

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Carolina Gas Transmission Corporation	Docket Nos.	CP06-71-000
SCG Pipeline, Inc.		CP06-72-000
South Carolina Pipeline Corporation		CP06-73-000

ORDER ISSUING CERTIFICATES, GRANTING ABANDONMENT AUTHORITY,  
AND APPROVING OFFER OF SETTLEMENT

(Issued July 20, 2006)

1. On February 28, 2006, SCG Pipeline, Inc. (SCG) and South Carolina Pipeline Corporation (SCPC), on behalf of themselves and Carolina Gas Transmission Corporation (Carolina Gas) (collectively, the Applicants), filed a Joint Application and Offer of Settlement requesting approval of a settlement agreement (Settlement) addressing the proposed merger of SCG into SCPC and all authorizations necessary to permit the merger to form Carolina Gas, a new interstate pipeline that will be subject to the Commission's jurisdiction. Specifically, the Applicants request authorization for Carolina Gas to acquire and operate SCG's interstate pipeline facilities and SCPC's intrastate pipeline facilities to provide interstate natural gas transportation services on a single integrated pipeline and the issuance to Carolina Gas of blanket construction and transportation certificates pursuant to Parts 157 and 284, respectively, of the Commission's regulations. The Applicants also request authority for SCG to abandon its facilities and services. For the reasons discussed herein, we will approve the Settlement, issue the requested certificates to Carolina Gas, and grant the requested abandonment authority to SCG.

**I. Background**

2. SCG and SCPC are organized and exist under the laws of the State of South Carolina and are wholly-owned subsidiaries of SCANA Corporation (SCANA). The proposed new interstate pipeline, Carolina Gas, will be formed by the merger of SCG into SCPC and also will be organized under the laws of the State of South Carolina.

3. SCG is an interstate natural gas pipeline that commenced Part 284 operations in November 2003 pursuant to Commission authorization issued in Docket No. CP02-57-000.<sup>1</sup> SCG's pipeline is 31 miles long, originating in Georgia at the tailgate of the Elba Island liquefied natural gas (LNG) terminal and extending into Jasper County, South Carolina, where it interconnects with SCPC. The first 13 miles consist of SCG's undivided interest (equal to 190,000 Mcf per day of capacity) in two parallel 30-inch diameter pipelines, shared with Southern Natural Gas Company (Southern Natural). These two lines connect at Port Wentworth, Georgia to 18.2 miles of SCG-constructed 20-inch diameter pipeline. SCG serves one firm customer, SCANA Energy Marketing, Inc. (SEMI), also a SCANA subsidiary, pursuant to a long-term firm transportation contract.

4. SCPC is a Hinshaw pipeline that serves South Carolina markets through its 1,400-mile web of transmission lines and related valve stations, system control facilities, and compressor stations. SCPC currently receives gas from Southern Natural and Transcontinental Gas Pipe Line Corporation (Transco) and from SCG at SCPC's receipt point in Jasper County, South Carolina. SCPC serves 11 sale for resale customers and 47 industrial customers. Pursuant to rates, terms, and conditions approved by the Public Service Commission of South Carolina (South Carolina PSC), SCPC provides bundled sales/transportation service to its customers. SCPC also provides, on a limited basis, an experimental transportation-only service approved by the South Carolina PSC.

5. The Applicants state that they filed the Settlement and application in this proceeding in partial fulfillment of the obligations of SCG and SCPC under the Stipulation and Consent Agreement approved by the Commission in Docket No. IN05-6-000 in which SCG and SCPC agreed to file an application to combine the two companies into a single open-access interstate pipeline subject to the Commission's jurisdiction.<sup>2</sup>

6. The Applicants request that the Commission grant the relief requested no later than July 31, 2006, so that Carolina Gas can commence operations as an interstate pipeline subject to the Commission's jurisdiction for the 2006-2007 winter season.

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<sup>1</sup> *Southern Natural Gas Company, SCG Pipeline, Inc.*, Docket Nos. CP02-57-000, CP02-58-000 and CP02-59-000, 99 FERC ¶ 61,345 (2002) (Preliminary Determination on Non-Environmental Issues), 100 FERC ¶ 61,284 (2002) (Order Issuing Certificates, Approving Abandonment and Denying Rehearing).

<sup>2</sup> *South Carolina Electric & Gas Company, SCG Pipeline, Inc., SCANA Energy Marketing, Inc., South Carolina Pipeline Corporation, SCANA Services Inc.*, 111 FERC ¶ 61,217 at P 5.A (2005).

## II. The Proposal

7. The Applicants are requesting certificates and other authorizations necessary to permit: (1) the merger of SCG into SCPC to form Carolina Gas, a single, integrated interstate pipeline, subject to Commission jurisdiction; (2) the operation of such interstate pipeline facilities by Carolina Gas, the entity to be formed by merger; (3) the provision of jurisdictional services by Carolina Gas pursuant to the initial rates and FERC Gas Tariff proposed in the settlement and applications; and (4) the abandonment, by merger, of SCG's FERC-certificated facilities and the cancellation of SCG's FERC Gas Tariff, and any other authorizations granted to SCG by the Commission. The Applicants also request that the Commission grant Carolina Gas a blanket certificate authorizing Carolina Gas to transport gas on behalf of others pursuant to Part 284, Subpart G of the Commission's regulations; and a blanket certificate authorizing certain construction and operation of facilities and abandonment under NGA section 7 pursuant to Part 157, Subpart F, of the Commission's regulations.<sup>3</sup>

8. The Applicants state that upon Commission approval of the authorizations they request, SCG, currently an interstate pipeline regulated by the Commission, will merge into SCPC, currently a non-jurisdictional intrastate pipeline. SCPC's intrastate services will end on the merger effective date. SCPC will relinquish its Hinshaw exemption, become subject to the Commission's jurisdiction over interstate pipelines, and change its name to Carolina Gas Transmission Corporation. Following the merger, the resulting entity, Carolina Gas, will own and operate all of the facilities that were owned and operated by SCG and SCPC at the time of the merger.<sup>4</sup>

9. The Applicants state that the resulting Carolina Gas pipeline will be a reticulated web-like system providing open-access, unbundled, firm and interruptible transportation services and interruptible parking and lending service for interstate gas markets. Carolina Gas will transport gas supplies received from Southern Natural and Transco, which have access to various gas supply regions including the Gulf Coast, north Louisiana and north

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<sup>3</sup> Docket No. CP06-71-000 includes the requests to authorize facilities acquisition and operation, for approval for the provision of interstate natural gas transportation services, and for approval of abandonment by SCG Pipeline, Inc. Docket No. CP06-72-000 includes a Part 157, Subpart F blanket certificate request. Docket No. CP06-73-000 includes a Part 284, Subpart G blanket certificate request. The Offer of Settlement encompasses and is related to all three dockets.

<sup>4</sup> SCPC also owns two intrastate LNG peaking facilities; however, these facilities are not included in the assets that are the subject of this proposal. The Applicants state that before Carolina Gas is formed and commences interstate operations, these LNG peaking facilities assets will be transferred to South Carolina Electric & Gas Company and remain in intrastate service.

Texas, as well as LNG supplied at Elba Island, Georgia. The Applicants state that the Carolina Gas system will increase natural gas supply diversity and competition in and beyond the southeastern United States and provide much needed interstate infrastructure without the delay, uncertainty and environmental disturbances inherent in a new construction project.

### **The Settlement Agreement**

10. Pursuant to sections 385.207(a)(5) and 385.602 of the Commission's regulations, the Applicants filed an Offer of Settlement for the Commission's acceptance. The Settlement is a negotiated resolution of the matters arising in connection with the Applicants' requests for certificate and abandonment authority.<sup>5</sup> The Applicants state that the terms and conditions of the Settlement are the product of substantial inter-customer negotiation and compromise, as well as negotiation and compromise between the Applicants and their customers. They state that the Settlement reflects an overall balancing of the various competing interests among customers and among Applicants and the various customer constituencies.

11. The Applicants have included two sets of rates as part of this proceeding: Settlement Rates and Alternate Rates. Both sets of rates are based on SFV cost allocation and rate design and are zone-of-delivery rates with two zones. Zone 1 consists of the former SCPC facilities and Zone 2 consists of the former SCG facilities.

12. Under the terms of the proposed Settlement, Carolina Gas's prospective customers were to execute and return their new service agreements before the deadline for filing comments regarding the Settlement, which was established by the Commission's Notice in these proceedings. A customer that did not execute and return its service agreement before the comment date would be deemed a contesting party under the Settlement and thus ineligible to receive service at the lower Settlement Rates. Rather, contesting parties would be subject to the higher Alternate Rates. Carolina Gas filed rate derivation information and pro forma tariff sheets for both the Settlement Rates and the Alternate Rates in the event that both rates might become applicable.

13. The Applicants also request negotiated rate authority, which is reflected in section 29 of the General Terms and Conditions (GT&C) of Carolina Gas' proposed Settlement Tariff. The Applicants assert that Carolina Gas will finance its capital investments with advances from SCANA and through its own debt.

14. The Applicants assert that the Alternate Rates conform to Commission precedent and policy regarding NGA section 7 initial rates. The Applicants state that the expenses

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<sup>5</sup> A summary of the settlement terms provided by applicants is reproduced in Appendix B.

and facilities costs that underlie the Alternate Rates are taken from the books and records of the two merging pipelines, with pro forma adjustments to reflect SCPC's exit from the merchant business and its conversion to interstate transmission-only service. The Applicants state that the rate base for the Alternate Rates includes the post-merger plant-in-service, accumulated depreciation, accumulated deferred income taxes, and construction work-in-progress as of the expected merger date. The Applicants also state that the rate base for the Alternate Rates includes materials and supplies based on a 13-month average inventory level, and that no cash working capital allowance is proposed. The Alternate Rates are derived using SCPC's current amortization rate of 10 percent for intangible plant, and its current depreciation rates of 1.83 percent for transmission plant and 8.67 percent for general plant. SCG's current depreciation rates are 2.5 percent for all classes of plant.

15. The Applicants state that the transmission cost of service for the Alternate Rates is \$53.1 million, incorporating an overall, after-tax rate of return of 9.82 percent and a return on equity (ROE) of 14 percent. The Applicants assert that the Alternate Rates should be approved by the Commission for Carolina Gas' services to apply to any contesting party. The Applicants note that, but for the Settlement, these Alternate Rates would apply to all customers.

16. The Applicants assert that the Settlement Rates are derived on the same basis as the Alternate Rates, with three principal differences. First, certain rate base and expense items were the subject of compromise for Settlement purposes in the calculation of the Settlement Rates, while the Alternate Rates do not include these compromises. Secondly, the Settlement Rates incorporate a 12.7 percent ROE. The Applicants state that the cost of service underlying the Settlement Rates is \$50.6 million, and incorporate an overall after-tax rate of return of 9.08 percent.

17. The Applicants assert that the third principal difference between the Alternate Rates and the Settlement Rates concerns the billing determinants for Columbia Energy, LLC (Columbia Energy) included in the rate calculation. The Applicants state that Columbia Energy has a long-term transportation contract with SCPC, which provides that Columbia Energy will continue to receive transportation service from SCPC even if it converts to interstate service. That contract calls for Columbia Energy to continue to reserve 85,000 Dth per day of firm capacity. However, the Applicants note that on December 30, 2005, Columbia Energy and its parent Calpine Corporation (Calpine) filed voluntary petitions to restructure under Chapter 11 of the United States Bankruptcy Code. The Applicants state that Columbia Energy has not yet made the election afforded it under the Bankruptcy Code regarding whether to assume or reject its contract for future transportation service from Carolina Gas. The Applicants estimate that the firm capacity contracted on Carolina Gas by Columbia Energy may be as low as 12,000 Dth per day. The Applicants assert that the Alternate Rates are based on billing determinants associated with the Columbia Energy plant set at the 12,000 Dth per day level, while the

Settlement Rates are based on billing determinants for Columbia Energy of 70,000 per day, reflecting the Applicants' agreement in the Settlement to accept the risk during a moratorium period that Carolina Gas will have rates in effect based on level of billing determinants that could be more than 55,000 Dth per day higher than the actual level of service provided.

18. The Applicants assert that if any party contests this application or the Settlement Agreement, the Commission should determine that the Settlement Agreement nonetheless applies to the contesting party. The Applicants further assert that if the Commission makes that determination, such contesting party shall be deemed to be a settling party under the Settlement, provided that such party shall execute a service agreement at the agreed upon MDTQ level.

19. In Appendix D of Exhibit P of the application, the Applicants have submitted the rate derivation for the Alternate Rates. Under the Alternate Rates, the Applicants propose a Zone 1 reservation charge of \$9.1597 and a Zone 2 reservation charge of \$3.4696 per Dth. The Applicants also propose an IT Usage Rate for Zone 1 of \$0.0041 per Dth, and for Zone 2, \$0.0010 per Dth.

20. In Appendix A of Exhibit P of the application, the Applicants have submitted the rate derivation for the Settlement Rates. Under the Settlement Rates, the Applicants propose a Zone 1 reservation charge of \$7.4287 and a Zone 2 reservation charge of \$3.4696. The Applicants also propose an IT Usage Rate for Zone 1 of \$0.0036, and for Zone 2, \$0.0009.

21. The Applicants have filed a pro forma tariff that is substantially similar to the tariffs of other jurisdictional pipelines. The Applicants proposed to offer firm, interruptible and park-and-loan services. In Appendix B of Exhibit P of the application, the Applicants have charts demonstrating how the proposed tariff complies with Order No. 637 and the standards and definitions promulgated by NAESB.

22. The Applicants state that as part of the unbundling of SCPC's service, they and their customers have agreed to the transfer of the upstream capacity currently held by SCPC on Southern Natural and Transco to Carolina Gas customers. With the exception of a small amount of storage service that SCPC receives from Transco under its Rate Schedule GSS, the remaining upstream capacity to be allocated was certificated pursuant to Part 284 of the Commission's regulations and, therefore, will be transferred pursuant to the capacity release provisions of the upstream pipelines and the Commission's regulations. The upstream storage service that SCPC receives from Transco under its Rate Schedule GSS was certificated pursuant to Part 157 of the Commission's regulations and is thus ineligible for transfer through capacity release. In order to permit the transfer of such capacity, Applicants request authorization and waiver of any regulations or policies to permit the permanent, one-time assignment of such SCPC capacity to SCPC's

former firm sales customers as provided in the Settlement. Applicants state that upon assignment, the transfer will continue to be Part 157 capacity.

### **III. Notice, Interventions, Comments and Protests**

23. Notice of the applications was published in the *Federal Register* on March 10, 2006 (71 Fed. Reg. 12345). Fifteen parties filed timely motions to intervene or notices of intervention.<sup>6</sup> Timely, unopposed motions to intervene or notices of intervention are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>7</sup>

24. Two parties filed untimely motions to intervene.<sup>8</sup> The Commission finds that granting these late-filed motions to intervene will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, we will grant the late-filed motions to intervene.<sup>9</sup>

25. Because the Applicants' proposal included an offer of settlement filed under Rule 602 of the Commission's regulations, both initial comments and reply comments were permitted under the Commission's process. The Commission's notice provided that comments, interventions and protests to the applications, and initial comments to the Offer of Settlement must be filed on or before March 31, 2006. The notice also allowed for reply comments on the Offer of Settlement, provided that they were filed on or before April 10, 2006.

26. A number of parties filed protests or made adverse comments about to the Applicants' proposal. These parties are all natural gas marketing companies and include Southstar Energy Services d/b/a Georgia Natural Gas, LLC (Georgia Natural Gas), Texican Horizon Energy Marketing LLC (Texican), Sequent Energy Management, L.P. (Sequent), Amerada Hess Corporation (Amerada Hess), and Interconn Resources, Inc. (Interconn) (collectively, the Marketer Group). They state generally that they were not allowed to participate in the restructuring and settlement process, nor allowed to obtain capacity on the new interstate pipeline. The Marketer Group requests that the Commission reject the Applicants' proposals or convene a hearing or technical conference to examine their issues.

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<sup>6</sup> The interveners are listed in Appendix A to this order.

<sup>7</sup> 18 C.F.R. § 385.214(a)(3) (2005).

<sup>8</sup> *See* Appendix A.

<sup>9</sup> 18 C.F.R. § 385.214(d) (2005).

27. The Applicants filed an answer stating that the Marketer Group failed to raise any issue justifying denial or delay of the Applicants' request to approve the Settlement and application as filed.<sup>10</sup> Further, the Applicants state that neither the North Carolina Utilities Commission nor the South Carolina PSC opposed the Settlement and that the South Carolina Office of Regulatory Staff (South Carolina ORS), a state agency charged under South Carolina law with the duty to represent the South Carolina public interest in utility matters, filed comments in support of the proposal. The protests and the Applicants' reply are discussed in more detail below.

#### **IV. Discussion**

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

29. The Applicants have proposed a merger and the operation of a new interstate pipeline in partial fulfillment of the obligations of SCG and SCPC under the Stipulation and Consent Agreement approved by the Commission in Docket No. IN05-6-000. The Applicants state that the regulatory goals embodied in Order No. 636<sup>11</sup> were intended to encourage interstate pipelines to provide open-access service. Under current policy and regulations, the Commission generally requires transportation services, including storage, be rendered under its Part 284 open-access regulations in order to ensure as competitive an environment as possible for natural gas services. Further, analysis of proposed abandonments under NGA section 7(b) allows the Commission to "evaluate how such a proposed abandonment affects the availability and flow of gas in interstate commerce."<sup>12</sup> The Commission will also review the proposed formation of a new interstate pipeline to

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<sup>10</sup> The Commission will accept Applicants' answer because it assists in the Commission's analysis of the issues and provides a more complete record. *See, e.g., ANR Pipeline Company*, 107 FERC ¶ 61,094 (2004).

<sup>11</sup> Citing Order No. 636, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC Stats. & Regs. ¶ 30,939 (1992), order on reh'g, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950 (1992), order on reh'g, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *aff'd in part, rev'd in part, United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), cert. denied, 137 L. Ed. 2d 845, 117 S. Ct. 1723, 117 S. Ct. 1724 (1997), on remand, Order No. 636-C, 78 FERC ¶ 61,186 (1997), order on reh'g, Order No. 636-D, 83 FERC ¶ 61,210 (1998).

<sup>12</sup> *Coastal Oil & Gas Corporation v. FERC*, 782 F.2d 1249 at 1252 (5<sup>th</sup> Cir. 1986).



assure that the initial capacity has been fairly allocated and that the new interstate pipeline will operate under the open-access regulatory goals embodied in Order No. 636.

30. The individual members of the Marketer Group each filed separate comments that focused on certain common themes. The Marketer Group states that the Applicants' proposal contains anticompetitive features that raise several significant issues and also that the Applicants have not shown that the proposed rates are just and reasonable. The Marketer Group states that the settlement process was not an open process, but instead shut out prospective customers from gas markets that are potential competitors of the Applicants' marketing affiliate SEMI. Further, the Marketer Group states that the proposal is anticompetitive because it effectively awards SEMI all of the Zone 2 capacity on Carolina Gas, which will prevent the Marketer Group from reliably accessing Elba Island supplies, and thereby will chill the development of any real gas-on-gas competition within the Carolina Gas market. The Marketer Group requests that the Commission reject the application outright, or in the alternative, conduct a technical conference or an evidentiary hearing addressing these issues.

31. The Applicants state that the issues noted are without merit and fail to raise any genuine issue of material fact warranting a hearing or technical conference. They maintain that the Commission has the necessary procedures in place to deal as appropriate with allegations of discriminatory behavior and no further proceedings are necessary.

32. Further, the Applicants submit that the proposed Settlement and conversion of SCG and SCPC into a single interstate pipeline are pro-competitive developments and set the stage for expansion of interstate access to Elba Island through future open seasons to meet shipper requirements. The Applicants state that the Marketer Group disregards the benefits of the proposed merger of SCG and SCPC by arguing that the transaction will do little more than "entrench SEMI" and other SCANA affiliates.

33. The Applicants state that the proposal represents a meaningful change in the regulatory status of SCPC since the SCPC system will no longer be "closed" but will instead be an open-access system. With the exception of experimental firm transportation services, SCPC provides firm service on a bundled basis. After the merger, SCPC will be a transportation-only, open-access pipeline subject to the full range of Commission policies, including the Commission's capacity release program, flexible receipt and delivery point rights, and policies governing the availability of new transportation capacity. Therefore, the Applicants point out, immediately upon the effective date of the merger, there will be opportunities for marketers to serve SCPC's current customers as marketers, gas suppliers, or asset managers.

34. The Applicants note further that most of SCPC's existing customers have agreed to enter into firm transportation agreements with three-year terms. After the three years,

these customers will have an opportunity to re-examine their transportation capacity needs, thus providing additional opportunities for the Marketer Group's members.

35. The Applicants state further that a fundamental principle of SCPC's conversion to FERC-jurisdictional service is that no existing customer, including the LDCs serving residential and commercial customers and industrial customers, as well as SEMI, would lose access to the firm service that they would need from the new interstate pipeline. This was a foundation principle for attempting to gain the support for the conversion from these customers, the state commissions and the South Carolina ORS.

36. Sequent and Georgia Natural Gas also raise questions about the manner in which SCG administered its 2001 open season when SEMI won the full 190,000 Mcf/day of available firm capacity on SCG under a 20-year agreement, capacity that will be on Carolina Gas' Zone 2 under the current proposal. At the time of the open season, the only end user on the SCG system was a power plant owned by South Carolina Electric & Gas Company (SCE&G), the SCANA retail affiliate. Sequent and Georgia Natural state that SEMI was the only bidder that could have seen value in the capacity during the open season, and won the capacity as a result. Georgia Natural Gas argues that the Commission should re-investigate the conduct of parties involved with that open season, given that the Commission recently completed an investigation into the parties' conduct on other matters.<sup>13</sup> Texican argues that the Commission should require a new open season now.<sup>14</sup>

37. The Applicants first point out that the 2001 open season was reviewed and approved by the Commission. They state that SEMI was the only shipper to contract for SCG capacity and, since SEMI agreed to purchase 190,000 Mcf/day of capacity, that became SCG's total certificated capacity. Thus, SEMI'S agreement made it possible to construct SCG. The Applicants note that SEMI planned to use a portion of its capacity to serve the new 875-MW Jasper combined cycle gas-fired generating unit being developed by SCE&G and planned to use the remainder of its capacity to serve other markets in the Southeast through SCPC. Applicants state that any commercial advantage that SEMI might hold today is the result of the market risk that SEMI took in 2001.

38. We agree with the Applicants that evaluation of the Settlement itself, filed and contested in this docket, shows "substantial evidence upon which to base a reasoned

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<sup>13</sup> *Citing SCE&G*, 111 FERC ¶ 61,217 (2005).

<sup>14</sup> *Citing Northwestern Pipeline Corp.*, 97 FERC ¶ 61,163 at 61,731 (2001); *Texas-Ohio Pipeline, Inc.*, 69 FERC ¶ 61,145 (1994), *reh'g denied*, 70 FERC ¶ 61,001 (1995).

decision” that the requested authorizations are consistent with the public interest.<sup>15</sup> In 2002, the Commission upheld the propriety of the open-season process employed by SCG,<sup>16</sup> noting that SCG provided adequate notice of its project to prospective shippers and that because only SEMI executed a precedent agreement for capacity on SCG's proposed pipeline, and none of the shippers who responded to the open season decided to execute an agreement with SCG, “we find that SCG did not allocate capacity in an unduly discriminatory manner.”

39. In 2005, as part of a Stipulation and Consent Agreement resolving an investigation by the Commission's Division of Enforcement, SCG and SCPC agreed to file an application and related documents for authority to combine into a single open access interstate pipeline subject to the FERC's jurisdiction to prevent possible future violations of Commission rules. The Commission agrees with the Applicants that no evidence has been submitted justifying further investigation into the conduct of the 2001 open-season. Unsupported allegations that SEMI might have known in 2001 that SCG and SCPC would merge in 2006, and, if true, SEMI alone knew the true value of the SCG capacity, do not constitute good reason to delay the benefits of this proposal.

40. The Applicants state further that the decision to merge SCG and SCPC was not made in 2001, but was also a reasonable response to the Commission's Order No. 2004 standards of conduct. Pursuant to Order No. 2004, SCPC is an Energy Affiliate that would no longer be permitted to perform essential operational functions for SCG, an affiliated Transmission Provider.<sup>17</sup> Rather than incur substantial costs to establish SCG operations separate from those of SCPC, in 2004 SCG and SCPC decided to merge and to seek a waiver of certain of the standards of conduct until the merger becomes effective.<sup>18</sup>

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<sup>15</sup> 18 C.F.R. § 385.602(h)(1)(i).

<sup>16</sup> 99 FERC ¶ 61,345 at P 42-46 (2002).

<sup>17</sup> The Applicants state that, as permitted by the Order No. 497 Standards of Conduct, which were in effect when SCG was proposed and placed into operation, SCPC provided essential operational services to SCG, including: dispatch, transportation scheduling, Internet website postings, modeling and cost estimating, review of the operating aspects of the tariff and related documents, system control, metering, operations and maintenance, training, drafting, communications, right-of-way, environmental permitting, compliance, safety, construction project management and oversight, and some direct construction activities.

<sup>18</sup> To avoid immediate disruption of operations, the Commission granted SCG's petition for temporary, partial waiver of the standards of conduct to allow SCPC to continue to perform SCG's operations until the merger is complete. *See American Transmission Company LLC*, 109 FERC ¶ 61,082 at P 39-44 (2004).

The avoidance of these costs is one of the reasons the South Carolina ORS supports the merger.

41. We agree that no good reason has been shown for holding a new open season, and we find merit in the Applicants' arguments in support of its Settlement. As noted, we reviewed and approved the 2001 open season in 2002. The Applicants are not proposing to construct any facilities at this time and to expand the volumes of capacity available for customer use. Indeed, the Applicants state that it is not clear that the members of the Marketer Group are currently interested in purchasing capacity in the absence of an opportunity to evaluate the new market opportunities created in South Carolina. Further, the Applicants contend that future market opportunities would not have existed but for SEMI's contractual commitment in 2001 to take long-term firm service from SCG, which makes it possible to receive gas at Elba Island for transport to South Carolina. Moreover, the protest that access to Elba Island LNG gives SEMI a unique advantage depends on such supplies being less expensive than alternative supplies for the 20-year term of SEMI's contract, which is impossible to predict.

42. Finally, the Applicants note that to bring additional Elba supplies to Zone I, Carolina Gas will need to expand its facilities. An open season would be held before any such expansion. Carolina Gas already posted on the SCG website an August 2, 2004 notice inviting inquiries from any party with an interest in transportation from Elba Island on the combined post-merger SCG/SCPC system. The notice stated that, depending on the level of interest, expansion of the combined companies' system may be considered. In response to inquiries from potential shippers, Carolina Gas also has issued a notice soliciting interest in expanding the Carolina Gas system to serve the North Carolina market. The Applicants state that no individual member of the Marketer Group responded to Carolina Gas' solicitations.

43. More generally, the Applicants defend as fair a Settlement process in which substantial time and effort was expended to develop and negotiate a filing that would be acceptable to all interested parties, including the customers of SCG and SCPC, and to the relevant state commissions, local governmental oversight bodies, and state public interest advocates. The Applicants state that they held three meetings where any interested person, including marketers and existing customers of the Applicants, were invited to discuss the merger. At these meetings, the marketers that complain of being excluded from the negotiations had ample opportunity to meet, interact with, and sell their services to the SCPC and SCG customers that would be served through the merged pipeline.

44. The Applicants began the formal settlement efforts with existing customers so that the Applicants and existing customers could be confident that SCPC's existing shippers would take their fair share of the upstream transportation and storage assets that had been used by SCPC to provide their service on a bundled basis. The Applicants note that SCPC and its private and public LDC customers have a public utility obligation to

continue reliable service. The settlement process required a substantial investment of time and effort by the Applicants, and by the customers of SCG and SCPC. For all of these reasons, the Applicants state that the Marketer Group's claim that the settlement process was tainted is unjustified and unfounded.

45. The Applicants state that they have relied on the Commission's approach in Order No. 636 as a model for allocating upstream transportation and storage capacity to existing customers on the Carolina Gas system. Following the SCPC conversion to an open-access transportation-only pipeline, SCPC customers will be required to purchase their gas supply and arrange for upstream transportation service to get that supply to their city or plant gates in order to serve their loads. To meet their requirements in the future, these customers will hold the upstream assets currently used by SCPC to serve its customers. Allocating SCPC's upstream capacity to its customers allows these customers to serve their loads without disruption. As part of the settlement process, the Applicants also allowed customers to trade the upstream capacity among themselves in order to facilitate the transition and permit customers to obtain the upstream capacity needed.

46. The protesting marketers are not current customers and no good reason, in the circumstances, has been identified in support of current capacity being assigned to the marketers through a new open season process. Rather, consistent with the conversion of sales to transportation capacity under Order No. 636, existing customers are made able to utilize necessary interstate transportation capacity. Further, the Commission's review of the 2001 open season found no reason for its results to be reversed.<sup>19</sup> The Applicants emphasize that the use of an open-season to distribute capacity would have precluded the development of any worthwhile settlement.

47. It was important to existing customers, and to the governmental bodies that oversee the services provided by certain of these customers, that access to the capacity used to supply homes, commercial businesses, and industrial plants in South Carolina be preserved. The merger could only be accomplished expeditiously and with little controversy if access to this capacity at the inception of the new pipeline was a component of the merger. There would have been no settlement otherwise.

48. The Marketer Group complains that requiring them to pay the alternate rate would be unfair. The Applicants state they have no desire to charge these marketers or any other shipper the alternate rate. The Applicants' position is that the Commission should determine that the Settlement is just and reasonable for all customers and that the Settlement rates should be approved as initial rates for customers as the effective maximum recourse rate under the Carolina Gas tariff. Under these circumstances, the alternate rates would never take effect for any existing or potential customer.

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<sup>19</sup> See 99 FERC ¶ 61,345 at P 42-46 (2002).

49. With regard to the Applicants' request for waivers concerning the assignment of SCPC's Part 157 service under Transco's Rate Schedule GSS, it is the Commission's current policy not to permit such assignment.<sup>20</sup> On June 21, 2006, Transco filed an application, in Docket No. CP06-397-000, seeking authority to abandon service for SCPC and to perform new Part 157 services directly for the new customers seeking assignment of SCPC's capacity under Transco's Rate Schedule GSS. The merits of Transco's proposal will be considered in this separate proceeding.

50. The Commission finds, on the basis of all the evidence submitted in this proceeding, that certificate authorities as requested by the Applicants are required by the public convenience and authority. We find further, on the basis of all the evidence submitted in this proceeding, that that abandonment authority as requested by the Applicants is permitted by the public convenience and necessity.

### **Rate and Tariff Issues**

51. The Applicants propose two sets of rates, one that would apply to all non-contesting parties, *i.e.*, the Settlement Rates, and one that would apply to services for any contesting party, *i.e.*, the Alternate Rates. The Applicants are also proposing two rate zones. Since the new jurisdictional pipeline is the result of a merger between two existing systems, with already developed markets within each system, the establishment of zones for the new pipeline simply reflects these two existing and distinct market areas. Further, as capacity on the Carolina gas system becomes available, any party will have the opportunity to bid on such capacity. Commission policy would bar Carolina Gas from unduly discriminating against the contesting parties, and such parties will be awarded the capacity provided they submit the winning bid and execute a service agreement as set forth in Carolina Gas' tariff.<sup>21</sup>

52. The Commission finds that the Settlement Rates are fair and reasonable and in the public interest, and should be applied to all of Carolina Gas' shippers. Therefore, the Commission will reject the proposed Alternate Rates and accept the Settlement Rates as

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<sup>20</sup> See *Transcontinental Gas Pipeline Corp.*, 65 FERC ¶ 61,023 (1993); 106 FERC ¶ 61,299 (2004); 109 FERC ¶ 62,062 (2004).

<sup>21</sup> On May 31, 2006, SCG filed a reply to staff's May 12, 2006 data request which asked SCG to describe any unsubscribed capacity that it believed would be immediately available on the merged Carolina Gas system. In its reply, SCG stated that, due to the reticulated nature of the Carolina Gas system, and the multitude of receipt and delivery combinations, the existence and extent of available capacity would depend upon the primary receipt and delivery points selected by a prospective shipper. Based on the submitted computer gas flow model, we confirm that capacity could be made available, depending upon the receipt and delivery point combinations requested.

the initial rates. Our approval of the Settlement Rates does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission will also grant Carolina Gas the authority to enter into negotiated rate agreements with its shippers, provided that Carolina Gas files either numbered tariff sheets setting forth the details of such negotiated rate agreements, or the negotiated rate contracts, consistent with Commission policy as articulated in the Alternative Rate Policy Statement,<sup>22</sup> and the Commission's decision in *NorAm Gas Transmission Company*.<sup>23</sup>

53. We note that Applicants have adjusted the billing determinants underlying the Settlement Rates based on anticipated contract levels. Commission policy generally provides for the establishment of initial rates that are based on billing determinants derived from the physical capacity of the pipeline, not the volume that has been subscribed by potential or actual shippers. Nevertheless, in this instance the Applicants and shippers have determined mutually agreeable billing determinants and we will accept them as part of the negotiated Settlement Rates.<sup>24</sup>

54. As discussed above, the Commission is rejecting the proposed Alternate Rates. Therefore, the Commission directs Carolina Gas to delete those pages from its proposed pro forma tariff that set forth the Alternate Rates. Otherwise, the Commission finds that the proposed tariff sets forth terms and conditions of service that would govern the manner in which Carolina Gas will offer open-access transportation of natural gas, on a not unduly discriminatory basis, consistent with Commission policies and regulations. Accordingly, Carolina Gas will be directed to file actual tariff sheets consistent with the pro forma tariff sheets filed in this application, but deleting those tariff sheets that set forth the Alternate Rates.

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<sup>22</sup> Alternative to Traditional Cost-Of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Alternative Rate Policy Statement, 74 FERC ¶ 61,076 (1996), reh'g and clarification denied, 75 FERC ¶ 61,024 (1996), reh'g denied, 75 FERC ¶ 61,066 (1996); petition for review denied, *Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, et al., U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998).

<sup>23</sup> *NorAm Gas Transmission Company*, 77 FERC ¶ 61,011 (1996).

<sup>24</sup> The Commission has approved other settlements of proposed initial rates. See *Portland Natural Gas Transmission System*, 102 FERC ¶ 61,026 (2003); *Cove Point LNG Limited Partnership*, 97 FERC ¶ 61,043 (2001); *Order Granting and Denying Rehearing in Part, Granting and Denying Clarification*, 97 FERC ¶ 61,276 (2001); *Order Denying Rehearing and Granting and Denying Clarification*, 98 FERC ¶ 61,270 (2002).

### **Non-Conforming Service Agreement**

55. In Exhibit I of the application, Carolina Gas has filed a service agreement with Patriots Energy Group (PEG), which is identified in the application as non-conforming. What renders this agreement non-conforming is the inclusion of a specific provision that would give PEG the right to increase its MDTQ in the future under certain circumstances. Carolina Gas states that it has included this provision in its tariff, making it generally available to all similarly situated customers, consistent with Commission precedent as established in *Northern Natural Gas Company*.<sup>25</sup>

56. Although the service agreement with PEG as filed by Carolina Gas contains material deviations from the proposed pro forma service agreement in Carolina Gas' proposed tariff, the non-conforming service agreement provides FT transportation service in a manner that is consistent with the FT service described in Carolina Gas' proposed tariff, and does not allow for any undue discrimination against other shippers. Accordingly, the Commission accepts the agreement with PEG as a non-conforming service agreement.

57. Section 154.112(b) of the Commission's regulations requires that service agreements which deviate in any material aspect from the form of service agreement must be filed with the Commission, and must be referenced in FERC Volume No. 1. Carolina Gas has filed the subject service agreement in the instant proceeding, but has not filed a tariff sheet referencing this agreement as non-conforming or as deviating in a material aspect from the form of service agreement. Therefore, when Carolina Gas files its actual tariff sheets based on the proposed pro forma tariff sheets, it is directed to file a tariff sheet listing the referenced agreement as non-conforming, in accordance with section 154.112(b).

### **Part 157, Subpart F Blanket Construction Certificate**

58. Carolina Gas has applied in Docket No. CP06-72-000 for a Part 157, Subpart F blanket construction certificate. Part 157, Subpart F blanket certificates accord natural gas pipelines certain automatic NGA section 7 facility authorizations and allows them to make several types of simplified prior notice requests for certain other section 7 facility authorizations. Because Carolina Gas will become an interstate pipeline with the issuance of a certificate to own and operate pipeline facilities, we will also issue the requested Part 157, Subpart F, blanket certificate to Carolina Gas.

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<sup>25</sup> *Northern Natural Gas Company*, 111 FERC ¶ 61,287, *reh'g denied*, 113 FERC ¶ 61,119 (2005), *appeal docketed*, No. 05-1468 (D.C. Cir. Dec. 27, 2005); *citing also Northern Natural Gas Company*, 111 FERC ¶ 61,141, *Northern Natural Gas Company*, 110 FERC ¶ 61,321, *reh'g denied*, 113 FERC ¶ 61,379, *reh'g denied*, 113 FERC ¶ 61,188 (2005), *appeal docketed*, No. 06-1016 (D.C. Cir. Jan. 12, 2006).



**Part 284, Subpart G Blanket Transportation Certificate**

59. Carolina Gas has applied in Docket No. CP06-73-000 for a Part 284, Subpart G blanket transportation certificate, which would provide Carolina Gas certain automatic NGA section 7 natural gas transportation authorizations for individual customers under the terms of its contracts and tariff. Because Carolina Gas will become an interstate pipeline with the issuance of a certificate to own and operate the proposed facilities, and because a Part 284, Subpart G blanket certificate is required for Carolina Gas to offer transportation services, the Commission will issue the requested Part 284 certificate authority.

**Environment**

60. This action qualifies as a categorical exclusion under sections 380.4(a) (24), 380.4(a) (27), and 380.4(a) (31).

61. For all the reasons stated above, and based on the evidence submitted in this proceeding, the Commission approves the application submitted herein, and

**The Commission orders:**

(A) In Docket No. CP06-71-000, Carolina Gas is issued a certificate of public convenience and necessity pursuant to NGA section 7(c) to acquire and operate the subject facilities, as described herein and in the application.

(B) Carolina Gas's certificate authorization granted by Ordering Paragraph (A) is conditioned upon its compliance with the Natural Gas Act and all relevant provisions of the Commission's regulations, particularly Part 154 and paragraphs (a), (d), (e) and (f) of section 157.20 of the Commission's regulations.

(C) Carolina Gas's acquisition of the subject facilities granted by Ordering Paragraph (A) shall be completed within 12 months from the date of this order in accordance with section 157.20(b) of the Commission's regulation.

(D) The certificate authorization issued in Ordering Paragraph (A) is conditioned on Carolina Gas's filing actual tariff sheets consistent with the pro forma tariff sheets filed in this application and revised rates consistent with the discussion in the body of this order, the NAESB standards, the requirements of Order No. 637, and any other tariff standards in effect within at least 30 days of its proposed date of initial operations, in accordance with Part 154 of the Commission's regulations.

(E) The Alternate Rates proposed in the application are rejected; Carolina Gas shall establish the Settlement Rates as the initial rates.

(F) The abandonment of the certificates issued to SCG Pipeline, Inc. in the prior proceedings, as described herein and in the application, are granted subject to the completion of the acquisition authorized in Ordering Paragraph (A).

(G) Upon the abandonment granted in Ordering Paragraph (F), SCG Pipeline, Inc. shall terminate and cancel its FERC Gas tariff in accordance with section 154.602 of the Commission's regulations.

(H) In Docket No. CP06-72-000, Carolina Gas is issued a blanket certificate under Part 157, Subpart F of the Commission's regulations.

(I) In Docket No. CP06-73-000, Carolina Gas is issued a blanket certificate under Part 284, Subpart G, of the Commission's regulations to provide firm and interruptible transportation services for others, on an open-access, non-discriminatory basis.

(J) The motions that request the Applicants' proposals be rejected or that a formal hearing or technical conference be held are denied.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

**Appendix A**

Interventions in Docket Nos. CP06-71-000, CP06-72-000, and CP06-73-000

Alumax of South Carolina (late)  
Amerada Hess Corporation  
Carolina Power & Light Company  
City of Orangeburg, South Carolina  
Nucor Steel-Berkeley, a Division of Nucor Corporation and Nucor Steel-South Carolina,  
a Division of Nucor Corporation (jointly)  
Columbia Energy LLC  
Interconn Resources, Inc.  
North Carolina Utilities Commission  
Patriots Energy Group <sup>26</sup>  
SCANA Energy Marketing, Inc.  
Sequent Energy Management, L.P.  
South Carolina Electric & Gas Company  
South Carolina Office of the Regulatory Staff  
Southstar Energy Services, LLC d/b/a Georgia Natural Gas  
Texican Horizon Energy Marketing LLC  
Transcontinental Gas Pipe Line Corporation  
Weyerhaeuser Co. (late)

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<sup>26</sup> Patriots Energy Group supply natural gas services to its members, which are York County Natural Gas Authority, Chester County Natural Gas Authority, and Lancaster County Natural Gas Authority.

## Appendix B

The major features of the Settlement Agreement are as follows:

1. Article I provides background information regarding the Applicants and the history of negotiations that lead to the Settlement Agreement. SCG is an interstate pipeline and a “natural-gas company” within the meaning of Section 2(6) of the Natural Gas Act (“NGA”)<sup>27</sup> subject to the Commission’s jurisdiction. SCG commenced operations in November 2003, pursuant to Commission authorization. SCPC serves South Carolina markets through its 1,400-mile web of transmission lines. Pursuant to rates, terms and conditions approved by the Public Service Commission of South Carolina, SCPC provides bundled sales/transportation service to its customers. Consistent with the Commission’s policy on settlements, and the encouragement it has offered to jurisdictional entities to attempt to reach mutually acceptable compromises with customers before filings are submitted to the Commission, the Pipelines and their customers invested substantial time and resources in order to reach a settlement before the companies jointly filed to commence interstate service as a single pipeline. The Settlement Agreement provides support for the Commission’s acceptance of the Settlement and Certificate Application.
2. Article II of the Settlement Agreement provides that a Settling Party is any party that either (1) files no comments regarding the Settlement Agreement or the SCA; or (2) files comments that affirmatively support, or do not oppose or seek modification of any provision of the Settlement Agreement or the SCA. Article II also provides that, within five (5) business days after the filing with the Commission of the Settlement Agreement and the SCA, the Pipelines will provide to each Customer listed on Attachment 1 a form of service agreement for the Customer’s execution. In order to be a Settling Party, in addition to meeting one of the requirements set out in items (1) and (2) above, each Customer listed on Attachment 1 must execute the form of service agreement provided by the Pipelines as described, and within the time frame set out, in Article V of the Settlement Agreement.
3. Article III describes the parties’ agreement regarding the allocation of SCPC’s upstream transportation capacity. The Pipelines and Customers agree that the Pipelines will permanently transfer upstream transportation and storage capacity currently held by SCPC in the amounts and to the customers listed in Attachment 2 to the Settlement Agreement (Allocation Customers) pursuant to the tariff provisions of the upstream pipelines, the Commission’s regulations and any necessary waivers granted by the Commission in connection with the Settlement and Certificate Application. Article III provides that the Allocation Customers will accept the permanent transfer of upstream

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<sup>27</sup> 15 U.S.C. § 717a(6) (2000).

transportation and storage capacity currently held by SCPC as set forth in Attachment 2 to the Settlement Agreement.

4. Article IV describes the Settlement Rates for Carolina Gas services, which are set out in Attachment 3 to the Settlement Agreement. The rate derivation and relevant data supporting the Settlement Rates are provided as part of Exhibit P to the SCA. The Pipelines and Customers agree that the Settlement Rates are based on the following: (1) an overall cost of service of \$50.6 million; (2) an overall after-tax rate of return of 9.08 percent derived from a 12.7 percent return on equity (“ROE”), a 5.46 percent cost of debt, and a capital structure of 50 percent debt and 50 percent equity; (3) zone of delivery rates, with two zones, based on SFV cost allocation and rate design; (4) a discount adjustment based on the contract with Patriots Energy Group; (5) billing determinants based on the contract quantities listed on Attachment 3 to the Settlement Agreement, taking into consideration the discount adjustment referenced above; (6) depreciation and amortization rates listed on Attachment 4 to the Settlement Agreement; and (7) agreed upon expense and rate base compromises as reflected in Exhibit P to the SCA. Article IV also sets forth for fair and reasonable mitigation measures for zones 1 and 2.

5. Article V explains the procedure by which the Pipelines will send each Customer listed on Attachment 1 a Rate Schedule FT Transportation Agreement in the form of service agreement included in the Settlement Tariff (“Service Agreement”) within five (5) business days after the filing of the Settlement Agreement and the SCA with the FERC. With the exception of longer-term agreements discussed below, the Service Agreements will be for three-year terms with the MDTQ amounts set forth in Attachment 3 to the Service Agreement. Each Customer’s Service Agreement will include an exhibit setting forth that Customer’s allocation of upstream capacity as shown in Attachment 2 to the Service Agreement. Pursuant to Article III of the Settlement Agreement, Customers will accept the assignment of such upstream capacity. Prior to the deadline for filing comments regarding the Settlement Agreement, as established by Commission notice (“Comment Date”), Customers will execute and return to the Pipelines their Service Agreements.<sup>28</sup> A Customer that does not execute and return to the Pipelines its Service Agreement, as provided in the Settlement Agreement by the Comment Date, will be deemed a Contesting Party subject to Article VIII of the Settlement Agreement. Customers deemed Contesting Parties as a result of not executing Service Agreements will be ineligible to receive service at the Settlement Rates and will be subject to the

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<sup>28</sup> In the SCA, the Pipelines request that the Commission establish: (1) a deadline for initial comments to the offer of settlement and for comments, interventions and protests to the SCA 30 days from the date that the offer of settlement and SCA are filed, and (2) a deadline for reply comments on the offer of settlement, if needed, 40 days from the date that the offer of settlement and SCA are filed.

Alternate Rates as set forth in Article VIII of the Settlement Agreement.<sup>29</sup> The Pipelines will notify the Commission within five (5) business days following the Comment Date of any Customers that did not execute and return Service Agreements and, therefore, have become Contesting Parties. Article V also explains that there are three customers that are committed to longer-term agreements and sets forth the details of those longer-term arrangements.

6. In Article VI, Carolina Gas agrees that it will not file an NGA Section 4 general rate case for the purpose of placing rates into effect before October 1, 2009, or three years after the commencement of service by Carolina Gas, whichever is earlier (“Moratorium Period”). The Moratorium Period is subject to the following condition: if Columbia Energy LLC, which has filed for bankruptcy protection, rejects its service agreement with Carolina Gas at any time prior to or during the Moratorium Period, the Moratorium Period will automatically be reduced to two years, in which case Carolina Gas will not make an NGA Section 4 general rate case filing that would result in new rates taking effect before October 1, 2008, or two years after commencement of service by Carolina Gas, whichever is earlier. Carolina Gas may file a Section 4 general rate case during the Moratorium Period in response to a section 5 proceeding ordered by the FERC. During the effectiveness of the Moratorium Period, no Settling Party will (1) file or (2) support, either directly or indirectly, the filing and prosecution of an NGA Section 5 case with respect to the matters provided for in the Settlement Agreement. Carolina Gas is not precluded from filing unilaterally at any time additional Rate Schedules with additional services and associated rates. Settling Parties retain the right to take whatever positions they deem appropriate in any such filing made by Carolina Gas. Carolina Gas does not have an obligation to file an NGA section 4 general rate case at any specified future time as a result of the Settlement Agreement.

7. Article VII provides that a copy of the Carolina Gas *pro forma* Settlement Tariff, which incorporates the provisions of the Settlement Agreement, is included in Exhibit P to the SCA. The Settlement Tariff is agreed upon by the Settling Parties as part of the Settlement Agreement. Carolina Gas will have the right to make tariff changes during the term of the Settlement Agreement so long as such tariff changes are not inconsistent with the matters addressed in Articles III, IV, V and VI of the Settlement Agreement. Such tariff change filings by Carolina Gas, however, will not limit in any way the right of any party or the Commission to take whatever position is deemed appropriate with respect to such tariff changes proposed by Carolina Gas.

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<sup>29</sup> Due to its unique situation, as discussed in footnote 1 of the Settlement Agreement, Columbia Energy will not become a Contesting Party by virtue of not executing a Service Agreement prior to the Comment Date. However, Columbia Energy may become a Contesting Party if it files adverse comments as set forth in Article VIII.

8. Article VIII explains that any party that files comments opposing or requesting modifications that are not acceptable to the Pipelines and the Settling Parties regarding any part of the Settlement Agreement or the Settlement and Certificate Application, will be considered a Contesting Party. The Commission may determine that the Settlement Agreement will apply to a Contesting Party and, if the Commission makes that determination, such Contesting Party will be deemed to be a Settling Party under the Settlement Agreement. However, Customers that become Contesting Parties by not executing their Service Agreements in the manner and in the time period set out in Article V of the Settlement Agreement will be ineligible to receive service at the Settlement Rates. If a Contesting Party is severed from the Settlement Agreement pursuant to a Commission order to enable such Contesting Party to separately litigate and/or otherwise contest issues in this proceeding without delaying the implementation of the Settlement Agreement for the Settling Parties, such Contesting Party will be entitled to only such rate and other relief as is ultimately determined appropriate by the Commission in a final, nonappealable order establishing the outcome of this proceeding with respect to such party. The Pipelines include as part of the Settlement and Certificate Application, alternate initial rate sheets (“Alternate Rates”) that will apply to Contesting Parties.

9. Article IX provides the terms for the implementation of the Settlement Agreement and the conditions under which parties may declare the agreement null and void.

10. Article X states that the Settlement Agreement embodies an integrated agreement. None of the terms of the Settlement Agreement are agreed to without each of the others. The various provisions of the Settlement Agreement are not severable. The severance of any provision or any party will be considered a modification of the Settlement and such severance will be subject to section 9.2 of the Settlement Agreement.

11. Article XI sets forth reservations and limitations and provides that the Settlement Agreement is privileged unless and until it becomes effective, that the Settlement Agreement does not constitute settled practice, and that the Settlement Agreement relates only to the specific matters referred to therein.

12. Article XII provides that the standard of review once the Settlement Agreement has become effective for reviewing proposed unilateral modifications to the agreement shall be the “public interest” standard of review rather than the “just and reasonable” standard of review.