

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cheniere Creole Trail Pipeline, L.P.

Docket Nos. CP05-357-003
CP05-357-004

ORDER AMENDING CERTIFICATE

(Issued February 16, 2007)

1. On August 4, 2006, Cheniere Creole Trail Pipeline, L.P. (Creole Trail) filed an application, in Docket No. CP05-357-003, to amend the certificate of public convenience and necessity issued by the Commission on June 15, 2006 (June 15 Order).¹ On November 16, 2006, Creole Trail filed an application, in Docket No. CP05-357-004 to amend its August 4 amendment filing. Creole Trail requests authority to extend its approved pipeline system by constructing 18.1 miles of 42-inch diameter pipeline (Segment 1), in Cameron Parish, Louisiana, to connect to the approved Cheniere Sabine Pass Pipeline, L.P. (Sabine Pass).² We will grant Creole Trail's request for amended certificate authority to construct the Segment 1 project as required by the public convenience and necessity.

I. Background and Proposal

2. The June 15 Order granted Creole Trail LNG authority under section 3 of the Natural Gas Act (NGA) to site, construct and operate a liquefied natural gas (LNG) facility in Cameron Parish, Louisiana, and issued a certificate to Creole Trail to construct pipeline facilities extending 116.8 miles from the LNG terminal. As certificated by the June 15 Order, 42-inch diameter parallel Lines 1 and 2 would extend from the Creole

¹ *Creole Trail LNG, L.P. (Creole Trail LNG) and Creole Trail*, 115 FERC ¶ 61,331 (2006).

² *Sabine Pass LNG, L.P.*, 109 FERC ¶ 61,324 (2004) (authorizing construction of an LNG terminal and pipeline facilities by Sabine Pass LNG, L.P. (Sabine Pass LNG) and Cheniere Sabine Pass, respectively).

Trail LNG terminal to a terminus in Acadia Parish, Louisiana. Lines 1 and 2 would each comprise two interconnected segments -- Segment 2, extending from the Creole Trail LNG terminal northward for 25.3 miles to an interconnection with Sabine Pipeline Company's system, and Segment 3³ extending from that interconnection in a northeastward direction to the terminus at an interconnection with Columbia Gulf Transmission Company (Columbia Gulf). The originally certificated system was designed to transport up to 3.3 Bcf/d of regasified LNG from Creole Trail LNG's terminal.

3. In Docket No. CP05-357-003, Creole Trail, at the request of its sole shipper, affiliate Cheniere LNG Marketing, Inc. (Cheniere LNG Marketing), requests amended authority to construct Segment 1, which as proposed consists of an additional 18.1 miles of 42-inch pipeline.⁴ Segment 1 will extend Creole Trail's certificated system westward from the Creole Trail LNG terminal site to interconnect with the terminus of the Sabine Pass pipeline system, located at Johnson's Bayou in Cameron Parish, in order to access and transport up to 2.0 Bcf/d of regasified LNG originating from the Sabine Pass LNG terminal.⁵

4. In Docket No. CP05-357-003, Creole Trail proposed to charge the system-wide transportation rates previously approved in the June 15 Order, and requested certain deferred rate and accounting treatment. However, in Docket No. CP05-357-004, Creole Trail amended its proposal by withdrawing its request for deferred rate and accounting treatment, and, instead, requests approval of revised initial rates for transportation on its pipeline system to reflect construction of a single 42-inch diameter, 134.9-mile line

³ Segment 3 has been divided into Segments 3a and 3b for purposes of establishing rates.

⁴ The original application in Docket No. CP05-357-000 included about 46.9 miles of single 42-inch diameter pipeline (Segment 1) that Creole Trail subsequently withdrew because of market conditions. The withdrawn Segment 1 would have extended from the Sabine Pass LNG terminal, under construction in Cameron Parish, Louisiana, to a juncture, also in Cameron Parish, with the 116.8-mile long, dual 42-inch diameter pipeline consisting of Segments 2 and 3 authorized in the June 15 Order.

⁵ Creole Trail indicates that construction of Segment 1 will also connect its approved pipeline facilities to additional gas suppliers and processing plants located at Johnson's Bayou through various pipeline interconnections with Sabine Pass in that area.

(comprised of Segments 1, 2, and 3) with a capacity of 2.0 Bcf/d.⁶ Creole Trail proposes to allocate the cost of service between Zone 1 and Zone 2. Zone 1 is comprised of pipeline facilities in Segment 1, Segment 2, and Segment 3a, and will traverse 76.1 miles from the interconnection with Sabine Pass in Cameron Parish to an interconnection with Texas Eastern Transmission Corporation (Texas Eastern) in Beauregard Parish, Louisiana. Zone 2 is comprised of pipeline facilities in Segment 3b and will traverse 58.8 miles from the interconnection with Texas Eastern in Beauregard Parish to the terminus at an interconnection with Columbia Gulf in Acadia Parish. The estimated total cost of the Creole Trail system (Segments 1, 2, and 3) is approximately \$695 million.

5. Creole Trail proposes to place the facilities located in Zone 1 into service in 2008, concurrent with the anticipated in-service dates of the Sabine Pass LNG terminal and the Sabine Pass pipeline system. Creole Trail proposes to place the facilities located in Zone 2 into service in 2009, all prior to the currently anticipated 2011 in-service date of the Creole Trail LNG terminal.

II. Notice and Intervention

6. Notice of Creole Trail's August 4, 2006 application in Docket No. CP05-357-003 was published in the *Federal Register* on August 18, 2006.⁷ Cheniere LNG Marketing filed a timely motion to intervene which is automatically accepted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure.⁸ No objections to the proposal were filed. Notice of Creole Trail's November 16, 2006 application in Docket No. CP05-357-004 to amend its August 4 application was published in the *Federal Register* on November 30, 2006.⁹ No further motions to intervene or objections to the proposals were filed.

⁶ On December 26, 2006, the Commission issued an order in Docket No. CP05-357-005 vacating, in part, the certificate authority granted in the June 15 Order, eliminating Creole Trail's authority to construct Line 2, because LNG market conditions no longer warrant construction of both Line 1 and Line 2. Elimination of Line 2 reduced the capacity of Creole Trail's pipeline system from 3.3 to 2.0 Bcf/d. *See Creole Trail*, 117 FERC ¶ 61, 341 at P 8 (2006).

⁷ 71 Fed. Reg. 47,796.

⁸ 18 CFR § 385.214 (2006).

⁹ 71 Fed. Reg. 69,205.

III. Discussion

7. Since the proposed pipeline facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of NGA section 7.

A. Application of the Certificate Policy Statement

8. On September 15, 1999, the Commission issued a statement of policy providing guidance as to how proposals for certificating new construction will be evaluated.¹⁰ Specifically, the Policy Statement explains that the Commission, in deciding whether to authorize the construction of new pipeline facilities, balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

¹⁰*Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement)*, 88 FERC ¶ 61,227 (1999); *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128 (2000); *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094 (2000).

10. Creole Trail's proposed project satisfies the threshold requirement of the Policy Statement that existing shippers not subsidize the expansion of facilities, because, as found in the June 15 Order, Creole Trail will be a new jurisdictional company with no existing customers. Nothing in this proposal changes that finding. In addition, no existing pipelines have objected to the proposed project.

11. The proposed project will disturb approximately 273.3 acres during construction and will require 108.8 acres for operation. Of the proposed 18.1 miles of pipeline, approximately 80 percent will parallel existing rights-of-way. There has been little opposition to the route by landowners or communities, and the pipeline will be constructed in a manner that mitigates potential adverse environmental impacts. Thus, we find that any adverse impacts on landowners and communities will be minimal.

12. Cheniere LNG Marketing holds 100 percent of the transportation capacity on the new Creole Trail pipeline system, including the proposed Segment 1, under a 20-year agreement. In addition to supplies of regasified LNG originating at the Sabine Pass LNG terminal, the project could access alternative supplies at Johnson's Bayou through pipeline interconnections with Sabine Pass in the area. Shippers on Creole Trail would also have the potential to deliver gas via displacement to pipelines at Johnson Bayou. Thus, the broader connection between markets and supplies afforded by construction of Segment 1 can be expected to result in more competitively priced supplies, as well as enhanced reliability and flexibility, on Creole Trail's pipeline system. Further, access through Segment 1 to gas processing plants located at Johnson's Bayou could also provide a means to address potential gas quality and interchangeability issues by blending processed gas into the Creole Trail pipeline's stream of regasified LNG. Therefore, we find that the benefits of the project outweigh any potential adverse effects. Accordingly, we find that the project is required by the public convenience and necessity.

B. Revised Initial Rates

1. Firm and Interruptible Zonal Rates

13. Creole Trail has filed revised initial system-wide transportation rates reflecting the construction of 18.1 miles of pipeline (Segment 1) to connect the Creole Trail and Sabine Pass pipeline systems and the construction of a single 42-inch pipeline from the Creole Trail LNG terminal to Acadia Parish, Louisiana (Segments 2 and 3). Creole Trail states that the proposed cost-based rates reflect a straight fixed-variable (SFV) rate design and a zone-gate rate design methodology that assigns and allocates the cost of service between two geographic rate zones, which will allow shippers who utilize a limited portion of the system to pay for only those costs related to the zone in which they receive service. As planned, the proposed Zone 1 and Zone 2 facilities will be constructed and placed in service in 2008 and 2009, respectively.

14. The proposed firm transportation service (FTS) rates are derived using an average cost of service of \$73,030,203 for Zone 1, and \$41,171,541 for Zone 2, and annual FTS reservation billing determinants of 25,200,000 Dth based on Creole Trail's maximum daily design capacity. The proposed annual FTS usage determinants total 498,225,000 Dth and represent a 65 percent load factor of the maximum daily design capacity. The proposed maximum cost-based FTS reservation rate is \$2.8980 per Dth for Zone 1 and \$1.6338 per Dth for Zone 2. Creole Trail states that it currently has no variable costs, so the proposed FTS usage rate is \$0.00 per Dth.

15. The interruptible transportation service (ITS) rate is derived at a 100 percent load factor of the FTS rate. Creole Trail has not identified any usage determinants associated with its proposed ITS service. The proposed maximum ITS rate for Zone 1 is \$0.0953 per Dth and for Zone 2 is \$0.0537 per Dth, and the same rate is proposed for parking and landing service.

16. For both its firm and interruptible services, Creole Trail estimates 0.0 percent retainage for fuel. Creole Trail has elected in section 31 of its pro forma FERC Gas Tariff to provide a 100 percent credit of interruptible revenues, net of variable costs, to its firm and interruptible customers. This is consistent with the Commission's policy requiring new interruptible services to either credit 100 percent of the interruptible revenues, net of variable costs, to firm and interruptible customers or to allocate costs and volumes to these services.¹¹

17. While zone rates have traditionally been used for pipelines covering a broader geographical area, the Commission permits project sponsors flexibility in designing new pipeline projects, and this flexibility includes the initial proposed rate structure. The Commission has reviewed the proposed cost of service and proposed initial rates, and generally finds them reasonable for a new pipeline entity, such as Creole Trail, subject to the modifications and conditions imposed below.

2. Depreciation

18. The Commission's June 15 Order authorizing Creole Trail to construct and operate Segments 2 and 3 of its pipeline system approved a straight-line depreciation rate of 5 percent per year based upon a 20-year life for the Creole Trail facilities. Creole Trail is now proposing to depreciate its Zone 1 facilities (Segments 1, 2, and 3a) over a 40-year life, resulting in a straight-line depreciation rate of 2.50 percent, and to depreciate its

¹¹ See, e.g., *Creole Trail LNG*, 115 FERC ¶ 61,331 at P 27 (2006); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177 at P 51 (2005).

Zone 2 facilities (Segment 3b) over a 39-year life (reflecting the fact that they will be put in service one year after the Zone 1 facilities), resulting in a straight-line depreciation rate of approximately 2.56 percent. Creole Trail is seeking to implement a longer depreciation period than the 20-year period authorized by the June 15 Order so that it may better align the depreciation term with the physical life of these proposed facilities.

19. Creole Trail's use of straight-line depreciation is consistent with the Commission's Uniform System of Accounts because it is a systematic and rational depreciation method. Therefore, the Commission approves the use of a 2.50 percent depreciation rate for Creole Trail's Zone 1 facilities and a 2.56 percent depreciation rate for Creole Trail's Zone 2 facilities.

3. Cost of Debt

20. The June 15 Order approved a capital structure of 30 percent equity and 70 percent debt as well as a 14 percent return on equity for Creole Trail.¹² Creole Trail has not filed to modify its approved capital structure or return on equity, but it has updated its cost of debt to reflect current market rates. Creole Trail anticipates raising approximately \$314.0 million of debt for its Zone 1 facilities and approximately \$172.6 million of debt for its Zone 2 facilities from commercial banks and/or insurance companies, at an effective interest rate of 7.75 percent, to be retired over a period of fifteen years. The terms and conditions applicable to the debt will depend upon the financial market conditions existing at the time the debt is raised. However, Creole Trail will seek the most favorable terms available in the marketplace at the time of financing and the debt will be non-recourse to Creole Trail.

21. Creole Trail proposes a 7.75 percent cost of debt. When Creole Trail files its revised initial rates, it must modify the cost of service and resulting rates conditionally authorized herein to the extent necessary to reflect the actual cost of debt incurred to construct the project.

4. Rate Changes and Three-Year Filing Requirement

22. If Creole Trail desires to make any other changes not specifically authorized by this order prior to placing its facilities into service, it will need to file an amendment to its application under NGA section 7(c). In that filing, Creole Trail will need to provide cost data and the required exhibits supporting any revised rates. After the facilities are

¹² *Creole Trail LNG*, 115 FERC ¶ 61,331 at P 30 (2006).

constructed and placed in service, Creole Trail must make a NGA section 4 filing to change its rates to reflect revised construction and operating costs.

23. Consistent with Commission precedent, the Commission will require Creole Trail to file a cost and revenue study at the end of its first three years of actual operation of facilities in both Zone 1 and Zone 2 to justify its existing cost-based firm and interruptible recourse rates.¹³ In its filing, the projected units of service should be no lower than those upon which Creole Trail's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the regulations to update cost of service data. After reviewing the data, we will determine whether to exercise our authority under NGA section 5 to establish just and reasonable rates. In the alternative, in lieu of this filing, Creole Trail may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities in Zone 1 and Zone 2.

5. Pro Forma Tariff Issues

24. The June 15 Order found Creole Trail's proposed tariff to generally comply with Part 284 of the Commission's regulations and required Creole Trail to address a series of issues when filing actual tariff sheets prior to the commencement of service. That requirement still exists, consequently Creole Trail is required to file actual tariff sheets consistent with the directives in the June 15 Order at least 30 days but no more than 60 days prior to the commencement of service. In addition, to the extent Creole Trail's pro forma tariff must be modified to comply with the Commission's statement of policy on gas quality standards,¹⁴ Creole Trail should submit those changes at the time it files its actual tariff sheets, 30 to 60 days before commencing service.

C. Environmental

25. On September 5, 2006, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Creole Trail Segment 1 Amendment Project and Request for Comments on Environmental Issues (NOI), and the U.S. Fish and Wildlife Service (FWS) submitted a response. The U.S. Department of Commerce,

¹³ See, e.g., *Empire State Pipeline and Empire Pipeline, Inc.*, 116 FERC ¶ 61,074 at P133 (2006); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177 at P 52 (2005).

¹⁴ *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325 (2006).

National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS); the U.S. Army Corps of Engineers (COE); the U.S. Department of Interior, Fish and Wildlife Service (FWS); and the Louisiana Department of Wildlife and Fisheries assisted in the development of the environmental assessment (EA). In addition, FWS, COE, and NMFS assisted in addressing wetland related issues. FWS and COE are cooperating agencies for this project. All substantive comments are addressed in the EA.

26. The EA addresses geology and soils, water resources, fisheries, essential fish habitat and wetlands, endangered and threatened species, vegetation and wildlife, cultural resources, land use, air quality and noise, hazardous waste, reliability and safety, cumulative impacts and alternatives. The EA was issued on December 27, 2006, and incorporates by reference the environmental analysis and recommendations for the Creole Trail LNG project approved by the Commission on June 15, 2006. Environmental Conditions 1 through 88 in the June 15 Order are still applicable.

27. In its letter dated September 25, 2006, FWS indicated that there are no federally listed threatened and endangered species, or their critical habitat, within the proposed project area. We concur. The FWS, by letter dated January 24, 2007, provided comments on the EA and stated that the project is not likely to adversely affect any federally listed threatened or endangered species. By letter dated January 9, 2007, NMFS stated that based on their review of the EA and the stipulation that the applicant would be required to comply with the aquatic resources mitigation plan, NMFS has no further comments or additional recommendations. With these letters, we have satisfied our obligation to consult with federal agencies pursuant to the Endangered Species Act.

28. Based on the discussion in the EA, we conclude that if the proposed facilities are constructed or operated in accordance with Creole Trail's application and supplements, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

29. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹⁵ Creole Trail shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance

¹⁵See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and

identified by other federal, state, or local agencies on the same day that such agency notifies Creole Trail. Creole Trail shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

30. At a hearing held on February 15, 2007, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications, as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) In Docket No. CP05-357-003, as amended in Docket No. CP05-357-004, Creole Trail's certificate of public convenience and necessity issued on June 15, 2006, in Docket No. CP05-357-000, as amended, is further amended to issue Creole Trail certificate authorization under section 7(c) of the NGA to construct and operate Segment 1, an 18.1-mile long, 42-inch diameter pipeline, as more fully described in this order and in the application.

(B) The certificate authorized in Ordering Paragraph (A) above is conditioned upon Creole Trail's compliance with all applicable Commission regulations under the NGA, particularly paragraphs (a), (c), (e), and (f) of section 157.20 of such regulations.

(C) Except as provided in Ordering Paragraphs (A) and (B), above, the terms and conditions of Creole Trail's certificate authorization set forth in the June 15 Order remain unchanged.

(D) Construction of the proposed facilities shall be completed and made available for service within two years from the date of this order, in accordance with section 157.20(b) of the Commission's regulations.

(E) Creole Trail's revised rates and tariff are approved, as conditioned and modified in the body of this order.

(F) Creole Trail must file actual tariff sheets consistent with the directions in the body of this order and the June 15 Order not less than 30 days and not more than 60 days prior to commencing service.

(G) Within three years of the actual operation of facilities in both Zones 1 and 2, as discussed herein, Creole Trail must make a filing to justify its existing cost-based firm and interruptible recourse rates. In its filing, the projected units of service should be no lower than those upon which Creole Trail's approved initial rates are based. The cost and revenue study must be in the form specified in section 154.313 of the regulations to update cost-of-service data. In the alternative, in lieu of such filing, Creole Trail may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities in Zone 1 and Zone 2.

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

(I) Creole Trail shall comply with the environmental conditions contained in the Appendix to this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

Environmental Conditions for Creole Trail LNG, L.P. (Creole Trail)

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

1. Creole Trail shall prepare a Plan for the Discovery and Management of Contaminated groundwater for the Segment 1 Project. This plan shall comply with applicable state and federal regulations and shall include procedures for the identification and management of unknown contaminants if any are encountered during construction of the pipeline facilities. The plan should be filed with the Secretary for review and written approval of the Director of the Office of Energy Projects (OEP) **prior to construction.**
2. **Prior to construction,** Creole Trail shall file with the Secretary a copy of its U.S. Army Corps of Engineers (COE) permit and the finalized Aquatic Resources Mitigation Plan developed in consultation with the COE, National Marine Fisheries Service, Fish and Wildlife Service, Louisiana Department of Natural Resources (LADNR), and Louisiana Department of Wildlife and Fisheries.
3. Creole Trail shall not begin construction of any of the facilities associated with the Segment 1 Project until it files with the Secretary a copy of its coastal zone consistency determination issued by the LADNR.