

Proposal

4. Vista LNG proposes to construct and operate LNG facilities that will import, store, and vaporize foreign source LNG, which will be sent out of the terminal through an onsite metering station that will connect with Vista Pipeline's proposed facilities. Vista Pipeline proposes to transport the imported natural gas to proposed interconnection facilities with various interstate and intrastate pipelines in Texas.¹

A. Vista LNG Proposal

5. The proposed Vista LNG facilities will import, store and vaporize approximately 1.1 billion cubic feet (Bcf) per day of LNG, with a peak capacity of approximately 1.4 Bcf per day. Vista LNG seeks authorization under NGA section 3 to site, construct and operate: (1) LNG marine terminal and transfer lines; (2) LNG storage facilities; (3) LNG vaporization and sendout facilities; and (4) associated utilities, infrastructure and support systems. More specifically, the Vista LNG facilities will be comprised of:

LNG Marine Terminal and Transfer Lines

- Turning basin and one protected berth equipped with mooring systems and accessories for berthing and de-berthing of LNG carriers;
- Four (4) liquid unloading arms for unloading LNG equipped with powered emergency release couplings;
- Two (2) stainless steel (SS) insulated LNG transfer lines;
- Three (3) tugs, and berthing facilities at or near the terminal; and
- Various controls, safety devices, appurtenances and accessories.

LNG Storage Facilities

- Up to three (3) full-containment, nine percent nickel inner tank, top entry LNG storage tanks, each with a nominal working volume of 155,000 cubic meters (m³), with a double-containment design consisting of an inner steel tank and an outer concrete tank, sized to contain 110 percent of the gross tank volume
- Three (3) in-tank pumps, each sized for 3,277 gallons per minute (gpm); and
- Instrumentation and safety systems.

¹ Vista LNG and Vista Pipeline are affiliates of Exxon Mobil Corporation.

LNG Vaporization and Sendout Facilities

- Five (5) shell-and-tube Heat Transfer Fluid (HTF) heat exchangers to vaporize the LNG;
- Three (3) boil-off gas (BOG) compressors; one (1) return gas blower and a direct contact re-condenser to re-liquefy the boil-off from the LNG tanks and unloading systems;
- Four (4) LNG booster pumps to transfer LNG from storage tanks to vaporizers;
- Five (5) HTF gas-fired heaters; and
- On-site natural gas metering facilities.

Utilities, Infrastructure, and Support Systems

- Distributed Control System;
- Emergency Shutdown Systems;
- Hazard Detection System;
- Security systems and facilities;
- Fire response systems;
- Low pressure natural gas vent;
- High pressure natural gas vent (dedicated to high pressure Pressure Safety Valves)
- Plant air, instrument air, and nitrogen systems;
- Electric power transmission and control systems;
- Service water and drinking water systems;
- Separate stormwater and wastewater systems;
- Access roadways and service facilities;
- Administration, control, and service buildings;
- Fire and emergency access roads; and
- Other facilities as required to support safe, efficient, and reliable operation.

6. The LNG terminal will be located near Ingleside and Gregory, Texas. The construction and permanent operation of the facilities will use approximately 192 acres of a 311-acre tract of land to be owned by Vista LNG. Vista LNG states that the remaining 119 acres will remain in their native undisturbed state, except for a portion of the property that will be used during construction.

B. Vista Pipeline Proposal

7. Vista Pipeline proposes to construct and operate a 25-mile long, 36-inch diameter pipeline with a capacity of 1.4 Bcf per day from the tailgate of the Vista LNG terminal to

a terminus near Sinton, Texas. In addition to the 25 miles of pipeline, the proposed facilities will include eight metering stations, eight delivery points, and mainline valves, as required by the United States Department of Transportation.

8. Vista Pipeline states that the proposed route interconnects with the existing pipeline systems of Texas Eastern Transmission Company, HPL/Channel A/S Pipeline, Gulf South Pipeline, Kinder Morgan Tejas, Kinder Morgan – NGPL Company, Crosstex Energy Pipeline, Transcontinental Gas Pipe Line Corporation (Transco), and Tennessee Gas Pipeline. Vista Pipeline estimates the total cost of constructing its proposed facilities to be approximately \$66.8 million.

9. Vista Pipeline requests a Part 284, Subpart G open-access blanket transportation certificate under which it proposes to offer cost-based firm (FTS) and interruptible (ITS) open access transportation services and authorized overrun services (AOS) on a non-discriminatory basis under Part 284 of the Commission's regulations. Vista Pipeline states that the proposed cost-based rates reflect a straight fixed-variable (SFV) rate design. On February 10, 2005, Vista Pipeline filed a report stating that it conducted an open season from November 29, 2004 through January 27, 2005, which resulted in a precedent agreement with Golden Pass LNG Trading Company, Inc. for 1,442,610 Dth per day of firm transportation capacity on the proposed facilities.

10. Vista Pipeline also requests a blanket Part 157, Subpart F blanked certificate to perform routine activities in connection with the construction, maintenance, and operation of the proposed facilities.

Notice and Interventions

11. Notice of the applications was published in the *Federal Register* on September 15, 2004, 69 Fed. Reg. 55,609 (2004). A number of timely, unopposed interventions were filed. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.² There were no protests. All interveners are listed in Appendix A to this order.

² 18 C.F.R. § 385.214(a)(3) (2004).

Discussion

A. Vista LNG's Proposed Terminal

12. Because the proposed LNG terminal facilities will be used to import gas from foreign countries, the construction and operation of the facilities and site of their location require approval by the Commission under NGA section 3.³ The Commission's authority over facilities constructed and operated under section 3 includes the authority to apply terms and conditions as necessary and appropriate to ensure that the proposed construction and siting is in the public interest.⁴ Section 3 provides that the Commission "shall issue such order on application..." if it finds that the proposal "will not be inconsistent with the public interest."

13. The Commission has chosen to exercise a less intrusive degree of regulation for new LNG import terminals, and does not require the applicant to offer open-access service or to maintain a tariff or rate schedules for its terminalling service.⁵ The Commission, however, reserves the authority under section 3 to take any necessary and appropriate action if it receives complaints of undue discrimination or anticompetitive behavior.

14. The Commission recognizes the important role that LNG will play in meeting future demand for natural gas in the United States and has noted that the public interest is served through encouraging gas-on-gas competition by introducing new imported

³ The regulatory functions of section 3 were transferred to the Secretary of Energy in 1977 pursuant to Section 301(b) of the Department of Energy Organization Act (Pub. L. No. 95-91, 42 U.S.C. §§7101 *et seq.*). In reference to regulating the imports or exports of natural gas, the Secretary subsequently delegated to the Commission the authority to approve or disapprove the construction and operation of particular facilities, the site at which facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry or exit for exports. DOE Delegation Order No. 00-044.00, 67 *Fed. Reg.* 8,946 (2002). However, applications for authority to import natural gas must be submitted to the Department of Energy. The Commission does not authorize importation of the commodity itself.

⁴ *Distrigas Corporation v. FPC*, 495 F.2d 1057, 1063-64, *cert. denied*, 419 U.S. 834 (1974); *Dynegy LNG Production Terminal, L.P.*, 97 FERC ¶ 61,231 (2001).

⁵ See *Hackberry LNG Terminal, L.L.C.*, 101 FERC ¶ 61,294 (2002), *order issuing certificates and granting reh'g*, 104 FERC ¶ 61,269 (2003) (*Hackberry*).

supplies.⁶ The record in this case shows that the Vista LNG terminal will provide such additional supplies of natural gas to customers. Because the project is new, Vista LNG has no existing customers who might be adversely affected by the costs or risk of recovery of the costs associated with the proposed LNG terminal project. The economic risks will be borne by Vista LNG. Further, the environmental conditions set forth in this order will ensure that the adverse environmental impacts will be limited. In view of these considerations, we find that the Vista LNG terminal is not inconsistent with the public interest.

B. Vista Pipeline's Proposed Facilities

15. 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.

1. The Certificate Policy Statement

16. On September 15, 1999, the Commission issued a Policy Statement providing guidance as to how proposals for certificating new construction will be evaluated.⁷ 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. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment and the unneeded exercise of eminent domain in evaluating new pipeline construction.

17. Under this policy the threshold requirement for existing 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

⁶ *Hackberry*, 101 FERC at P 26 (2002).

⁷ *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) (*Policy Statement*).

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.

18. Vista Pipeline's proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Vista Pipeline is a new pipeline and has no existing customers. Thus, there is no potential for subsidization by existing customers.

19. Vista Pipeline also meets the remaining criteria for certification of new facilities set forth in the Policy Statement. There will be no adverse effect on existing services because Vista Pipeline has no current customers. The new pipeline should also benefit interconnecting pipelines by providing new sources of gas for them to transport. No existing shippers or pipelines in the area have protested the filing.

20. No landowner or community member objected to the proposed pipeline route. We find that the environmental conditions set forth in this order ensure that there will be limited adverse environmental impacts.

21. The need for the Vista Pipeline project is supported by historical and projected trends in gas demand and supply. Various national and industry organizations that monitor energy consumption trends forecast growing demand for natural gas. Traditional sources of domestically produced gas, however, are in long-term decline. The data shows that forecasted domestic production will be unable to keep pace with demand and that the gap will only widen in the future. It is expected that imports, including LNG, will be necessary to make up the supply gap. The Vista Pipeline project is being developed to provide access to new, competitively priced LNG supplies to meet this growing demand. Based on the benefits Vista Pipeline will provide to the market and the lack of any identified adverse effect on existing customers, other pipelines, landowners, or communities, we find, consistent with the Policy Statement and NGA section 7, that the public convenience and necessity requires approval of Vista Pipeline's proposal.

2. Rates and Tariff

a. Initial Rates

22. Vista Pipeline proposes to offer cost-based firm and interruptible open-access transportation services on a non-discriminatory basis under Part 284 of the Commission's regulations.⁸ The proposed cost-based rates reflect a straight fixed variable rate design. Vista Pipeline prepared an estimated cost of service for the 25-year project using an annual straight line depreciation accrual rate of 4 percent.

23. Vista Pipeline anticipates that 30 percent of the capital will be furnished by the owners as equity and that 70 percent will consist of debt. It also proposes a 13 percent return on equity (ROE) and a 7.5 percent interest rate for debt based on anticipated capital market conditions.

24. The rate for FT service is derived using a \$13,463,128 annual cost of service and FT reservation determinants of 17,311,320 Dth per year. The annual FT usage determinants total 526,552,650 Dth. The proposed maximum cost-based FT reservation rate is \$0.78 per Dth. Vista Pipeline states that it currently has no variable costs, so the proposed FT usage rate is \$0.00 per Dth.

25. The IT and authorized overrun service (AOS) rates are derived at a 100 percent load factor of the FT rates. Vista Pipeline has not identified any usage determinants associated with its proposed interruptible service. The proposed maximum IT rate is \$0.0256 per Dth. For both its firm and interruptible services, Vista Pipeline estimates .30 percent retainage for fuel and loss retainage.

26. 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 Vista Pipeline, subject to the following condition.

27. Consistent with commission precedent, the Commission will require Vista Pipeline to file a cost and revenue study at the end of its first three years of actual operation 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 Vista Pipeline'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

⁸ See Vista Pipeline's FERC Gas Tariff, *Pro Forma* Original Volume No. 1 (*pro forma* tariff).

data. After reviewing the data, we will determine whether to exercise our authority under section 5 to establish just and reasonable rates. In the alternative, in lieu of this filing, Vista Pipeline 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.

b. Pro Forma Tariff Issues

28. Vista Pipeline proposes to offer firm and interruptible transportation services on an open-access basis under the terms and conditions set forth in the pro forma tariff attached as Exhibit P to the application. We find Vista Pipeline's proposed tariff generally complies with Part 284 of the Commission's regulations, with the exceptions discussed below. The Commission will require Vista Pipeline to file actual tariff sheets consistent with the directives in this order at least 30 days and no more than 60 days prior to the commencement of service.

i. Interruptible Services Revenue Crediting

29. The Commission's policy regarding new interruptible services requires either a 100 percent credit of the interruptible revenues, net of variable costs, to firm and interruptible customers or an allocation of costs and volumes to these services.⁹ Instead of allocating costs to interruptible services, Vista Pipeline proposes to credit 90 percent of revenues from interruptible services to firm shippers. Since Vista Pipeline has chosen to use a revenue crediting mechanism, the Commission will require Vista Pipeline to revise its tariff to provide for a mechanism to credit 100 percent of the interruptible revenues, net of variable costs, to its firm and interruptible shippers.

ii. Creditworthiness and Contract Termination

a) Criteria for Shipper Creditworthiness

29. Section 32 requires a shipper to prove creditworthiness either by having a specified minimum investment grade debt rating through Moody's, S&P, or an equivalent agency¹⁰ (Section 32.1) or by having a financial position acceptable to Vista Pipeline and its lenders (Section 32.2).

⁹ See, e.g., *Tractebel Calypso Pipeline, LLC*, 106 FERC ¶ 61,273 (2004).

¹⁰ The Moody's rating must be Baa3 stable outlook or better, and the S&P rating must be BBB- stable outlook or better.

30. Consistent with our ruling in *Natural Gas Pipeline Company of America (Natural)*,¹¹ we will require Vista Pipeline to revise section 32.2 to include objective criteria for determining whether a shipper's financial position is acceptable to Vista Pipeline and its lenders.¹² We also find that the proposed language in that section allows Vista Pipeline too much discretion, does not meet the Commission's requirement that criteria for determining creditworthiness must be clear and objective, and allows for the possibility of undue discrimination. If Vista Pipeline intends to find a shipper creditworthy that does not have a credit rating, it must state in its tariff what it will rely upon to determine that a shipper's financial position is acceptable.¹³ In *Natural*,¹⁴ we stated that it is important that the creditworthiness evaluation process be open and objective. Therefore, Vista Pipeline is directed to set forth in section 32.2 the objective financial analyses and criteria that it will use to determine a shipper's creditworthiness.

b) Requirement to Provide Security

31. Under section 32.3, any time a shipper does not satisfy Vista Pipeline's creditworthiness requirements, it must provide security within five business days. For a firm agreement, such security must be a Letter of Credit from a major banking institution with an investment grade rating, or a pledge of a cash deposit, in either case equal to twelve months of Reservation Charges. For an interruptible or other service agreement, the security must be in the form of an irrevocable letter of credit or other equivalent financial guarantees equal to 30 days of service at the agreed to rate, or other security acceptable to Vista Pipeline. If the non-creditworthy shipper does not provide the required security, Vista Pipeline may refuse to render service.

¹¹ 106 FERC ¶ 61,175 (2004).

¹² 102 FERC ¶ 61,355 at P 69 (2003); *see also*, *Tennessee Gas Pipeline Co.*, 103 FERC ¶ 61,275 at P 41 (2003).

¹³In recent orders, the Commission has approved a range of criteria for determining creditworthiness which it considers clear and objective, while allowing a service provider to exercise discretion in its determination. *See, e.g., Gulf South Pipeline Co., LP (Gulf South)*, 107 FERC ¶ 61,273 at P 20 (2004); *Natural*, 106 FERC at 84 (2004).

¹⁴ 102 FERC ¶ 61,355 at P 69 (2003).

32. The Commission has previously found that requiring a shipper to provide collateral assurances within five business days is unreasonable. As we stated in *Gulf South*, ~~A~~ five days is not a reasonable time period to expect a shipper to obtain requisite collateral, and does not provide sufficient time for the Commission to respond to a complaint filed by a shipper who contends it was unfairly treated by the pipeline. In addition, the shipper may be faced with requests from other pipelines to provide collateral, and five days would not provide sufficient time.¹⁵

33. Accordingly, we direct Vista Pipeline to either (1) provide adequate justification for the five-day deadline in section 32; (2) justify a longer proposed notice period; or (3) consistent with prior orders, adopt the following approach, which the Commission has found to establish a reasonable balance between a service provider's legitimate need to obtain security and the shipper's need for adequate time to arrange for such security.¹⁶ Under this approach, when a shipper loses its creditworthiness status, the shipper must, within five business days, pay for one month of service in advance in order to continue service. This will allow the shipper to have at least thirty days to provide the next three months of security for service.

34. If the shipper fails to provide the required security within these time periods, Vista Pipeline may suspend service immediately, and also provide simultaneous written notice that it will terminate service in thirty days if the shipper fails to provide security. Vista Pipeline should also provide written notification to the Commission at least thirty days prior to terminating a shipper's service, as required by section 154.602 of the Commission's regulations.

c) **The Amount of Security Required of Non-creditworthy Shippers**

35. Section 32.3(a) describes options available to a shipper that must provide security to Vista Pipeline if it fails to meet or maintain creditworthiness requirements. Security for firm service must consist of either (1) a letter of credit from a major banking institution with an investment grade credit rating, or (2) a cash pledge, in either case equal to 12 months of reservation charges, adjusted annually. The security for interruptible or other service must consist of "an irrevocable letter of credit or other such

¹⁵ *Gulf South*, 103 FERC ¶ 61,129 at P 49 (2003), *reh'g denied*, 107 FERC ¶ 61,273 at P 20 (2004).

¹⁶ *See Tennessee*, 102 FERC ¶ 61,075 at P 18 (2003).

equivalent financial guarantees equal to 30 days of service at the agreed to rate.” Section 32.3(b) provides that the non-creditworthy shipper may alternatively “[p]rovid[e] other security acceptable to [Vista Pipeline].” Finally, Section 32.3 provides that Vista Pipeline may refuse to render service if the non-creditworthy shipper fails to provide security.

36. The requirement that a non-creditworthy interruptible shipper must provide security equal to 30 days worth of charges is consistent with Commission policy, and therefore approved. However, requiring a non-creditworthy firm shipper to provide security equal to 12 months of reservation charges is not consistent with Commission policy. Since before Order Nos. 436 and 636, the Commission has approved a collateral requirement equal to three months of demand charges as the industry standard.¹⁷

37. Thus, in *Natural*,¹⁸ the Commission determined that requiring longer than three months of security is acceptable in precedent agreements for greenfield pipelines and major system expansions, but once the pipeline goes into service, tariff requirements for security must be limited to three months. This limitation applies equally to standby irrevocable letters of credit, collateral security, a guarantee by a creditworthy entity, or prepayment costs. Vista Pipeline is directed to revise Section 32.3(a) accordingly.

38. The alternative requirement in Section 32.3(b) of permitting a shipper to provide other security acceptable to Vista Pipeline must be revised to provide that Vista Pipeline will administer this option on a not unduly discriminatory basis, and that the value of the other security provided must be the same as required under Section 32.3(a) for the respective service.

39. Also, as we held in *Tennessee*,¹⁹ shippers that opt to pledge collateral equal to three months of reservation charges under section 32.3 must have an opportunity to earn interest on such pledges either by Vista Pipeline paying the interest itself at the Commission’s interest rate, or by the shipper designating an interest-bearing escrow account to which Vista Pipeline may have access to payments for services provided if needed.

¹⁷ See *Gulf South*, 107 FERC ¶ 61,273 at n. 38.

¹⁸ See *Natural*, 102 FERC ¶ 61,355 at P 29-30 (2003).

¹⁹ 103 FERC ¶ 61,275 at P 21 (2003), *reh’g denied*, 105 FERC ¶ 61,120 at P 17-24.

40. With regard to Vista Pipeline's right, under Section 32.3, to refuse to render service if the non-creditworthy shipper fails to provide security, Vista Pipeline must clarify (1) whether this refers to suspension of service or termination of service, and (2) whether Vista Pipeline would consider a shipper's failure to maintain creditworthiness or financial assurances under Section 32 as a default under the contract subjecting the shipper to the remedies of suspension or termination under Section 36, discussed further below.²⁰ In this regard, Vista Pipeline is directed to clarify the relationship between the five-day period for a shipper to provide financial assurance in Section 32.3, and the ten-day and thirty-day prior notice provisions for suspension and termination in Section 36.

41. Finally, consistent with prior Commission orders,²¹ Vista Pipeline is directed to revise Section 32 to state that it will communicate its determination on shipper creditworthiness in writing, include its reasons for any denial of creditworthiness in such communication, that the communication will be made within 10 days of its determination, and that it will provide recourse to the shipper to challenge the finding.

iii. **Default, Suspension and Termination**

42. Section 36 describes procedures for Vista Pipeline to terminate a contract in two circumstances. Paragraphs (1) and (2) provide that when either party fails to perform any of the covenants or obligations under a service agreement, the non-defaulting party may issue a notice requiring the other party to cure the default within 10 days, or the agreement will terminate. Paragraph (4) provides that when a company is subject to voluntary liquidation, court-ordered winding up of its affairs, appointment of a receiver or similar type officer, or appointment of an administrator or like officer upon insolvency or likely insolvency, then either party has the right to suspend the agreement immediately and terminate the agreement by giving 30 days prior written notice to the other party.

43. Section 36.4 does not address whether a shipper whose service has been suspended will continue to be billed demand charges by Vista Pipeline. In accordance with prior Commission orders,²² we direct Vista Pipeline to revise its tariff to state that

²⁰ Section 36.1 states provisions for termination that are applicable "[except where different procedures for termination of a Transportation Agreement are expressly provided in the GT&C"]".

²¹ *Natural*, 106 FERC ¶ 61,175 at P 80 (2004); *Tennessee*, 103 FERC ¶ 61,275 at P 45 (2003).

²² *See, e.g., Natural*, 106 FERC ¶ 61,175 at P 53.

shippers will not incur demand charges when their service is suspended. Also, as stated elsewhere in this order, a service provider cannot terminate a shipper's contract without giving the Commission at least 30-days written prior notice in addition to notifying the shipper. We direct Vista Pipeline to revise Section 36.4 accordingly.

iv. NAESB Standards

44. Vista Pipeline's tariff proposal is intended to be consistent with Version 1.6 of the North American Energy Standards Board (NAESB) Standards, and the recommendations of NAESB's Wholesale Gas Quadrant (WGQ) adopted by the Commission in Order No. 587-R.²³ On May 9, 2005, the Commission issued Order No. 654 amending its regulations, which among other things, adopted Version 1.7 of the NAESB standards.²⁴ Therefore, when it files actual tariff sheets in this proceeding, Vista Pipeline is directed to revise its tariff to be compliant with Order No. 654 as modified by any future NAESB requirements then in effect.

v. Scheduling Priorities

45. Section 5 provides that a shipper nominates by requesting quantities of gas to be received and delivered at specific receipt and delivery points. Section 6.1 states general scheduling principles under which firm quantities are to be scheduled first, allocated on a pro rata basis if necessary, followed by Authorized Overrun Service (AOS) quantities allocated on a pro rata basis, followed by interruptible quantities allocated by price.

²³ *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-R, 68 Fed. Reg. 13,813 (Mar. 21, 2003), FERC Stats. & Regs. ¶ 31,141 (2003) (Order No. 587-R).

²⁴ *Standards For Business Practices of Interstate Natural Gas Pipelines*, Order No. 654, 111 FERC ¶ 61,203 (2005) (amending the regulations to incorporate by reference the most recent version of the standards: Version 1.7 of the consensus standards promulgated December 31, 2003 by the Western Gas Quadrant (WGQ) of the NAESB; the standards ratified by NAESB on June 25, 2004 to implement Order 2004; the standards ratified by NAESB on May 3, 2005 to implement the Order 2004-A; and the standards implementing gas quality requirements ratified by NAESB on October 20, 2004).

46. Section 6.2 states how nominations will be scheduled at “specific Delivery Points” in the following order of declining priorities:

47. (1) FT service, including [Authorized Overrun Service] AOS quantities, utilizing delivery points on a primary basis, to the extent of a shipper’s primary delivery point capacity for that point, prorated on the basis of reservation quantity;

48. (2) FT service, including AOS quantities, utilizing delivery points not on a primary basis but within shippers’ primary paths; and shippers nominating quantities greater than their delivery point capacities, “prorated on the basis of each Shipper’s share of the total of such nominations;

49. (3) FT service, including AOS quantities, utilizing delivery points not on a primary basis and outside the shippers’ primary paths, “prorated on the basis of each Shipper’s share of the total of such nominations;

50. (4) IT service, “on the basis of rate paid, from the highest to the lowest, with pro rata allocation when the rate paid is equal, including the maximum Rate Schedule IT, Recourse Rates Usage Charge . . .”

51. The Commission considers authorized overrun service associated with a firm service contract to be an interruptible service in terms of scheduling.²⁵ Therefore, because Section 6.2 includes AOS quantities within the same scheduling priority assigned to nominations under associated FT contracts, the scheduling priority of AOS is contrary to Commission regulations requiring that interruptible services be scheduled at a lower priority than firm services.²⁶ Vista Pipeline is directed to revise Section 6.2 to schedule all AOS nominations after all firm nominations.

52. Further, in Section 35, Vista Pipeline has incorporated by reference NAESB Standard 4.3.23, which requires the subcategories of informational postings of capacity to be “Operationally Available” and “Unsubscribed.” However, Section 6.3 states: “Available AOS, as posted on [the] Web Site from time to time, will be allocated as follows” giving the impression that Vista Pipeline will consider unsubscribed capacity as initially reserved for AOS rather than IT service. Vista Pipeline is directed to revise Section 6.3 to be consistent with NAESB Standard 4.3.23.

²⁵ *CNG Transmission Corp.*, 81 FERC ¶ 61,346 at 62,592 (1997).

²⁶ Sections 284.7 and 284.9 of the regulations.

53. Finally, Vista Pipeline is directed to modify Section 6.2 to apply the same scheduling priorities to receipt points as well as delivery points.²⁷

vi. Curtailment Priorities

54. Section 8.4 describes the curtailment priorities at delivery points as the reverse order of the scheduling priorities described in Section 6.2.

55. Section 8.4 is contrary to Commission policy that once scheduled, all firm service is assigned the same priority for curtailment purposes, irrespective of whether capacity is utilized on a primary or secondary basis.²⁸ In addition, Section 8.4 includes AOS quantities in the curtailment priorities assigned to firm services, contrary to Commission policy and precedent that all interruptible service is curtailed before all firm service.

56. Section 8.2 gives Vista Pipeline the unqualified right to interrupt IT transportation service at any time in order to provide service under Rate Schedule FT, “including AOS.” This proposal is not consistent with NAESB Standard 1.3.2(iv), which prohibits bumping during the Intraday 2 Nomination Cycle. Vista Pipeline is directed to revise Section 8.2 accordingly.

vii. Resolution of Shipper Imbalances

57. Section 9 provides for resolution of shipper imbalances, after netting and trading, through a tiered cashout mechanism utilizing an Index Price as described in Section 9.1(d). Vista Pipeline indicates that it has yet to determine the spot prices that will comprise the Index Price, since such prices will depend on its actual interconnections. Therefore, Vista Pipeline’s actual tariff filing should identify the spot prices that it will use to determine the Index Price. Further, Vista Pipeline is directed to include in its filing an explanation of how the Index Price complies with Commission’s *Policy Statement on Price Discovery in Natural Gas and Electric Markets*.²⁹

²⁷ Order No. 637-B, 92 FERC ¶ 61,062 at 61,170 (2000).

²⁸ Order No. 637-B, 92 FERC at 62,013.

²⁹ 109 FERC ¶ 61,184 (2004).

viii. Invoice, Payment, and Termination for Non-Payment

58. Section 13.2 provides that if a Shipper fails to pay all of Vista Pipeline's Invoice by its due date, and such failure continues for 30 days thereafter, then in addition to any other remedy under the service agreement, Vista Pipeline "may terminate the Transportation Agreement and/or suspend further delivery of Gas without further notice." Vista Pipeline is directed to revise this section to be consistent with Section 154.602 of the Commission's regulations, which requires a natural gas company to notify the Commission of the proposed termination at least 30 days prior to its effective date. Also, this section must reflect the Commission's requirement that the shipper be given 30-days written notice prior to termination.³⁰

59. Section 12.1, (Billing) indicates that its provisions are pursuant to NAESB Standards 3.3.15 and 3.3.16, which deal with prior period adjustments. However, these standards are not addressed in the text of Section 12.1 nor incorporated by reference in Section 35 of the tariff. Therefore, Vista Pipeline is directed to include Standards 3.3.15 and 3.3.16 in the tariff, either verbatim in the text or by incorporating them by reference.

ix. Force Majeure

60. Section 1.16 (Definitions) describes various circumstances that Vista Pipeline will consider to be a force majeure event. The text of this definition requires several clarifying revisions. First, in order to distinguish repairs constituting a force majeure event from planned maintenance as described in Section 26, Vista Pipeline is directed to add the phrase "unplanned, emergency" between the words "making" and "repairs" in the first sentence. Second, in order to clarify that the definition does not include all possible force majeure circumstances, Vista Pipeline is directed to add the words "any circumstance" after the phrase "governmental body or" in the first sentence.

61. Section 19.5 provides that if a force majeure event prevents or substantially impairs a party from performing a material obligation or condition under the service agreement, either party may terminate the agreement by providing notice to the other party if service has not been completely and permanently restored after 24 consecutive months following the force majeure event, at the time notice is provided. This language should be revised, consistent with Section 154.602 of the Commission's regulations, to

³⁰ *Natural Gas Pipeline Co. of America (Natural)*, 108 FERC ¶ 61,170 (2004).

require Vista Pipeline to provide 30-days prior notice to the Commission before terminating a service agreement. In addition, consistent with Commission precedent this section should provide for 30-days prior notice to the shipper being terminated.³¹

x. Maintenance

62. Section 26.3 gives Vista Pipeline the right to perform planned maintenance for a maximum of three days over a maximum of two maintenance periods in any Calendar Year. This section does not require Vista Pipeline to provide reservation charge credits to shippers for reductions in service due to planned maintenance. The Commission has held that an outage due to planned or scheduled maintenance is considered a non-force majeure event that requires a pipeline to provide full reservation charge credits to affected shippers.³² Therefore, Vista Pipeline is directed to provide for full reservation charge credits for reductions in service due to planned maintenance in accordance with the reservation charge crediting formula set forth in Section 8.1(a) of Rate Schedule FT.

63. Section 26.4 gives Vista Pipeline the right to curtail deliveries of gas “without incurring liability to the Shipper to the extent necessary to carry out Emergency Maintenance . . .” Emergency Maintenance requiring curtailment of deliveries would be considered a force majeure event as defined by Section 1.16, requiring Vista Pipeline to provide reservation charge credits to firm shippers under Sections 8.1(a) and (c) of Rate Schedule FT. Therefore, Vista Pipeline is directed to add the phrase, “,except to the extent required by Section 8.1 of Rate Schedule FT,” after the phrase “liability to the Shipper” in Section 26.4

xi. Negotiated Rates

64. In pertinent part, Section 1.29 defines a negotiated rate as a rate or formula “which, for some portion of the contract term, one or more of the individual rate components may exceed the maximum charge, or be less than the minimum charge.” This definition appears to be inconsistent with Commission precedent and policy, under

³¹ *Natural*, 108 FERC ¶ 61,170 (2004).

³² *See, e.g., Natural*, 108 FERC ¶ 61,170, at P 7 (2004); *Florida Gas Transmission Co.*, 107 FERC ¶ 61,074, at P 27-28 (2004) (stating that events such as planned outages “could be read as within its [the pipeline’s] control” and disagreeing with the pipeline that “non-discretionary but planned events are appropriately included in its definition of force majeure”); *Alliance Pipeline, L.P.*, 84 FERC ¶ 61,239, at 62,214 (1998).

which negotiated rates may remain within the maximum and minimum recourse rate thresholds during the entire term of the contract. Vista Pipeline is directed to revise its definition accordingly.

xii. Rate Discounts

65. In Order No. 637-A, the Commission stated that the current policy permitting pipelines to limit discounts to particular points needs to be reexamined in the compliance filings, as part of the examination of restrictions on capacity release and segmentation.³³ In *CIG/Granite State*,³⁴ the Commission adopted a new policy that permits a shipper to retain a discount when it moves to segmented points or secondary points through a streamlined request process in which the pipeline processes a request for discounts within 2 hours. However, in its Second Order on Remand in *Williston Basin Interstate Pipeline Co.*,³⁵ the Commission vacated the policy adapted in *CIG/Granite State*.

66. Section 28.3 (Order of Discounting) sets forth a discounting proposal based on the Commission's policy articulated in *CIG/Granite State*. In light of our order in *Williston Basin Interstate Pipeline Co.*,³⁶ when Vista Pipeline files its actual tariff sheets, it may choose not to include this provision in its tariff.

xiii. Miscellaneous

67. Vista Pipeline is directed to make the following tariff revisions when it files actual tariff sheets:

68. In the Statement of Rates and Charges (Sheet No. 20), the ACA unit surcharge should be changed from \$0.0021 to \$0.0000. Section 154.402 of the Commission's regulations requires a company to pay its bill for annual charges before applying the ACA unit surcharge to its rates.

³³ See Order No. 637-A, at 31,595.

³⁴ See *Colorado Interstate Gas Co.*, 95 FERC ¶ 61,321 (2001); *Granite State Gas Transmission, Inc.*, 96 FERC ¶ 61,273 (2001), *order on reh'g*, 98 FERC ¶ 61,019 (2002).

³⁵ 110 FERC ¶ 61,210 (2004).

³⁶ See 110 FERC ¶ 61,210 (2004).

69. The AOS charge of \$0.0612 appears to be a typographical error and should be revised to reflect Vista Pipeline's proposal to charge the same rate for AOS and IT service.
70. Section 35 of the tariff, which incorporates by reference NAESB Standards, should indicate the version number of the standards incorporated. Also, Vista Pipeline should replace the word "Industries" in the caption of Section 35 with the word "Energy".
71. The Forms of Service Agreements for firm, interruptible and replacement shippers do not appear to provide for including the actual rate or rate formula in the agreements or the Appendices thereto. Vista Pipeline is directed to revise its Forms of Service Agreements to provide for a statement of the actual rate for service.
72. Except for paragraph 8.3 (Generic Discount Conditions) Vista Pipeline is directed to delete Section 8 (Negotiable Terms) from the firm transportation Form of Agreement since Commission policy does not allow the negotiation of terms and conditions of service.³⁷
73. Vista Pipeline should change the section reference in the first paragraph of Section 38 from "36" to "38".
74. Vista Pipeline should delete the following language in Section 29.3 (Service Complaints): "specifically state that it is a complaint under Order No. 497 [marketing affiliate regulations no longer effective]." This language is a reference to regulations superceded by procedures set forth in Section 38 (Compliance Plan for Transportation Services) for shippers filing complaints with the pipeline involving transporter- affiliate transactions in accordance with section 250.16(c) of the Commission's regulations.
75. Vista Pipeline should also add a statement to Section 29.3 that nothing in the tariff will prejudice the rights of shippers to file a complaint under section 385.206 of the Commission's regulations.

³⁷ Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996); *order granting clarification*, 74 FERC ¶ 61,194 (1996); *order denying requests for reh'g and clarification*, 75 FERC ¶ 61,024 (1996); *order denying reh'g*, 75 FERC ¶ 61,066; *appeal pending sub nom.*, Meridian Oil Co., *et al.* v. FERC, Nos. 96-1160, *et al.*, (D.C. Cir. May 14, 1996).

76. Vista Pipeline should change a section reference in paragraph (a) of Section 8, Rate Schedule FTS, from “Section 6” to “Section 5”.

77. Since Section 16 (Operational Flow Orders) contains a penalty provision, Vista Pipeline is directed to add a section to its tariff providing for crediting of penalty revenues in accordance with Commission policy.

3. Accounting

78. Vista Pipeline’s proposed straight-line depreciation rate of 4 percent per year based upon a 25-year life 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 4 percent depreciation rate for Vista Pipeline.

79. An allowance for funds used during construction (AFUDC) is a component part of the cost of constructing Vista Pipeline’s facilities. Gas Plant Instruction 3(17) prescribes a formula for determining the maximum amount of AFUDC that may be capitalized as a component of construction cost.³⁸ That formula, however, uses prior year book balances and cost rates of borrowed funds and other capital. In cases of newly created entities, such as Vista Pipeline, prior year book balances do not exist; therefore, using the formula contained in Gas Plant Instruction 3(17) could produce inappropriate amounts of AFUDC.

80. Therefore, to ensure that appropriate amounts of AFUDC are capitalized in this project, we will require Vista Pipeline to capitalize the actual cost of borrowed and other funds and for construction purposes not to exceed the amount of debt and equity AFUDC that would be capitalized based on the overall rate of return approved herein. This is consistent with what we have required in other similar cases.³⁹

C. Environmental

81. The FERC issued a draft Environmental Impact Statement (EIS) addressing Vista LNG’s and Vista Pipeline’s proposals (collectively, Vista del Sol project) on December 17, 2004. FERC issued the final EIS on April 15, 2005. The United States Environmental Protection Agency (EPA) prepared a *Notice of Availability of the Final*

³⁸18 C.F.R. Part 201 (2004).

³⁹ See, e.g., *Gulfstream Natural Gas System, L.L.C.*, 91 FERC ¶ 61,119 (2000); and *Buccaneer Gas Pipeline Company L.L.C.*, 91 FERC ¶ 61,117 (2000).

Environmental Impact Statement for the Proposed Vista del Sol LNG Terminal Project dated April 22, 2005. The draft and final EIS were mailed to federal, state, and local agencies, elected officials, Native American tribes, newspapers, public libraries, interveners to the FERC proceeding, and other interested parties (*i.e.*, landowners, other individuals, and environmental groups who provided scoping comments). The final EIS addresses the issues and concerns raised in response to the draft EIS. The final EIS also addresses: marine resources; geologic resources and hazards; soils and sediments; water resources; fishery resources, benthic communities, and wildlife; vegetation communities; endangered and threatened species; land use, recreation, and visual resources; cultural resources; socioeconomics; air quality and noise; reliability and safety; cumulative impacts; and alternatives to the proposed facilities.

82. Staff included an Essential Fish Habitat (EFH) Assessment in the draft EIS that described how the proposed Vista del Sol project could affect EFH. The EFH Assessment was reviewed by the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA Fisheries). NOAA Fisheries provided one conservation recommendation for the project. It recommended that a final EFH mitigation/beneficial uses plan should be fully developed by Vista del Sol, and then reviewed and approved by NOAA Fisheries prior to site construction.

83. In the final EIS, staff revised the EFH Assessment to include Vista del Sol's Conceptual Beneficial Use and Mitigation Plan. It included a proposal to fund, at the time of terminal construction, the outstanding work associated with the Goose Island Shoreline Stabilization and Restoration of Adjacent Habitats in Aransas Bay Project (Goose Island Project). However, on April 27, 2005, Vista del Sol filed a letter with the Commission stating that it was recently notified by the Texas Parks and Wildlife Department (TPWD) that it had proceeded with securing government funding for the Goose Island Project. Consequently, the project was no longer available to Vista del Sol as a mitigation site.

84. Staff recognizes that an approved mitigation plan is central to resolving EFH concerns for the Vista del Sol project and to satisfying the intent of the conservation recommendation that NOAA Fisheries provided. Consequently, Environmental Condition No. 18 has been added to address NOAA Fisheries concern.

85. EPA served as a cooperating agency in the preparation of the NEPA documentation for the Vista del Sol project and also filed comments on May 11, 2005 on the final EIS. The following paragraphs address EPA's comments.

86. EPA states that the cumulative impacts section of the final EIS should reflect the potential concurrent use of the Kiewit gravity-based structure site by the Compass Port LNG and Beacon Port LNG projects. Both projects are under review by the U.S. Coast Guard. The Beacon Port application was filed on January 19, 2005 but was determined to be incomplete and is currently being revised by the applicant. The Beacon Port application was not available to staff and we were unable to acquire any project details for inclusion in the final EIS.

87. Based on information provided by EPA in its comment letter, concurrent use of the Kiewit site has been proposed. In looking at the effects on cumulative impacts resulting from concurrent use, we believe that the effects are resource-specific. That is, while a larger area may be affected by increased dredging, the resources affected would incur only one impact event. Ultimately, we agree that potential concurrent use of the Kiewit site could have a bearing on the cumulative impacts. However, the potential changes could be both positive and negative and taken as a whole would not alter our conclusions.

88. EPA states that it recommended that a final EIS not be issued until a wetland mitigation plan had been fully analyzed and described. The final EIS is the product of discussions between staff and the agencies responsible for developing the mitigation measures. The proposed mitigation at the time the final EIS was being prepared is fully analyzed in the final EIS (see section 3.7.2 Seagrass and Wetland Mitigation Alternatives, section 4.4.1 Wetlands and Submerged Aquatic Vegetation, section 5.1.4 Wetlands and Terrestrial Vegetation, and Appendix E Goose Island Shoreline Stabilization and Restoration of Adjacent Habitats in Aransas Bay Detailed Project Scope).

89. EPA states that the Goose Island mitigation site is not consistent with EPA's 1990 Memorandum of Agreement with the United States Army Corps of Engineers (COE). Specifically, the mitigation is not an on-site alternative. We fully recognize the responsibility of the COE to finalize mitigation for impacts to resources covered under Section 404 of the Clean Water Act. Further, we trust the ability of the COE to ensure that the mitigation adequately compensates for those impacts while being responsive to any agreements with other agencies.

90. While staff wishes to accurately report the mitigation being developed by the COE and the applicant, we also understand that the final mitigation plan is the one that is approved and included in the COE permit. Consequently, changes sometimes occur after issuance of our final EIS and before the COE permit is issued. This very situation has arisen with the Vista del Sol project (see previous discussion regarding NOAA Fisheries EFH consultation). Currently, Vista del Sol is working with the COE and other agencies

to develop another compensatory mitigation plan. We have included a recommendation in the Order that would require that Vista del Sol complete an approved mitigation plan prior to construction of the terminal (see Condition No. 18 in Appendix B to this order). Final approval of the mitigation, of course, continues to be under the authority of the COE.

91. The final EIS concludes that construction and operation of the proposed project will result in limited adverse environmental impact. As part of the analysis in the final EIS, specific mitigation measures are developed for the construction and operation of the proposed facilities, including a program of environmental inspection and monitoring that is designed to contain most of the impact within the project vicinity and to ensure compliance with certificate and permit requirements. The final EIS concludes that these measures will substantially reduce any environmental impact and further concludes that if this project is constructed and operated in accordance with these mitigation measures, it will be an environmentally acceptable action. The Commission adopts the findings and conclusion of the final EIS.

92. The Coast Guard cooperated in the preparation of the EIS and plays an important role with regard to maritime issues. With regard to vessel transit to and from the Vista del Sol LNG receiving facility, the Coast Guard has identified no constraints. Further, at this time no outstanding safety and security issues have been identified.

93. The Coast Guard cooperated in the preparation of the EIS and plays an important role with regard to maritime issues. With regard to vessel transit to and from the Vista del Sol LNG receiving facility, the Coast Guard has identified no constraints. Further, at this time no outstanding safety and security issues have been identified.

94. On June 14, 2005, the Coast Guard issued a *Navigation and Vessel Inspection Circular – Guidance on Assessing the Suitability of a Waterway for Liquefied Natural Gas (LNG) Marine Traffic* (NVIC). The purpose of this NVIC is to provide Coast Guard Captains of the Port (COTP)/Federal Maritime Security Coordinators (FMSC), members of the LNG industry, and port stakeholders with guidance on assessing the suitability and security of a waterway for LNG marine traffic. It provides specific guidance on the timing and scope of the waterway suitability assessment (WSA), which will address both safety and security of the port, the facility, and the vessels transporting the LNG. Preparation of this guidance was referenced in the Coast Guard's March 18, 2005 Report to Congress on Liquefied Natural Gas Terminals.

95. The WSA process addresses the transportation of LNG from an LNG tanker's entrance into U.S. territorial waters, through its transit to and from the LNG receiving facility, and includes operations at the vessel/facility interface. In addition, the WSA

addresses the navigational safety issues and port security issues introduced by the proposed LNG operations. The Coast Guard's report on the WSA identifies the relevant safety and security issues from the broad viewpoint of impact on the entire port, as well as provides a detailed review of specific points of concern along the LNG tanker's proposed transit route. The WSA will be reviewed on an annual basis and updated as needed until the facility is placed in service.

96. To facilitate implementation of the guidelines presented in the NVIC, FERC staff will continue working with the COTP Corpus Christi and determine how the guidance should be followed by Vista del Sol project sponsors.

97. A review of port security issues, as identified in the NVIC, will be completed by the Coast Guard. Therefore, we require that:

Vista del Sol LNG shall submit a draft waterway suitability assessment to the cognizant Captain of the Port/Federal Maritime Security Coordinator for review and validation and provide a copy to the FERC staff.

98. Once the draft WSA is submitted, the Coast Guard NVIC process will be implemented by the cognizant Captain of the Port, as appropriate, and the Coast Guard will submit a WSA report to FERC. The findings of this report will be reviewed by the Director of OEP and implemented by Vista del Sol. To ensure that these measures are funded, we require that:

Vista del Sol provide a comprehensive plan identifying the mechanisms for funding all project-specific security/emergency management costs that would be imposed on state and local agencies. In addition to the funding of direct transit-related security/emergency management costs, this comprehensive plan should include funding mechanisms for the capital costs associated with any necessary security/emergency management equipment and personnel base. This plan should be filed with the Secretary prior to initial site preparation for review and approval by the Director of OEP.

99. We also recognize that the initial assessment would be prepared well before import operations would commence, and that the port's overall operation/security picture may change over that time period. New port activities may commence, infrastructure may be added, or population density may change. Improvements in technology to detect, deter and defend against intentional acts may also develop. Therefore, we also require that:

Vista del Sol shall annually review its waterway suitability assessment for the project; update the assessment to reflect changing conditions; provide the updated assessment to the cognizant Captain of the Port/Federal Maritime Security Coordinator for review and validation; and provide a copy to the FERC staff.

100. The Commission has reviewed the information and analysis contained in the final EIS regarding the potential environmental effect of the project. Based on our consideration of this information, we agree with the conclusions presented in the final EIS and find that Vista's project is environmentally acceptable, if the project is constructed and operated in accordance with the conditions discussed above and the EIS's other recommended environmental mitigation measures in Appendix B to this order. Thus, we are including the environmental mitigation measures recommended in the final EIS as conditions to the authorizations granted by this order for the Vista del Sol project.

101. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. This does not mean, however, 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.⁴⁰

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

Conclusion

103. For the reasons set forth herein, and subject to the conditions set forth below, we find that granting authorization under section 3 of the NGA for Vista LNG's proposed import terminal is in the public interest. We further find, also subject to the conditions

⁴⁰See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

below, that the public convenience and necessity require issuance of a certificate under section 7(c) of the NGA for Vista Pipeline's proposed pipeline facilities. Thus, we grant the requested authorizations to Vista LNG and Vista Pipeline.

104. At a hearing held on June 15, 2005, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record.

The Commission orders:

(A) In Docket No. CP04-395-000, Vista LNG is hereby authorized under section 3 of the NGA to site, construct and operate its LNG terminal in San Patricio County, Texas, as more fully described in this order and in the application.

(B) In Docket Nos. CP04-405-000, a certificate of public convenience and necessity is issued to Vista Pipeline under section 7(c) of the NGA authorizing it to construct and operate a 25-mile long, 36-inch diameter pipeline, as more fully described in this order and in the application.

(C) The authorizations in the above paragraphs are conditioned on Vista LNG and/or Vista Pipeline, as applicable:

- (1) placing the proposed facilities in service within three years of the final order;
- (2) complying with all regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs(a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) making a tariff filing no sooner than 60 days but no later than 30 days prior to commencement of service to place the rates approved herein into effect, including redlined tariff sheets reflecting how its actual tariff filing differs from its *pro forma* filing;
- (4) signing and returning the Testimony of Acceptance of all the provisions, conditions, and requirements of the Presidential Permit to the Secretary of the Commission within thirty days of the issuance of this order;
- (5) complying with the safety and security measures identified in the Coast Guard's Waterway Suitability Assessment report; and,

(6) complying with the specific environmental conditions listed in Appendix B of this order.

(D) Vista Pipeline must execute firm contracts equal to the level of service and in accordance with the terms of service represented in its precedent agreement prior to commencement of construction.

(E) In Docket No. CP04-406-000, a blanket transportation certificate is issued to Vista Pipeline under Subpart G of Part 284 of the Commission's regulations.

(F) In Docket No. CP04-407-000, a blanket construction certificate is issued to Vista Pipeline under Subpart F of Part 157 of the Commission's regulations.

(G) Within three years after its in-service date, as discussed herein, Vista Pipeline 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 Vista Pipeline'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 this filing, Vista Pipeline may make an NGA section 4 filing to propose alternative rates to be effective no later than 3 years after the in-service date for its proposed facilities.

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

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

Appendix A

Intervenors

BP Energy Company
Cheniere LNG, Inc.
ConocoPhillips Company
Freeport LNG Development, L.P.
Kinder Morgan Tejas Pipeline, L.P.
Natural Gas Pipeline Company of America
Occidental Energy Ventures Corp.
Occidental Chemical Corporation

Appendix B Environmental Conditions

1. Vista del Sol LNG Terminal LP and Vista del Sol Pipeline LP⁴¹ shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff data requests) and as identified in the environmental impact statement (EIS), unless modified by this Order. Vista del Sol must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**

2. For pipeline facilities, the Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the Vista del Sol LNG Terminal Project (Project). This authority shall allow:
 - a. the modification of conditions of the Commission's Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

3. For liquefied natural gas facilities, the Director of OEP has delegated authority to take all steps necessary to ensure the protection of life, health, property, and the environment during construction and operation of the Project. This authority shall include:

⁴¹Hereafter, Vista del Sol LNG is used in measures applicable to Vista del Sol LNG Terminal LP, Vista del Sol Pipeline is used in measures applicable to Vista del Sol Pipeline LP, and Vista del Sol is used in measures applicable to both Vista del Sol LNG Terminal LP and Vista del Sol Pipeline LP.

- a. stop-work authority and authority to cease operation; and
 - b. the design and implementation of any additional measures deemed necessary to assure continued compliance with the intent of the conditions of this Order.
4. **Prior to any construction**, Vista del Sol shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
 5. The authorized facility locations shall be as shown in the EIS, as supplemented by filed alignment sheets, and shall include all of the staff's recommended facility locations. **As soon as they are available, and before the start of construction**, Vista del Sol shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.
 6. Vista del Sol shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

This requirement does not apply to extra workspace allowed by the *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan), minor field realignments per landowner needs, and requirements which do not affect other landowners or sensitive environmental areas such as wetlands. Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
7. **At least 60 days before that start of construction**, Vista del Sol shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Vista del Sol will implement the mitigation measures required by this Order. Vista del Sol must file revisions to the plan as schedules change. The plan shall identify:
- a. how Vista del Sol will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions Vista del Sol will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - e. the company personnel (if known) and specific portion of Vista del Sol's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Vista del Sol will follow if noncompliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - a. the completion of all required surveys and reports;
 - b. the mitigation training of onsite personnel;
 - c. the start of construction; and
 - d. the start and completion of restoration.
8. Vista del Sol shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the Project and restoration of the right-

of-way. **Prior to construction of the pipeline**, Vista del Sol shall mail the complaint procedures to each landowner whose property would be crossed by the Project.

- a. In its letter to affected landowners, Vista del Sol shall:
 - a. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 - b. instruct the landowners that, if they are not satisfied with the response, they should call Vista del Sol's Hotline; the letter should indicate how soon to expect a response; and
 - c. instruct the landowners that, if they are still not satisfied with the response from Vista del Sol's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.
 - b. In addition, Vista del Sol shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
 - a. the date of the call;
 - b. the identification number from the certificated alignment sheets of the affected property;
 - c. the description of the problem/concern; and
 - d. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
9. Vista del Sol shall employ a team of environmental inspectors (EIs). The environmental inspectors shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and

- f. responsible for maintaining status reports.
10. Vista del Sol Pipeline shall file updated status reports prepared by the EI with the Secretary on a weekly basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. the current construction status of the Project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Vista del Sol from other federal, state or local permitting agencies concerning instances of noncompliance, and Vista del Sol's response.
 11. Vista del Sol must receive written authorization from the Director of OEP **before commencing service of the Project**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the Project are proceeding satisfactorily.
 12. **Within 30 days of placing the certificated facilities in service**, Vista del Sol shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Vista del Sol has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

13. Vista del Sol shall file with the Commission **before construction** the following information on nonjurisdictional facilities, including the American Electric Power Texas Central Company transmission lines and substation, the San Patricio Municipal Water District water line, the lateral pipeline associated with the Kinder Morgan Tejas Gas Pipeline interconnect, and the piping associated with the GulfTerra Energy Partners and Crosstex Energy interconnects:
 - a. documentation of consultations with the appropriate agencies and the status of federal, state, or local permits or approvals required for their construction; and
 - b. status and copies of any surveys and reports prepared for wetlands, threatened and endangered species, and cultural resources. *EIS section 2.2.2*
14. Vista del Sol LNG shall prepare a dredge material placement plan that specifies the final placement locations, the routes of dredge slurry pipes and access roads, and the location/design of outfall structures. This plan shall be filed with the Secretary **prior to the start of dredging operations**. *EIS section 3.7.1*
15. Vista del Sol Pipeline shall limit the construction right-of-way width to 95 feet in areas with no topsoil segregation and limit the construction right-of-way width to 110 feet where topsoil would be removed from the trench and spoil storage area. If Vista del Sol Pipeline needs more than 110 feet of width at specific locations, a site-specific request for each area shall be filed with the Secretary for the review and written approval of the Director of OEP **prior to construction of the pipeline**. Vista del Sol Pipeline shall revise its Erosion and Sedimentation Control Plan (E&SC Plan) to be consistent with these right-of-way widths **prior to construction of the pipeline**. *EIS section 4.2*
16. Vista del Sol LNG shall develop a *Spill Prevention, Containment and Countermeasure Plan* (SPCC Plan) to include procedures that would be implemented should spills of oil, gas, lubricants, or other hazardous materials occur during construction and operation of the marine terminal. In addition to addressing emergency spill response and clean-up procedures, this plan shall include a description of general spill prevention measures such as material handling practices, personnel training, and inspection. The offshore SPCC Plan shall be filed with the Secretary for review and approval by the Director of OEP **prior to the start of site preparation at the LNG terminal**. *EIS section 4.3.2.1*
17. Vista del Sol LNG shall file a report that compares the results of the pre- and post-construction seagrass surveys with the Secretary **within 90 days** of completing dredging and dredge material placement. *EIS section 4.4.1*

18. **Prior to construction of the LNG terminal**, Vista del Sol LNG shall file with the Secretary for review and written approval by the Director of OEP a final EFH mitigation/beneficial uses plan that has been reviewed and approved by NOAA Fisheries. The plan should include detailed geotechnical and engineering studies, a quality assurance/control plan, a monitoring and management plan, and a remedial action plan for the life of the project, as appropriate.
19. Vista del Sol Pipeline shall revise its E&SC Plan to be consistent with our *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures) with respect to the width of the construction right-of-way in wetlands. The revised E&SC Plan shall be filed with the Secretary for review and written approval by the Director of OEP **prior to construction of the pipeline**. *EIS section 4.4.1*
20. Vista del Sol Pipeline shall prepare a site-specific plan for construction between mileposts 20.1 and 21.5 that minimizes the removal of mature trees (*i.e.*, trees greater than 12 inches diameter at breast height). If mature trees must be removed during construction, Vista del Sol Pipeline shall prepare a compensatory mitigation plan in consultation with representatives of the Welder Wildlife Foundation and the Texas Parks and Wildlife Department. These plans shall be filed with the Secretary for the review and written approval of the Director of OEP **prior to construction of the pipeline**. *EIS section 4.4.2*
21. Vista del Sol shall avoid clearing woody vegetation during the peak nesting period between March 1 and August 31. If vegetation clearing must be conducted during this time, Vista del Sol shall survey for all migratory bird nests **no more than 3 weeks prior to commencing work at the LNG terminal and along the pipeline route**. If an active migratory bird nest is found, Vista del Sol shall consult with the U.S. Fish and Wildlife Service (FWS) to identify the most appropriate measure that should be taken to avoid or minimize impacts. *EIS section 4.5.4.2*
22. Vista del Sol shall develop and implement an endangered species worker's education program **prior to construction at the LNG terminal and along the pipeline route**. The program, developed in consultation with the FWS, shall include information for EIs and construction personnel related to endangered species identification, necessary protective measures, and appropriate reporting and contact information. In addition, EIs trained in the identification of endangered species shall always be present in areas where endangered species could be encountered during construction (*e.g.*, construction disturbance of tidal flats potentially used by piping plovers). *EIS section 4.6.3*

23. If facilities are not constructed **within 1 year** of receiving authorization from the Director of OEP that construction may begin, Vista del Sol shall consult with the appropriate office of the FWS and NOAA Fisheries to verify that previous consultations and determinations of effect are still current. *EIS section 4.6.3*
24. Vista del Sol shall file with the Secretary documentation of concurrence from the Railroad Commission of Texas that the Project is consistent with the Texas Coastal Management Program **prior to construction of the LNG terminal and pipeline**. *EIS section 4.7.5*
25. Vista del Sol LNG shall consult with the Texas Department of Transportation (TxDOT) and other local entities responsible for transportation issues including San Patricio and Nueces Counties and the Cities of Ingleside, Gregory, and Portland, to determine the need for a Project specific Construction Transportation Management Plan. Such a plan shall provide specific measures that would be used to transport materials and construction workers to the proposed LNG terminal work site. Aspects of the plan may include, but are not limited to, identification of off-site vehicle parking areas, traffic control measures, traffic control personnel, and construction and delivery hours. Vista del Sol LNG shall file the results of this consultation and the Construction Transportation Management Plan, if recommended by the transportation authorities, with the Secretary **prior to the start of site preparation at the LNG terminal**. *EIS section 4.9.1*
26. Vista del Sol Pipeline shall defer implementation of any treatment plans/measures (including archaeological data recovery), construction of facilities, and use of all staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
 - a. Vista del Sol Pipeline files with the Secretary cultural resources survey and evaluation reports, any necessary treatment plans, and the Texas State Historic Preservation Office comments; and
 - b. the Director of OEP reviews all cultural resources survey reports and plans, and notifies Vista del Sol Pipeline in writing that treatment plans/mitigation measures may be implemented or construction may proceed.

All material filed with the Commission containing **location, character, and ownership information** about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: “**CONTAINS PRIVILEGED INFORMATION - DO NOT RELEASE.**” *EIS section 4.10.4*

27. Vista del Sol LNG shall file noise surveys with the Secretary **no later than 60 days** after placing the LNG terminal in service. If the noise attributable to the operation of all of the equipment at the LNG terminal exceeds a day-night

equivalent sound level of 55 decibels on the A-weighted scale at any nearby noise-sensitive areas, Vista del Sol LNG shall file a report on what changes are needed and shall install the additional noise controls to meet the level within 1 year of the in-service date. Vista del Sol LNG shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls. *EIS section 4.11.2.3*

The following measures apply to the LNG terminal design and construction details. Information pertaining to specific recommendations 27 through 69 shall be filed with the Secretary for review and approval by the Director of OEP either: prior to initial site preparation; prior to construction of final design; prior to commissioning; or prior to commencement of service. This information shall be submitted a minimum of 30 days before approval to proceed is required.

28. Vista del Sol LNG shall examine provisions to retain any vapor produced along the transfer line trenches and other areas serving direct LNG spills to associated impoundments. Measures to be considered may include, but are not limited to: vapor fencing; intermediate sump locations; or trench surface area reduction. **Prior to initial site preparation**, Vista del Sol LNG shall file final drawings and specifications for these measures with the Secretary for review and approval by the Director of OEP. *EIS section 4.12.4*
29. Vista del Sol LNG shall develop emergency evacuation routes/methods in conjunction with the local emergency planning groups and town officials for areas that are within any transient hazard areas. **Prior to initial site preparation**, these evacuation routes/methods shall be filed with the Secretary for review and written approval by the Director or OEP. *EIS section 4.12.5*
30. **Prior to initial site preparation**, Vista del Sol LNG shall demonstrate that suitable procedures and coordination exist between Vista del Sol LNG, the Aransas – Corpus Christi Pilots, and the TxDOT to minimize delays to ferry operations from LNG carrier transits. *EIS section 4.12.5.2*
31. Vista del Sol LNG shall file an evaluation of the relief and flare systems **prior to initial site preparation**. *EIS section 4.12.2*
32. Vista del Sol LNG shall file a complete plan and list of the proposed hazard detection equipment **prior to initial site preparation**. The information shall include a list with the instrument tag number, type and location, alarm locations, and shutdown functions of the proposed hazard detection equipment. Plan drawings shall clearly show the location of all detection equipment. The final design shall identify manufacturer and model. *EIS section 4.12.2*

33. Vista del Sol LNG shall provide a technical review of its facility design that:
- a. Identifies all combustion/ventilation air intake equipment and the distance(s) to any possible hydrocarbon release (LNG, flammable refrigerants, flammable liquids, and flammable gases).
 - b. Demonstrates that these areas are adequately covered by hazard detection devices and indicate how these devices would isolate or shutdown any combustion equipment whose continued operation could add to or sustain an emergency.

Vista del Sol LNG shall file this review with the Director of OEP for review and approval **prior to initial site preparation**. *EIS section 4.12.2*

34. Vista del Sol LNG shall file a complete plan and list of the proposed fixed and wheeled dry-chemical, fire extinguishing, high expansion foam, hazard control equipment **prior to initial site preparation**. The information shall include a list with the equipment tag number, type, size, equipment covered, and automatic and manual remote signals initiating discharge of the units. Plan drawings shall clearly show the planned location of all fixed and wheeled extinguishers. *EIS section 4.12.2*
35. Vista del Sol LNG shall file facility plans showing the proposed location of, and area covered by, each monitor, hydrant, deluge system, hose, and sprinkler, as well as piping and instrumentation diagrams; and piping and instrumentation diagrams, of the proposed fire water system **prior to initial site preparation**. *EIS section 4.12.2*
36. Vista del Sol LNG shall relocate the process area sump from within the process area and file the design **prior to initial site preparation**. *EIS section 4.12.2*
37. Vista del Sol LNG shall evaluate and file the design of the containment systems and the application of insulated concrete **prior to initial site preparation**. *EIS section 4.12.2*
38. Vista del Sol LNG's **final design** of the hazard detection equipment shall identify the manufacturer and model. *EIS section 4.12.2*
39. Vista del Sol LNG's **final design** of the hazard detection equipment shall include redundancy and fault detection and fault alarm monitoring in all potentially hazardous areas and enclosures. *EIS section 4.12.2*
40. Vista del Sol LNG's **final design** shall include provisions for all flammable gas and ultraviolet/infrared hazard detectors to be equipped with local instrument status indication as an additional safety feature. *EIS section 4.12.2*

41. In the event that open path detectors are used in the **final design**, Vista del Sol LNG shall calibrate the detectors to detect the presence of flammable gas and alarm at the lowest reliable set point, in addition to the required 25 percent lower flammability limit set point. *EIS section 4.12.2*
42. Vista del Sol LNG's **final design** of the fixed and wheeled dry-chemical, fire extinguishing, high expansion foam hazard control equipment shall identify the manufacturer and model. *EIS section 4.12.2*
43. Vista del Sol LNG's **final design** shall include equipment and instrumentation for the measurement of translational and rotational movement of the inner vessel for use during and after cool down. *EIS section 4.12.2*
44. Vista del Sol LNG's **final design** shall include details of the boil-off gas (BOG) flow measurement system provided for each tank. *EIS section 4.12.2*
45. Vista del Sol LNG's **final design** shall include a reliable measurement system to monitor deflections during the hydraulic test. At a minimum, this system shall include two slope indicator ducts which bisect the tank in mutually perpendicular directions, monitoring points at the terminals of these ducts, and other monitoring points along the perimeter of the concrete shell, so that sag, warping, tilt, and settlements can be monitored. Tolerances for sag, tilt, and shell warping shall meet or exceed the limits specified by the tank manufacturer. *EIS section 4.12.2*
46. Vista del Sol LNG's **final design** shall include details of the LNG tank tilt settlement and differential settlement limits between each LNG tank and piping and procedures to be implemented in the event that limits are exceeded. *EIS section 4.12.2*
47. Vista del Sol LNG's **final design** shall include drawings and specifications of the spill protection system to be applied to the LNG tank roofs. *EIS section 4.12.2*
48. Vista del Sol LNG's **final design** shall include a discretionary vent for each tank, to be operated through the Distributed Control System. *EIS section 4.12.2*
49. Vista del Sol LNG's **final design** shall include provisions to ensure that all pumps can be operated within the recommended flow range when pumping from two or more LNG tanks with different levels. *EIS section 4.12.2*
50. Vista del Sol LNG's **final design** shall include provisions to ensure that hot glycol/water circulation is in operation at all times when LNG is present in the LNG booster pump discharge piping or when the temperature in the LNG inlet channel to any vaporizer is below 0 °F. *EIS section 4.12.2*

51. Vista del Sol LNG's **final design** shall include detection instrumentation and shutdown procedures for vaporizer tube leak, shell side overpressure, or bursting disc failure. *EIS section 4.12.2*
52. Vista del Sol LNG's **final design** shall include temperature measurement of the vaporizer common discharge header which should alarm the low temperature condition. *EIS section 4.12.2*
53. Vista del Sol LNG's **final design** shall include redundant low temperature alarm and shutdown in each vaporizer discharge. *EIS section 4.12.2*
54. Vista del Sol LNG's **final design** shall include provisions to recover BOG, under all conditions, in the event that the sendout vaporization system is not in operation. *EIS section 4.12.2*
55. Vista del Sol LNG's **final design** shall include automatic shutdown valves at the suction and discharge of the each boil-off blower and each boil-off compressor. *EIS section 4.12.2*
56. Vista del Sol LNG's **final design** shall provide revised calculations for vapor dispersion from the vent stack for cold temperature and static wind conditions. *EIS section 4.12.2*
57. Vista del Sol LNG's **final design** shall reevaluate the need for heating the vent gas and the location of the vent stack. *EIS section 4.12.2*
58. Vista del Sol LNG's **final design** shall ensure that air gaps are installed downstream of all seals or isolations installed at the interface between a flammable fluid system and an electrical conduit or wiring system. Each air gap shall vent to a safe location and be equipped with a leak detection device that: would continuously monitor for the presence of a flammable fluid; would alarm the hazardous condition; and would shutdown the appropriate systems. *EIS section 4.12.2*
59. Vista del Sol LNG's **final design** shall include a fire protection evaluation carried out in accordance with the requirements of National Fire Protection Association 59A (2001), chapter 9.1.2. *EIS section 4.12.2*
60. Vista del Sol LNG's **final design** shall include details of the shut down logic. *EIS section 4.12.2*

61. Vista del Sol LNG's **final design** shall include emergency shutdown of equipment and systems activated by hazard detection devices for flammable gas, fire, and cryogenic spills, when applicable. *EIS section 4.12.2*
62. Vista del Sol LNG shall file security personnel requirements for prior to and during LNG vessel unloading with the Secretary **prior to commissioning**. *EIS section 4.12.2*
63. Vista del Sol LNG shall file Operation and Maintenance procedures and manuals, as well as emergency plans, emergency evacuation plan and safety procedure manuals, with the Secretary **prior to commissioning**. *EIS section 4.12.2*
64. Vista del Sol LNG shall coordinate with the Coast Guard to define the responsibilities of Vista del Sol LNG's security staff in supplementing other security personnel and in protecting the LNG tankers and terminal **prior to commissioning**. *EIS section 4.12.5*
65. Vista del Sol LNG shall provide copies of the U.S. Coast Guard (Coast Guard) security plan, vessel operation plan, and emergency response plan to the FERC staff **prior to commissioning**. *EIS section 4.12.2*
66. Vista del Sol LNG shall file the contingency plan for failure of the outer LNG tank containment **prior to commissioning**. *EIS section 4.12.2*
67. Vista del Sol LNG shall file a copy of the criteria for horizontal and rotational movement of the inner vessel for use during and after cool down **prior to commissioning**. *EIS section 4.12.2*

68. Vista del Sol LNG shall develop an Emergency Response Plan (including evacuation) and coordinate procedures with local emergency planning groups, fire departments, state and local law enforcement, and appropriate federal agencies. This plan shall include at a minimum:
- a. designated contacts with state and local emergency response agencies;
 - b. scalable procedures for the prompt notification of appropriate local officials and emergency response agencies based on the level and severity of potential incidents;
 - c. procedures for notifying residents and recreational users within areas of potential hazard;
 - d. evacuation routes for public use areas and residents of areas that are within any transient hazard areas;
 - e. locations of permanent sirens and other warning devices; and
 - f. an “emergency coordinator” on each LNG vessel to activate sirens and other warning devices.

The Emergency Response Plan shall be filed with the Secretary for review and approval by the Director of OEP **prior to commencement of service**. Vista del Sol LNG shall notify FERC staff of all meetings in advance and shall report progress on its Emergency Response Plan at 6-month intervals starting at the commencement of construction. *EIS section 4.12.5*

69. Vista del Sol LNG shall notify the FERC staff of any proposed revisions to the security plan and physical security of the facility **prior to commencement of service**. *EIS section 4.12.2*
70. Vista del Sol shall report progress on the construction of the LNG terminal in **monthly reports** filed with the Secretary. Details shall include a summary of activities, problems encountered, and remedial actions taken. Problems of significant magnitude should be reported to the FERC **within 24 hours**. *EIS section 4.12.2*

The following measures apply throughout the operation life of the LNG facility.

71. The facility shall be subject to regular FERC staff technical reviews and site inspections on at least a **biennial** basis or more frequently as circumstances indicate. Prior to each FERC staff technical review and site inspection, Vista del Sol LNG shall respond to a specific data request including information relating to possible design and operating conditions that may have been imposed by other agencies or organizations. Vista del Sol LNG shall also provide up-to-date detailed piping and instrumentation diagrams reflecting facility modifications and provision of other pertinent information not included in the semi-annual reports

described below, including facility events that have taken place since the previously submitted annual report. *EIS section 4.12.2*

72. Vista del Sol LNG shall file **semi-annual** operational reports with the Secretary to identify changes in facility design and operating conditions, abnormal operating experiences, activities (including ship arrivals, quantity and composition of imported LNG, vaporization quantities, boil-off/flash gas, etc.), plant modifications including future plans, and progress thereof. Abnormalities shall include, but not be limited to: unloading/shipping problems, potential hazardous conditions from offsite vessels, storage tank stratification or rollover, geysering, storage tank pressure excursions, cold spots on the storage tanks, storage tank vibrations and/or vibrations in associated cryogenic piping, storage tank settlement, significant equipment or instrumentation malfunctions or failures, non-scheduled maintenance or repair (and reasons therefore), relative movement of storage tank inner vessels, vapor or liquid releases, fires involving natural gas and/or from other sources, negative pressure (vacuum) within a storage tank, and higher than predicted boil-off rates. Adverse weather conditions and the effect on the facility shall also be reported. Reports shall be submitted **within 45 days** after each period ending June 30 and December 31. In addition to the above items, a section entitled “Significant plant modifications proposed for the next 12 months (dates)” shall also be included in the semi-annual operational reports. Such information would provide the FERC staff with early notice of anticipated future construction/maintenance projects at the LNG facility. *EIS section 4.12.2*
73. In the event the temperature of any region of any secondary containment, including imbedded pipe supports, becomes less than the minimum specified operating temperature for the material, Vista del Sol LNG shall notify the Commission **within 24 hours** and shall specify the procedures for corrective action. *EIS section 4.12.2*
74. Vista del Sol LNG shall report to the FERC staff any significant non-scheduled events, including safety-related incidents (*i.e.*, LNG or natural gas releases, fires, explosions, mechanical failures, unusual over pressurization, and major injuries) **and security-related incidents (*i.e.*, attempts to enter site, suspicious activities)**, **within 24 hours** of the event. In the event an abnormality is of significant magnitude to threaten public or employee safety, cause significant property damage, or interrupt service, notification shall be made immediately, without unduly interfering with any necessary or appropriate emergency repair, alarm, or other emergency procedure. This notification practice shall be incorporated into the LNG facility’s emergency plan. Examples of reportable LNG-related incidents include:

- a. fire;
- b. explosion;
- c. property damage exceeding \$50,000;
- d. death or injury necessitating in-patient hospitalization;
- e. free flow of LNG for 5 minutes or more that results in pooling;
- f. unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability, structural integrity, or reliability of an LNG facility that contains, controls, or processes gas or LNG;
- g. any crack or other material defect that impairs the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG;
- h. any malfunction or operating error that causes the pressure of a pipeline or LNG facility that contains or processes gas or LNG to rise above its maximum allowable operating pressure (or working pressure for LNG facilities) plus the build-up allowed for operation of pressure limiting or control devices;
- i. a leak in an LNG facility that contains or processes gas or LNG that constitutes an emergency;
- j. inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of an LNG storage tank;
- k. any safety-related condition that could lead to an imminent hazard and cause (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a 20 percent reduction in operating pressure or shutdown of operation of a pipeline or an LNG facility that contains or processes gas or LNG;
- l. safety-related incidents to LNG vessels occurring at or enroute to and from the LNG facility; or
- m. an event that is significant in the judgment of the operator and/or management even though it did not meet the above criteria or the guidelines set forth in an LNG facility's incident management plan.

In the event of an incident, the Director of OEP has delegated authority to take whatever steps are necessary to ensure operational reliability and to protect human life, health, property, or the environment, including authority to direct the LNG facility to cease operations. Following the initial company notification, FERC staff would determine the need for a separate follow-up report or follow-up in the upcoming semi-annual operational report. All company follow-up reports shall include investigation results and recommendations to minimize a recurrence of the incident. *EIS section 4.12.2*