the broad conditions discussed above. Rather, those cases make clear that the Commission's authority under section 7 must be read in conjunction with NGA sections 4 and 5[128] and with the purposes of the NGA. As the court explained in *Office of Consumers' Counsel v. FERC*,[129] the Commission's "authority to consider all factors bearing on the public interest when issuing certificates means authority to look into those factors which *reasonably relate to the purposes for which FERC was given certification authority*." The court, quoting *FPC v. Louisiana Power & Light Co.*,[130] explained that the authority to consider all factors bearing on the public interest must take into account what the "public interest" means in the context of the Natural Gas Act, and that this authority involves only the authority to look into those factors which reasonably relate to the purposes for which FERC was given certification authority; it does not imply authority to issue orders regarding any circumstance in which FERC's regulatory tools might be useful. The court further explained that the inclusion of the "the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare, but the words take meaning from the purposes of the regulatory legislation."[131] The court further explained that in the case of the NGA, the purpose is to encourage the orderly development of plentiful supplies of natural gas at reasonable prices.[132]

107. Thus, the Commission's responsibilities under section 7 of the NGA to consider the public interest in issuing certificates is related to the development of plentiful supplies of natural gas at reasonable prices. The Commission properly considered these factors in issuing the certificates that will promote increased supplies in the regions served by Florida Gas. The Florida Generators have not explained how the public interest, as

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[128] As the court explained in *Panhandle*, 613 F 2d 1120, 1128-29 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 899 (1980), section 7 authority must be read in conjunction with sections 4 and 5.

[129] 655 F.2d 1132, 1147 (D.C. Cir. 1980).

[130] 406 U.S. 621, 635, 636 (1972).

[131] 655 F.2d at 1147 (*quoting National Association for the Advancement of Colored People v. FPC*, 425 U.S. 662, 664-65 (1976)).

[132] *Id*. (*quoting National Association for the Advancement of Colored People v. FPC*, 425 U.S. at 669, 670).

opposed to their interests, would be served by allocating their costs to upstream entities not subject to our jurisdiction, even if the Commission had the authority to do so. Nothing in any of the cases cited by Florida Generators support the view that the Commission could attach conditions to a certificate that would require nonjurisdictional entities, i.e., the LNG suppliers, to pay costs to other nonjurisdictional entities, i.e., to electric generators and/or LDCs.

3. The Commission's Jurisdiction vs. that of the Florida Public Service Commission

108. In rejecting the proposal by the Florida Generators and LDCs that the Commission allocate their mitigation costs to any purchaser-end-users of the re-vaporized LNG, the Commission pointed out that, at present, there appears to be only one such entity with a purchase contract, Progress Energy. The Commission stated that Progress Energy is an electric generator regulated by the FPSC, and the FPSC had approved Progress Energy's purchase of imported LNG under a 20-year contract and its recovery of associated costs. Thus, the Commission stated, the generators and LDCs, all of whom are located in Florida and many subject to the jurisdiction of the FPSC, would have us establish a mechanism under which their mitigation costs would be allocated to Progress Energy, among others. This would involve us in authorizing some state-regulated companies to recover their costs from another state-regulated entity on the grounds that a purchase by the latter entity approved by the FPSC caused the former entities to incur additional costs. The Commission concluded that this was a matter more appropriately within the jurisdiction of Florida regulatory bodies.

109. The Florida Generators discount the Commission's statement that mitigation issues are more appropriately addressed by Florida's regulatory bodies. The Florida Generators assert that the cost mitigation measures to be considered do not involve only parties and interests subject to the jurisdiction of Florida, and that the upstream LNG suppliers and a portion of the facilities used to effectuate the delivery of the LNG are outside Florida. Therefore, they argue, a cost mitigation mechanism could not be entirely implemented by one state. They state that in analogous circumstances in *FPC v. La. Power & Light Co.*,[133] the Supreme Court rejected the option of allowing varying state-by-state regulation of gas curtailment plans, which could create a gap in regulation and instead found that the Commission's authority under section 7 of the NGA was sufficient

[133] 406 U.S. 621 (1972).

to regulate gas curtailment plans that involve both jurisdictional sales for resale and nonjurisdictional direct sales of natural gas.[134]

110. As the Commission explained in Opinion No. 495, the FPSC, not this Commission, has jurisdiction over Progress Energy, the shipper-end-user of the LNG, as well as the other generators and the LDCs within Florida, and has jurisdiction over Progress Energy's contract for the purchase of imported LNG. The Commission has no jurisdiction over these state-regulated entities. While the Florida Generators may be correct that the FPSC lacks jurisdiction over the upstream suppliers of LNG, so does this Commission.

111. The decision in *FPC v. La. Power & Light Co.* is not to the contrary. In that decision, the Supreme Court held that the proviso in section 1(b) of the NGA that provides that the Commission does not have the authority to establish rates for direct sales of natural gas does not prohibit the Commission from establishing curtailment plans that apply to direct sale customers pursuant to its jurisdiction over the transportation of gas in interstate commerce. The Court explained that the Commission's jurisdiction over transportation of natural gas is not limited by the proviso regarding its jurisdiction over direct sales of gas, and that the Commission's jurisdiction over transportation applies regardless of whether the gas transported is ultimately sold at retail or wholesale. Therefore, the decision was based on a finding that the NGA gave the Commission authority in the area, not on a finding that state-by-state regulation would result in a regulatory gap. As the Court stated, "a need for federal regulation does not establish FPC jurisdiction that Congress has not granted."[135]

4. The Level of the Florida Generators' Mitigation Costs

112. As discussed above, the Commission stated in Opinion No. 495 that, in determining whether Florida Gas's proposed gas interchangeability standards are just and reasonable, the Commission must consider the effects those standards will have on downstream gas transporters and users, including whether those standards may impose excessive cost burdens on downstream entities. Opinion No. 495 concluded that, while electric generators may incur some mitigation costs under the standards approved in this proceeding, those costs are not so excessive as to render Florida Gas's approved standards unjust and unreasonable. For the same reason, the Commission has found that the condition in the Florida Gas and Southern certificates that any gas Southern delivers

[134] The Generators also cite *Panhandle Eastern Pipe Line Co. v. FERC*, 359 F.2d 675,682 (8th Cir. 1966) ("The Commission should not be required to ignore the effects of the use of the gas when the gas is transported in jurisdictional pipelines.").

[135] 406 U.S. at 635-36.

to Florida Gas must satisfy the approved gas interchangeability standards is sufficient to protect the public interest, and it would not be appropriate to further condition those certificates by ordering Florida Gas or Southern to install any particular gas processing equipment.

113. The Florida Generators argue that the Commission erred in determining that the mitigation costs incurred by end-user generators to be insignificant and in not weighing the mitigation costs for end-users against the less significant cost of mitigation at the production site or the import terminal. In Opinion No. 495, the Commission explained that it is possible that some turbines might not currently have in place all the equipment necessary for a turbine to operate within a plus or minus 2 percent Wobbe Index, although no such turbines had been identified in this record. The Commission further explained that in this scenario, the generator could incur some of the following costs, depending on the plant and the need for the equipment: faster Wobbe Index meters ($33,000), related outage costs ($100,000), dynamic monitoring ($200,000), control systems ($500,000), and replacement of nozzles in the combustion chambers that may not be designed for, or because of wear may no longer be able to handle, the range required by the new gas composition ($200,000).[136]

114. The Florida Generators state that there are at least 54 DLN turbines that will be affected by the Commission's decision, and applying the Commission's estimate of $1 million per unit, Florida Power would incur costs of $32 million, and total mitigation costs would be $54 million. The Florida Generators state that the Commission erred in concluding that these costs are insignificant.

115. The Florida Generators have misinterpreted this portion of Opinion No. 495. The Commission did not suggest that each unit located on the Florida Gas system will require any or all of the additions noted as possible in some circumstances. Instead, the Commission explained that whether any of these modifications will be necessary is dependent on the particular facility and its location in Market Area. Some of these units already have the necessary equipment and will require no modification.[137] Further, in the short term, only the Jacksonville Lateral will be affected by re-vaporized LNG gas entering the system. Gas upstream of Compressor Station 16 will be domestic gas, and downstream of Compressor Station 16, re-vaporized LNG will be blended with domestic gas. Therefore, as the the Commission explained in Opinion No. 495, with the exception of the Jacksonville Lateral, the change in the flowing gas's Wobbe Index as the result of

[136] Opinion No. 495 at 60.

[137] *Id.* at 62.

introducing re-vaporized LNG will be small or nonexistent.[138] If there is limited or no likelihood of a Wobbe Index change outside of the parameters of domestic gas at a particular DLN turbine site, there is no imperative to invest in mitigation measures. As for Florida Generators' assertion that the costs of mitigating interchangeability at the production site or the import terminal could be less than the mitigation measures that may be necessary for the generators, that is speculative and, even if true, beyond the Commission's authority to effect. Opinion No. 495 describes the Commission's jurisdiction with regard to LNG imports and subsequent sales. Further, with regard the Florida Generators' implication that the Commission can effect investment on LNG producers, all located outside of the United States, is similarly flawed.

116. In addition, the Florida Generators argue that the Commission erred because it failed to address two of the three approaches to mitigation viewed by the industry as acceptable methods of handling the costs associated with managing interchangeability and ignores the NGC+ Interchangeability Report's discussion of cost mitigation. Specifically, they state that the NGC+ Interchangeability Report identified three approaches to managing the costs associated with achieving an acceptable level of gas interchangeability, i.e., management at the production source, management prior to introduction into the transmission pipeline system, and management at the point of end use. The Generators state that the NGC+ Interchangeability Report notes that management at the point of end use may require multiple years to implement and prove to be costly and finds that "[i]n the majority of cases, interchangeability is best managed at two key points along the value chain, at the origin of supply or prior to delivery into the existing pipeline infrastructure."[139]

117. The Florida Generators argue that the mitigation costs to be borne by the Florida end users are more significant than the costs that would be involved in handing the interchangeability issue at the supply end of the chain at the terminal or at the production site. They cite the testimony of Lukens that the heating value of gas can be changed by extracting heavier hydrocarbons at the liquefaction plant and terminal or by injecting nitrogen or air;[140] and testimony that the AES Ocean Express project[141] and the Lake Charles, Louisiana facility owned by Southern Union's Trunkline LNG subsidiary. Further, the Florida Generators argue, that the record shows that there are a number of

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[138] *Id.* at 61.

[139] Finding No. 23, Ex. FGT-6t at 20.

[140] They cite Ex. No. LNG-1 at pp. 16-17.

[141] Ex. FPL-4 at 12; Ex. FPL-10.

options to stabilize LNG Btu content at the LNG import site,[142] and that processing LNG at the LNG production site to lower heating value is economic. Citing Mr. Driebe, the Florida Generators state that processing costs would be relatively small.[143] Mr. Driebe points out that the capital investment for an LNG supply train (liquefaction, shipping, and revaporization) is $2.5 to $4.5 billion, whereas injection and NGL stripping options range from $18.5 to 40 million.[144] The Florida Generators state that from this data, it appears that these options are in the neighborhood of 1 percent of the overall capital investment and are smaller than the expected range of end-use mitigation costs that the Commission deemed to be insignificant in Opinion No. 495.

118. The Commission agrees that there are many possible solutions to manage gas quality all along the chain of custody, including the ones it identifies as applicable at the points of liquefaction, importation and revaporization. Opinion No. 495 did not require or mandate end-use mitigation options. Nor does it prevent the use of other solutions to manage gas quality upstream, within or downstream of the interstate pipeline. However, as explained by Opinion No. 495, the Commission has very limited jurisdiction over the importation and pricing of the commodity.[145] Thus, while the Florida Generators' economic claims may or may not be correct, their application or imposition is beyond the Commission's jurisdiction. The Florida Generators, with one exception, raise no upstream gas quality management solution that Opinion No. 495 did not already fully address. The exception is the Florida Generators' reference to possible solutions at the point gas is liquefied, which Opinion No. 495 failed to address. All the sources of LNG identified in the record are outside the boundaries of the United States. The Commission lacks extraterritorial jurisdiction. The Commission rejects the Florida Generators' specifications of error.

5. The Certificate Orders

119. The Florida Generators also argue that the Commission improperly relied on the certificate orders as an independent basis for rejecting the testimony of their expert

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[142]The Florida Generators at p. 45-46 of their Request for Rehearing cite Ex. FPL-50, which shows four methods available to Southern LNG to control gas quality: blending gas in storage to reduce the HHV of the sendout gas stream, blending facilities at the compressor stations, injecting inerts at the outlet of the LNG import terminal, and processing the gas.

[143]Ex. FPL-4 at 12-13.

[144]Ex. FPL-7 at slides 8 and 16.

[145]Opinion No. 495 at P 281-288.

witnesses asserting that more testing is required regarding gas quality and interchangeability impacts on DLN turbines to fully define the costs as well as safety and reliability impacts. The Florida Generators refer to the Commission's statement that it had "already found that construction of facilities to transport re-vaporized LNG through Southern's Cypress Pipeline for delivery to Florida Gas is required by the public convenience and necessity."[146] The Florida Generators argue that it is circular reasoning to rely on the certificate order to resolve these issues when the certificate order did not address gas quality and interchangeability.

120. The Commission fully evaluated the testimony of Dr. Klassen and the other experts on the issue of the need for further testing. The Commission recognized that additional testing in this area is needed and specifically stated that "there is no disagreement that additional testing on gas quality and interchangeability issues should be performed."[147] However, as the Commission explained, the NGC+ Work Group issued NGC+ Interim Guidelines to be applied until additional testing is completed. The Commission rejected Florida Generators' contention that, until all testing can be completed, no LNG should be permitted to enter the Florida Gas system unless it has the same characteristics as the historical domestic gas supply. The Commission explained that this would essentially eliminate LNG as a gas supply, contrary to the Commission's goals, and would be completely unnecessary because the record establishes that the DLN turbines can handle the variations in supply approved by the ALJ.

121. In reaching the Commission's conclusion that interchangeability standards based on the NGC+ Interim Guidelines should be implemented prior to the completion of all testing, the Commission stated that it had found the construction of facilities to transport re-vaporized LNG through Southern's Cypress Pipeline for delivery to Florida Gas is required by the public convenience and necessity, and that the facilities were projected to be ready to provide transportation service to Progress energy in May 2007. The Commission further explained that, as a practical matter, the point of delivery of the Cypress Pipeline gas onto the Florida Gas mainline and the effects of blending and the speculative nature of future LNG projects serving the Florida Market means that there will be little to no change in gas composition from domestic levels for most of the Market Area. In view of all of these factors, the Commission concluded that Dr. Klassen's testimony did not support depriving Florida Gas's Market Area of the benefit of access to re-vaporized LNG while additional testing is conducted. The Commission's decision is based on a thorough analysis of the record in this case and the Commission did not reject

[146] *Id.* at P 100.

[147] *Id.* at P 127.

Dr. Klassen's testimony based on anything in the certificate proceeding, as the Florida Generators suggest.

D. Application of the Standards to Gas Entering the Market Area from the Western Division

122. Florida Gas proposed that the gas quality and interchangeability standards adopted in this proceeding apply only to revaporized LNG received in its Market Area. Thus, Florida Gas's existing gas quality and interchangeability standards would continue to apply to all gas received in Florida Gas's Western Division and to all domestic gas received in the Market Area. In Opinion No. 495, the Commission approved Florida Gas's proposal not to change the existing standards for gas received in the Western Division. However, the Commission held that the new standards approved in this proceeding should apply to all gas receipts into the Market Area.

123. The Commission explained that the record developed at the hearing in this proceeding was insufficient to support a finding under NGA section 5 that the current gas standards applicable to the Western Division are unjust and unreasonable. Currently, Florida Gas receives gas in the Western Division from domestic sources and revaporized LNG from Trunkline LNG. The record contained no evidence that past deliveries of Western Division gas have caused problems either in the Western Division or the Market Area. In addition, while there have been various proposals for new LNG projects that could inject additional revaporized LNG into the Western Division, the record contains no evidence as to which of those projects will ever be completed and how they would affect Florida Gas's operations.

124. The Commission found that there should be only one gas standard for all receipts into the Market Area.[148] First, the Commission found that Florida Gas's proposal to limit its new Market Area standards to re-vaporized LNG was contrary to the goal of ensuring gas interchangeability. A Market Area customer, depending upon its location, could receive gas sourced anywhere from 100 percent domestic gas to 100 percent re-vaporized LNG, and therefore the same standards should apply to both types of gas. Moreover, different standards for the two types of gas could be unworkable, because re-vaporized LNG may arrive at Florida Gas Market Area receipt points already blended with domestic gas, for example where the re-vaporized LNG arrives from an intermediary interstate pipeline such as Southern's Cypress Pipeline.

125. Second, the Commission held that the Market Area gas quality receipt point standards should apply not only to receipts of gas from off-system sources directly into

[148] *Id.* at P 212-218.

the Market Area, but also to receipts of gas from Florida Gas's Western Division.[149] The Commission stated that the Florida Generators, the major shippers in the Market Area, were concerned that if Western Division gas quality standards are not synchronized with the Market Area requirements, Market Area customers could experience swings in gas quality that go beyond the standards Florida Gas proposed for re-vaporized LNG. The existing tariff standards do not include a maximum HHV limit or any Wobbe Index constituent constraints for Western Division sourced gas. The Commission accordingly found that there should be one receipt gas quality standard in the Market Area and that it should apply to all gas entering the Market Area, including from the Western Division. The Commission stated that that change would offer more protection to Market Area end-users than the current Florida Gas tariff offers.

126. No party seeks rehearing of the Commission's holdings (1) that the new standards adopted in this proceeding should not apply to gas receipts into the Western Division and (2) that the new standards should not be limited solely to receipts of revaporized LNG into the Market Area. However, Florida Gas and the LNG Suppliers do seek rehearing of the Commission's holding that the new Market Area standard should apply to gas entering the Market Area from the Western Division. As discussed below, the Commission denies these requests for rehearing. In addition, related issues arose when Florida Gas filed to comply with Opinion No. 495. Below, we also address the requests for rehearing of our orders on Florida Gas's three compliance filings.

1. Requests for Rehearing of Opinion No. 495

127. On rehearing, Florida Gas states that the Commission properly found that, in order to apply the gas quality standards proposed for the Market Area to the Western Division, it would have to find, pursuant to section 5 of the NGA, first, that the existing standards applicable to the Western Division are unjust and unreasonable and, second, that the application of the proposed standards to the Western Division would be just and reasonable. Florida Gas further states that, while the Commission properly applied this standard in rejecting the application of gas quality standards for gas received into the Market Area to receipt points in the Western Division, it erred in failing to follow this reasoning when it ordered the application of quality standards for LNG received in the Market Area to the mainline carrying commingled gas from the Western Division.

128. Florida Gas states that in Opinion No. 495, the Commission found that there have been "no reports either in the Western Division or the Market Area of problems of Western Division gas delivered to either market,"[150] and therefore concluded that the

[149] *Id.* at P 227-230.

[150] *Citing* Opinion No. 495 at P 229.

record did not support a finding that the current Western Division gas standards are unjust and unreasonable. Florida Gas argues that this finding also requires the rejection of the gas quality standards for the commingled gas stream entering the Market Area from the Western Division. Florida Gas asserts that as a result of the Commission's own finding that there were no reports of problems with respect to the commingled gas stream from the Western Division,[151] there is no basis under section 5 of the NGA to impose new gas quality standards on such gas. Further, Florida Gas argues that application of the Market Area standards to Western Division receipts could impose a constraint on domestic gas.

129. As Florida Gas points out, the Commission found that there was no evidence to suggest that were any gas quality or interchangeability problems in the Western Division, and therefore properly concluded that there was no basis for imposing new gas quality and interchangeability standards for gas receipts in that region. However, the Commission has found, based upon a careful review of the record in this case, that new gas quality and interchangeability standards are required for the Market Area. The primary purpose of these new standards is to ensure that, after the introduction of re-vaporized LNG directly into the Market Area, Florida Gas continues deliver interchangeable gas to its Market Area customers.

130. As discussed in Opinion No. 495, gas interchangeability refers to the extent to which a substitute gas can safely and efficiently replace gas normally used by an end-use customer in a combustion application.T[152] Therefore, in deciding whether to approve Florida Gas's proposed interchangeability standards for its Market Area, the Commission carefully reviewed the record evidence concerning what standards were necessary to permit the safe operation of the end-use appliances of the major shippers on Florida Gas's system, primarily electric generators. For example, the Commission found that the electric generators required gas which falls within a Wobbe Index range of plus or minus 2 percent from a midpoint value of 1,368, or a range of 1340 to 1396 in order to safely operate their gas turbines. Florida Gas has not sought rehearing of any of the Commission's findings concerning the quality of the gas required by Market Area shippers for the safe operation of their end-use appliances. Nor does Florida Gas's request for rehearing of Opinion No. 495 challenge our holding that the new Market Area standards should apply to all gas entering the Market Area from off-system sources,

[151]Florida Gas quotes Opinion No. 495 at P 229: "as there are no identified gas quality problems in the Western Division under its existing tariff gas quality standards…."

[152]Opinion No. 495 at P 29-33.

including not only re-vaporized LNG, but also domestic gas and deliveries of commingled gas streams from other interstate pipelines.

131. Florida Gas's position thus boils down to an assertion that, while all gas entering its Market Area from off-system sources must satisfy the new standards to ensure that Market Area shippers may safely operate their end-use appliances, Florida Gas may deliver any amount of nonconforming gas into its Market Area from the Western Division. For example, Florida Gas has no limits on the Wobbe Index of gas entering its Western Division or any upper limit on the HHV of gas entering its Western Division. Therefore, if the Commission were to grant Florida Gas's request for rehearing, Florida Gas would be free to deliver into its Market Area gas with a Wobbe Index well outside the 1340 to 1396 range the Commission has found necessary for the Market Area electric generators' safe operation of their gas turbines. Similarly, Florida Gas would be free to deliver gas with an HHV in excess of the maximum 1,110 Btu/cubic foot found necessary in this proceeding. However, the Commission approved those standards based upon a determination that shippers in the Market Area must receive gas satisfying those standards in order to safely operate their end-use appliances. That finding, which Florida Gas does not contest, must logically apply to all gas that can reach any delivery point in the Market Area. Florida Gas makes no assertion that its delivery of nonconforming gas from the Western Division into the Market Area would not affect the quality of the gas it delivers to its Market Area customers.

132. The Commission's decision not to impose any additional requirements on gas at receipts points in the Western Division, but to impose them on gas at receipt points into the Market Area is fully consistent with the evidence that these standards are needed in the Market Area, but not in the Western Division. The receipt requirements into the Market Area do not control the receipt requirements upstream,T[153] but are necessary for all gas entering the Market Area to insure that gas quality in the Market Area is consistent with the standards adopted here.

133. Florida Gas argues that the lack of evidence that Western Division gas has caused any problems for Market Area customers in the past permits a finding that the Market Area gas quality standards should not apply to Western Division deliveries into the Market Area. However, this proceeding was initiated by the need to establish gas quality tariff standards to accommodate re-vaporized LNG being introduced directly into Florida Gas's Market Area from new sources. The record shows customers are concerned about

[153]Opinion No. 495 at P 229 explains why the new Market Area receipt standards do not require adjustments to the Western Division receipt standards, and P 297 notes Southern's lack of proposed tariff changes in the face of different receipt and delivery point standards.

gas composition and interchangeability, and not the origin of the gas. The Commission believes that concern is supported. The record showed that Market Area gas composition at given locations will vary depending on the source of the gas, overall demand in the Market Area, and Florida Gas's operations.[154] Further, while the timing is not known, Western Division gas composition is not fixed into the future either.[155] Finally, Florida Gas provided no basis as to why different sources of gas that are to be delivered into the Market Area and commingled can be treated differently without undue discrimination.[156]

134. If the Market Area standards apply to Western Division deliveries to the Market Area, Florida Gas continues, the result could be reduced domestic supplies, citing specifically the standard for C5+ (pentanes+). However, Florida Gas proposed this standard and supported it not on the basis of a LNG-specific standard, but as an issue of gas quality that could result in liquid dropout adversely impacting Florida Gas's pipeline operations.[157] The Commission simply found that there was no difference between domestic and LNG sourced C5+,[158] and to establish dual standards on the basis of source of the supply would be unenforceable and unduly discriminatory.[159] If Florida Gas now believes that C5+ no longer presents a liquid drop out problem that impacts its operations, it may make and support such a proposed tariff change in a NGA section 4 filing.

135. In addition, Florida Gas argues that the Commission's policy and past orders have applied gas quality standards only to receipts of gas into a pipeline system from off-system sources. It asserts that the Commission has made a significant departure from this policy here by requiring application of the standards to the commingled gas stream in the Florida Gas's mainline entering its Market Area. Florida Gas argues that applying gas quality standards to receipt points provides a logical nexus between the standard and the gas to which it applies before the gas is commingled with gas from other receipt points. Thus, Florida Gas states, the responsibility for gas that fails to meet the applicable standard can be directly applied to the non-compliant gas at the receipt point, and the

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[154] *Id.* at P 215.

[155] *Id.* at P 228.

[156] *Id.* at P 218.

[157] *Id.* at P 198. Indeed, C5+ barely exists in revaporized LNG. *See id.* at P 198 and Appendix A.

[158] *Id.* at P 213.

[159] *Id.* at P 218.

non-compliant gas can be controlled before it is commingled with other gas. Florida Gas asserts that Opinion No. 495 destroys this nexus by applying gas quality standards to a commingled gas stream in a mainline with no mechanism to bring the gas into compliance with the quality standards. Florida Gas asserts that in these circumstances, responsibility for the non-compliant gas cannot be directly determined and the non-compliant gas cannot be controlled.

136. Further, Florida Gas asserts, while the Commission states that the gas quality receipt point standards for the Market Area will apply equally to gas entering the Market Area from the Western Division, this location on the system is not a receipt point, and there is no contractual or operational "receipt" of gas when the commingled gas stream flows through Florida Gas's mainline from the Western Division to the Market Area.[160] Florida Gas argues that the Commission fails to provide a rational explanation for its departure from Commission policy and precedent to apply gas quality standards to receipt points where compliance can be determined and controlled.

137. The Commission rejects Florida Gas's arguments. Florida Gas has not cited any authority for the proposition that it is Commission policy to apply gas interchangeability standards only at pipeline receipt points, and there is in fact no such policy. Gas quality and interchangeability are relatively new issues for the Commission, and this proceeding was the Commission's first litigated gas interchangeability case.[161] The Commission has not made any policy statement that it prefers or requires tariff gas quality standards to be applied only at the point of receipt or elsewhere. Even if there were such a policy, the Commission would apply the policy on a case-by-case basis and consider the facts and

[160]Florida Gas cites its tariff definition of receipt point (Florida Gas's FERC Gas Tariff, Fourth Revised Volume No. 1, General Terms and Conditions, Original Sheet No. 204): "Point of Receipt" or "Receipt Point" shall mean the point at which gas is received by Transporter into Transporter's system from an upstream source or facility. The Commission disagrees with Florida Gas's implication that there are no contractual distinctions between the Western Division and the Market Area. Its tariff is replete with rate, service and shippers' obligation differences between the two zones.

[161]This proceeding spanned the time wherein the Commission issued its Gas Quality Policy Statement. The instant proceeding dates from June 18, 2004, when the Commission made its initial findings with regard to the adequacy of Florida Gas's tariff. (*AES Ocean Express, LLC v. Florida Gas Transmission Co.*, 107 FERC ¶ 61,276 (2004)). The Commission's Gas Policy Statement was issued June 15, 2006. (*Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325 (2006)).

circumstances of each case.[162] In Opinion No. 495, the Commission looked at this record and found evidence to support tariff gas quality standards for receipts into the Market Area from all points of entry into that Area.[163] This is the same level of review the Commission would have had to perform even if a policy existed.

138. Florida Gas argues that the Commission finding gives it no tools to ensure that Western Division deliveries will meet Market Area receipt requirements. However, Florida Gas is in no different posture than any other pipeline in this regard. The Market Area tariff receipt point gas quality standards must be met by Southern and any other pipeline delivering commingled gas from their systems into Florida Gas's Market Area.[164] The Commission did not examine and made no finding as how those pipelines must satisfy Florida Gas's Market Area receipt point standards. Florida Gas is left in the same situation as any other upstream pipeline that must deliver gas to a downstream system which has tariff gas quality standards different from those on the upstream system. Each upstream pipeline must evaluate whether the differences in those standards require changes in its operations or its own tariff provisions so as to enable it to meet the downstream standards.

139. As the Commission has explained in Opinion No. 495 and *ANR III*, receipt gas quality requirements on downstream pipelines do not control the upstream pipelines' receipt requirements, but control only their delivery gas quality requirements.[165] The fact a downstream pipeline has more stringent receipt point standards than an upstream pipeline does not necessarily mean that the upstream pipeline needs the same receipt point standards as the downstream pipeline in order to deliver gas to the downstream pipeline that satisfies its standards. In fact, the record in this case shows that in the past, when Trunkline LNG has delivered gas to the Western Division with an HHV as high as 1,131 Btu/scf and a Wobbe Index as high as 1,434, Florida Gas could still deliver gas to the Market Area which did not significantly differ from historical parameters.[166] Thus, it is not clear from this record whether changes to the Western Division tariff receipt point

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[162]*See ANR Pipeline Company*, 117 FERC ¶ 61,286 at P 28-32 (2006) (*ANR III*), wherein the Commission discusses its obligations in applying and changing gas quality policies.

[163]Opinion No. 495 at P 228.

[164]*Id.* at P 296. *See also infra* regarding the Wobbe Index rate of change discussion and at *Id.* at P 140, 142.

[165]*Id.* Opinion 495 at P 142, 296; and 117 FERC ¶ 61,286 at P 27 (2006).

[166]Opinion No. 495 at P 229.

gas quality standards are necessary in order for Florida Gas's deliveries from the Western Division into the Market Area to meet the Market Area standards. However, as the Commission stated in the August 2, 2007 order on the compliance filing, if Florida Gas believes that additional gas quality and interchangeability standards are necessary for the Western Division in view of the Commission's ruling on this issue, it may propose those standards in a section 4 filing.[167]

140. Florida Gas further argues that it is unduly discriminatory to impose quality standards on the commingled gas stream in Florida Gas's mainline when no other pipelines have quality control standards that apply to the commingled stream in their mainlines. Florida Gas asserts that all other pipelines, including competing pipelines, operate under the Commission policy of applying gas quality standards to receipt points, while the Commission places the burden of applying these standards to the commingled gas stream in its mainline to Florida Gas.

141. As explained above, the Commission has no established policy on this issue, and Florida Gas does not cite to any cases holding that gas quality standards should be applied at receipt points only. And, indeed, the Commission notes that at least one other major pipeline has proposed delivery point gas quality standards.[168] Further, for many pipeline operations, operating wet and dry systems is the norm,[169] including different gas quality standards that have the effect of different delivery point standards for distinct areas of their systems.[170]

142. Finally, Florida Gas states that the Commission's Policy Statement on gas quality standards provides for negotiations between a pipeline and its customers to develop quality standards based on facts involved on the pipeline system and balancing safety and reliability concerns with the importance of maximizing supply, and it is only after the

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[167] *Florida Gas Transmission Company, LLC,* 120 FERC ¶ 61,128 (2007).

[168] *Iroquois Gas Transmission System, L.P.*, 119 FERC ¶ 61,325 (2007). *See also Norstar Operating, LLC v. Columbia Gas Transmission Corp., et al.*, 118 FERC ¶ 61,221, at P 119-136 (2007) (*Norstar*) wherein, while rejecting the proposed delivery point standards, the Commission did so on the basis that they were unsupported, not for violation of Commission policy.

[169] *Eg. Northern Natural Gas Company,* 116 FERC ¶ 61,238 (2006); *Transwestern Pipeline Company, LLC*, 115 FERC ¶ 62,189 (2006); *Amoco Production Company v. ANR Pipeline Company,* 76 FERC ¶ 61,081 (1996); *Natural Gas Pipeline Company of America,* 88 FERC ¶ 61,193 (1999).

[170] *Norstar*, at P 59-65.

pipeline and its customers cannot resolve a dispute that the dispute is brought to the Commission to be resolved on a record. Since the Commission found that there is no evidence of any problems in the Western Division, the Commission should allow Florida Gas to follow the Policy Statement, review the facts regarding gas receipts in the Western Division and negotiate with the affected parties the appropriate quality standards to include in its tariff for the Western Division. Florida Gas asserts that the Commission's failure to follow the Policy Statement procedures is unjust, unreasonable, arbitrary and capricious, and not reasoned decision making.

143. There is nothing in Opinion No. 495 that in any way hinders Florida Gas from following the Policy Statement by considering the circumstances on its system and negotiating with its customers to determine appropriate tariff standards for gas quality and interchangeability for the Western Division. Once that process is completed, Florida Gas can propose appropriate standards in a section 4 tariff filing. But these future processes and proposals do not undermine the findings of Opinion No. 495 that this record does not support new standards for the Western Division.

144. Similarly, the LNG Suppliers state that the Commission accepted Florida Gas's proposal to limit the proposed gas quality changes to the Market Area, but then states, inconsistently, that gas quality receipt point standards for the Market Area will apply equally to receipts from the Western Division. The LNG Suppliers ask the Commission to clarify that the Market Area receipt point standards do not apply to gas entering the Market Area from the Western Division and shall not apply to receipt points in the Western Division. The LNG Suppliers note that the Commission stated that "there are no reports in either the Western Division or the Market Area of problems from the Western Division gas delivered to either market." Further, the LNG Suppliers state, the Commission determined that "[a]pplication of the Market Area receipt point gas quality standards, especially the maximum Wobbe Index and HHV limits, would clearly restrict receipts from Trunkline LNG." Thus, the LNG Suppliers conclude, the Commission clearly found that there was no reason to implement new gas quality standards for Western Division receipt points.

145. The Commission clarifies that the Market Area receipt point standards will not apply to receipt points in the Western Division, but, for the reasons explained above, will apply to all gas entering the Market Area including gas entering from the Western Division.

2. Requests for Rehearing of Florida Gas's Compliance Filings

146. Issues concerning the coordination of Florida Gas's gas quality standards in its Western Division and Market Area also arose in the dockets involving Florida Gas's filings to comply with Opinion No. 495. In Opinion No. 495, the Commission directed Florida Gas to file tariff sheets in Docket No. CP06-1 to implement the gas quality and

interchangeability standards prior to the in-service date of Southern's Cypress Pipeline interconnection with Florida Gas. Florida Gas made three filings to comply with Opinion No. 495. Below, we discuss the requests for rehearing of the Commission's orders on each of those filings.

147. *The First Compliance Filing*. On April 30, 2007, Florida Gas made its first filing to comply with Opinion No. 495.[171] In its compliance filing, in addition to proposing tariff language implementing the gas quality standards Opinion No. 495 approved for the Market Area, Florida Gas also proposed to apply the Market Area standards to the Western Division receipt points. Florida Gas stated that since its proposed standards were not intended to apply to a blended gas stream of domestic gas, it proposed the tariff language to ensure that gas from the Western Division complies with the approved standards. On May 25, 2007, the Commission issued a letter order[172] accepting the Market Area related tariff language effective May 1, 2007. However, the Commission rejected the tariff language applying Market Area standards to Western Division receipts as contrary to the holding in Opinion No. 495 that the existing Western Division standards should be retained. Florida Gas and the Florida Generators filed requests for rehearing of this first order on compliance.[173]

148. In its request for rehearing of the May 25 letter order, Florida Gas argues that because the Commission imposed gas quality standards on gas entering the Market Area from the Western Division, it erred in rejecting the proposed tariff language that would have enabled Florida Gas to comply with that standard. Florida Gas's request for rehearing of the First Compliance Order raises the identical issues contained in its request for rehearing of Opinion No. 495, and is rejected again here for the reasons stated above. As we have explained above, Florida Gas may propose additional standards for gas entering the Western Division in a section 4 filing.

149. The Florida Generators also request rehearing of the First Compliance Order. The Florida Generators support Florida Gas's proposal to apply the Market Area receipt point gas quality standards to the Western Division. The Florida Generators support Opinion No. 495's application of the Market Area gas quality standards to all Market Area receipt points. However, the Florida Generators are concerned that the sources of Western Division gas will soon be changing, citing projections for many new LNG receipt

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[171]This filing was made in Docket No. CP06-1-002.

[172]*Florida Gas Transmission Company, LLC*,119 FERC ¶ 61,18528 (2007) (First Compliance Order).

[173]Florida Gas's first compliance filing is Docket No. CP06-1-002; and the requests for rehearing are in Docket No. CP06-1-005.

terminals in the Gulf region of the United States. The Florida Generators argue that Florida Gas needs the Western Division tariff receipt point gas quality standard authority to manage tendered gas quality to ensure Western Division gas will meet Market Area gas quality standards at the point of delivery. If Western Division gas does not meet Market Area standards, the Florida Generators fear that Florida Gas will be required to shut off deliveries from the Western Division.

150. The Commission denies the Florida Generators' request for rehearing. The Commission rejected Florida Gas's proposal as it was beyond the scope of compliance with Opinion No. 495. The Commission did not rule on the merits of Florida Gas's compliance filing proposal, and it is free to propose and support changes to the Western Division tariff gas quality standards in a separate proceeding. The Florida Generators also have the right to initiate an NGA Section 5 proceeding on this issue.

151. The Florida Generators note that the LNG Suppliers' Protest to Florida Gas's first compliance filing included arguments and documents related to Opinion No. 495's adoption of a Wobbe Index Range of plus or minus 2 percent. The Florida Generators note that when Florida Power proposed, in Florida Gas's compliance filing, a modification to Florida Gas's sulfur standards and heating value calculations, the Commission rejected them as beyond the scope of compliance with Opinion No. 495. However, the Florida Generators continue, the Commission did not do the same with the LNG Suppliers' arguments and documents. The Florida Generators request that the Commission reject the LNG Supplier's arguments and documents as beyond the scope of the compliance filing.

152. The Commission grants the Florida Generators' request for rehearing. The Commission rejects the LNG Suppliers' arguments and related documentation as beyond the scope of compliance with Opinion No. 495.[174] This finding does not change the Commission's determination in the First Compliance Order. As the Florida Generators note, the Commission's First Compliance Order did not reference or rely upon the LNG Suppliers' additional arguments and documents. Nor did the First Compliance Order require Florida Gas to comply with any of the Wobbe Index Range changes advocated by the LNG Suppliers.

153. *The Second Compliance Filing.* On June 7, 2007, Florida Gas made its filing to comply with the May 25 order.[175] In this second compliance filing, Florida Gas proposed to eliminate from its tariff language requiring that gas entering the Market Area from the

[174]LNG Suppliers' Protest filed May 1, 2007, Item C at p. 10, and Attachments 1 and 2.

[175]This filing was made in Docket No. CP06-1-004

Western Division must comply with the Market Area standards. Florida Gas argued that since the Commission had rejected its first compliance filing to apply Market Area receipt point standards to Western Division receipt points, it must eliminate the requirement that gas entering the Market Area from the Western Division must meet the Market Area standards.

154. On August 2, 2007, the Commission issued a letter order[176] rejecting the compliance filing. The filing proposed to eliminate the requirement that gas entering the Market Area from the Western Division must comply with the Market Area receipt point. The August 2, 2007 Order rejected Florida Gas's compliance filing as inconsistent with the holding in Opinion No. 495 that gas from the Western Division must comply with the Market Area standards. The Commission rejected Florida Gas's argument that because the Commission had concluded in the First Compliance Order that Florida Gas could not impose in a compliance filing new gas quality standards for the Western Division, it followed that the requirements of gas quality requirements of Opinion No. 495 should not apply to gas entering the Market Area from the Western Division. The Commission explained that if Florida Gas believed that additional gas quality and interchangeability standards are necessary for the Western Division, it can propose those standards in a section 4 filing.[177]

155. In its request for rehearing of the Second Compliance Order, Florida Gas states that the Commission erred in claiming that the rejected tariff language was contrary to Opinion No. 495, because such provision made no change to receipt standards in the Western Division other than what was required as a result of the quality standards imposed by Opinion No. 495 on gas from the Western Division. The Commission rejects this argument. Nothing in Opinion No. 495 required or authorized tariff changes to gas quality standards for receipt points into the Western Division.[178] The Commission specifically held in Opinion No. 495 that this record lacks substantial evidence to support a change in current receipt point standards for the Western Division.[179] The Second Compliance Order further noted how Florida Gas could proceed if it chose to do so: file an NGA section 4 proposal.[180] The remainder of Florida Gas's request for rehearing of

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[176] *Florida Gas Transmission Company, LLC*, 120 FERC ¶ 61,128 (2007)(Second Compliance Order).

[177] *Id.*

[178] Opinion No. 495 at P 227.

[179] *Id.* at P 228.

[180] Second Compliance Order at P 6. We do not permit pipelines to combine compliance filings with other proposed tariff changes. 18 C.F.R. § 154.203(b) (2007).

the Second Compliance Order repeats its request for rehearing of Opinion No. 495, and is rejected for the same reasons discussed above.

156. *The Third Compliance Filing.* Finally, on August 17, 2007, Florida Gas made its filing to comply with the August 2, 2007 Order. In an unpublished letter order dated September 11, 2007, the Commission accepted the compliance filing. Florida Gas filed a request for rehearing of the September 11, 2007 Order.[181]

157. Florida Gas's third request for rehearing repeats the arguments of its first and second requests for rehearing, which have already been denied for the reasons explained above.

E. Florida Power's Right to Low Btu Gas

158. In Opinion No. 495, the Commission affirmed the ALJ's finding that section 4 of a 1989 Letter Agreement between Florida Power and Florida Gas does not give Florida Power a right to any specific capacity on Florida Gas's system for transportation of low Btu gas and does not give Florida Power a right to require Florida Gas to deliver to its DLE turbines gas of any specific Btu content. Paragraph 4 of the 1989 Letter Agreement provides:

> During the primary or extended term of any service provided by Florida Gas under the FTS-1 Service Agreement, FPL shall have the right and Florida Gas shall have the obligation, subject to all necessary regulatory authorizations, to utilize the capacity reserved hereunder for transportation of low Btu gas downstream of Florida Gas's Compressor Station No. 16. The capacity utilized for this purpose shall be limited by the need for Florida Gas to maintain an acceptable gas quality in its pipeline and adequate service to its customers, as determined by Florida Gas in its sole discretion. Florida Gas will use due diligence to obtain all necessary regulatory authorizations for transportation under this Paragraph 4 if requested by FPL. [182]

159. The Commission rejected Florida Power's argument that the plain language of this Agreement guarantees that low Btu gas would be delivered to its DLE turbines. The Commission found that this interpretation is not consistent with the language of the Agreement, which refers to the *transportation* of gas, not its *delivery*. The Commission

[181] Florida Gas's third compliance filing is Docket No. CP06-1-006; and the request for rehearing is Docket No. CP06-1-008.

[182] Ex. FPL-30.

also affirmed the ALJ in rejecting Florida Power's argument that the Letter Agreement could have had no purpose other than to guarantee delivery of low Btu gas to Florida Power's DLE turbines. The Commission affirmed the ALJ's conclusion that the Agreement could have had other purposes, for example, the purpose suggested by the other party to the Agreement, Florida Gas, of permitting Florida Power to tender to Florida Gas for transportation on its system gas from a source with a lower Btu content than would otherwise be permitted. The Commission also affirmed the ALJ's finding that the Agreement is not material to the adoption of gas quality standards in this proceeding and concluded that Florida Power's right to tender low Btu gas to Florida Gas will not change as a result of this proceeding. Florida Power seeks rehearing of the Commission's ruling on this issue.

160. On rehearing, Florida Power argues that the Commission erred in departing from the plain meaning of the Letter Agreement. It asserts that the language of the Agreement is clear and needs no extrinsic evidence to determine the "common sense meaning of the warranty in the 1989 Letter Agreement."[183] Florida Power cites a number of cases that stand for the proposition that the plain meaning of an agreement is determined "from the language used by the parties to express their agreement"[184] and alleges that the Commission's decision is not consistent with these holdings.

161. Contrary to Florida Power's assertion, the Commission has focused on the language used by the parties to the 1989 Agreement in determining its meaning. It is Florida Power that has avoided the contract language and attempted to make its case by resorting to extrinsic evidence and convoluted argument. As the Commission explained in Opinion No. 495, the language of the 1989 Agreement simply does not contain a warranty guaranteeing that Florida Power will receive only low Btu gas at its DLE

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[183] Florida Power's Request for Rehearing at 7.

[184] *WMATA v. Mergentime Corp. et al.*, 626 F.2d 959, 961 (D.C. Cir. 1980). Florida Power also cites *Commonwealth Elec. Co. v. Boston Edison Co.*, 46 FERC ¶ 61,253, at 61,258 (1989) (quoting *Boston Edison Co. v. FERC*, 856 F.2d 361, 367-68 (1st Cir. 1988)).; *Consol. Gas Transmission Corp. v. FERC*, 771 F.2d 1536, 1544 (D.C. Cir.1985) (quoting *Lee v. Flintkote Co.*, 593 F.2d 1275, 1282 (D.C. Cir. 1979)), *Bennett Enters., Inc. v. Domino's Pizza, Inc.*, 45 F.3d 493, 497 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 863 (1995). *Cajun Elec. Power Coop., Inc. v. FERC*, 924 F.2d 1132, 1137 (D.C. Cir. 1991); *See also Public Works Comm'n v. Carolina Power & Light Co.*, 60 FERC ¶61,283, at 61,960 (1992);*Cinergy Servs., Inc.*, 94 FERC ¶ 61,146, at 61,555 n.6 (2001); *Mid-Continent Area Power Pool*, 92 FERC ¶ 61,229, 61,755 (2000) *Boston Edison Co. v. FERC*, 856 F.2d 361, 367 (1st Cir. 1988) ("plain and unambiguous language of the contract excludes consideration of extrinsic evidence").

turbines. Focusing on the language of the Agreement, Commission found that the Agreement addresses only *transportation service* and *transportation capacity*; it does not require Florida Gas to provide any assurance that Florida Power would receive *deliveries* of low Btu gas at its DLE turbines. The Commission explained that because gas on the pipeline is commingled, creating a new gas composition, an agreement to allow a shipper to tender low Btu gas to Florida Gas for transportation on its system does not guarantee delivery to the shipper's delivery point of low Btu gas. Because of variations in gas composition delivered to the pipelines, and variations in operations, the composition of the gas can vary throughout the day and throughout the year. Further, because pipelines often deliver by displacement, the composition of the gas that is delivered to a shipper is rarely the same composition that the shipper tendered the pipeline. Therefore, tendered gas is not identical to delivered gas.

162. In disputing the Commission's interpretation of the language of the Agreement, Florida Power does not focus on the words used by the parties to express their bargain. Instead, Florida Power attempts to characterize the Commission's interpretation as illogical in light of certain extrinsic facts that are not part of the record in this proceeding. Thus, Florida Power argues that the Commission's interpretation of the Agreement would mean that "although [Florida Power] agreed to reimburse [Florida Gas] for hundreds of millions of dollars in expansion costs in return for the low Btu gas warranty, and despite the fact that [Florida Power] detrimentally relied on this warranty by spending billions to then construct DLE turbines, … [Florida Gas] entered into this Agreement in bad faith and with an intent to deceive because this Agreement was worded in so artful a fashion as to deny [Florida Power] the entire benefit of its bargain" and then asserts that this interpretation would "strain credulity."[185]

163. Florida Power's argument ignores the language of the Agreement and refers to alleged facts not in evidence. There is nothing in this record that indicates that Florida Power paid "hundreds of millions" of dollars to Florida Gas in exchange for a warranty that Florida Gas would deliver low Btu gas to its DLN turbines and then relied on that

[185] Florida Power's Request for Rehearing at 9.

warranty when it constructed its turbines.[186] The Commission's recognition in Opinion No. 495 that there is a difference between gas that is tendered to the pipeline and gas that is delivered by the pipeline is accurate and well-recognized. Florida Power's suggestion that if a distinction is made between "transportation" and "delivery," then it must also be assumed that Florida Gas somehow tricked it into signing an agreement that confused the two concepts and denied it the benefit of its bargain is baseless. Rather than assuming that the parties did not understand the difference between "transportation" and "delivery," it is consistent with the case law cited by Florida Power to conclude that the parties meant what the language of the Agreement states and that the Agreement applies to transportation and not delivery.

164. Florida Power also argues that the Commission erred in upholding the ALJ's conclusion that the Agreement could have been intended to permit Florida Power to tender gas to Florida Gas from a source with a lower Btu content than would otherwise be permitted. Florida Power argues that this interpretation is unreasonable because the Commission would not permit the pipeline to unilaterally waive tariff provisions by means of private contract provisions. Moreover, Florida Power argues, there would have been no need to provide such a waiver by means of the 1989 Letter Agreement because

[186] As explained below, Florida Power offered no direct evidence at the hearing on the meaning or circumstances of this Agreement. In its request for rehearing, Florida Power cites to Tr. 71 as support for its contention that it relied upon this Agreement when it spent "billions of dollars to purchase and install Dry Low NOx Emission (DLE or DLN) turbines and the Martin, Sanford, and Turkey Point plants." Florida Power's Request for Rehearing at 2. The cited page of the transcript, however, does not refer to this Agreement at all, let alone any reliance on it by Florida Power. Instead, the referenced lines of the transcript contain a statement by Florida Power's attorney that Florida Power has invested billions of dollars in natural gas-fired generation that is connected to the Florida Gas system.

Also, in its request for rehearing, Florida Power quotes the opening paragraph of the Letter Agreement which provides that the Agreement relates to (1) certain expansion of Florida Gas's pipeline facilities, and (2) the transportation by Florida Gas of low Btu gas. *Id.* The Agreement gives Florida Power the option of requesting that Florida Gas expand its facilities to serve Florida Power and that Florida Power will reimburse Florida Gas for the costs of the expansion. There is nothing in the Agreement that indicates that the separate provisions for the expansion and for the transportation of low Btu gas are in any way related and Florida Power presented no evidence to show any interrelation between these separate contractual provisions.

Florida Gas's tariff already permitted the waiver of receipt point provisions in certain circumstances.[187]

165. Again, Florida Power's argument ignores the language of the Agreement. Contrary to Florida Power's assertion, this alternative interpretation would not provide for the unilateral waiver of the pipeline's tariff provisions. Instead, the Agreement specifically and clearly states that the right to transport low Btu gas is "subject to all necessary regulatory authorizations." The Agreement further specifically provides that Florida Gas "will use due diligence to obtain all necessary regulatory authorizations for transportation under this Paragraph 4 if requested by FPL." Thus, the Agreement clearly contemplated that Florida Gas could be required to seek regulatory approval to permit the transportation of the low Btu gas pursuant to the Agreement.

166. Florida Power next alleges that the Commission's conclusion is erroneous because the Agreement provides for the transportation by Florida Power of low Btu gas under its FTS-1 Service Agreement and Florida Gas's tariff explicitly acknowledges that its transportation obligation includes the obligation to deliver. In support of this, Florida Power cites the definition section of Original Sheet No. 205, section 1 which provides: "Transporter or Transportation Service Provider (TSP) shall mean Florida Gas Transmission Company, LLC, the party receiving gas at the Receipt Points and *transporting quantities to the Points of Delivery."* (Emphasis added by Florida Power).

167. Florida Power has merely cited tariff definition of the term "transporter" and has not cited a substantive portion of the tariff placing specific obligation on the parties. Of course, in performing its transportation service, the pipeline transports gas tendered to it by the shipper at a receipt point and then delivers the same quantity of gas to the shipper's delivery point. This says nothing about the quality of the delivered gas and does not suggest that the gas molecules received by the pipeline at the receipt point are the same molecules of gas that are delivered at the delivery point. There is nothing in the definition section of Florida Gas's tariff that supports Florida Power's argument.

168. Florida Power's arguments are inconsistent with the case law that it has cited holding that the meaning of an agreement must be determined from the plain language used by the parties, and that where the language of the agreement is clear and unambiguous, extrinsic evidence cannot be used to change that meaning. All that the language of this Agreement states is that, subject to significant limitations, Florida Power will have the right "to *utilize the capacity* reserved hereunder for *transportation* of low Btu gas downstream of Florida Gas's Compressor Station No. 16." It does not obligate

[187] Florida Power cites to Florida Gas's FERC Gas Tariff, Original Sheet No. 207, General Terms and Conditions, section 2.B.9.

Florida Gas or anyone else to provide Florida Power with a source of low Btu gas[188] and it does not guarantee the delivery of low Btu gas. It does not provide Florida Power with any warranty and does not mention DLE turbines. The language of this Agreement simply does not say what Florida Power would like it to say.

169. In addition, in Opinion No. 495, the Commission rejected Florida Power's motion to strike portions of Florida Gas's brief opposing exceptions. Florida Power had argued that Florida Gas's brief opposing exceptions introduced extra-record evidence and asserted for the first time that the contract was intended to allow Florida Power to transport low Btu gas from a landfill. The Commission found that Florida Gas's brief merely responded to Florida Power's brief and was not improper. The Commission denied Florida Power's request.

170. On rehearing, Florida Power argues that the Commission erred in denying its motion to strike and violated its due process rights by improperly relying on extra-record evidence and argument of counsel. Florida Power asserts that Florida Gas had ample previous opportunity to rebut Florida Power's interpretation of the Agreement, since the Agreement was introduced and considered at the hearing. Florida Power alleges that Florida Gas "slept on its rights" in failing to respond to this issue during the hearing, and that the Commission compounded the legal error in stating that it found Florida Gas's explanation of the purpose of the Agreement more consistent with the language that the explanation advocated by Florida Power. Florida Power asks that if the Commission does not grant rehearing and require Florida Gas to honor the Agreement's warranty, it remand the issue to the ALJ to permit Florida Power to respond to the alleged extra-record evidence regarding the meaning of the Agreement.

171. As explained above, the Commission's decision that the 1989 Agreement does not entitle Florida Power to delivery of low Btu gas to its DLE turbines is based on the plain language of the Agreement and not on any extrinsic evidence. The Commission did not conclude that the Agreement was intended to provide Florida Power with the opportunity to transport low Btu gas from landfills, but affirmed the ALJ's decision rejecting the contention that the Agreement could only have one purpose, the purpose ascribed to it by Florida Power.

172. Despite the fact that the Commission based its decision on this issue solely on the language of the Agreement, did not consider evidence concerning landfill gas, and did not conclude that the purpose of the Agreement was to enable Florida Power to tender landfill gas to Florida Gas. In order to remove any possible doubt on this question, the

[188] As explained in Opinion No. 495, the shipper is responsible for finding gas supply. P 269.

Commission will grant rehearing of its ruling on Florida Power's motion to strike. The Commission will strike from the record the portion of Florida Gas's Brief Opposing Exceptions that refers to landfill gas. Specifically, the Commission will strike the full paragraph that appears on page 92 of Florida Gas's Brief Opposing Exception, filed in this proceeding on May 31, 2006. The Commission again clarifies that its decision on this issue is based entirely on the language of the Agreement and not upon evidence or argument submitted by Florida Gas regarding its view of the purpose of the Agreement.

173. There has been no violation of Florida Power's due process rights in this proceeding. The Commission set this proceeding for hearing before an ALJ and Florida Power had every opportunity at that hearing to present witnesses and testimony setting forth the basis for its interpretation of the 1989 Agreement. It did not do so. The 1989 Letter Agreement was not sponsored by any of Florida Power's three witnesses and Florida Power did not offer any testimony at the hearing to explain the purpose or intent of the Agreement or why it was being introduced as evidence. Instead, Florida Power offered the Agreement into evidence, along with some 13 other exhibits, at the conclusion of its cross-examination of Florida Gas's witness Langston.[189] Florida Power did not question the witness regarding the meaning of the Letter Agreement.[190] Florida Power first presented its argument that the 1989 Letter Agreement provided it with a warranty that only low Btu gas would be delivered to its DLE turbines in its brief to the ALJ.

174. It is not clear whether Florida Power's failure to present testimony regarding its interpretation of the Agreement at the hearing was an oversight or a deliberate strategy designed to limit the ability of the other parties to respond to its strained interpretation of the Agreement. In either case, as the ALJ stated, "[i]f [Florida Power] had intended to rely on it as the crux of its case, it should have been more forthcoming."[191]

175. In any event, the Commission has struck from the record the reference that was objectionable to Florida Power, and has clarified that its decision is based on the language of the Agreement and not on any characterization of its purpose by Florida Gas. We find no merit in Florida Power's procedural objections, and we reject its suggestion that we now remand this issue to the ALJ to provide it with another opportunity to present its case.

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[189] Tr. 140.

[190] Tr. 136-137.

[191] Initial Decision at P 208.

The Commission orders:

The requests for rehearing are granted and denied as set forth in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.