

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Fayetteville Express Pipeline LLC

Docket No. CP09- -000

**APPLICATION OF
FAYETTEVILLE EXPRESS PIPELINE LLC
FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY**

FAYETTEVILLE EXPRESS PIPELINE LLC (“FEP”) hereby files this Application (“Application”) pursuant to Section 7(c) of the Natural Gas Act, as amended (“NGA”), and Subpart A of Part 157 of the Federal Energy Regulatory Commission’s (“Commission”) Regulations, for (i) the issuance of a certificate of public convenience and necessity authorizing the construction and operation by FEP of a new approximately 185-mile 42-inch natural gas pipeline system (the “FEP System” or “System”) in the states of Arkansas and Mississippi, with a design capacity of approximately 2,000,000 dekatherms per day (“Dth/d”); (ii) the issuance of a blanket certificate under Part 157, Subpart F of the Commission’s Regulations and construction by FEP of facilities pursuant thereto; and (iii) the issuance of a blanket certificate under Part 284, Subpart G of the Commission’s Regulations to permit FEP to perform self-implementing transportation of natural gas in interstate commerce. The proposed pipeline and appurtenant facilities are hereinafter referred to as the “Project”. The estimated total cost of the Project is approximately \$1.25 billion.

FEP also requests approval of proposed recourse rates for transportation service on an interim basis as well as upon full implementation of the Project, and of a *pro forma* tariff, that includes the authority to enter into negotiated rate agreements. To

ensure timely construction of this vital project, FEP respectfully requests that the Commission issue the requested authorizations on or before December 15, 2009.

In support of this Application and pursuant to the Commission's Regulations, FEP submits the following:

I
IDENTITY OF APPLICANT

The exact legal name of FEP is Fayetteville Express Pipeline LLC. FEP is a limited liability company, organized and existing under the Delaware Limited Liability Company Act, with one of its corporate offices located at 3250 Lacey Road, 7th Floor, Downers Grove, Illinois 60515. FEP is jointly owned by a subsidiary of Kinder Morgan Energy Partners, L.P. and a subsidiary of Energy Transfer Partners, L.P. ("ETP") and was formed for the purpose of constructing and operating the Project. FEP does not currently own any pipeline facilities and is not currently engaged in any natural gas transportation operations. Upon acceptance of the certificates sought in this Application, FEP will be a "natural-gas company" subject to the Commission's jurisdiction under the NGA. A wholly-owned subsidiary of ETP will operate the System once it goes in service.

II
COMMUNICATIONS

The names, titles, mailing addresses, telephone numbers and email addresses of those persons to whom all communications concerning this Application are to be directed are:

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III BACKGROUND

The Project is being developed by FEP to construct and operate a new pipeline and appurtenant facilities that will deliver gas from the Fayetteville Shale production area in Arkansas to markets in the Midwest, Southeast and Northeast through certain pipeline interconnections in Arkansas and Mississippi.

The FEP System will be a newly-constructed interstate pipeline that is anticipated to be in interim service during the fourth quarter of 2010 and in full service by January 1,

2011. The proposed route of the Project would begin in Conway County, Arkansas; extend east through Faulkner, Cleburne, White, Woodruff, St. Francis, Lee and Phillips Counties, Arkansas; cross the Mississippi River near Helena, Arkansas; proceed through Coahoma and Quitman Counties, Mississippi; and end in Panola County, Mississippi. The Project will interconnect with existing third party mainline interstate transmission facilities in White County, Arkansas and Coahoma, Quitman and Panola Counties, Mississippi.

The Project will have a design capacity of approximately 2,000,000 Dth/d. The design of the Project includes one compressor station, 14 receipt meters and 4 delivery meters.

IV **DESCRIPTION OF FACILITIES**

The Project facilities will consist of approximately 185 miles of a single 42-inch diameter pipeline with a capacity of 2,000,000 Dth/d; one compressor station near Russell, Arkansas totaling approximately 72,000 horsepower (“hp”) (the “Russell Compressor Station”); and appurtenant facilities that include interconnects, metering and regulating stations, mainline valves, launchers and receivers.

The Project addresses the need for new pipeline infrastructure to link natural gas production from the Fayetteville Shale production area in Arkansas to markets in the Midwest, Southeast and Northeast through certain pipeline interconnections in Arkansas and Mississippi. The Project will provide tie-ins with Natural Gas Pipeline Company of America LLC (“NGPL”), Texas Gas Transmission LLC (“TGT”), ANR Pipeline Company (“ANR”), and Trunkline Gas Company, LLC (“TGC”). As evidenced by the significant amount of capacity subscribed to the Project in long term agreements,

which is 1,850,000 Dth/d to date, the market has demonstrated a high level of demand for the new pipeline.

The construction and operation of the Project will require the acquisition of temporary and permanent easements (“rights-of-way”). To the extent feasible, these rights-of-way will parallel or overlap (in the case of temporary rights-of-way and additional temporary workspaces) existing pipeline and utility rights-of-way, while providing a safe separation distance between the Project and other pipelines and utility lines. In fact, over 84% of the first 165 miles of the pipeline will be co-located with existing pipelines and other corridors.

Pipeline Facilities

1. Approximately 64.3 miles of a single 42-inch diameter pipeline with capacity of 2,000,000 Dth/d and a maximum allowable operating pressure (“MAOP”) of 1,160 psig extending across Conway, Faulkner, Cleburne and White Counties, Arkansas to the Russell Compressor Station.
2. Approximately 120.5 miles of a single 42-inch diameter pipeline with capacity of 2,000,000 Dth/d and a MAOP of 1,480 psig from the Russell Compressor Station extending across White, Woodruff, St. Francis, Lee and Phillips Counties, Arkansas; crossing the Mississippi River near Helena, Arkansas; proceeding through Coahoma and Quitman Counties, Mississippi; and ending in Panola County, Mississippi. The pipeline would interconnect with existing third party mainline interstate transmission facilities in White County, Arkansas and Coahoma, Quitman and Panola Counties, Mississippi.

Compression

The compression at the Russell Compressor Station will be driven by Caterpillar 4,735 hp and 8,180 hp natural gas-fired reciprocating engines for a total of 71,465 hp. The Russell Compressor Station will consist of seven Caterpillar G16CM34 internal combustion (“IC”) engines (8,180 hp each) and three Caterpillar G3616 IC engines (4,735 hp each) at a new 40-acre site.¹

FEP considered several key factors when determining what type of horsepower to install for the Project, including initial capital costs, fuel consumption, operating and maintenance costs, air quality requirements, manufacturing availability, operational reliability, and proximity to power lines for electric motor driven technology. While all these factors were considered, including the fact that the cost to install gas turbines or electric motors driving centrifugal compressors is generally less than the cost to install IC engines driving separable reciprocating compressors, fuel consumption was the most heavily weighted factor in the selection of the equipment. FEP anticipates that the Project will have a high load factor utilization. Given the level of future gas pricing at the time the design was developed and based upon feedback from shippers, FEP placed a heavy emphasis on minimizing fuel consumption as part of its design and marketing of the Project. Fuel consumption is an issue of great significance to FEP’s existing and

¹ Under INGAA’s White Paper entitled “Waste Heat Recovery Opportunities: Pipelines Present Energy Efficient Proposal,” waste heat recovery is not well-suited to IC engines. It is important to note that only about 40% of the heat or energy loss from an IC engine is contained in the hot exhaust gases. Most of the heat is removed at very low temperatures (below 150° F) through jacket cooling water. This means that only a portion of IC engine waste heat (in the exhaust) could be effectively recovered for power generation applications. IC engines operate close to stoichiometric combustion conditions resulting in lower exhaust flows due to less inlet air volumes. The engines proposed by FEP also have lower exhaust gas temperatures than gas turbine compressors, *i.e.*, 625° versus 850° to 1100°. Therefore, the FEP compressors are not a viable candidate for waste heat recovery.

potential shipper group and the IC engine technology that FEP has selected will provide fuel efficient operation.

Interconnects

There are four delivery point interconnections planned for the Project. These four interconnects are with other FERC-regulated natural gas pipeline systems and are listed with their planned capacities below:

<u>Delivery Point Interconnects</u>	<u>Capacity (MMcf/d)</u>
1. NGPL in White County, Arkansas	542
2. TGT in Coahoma County, Mississippi	619
3. ANR in Quitman County, Mississippi	1,351
4. TGC in Panola County, Mississippi	901

FEP has made a commitment to its shippers to maintain its natural gas transmission system in such a manner to achieve energy efficiency in fuel consumption of its facilities, and to maintain a commercially reasonable cost of providing service to those shippers. As such, FEP is committed to monitoring the pipeline's efficiency on an on-going basis to determine when maintenance, such as line-pigging, is required to maintain high levels of efficiency. FEP also plans to dispatch its horsepower in such a way to maximize efficiency and to minimize fuel. FEP will periodically evaluate auxiliary equipment to maintain efficient use of power. In addition, FEP is installing state-of-the-art electronic measurement and will have a rigorous maintenance/cleaning schedule to avoid potential measure errors attributable to dirt or other impurities making their way into the pipeline system.

V
OPEN SEASON

FEP held an open season between October 8, 2008 and November 7, 2008, during which time capacity on the Project was offered to interested shippers on a non-discriminatory basis. Both negotiated and recourse rates were offered. On the basis of the open season and subsequent negotiations with shippers, FEP has entered into four (4) precedent agreements (“Precedent Agreements”) with non-affiliated shippers for over 92% of the Project’s capacity. FEP is actively marketing the remaining available capacity. Based upon the nature and extent of the interest being shown in that capacity by potential shippers, FEP anticipates that the Project will be fully contracted by the time it goes into full service on or about January 1, 2011.² Copies of the fully-executed Precedent Agreements are attached hereto as Exhibit I. FEP is filing the Precedent Agreements as privileged and confidential information, and requests such treatment pursuant to 18 C.F.R. Section 388.112 (2009).

VI
REQUEST FOR BLANKET FACILITIES CERTIFICATE
PURSUANT TO PART 157, SUBPART F

Pursuant to Section 157.204 of the Commission’s Regulations, FEP requests a blanket certificate of public convenience and necessity authorizing, *inter alia*, the construction and operation of facilities and certain abandonments under Section 7 of the NGA. The issuance of the requested authorization will permit FEP to respond expeditiously to the needs of those it proposes to serve following the receipt of the Project-specific certificate authority requested in this Application, and is required by the present and future public convenience and necessity.

² FEP will assume the economic risk of any uncontracted capacity.

VII
REQUEST FOR BLANKET TRANSPORTATION
CERTIFICATE PURSUANT TO PART 284, SUBPART G

Pursuant to Section 284.221 of the Commission's Regulations, FEP requests a blanket certificate of public convenience and necessity enabling it to provide open-access transportation service. Blanket authority will allow FEP to provide firm and interruptible open-access interstate transportation service and related services on a non-discriminatory basis to all parties requesting such services consistent with the terms and conditions set forth in FEP's proposed *pro forma* FERC Gas Tariff.

In accordance with Section 284.221(b)(1)(ii) of the Commission's Regulations, FEP states that it will comply with Section 284.221(c), thereby subjecting its blanket certificate to the conditions of Part 284, Subpart A of the Commission's Regulations.

VIII
PROPOSED TARIFF

FEP has prepared a proposed *Pro Forma* FERC Gas Tariff ("Tariff"), included as Part III of Exhibit P attached hereto. This section of the Application describes the services that FEP will provide pursuant to the Tariff and the pertinent provisions of the Tariff.

1. Overview of Tariff Provisions, Services and General Terms and Conditions. FEP's proposed Tariff applies to all of FEP's services. The Tariff has been developed in consultation with the shippers that have entered into Precedent Agreements supporting the construction of the Project.

Under the proposed Tariff, FEP would offer firm transportation service ("FTS"), interruptible transportation service ("ITS"), and interruptible park and loan service ("PALS") on an open access, non-discriminatory basis pursuant to Part 284 of the

Commission's Regulations. FEP will provide these services in accordance with proposed Rate Schedules FTS, ITS and PALS and the associated General Terms and Conditions ("GT&C") included in the proposed Tariff.

As described in this Application, the FEP System will consist of approximately 185 miles of pipeline consisting of a single rate zone. Shippers may pay either recourse rates (including discounted rates) or negotiated rates for each service. Rates are discussed separately below in the Rates section (Section IX) of this Application.

FEP prepared the proposed Tariff in conformance with the requirements of Part 154 of the Commission's Regulations. It contains proposed rates, rate schedules, the GT&C, and a form of service agreement for each service.

In compliance with Commission policy, including Order Nos. 636³ and 637,⁴ the GT&C provisions of the proposed Tariff provide for, *inter alia*:

- Nominations/Reporting, Balancing and Segmentation (GT&C Section 6)
- Capacity release (GT&C Section 14) including provisions in compliance with the Commission's Order No. 712.
- Third party balancing (GT&C Section 10.7)
- Interactive website (GT&C Section 13)
- Right of first refusal and contract rollovers (GT&C Section 16)

³ 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, Order No. 636, FERC Stats. & Regs., [Regs. Preamble 1991-1996] ¶30,939 (1992), on reh'g, Order No. 636-A, FERC Stats. & Regs., ¶30,950, on reh'g, Order No. 636-B, 61 FERC ¶61,272, aff'd in relevant part, United Distribution Cos. v. FERC, 88 F.3d 1105 (D.C. Cir. 1996), cert. denied, 520 U.S. 1224 (1997), on remand, Order No. 636-C, 78 FERC ¶61,186 (1997), reh'g denied, Order No. 636-D, 83 FERC ¶61,210 (1998).

⁴ Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, III FERC Stats. & Regs., [Regs. Preamble 1996-2000] ¶31,091 (2000), on reh'g, Order No. 637-A, III FERC Stats. & Regs., [Regs. Preamble 1996-2000] ¶31,099, reh'g denied, Order No. 637-B, 92 FERC ¶61,062, aff'd in part, rev'd in part, INGAA v. FERC, 285 F.3d 18 (D.C. Cir. 2002).

- NAESB standards (GT&C Section 29)
- Negotiated rates (GT&C Section 30)
- Operational control (GT&C Section 31)
- Discounting (GT&C Section 34)
- Annual Charges Adjustment (ACA) Surcharge (GT&C Section 35)
- Certain penalty provisions and an associated penalty crediting mechanism that complies with Order No. 637 (GT&C Sections 9 and 10)
- Other standard terms and conditions of service which are consistent with other Commission-approved tariff provisions for interstate natural gas pipelines

The remainder of this section contains a discussion of certain specific GT&C provisions.

2. Allocation of Capacity. GT&C Section 2.1 sets forth the provisions governing the allocation of firm capacity on the FEP System among shippers requesting firm services. Specifically, GT&C Section 2.1(b) sets forth the capacity award procedures that FEP will follow in awarding firm forward-haul capacity becoming available on the System, including Initial Open Seasons, the Request Procedure, and Additional Open Seasons. Under such capacity award procedures, a Foundation Shipper⁵ has the right, commencing October 8, 2009 through October 7, 2013, to acquire available unsubscribed firm capacity on the FEP System or any expansion (but not extension) of the FEP System, for a minimum term coincident with the then remaining primary term of its existing firm transportation service agreement at the

⁵ See Section X of this Application for a definition of Foundation Shipper.

negotiated rates provided for in such agreement, pursuant to the terms of the Precedent Agreement entered with such Foundation Shipper. The Foundation Shipper must submit a request for the desired capacity in accordance with the provisions of FEP's Tariff, which remains subject to any competing higher value request which may be received by FEP.

In the event that, during the period described in the immediately preceding paragraph, two or more pending bids which are competing for such available firm capacity are of equal value, and one of such bids is submitted by a Foundation Shipper which meets the applicable requirements set forth in such Foundation Shipper's agreement, then for evaluation under the capacity award provisions of the Tariff, FEP will award the subject capacity to the Foundation Shipper as set forth in GT&C Section 2.1(c)(3). However, if more than one Foundation Shipper has submitted a competing bid of equal value, FEP will award the requested capacity on a pro rata basis between the Foundation Shippers.

This provision addresses potential future capacity needs of those shippers, *i.e.*, Foundation Shippers, which have provided the critical contract support necessary for construction of the Project. Generally, this provision provides Foundation Shippers the right, for a limited period of time while they further determine their long-term capacity needs, to acquire available firm capacity at their negotiated rates, subject to the request procedures of the Tariff and any competing bids of higher value. The Foundation Shipper's right to an award of capacity over a competing bid of equal value recognizes its status essentially as a prearranged bidder for the desired available capacity, with the corresponding right to be awarded capacity if the value of its bid is equal to the value of

a competing bid from a shipper other than a Foundation Shipper. This is analogous to the matching right that prearranged bidders have under various Commission-established rules, including capacity release. In addition, this was an integral part of the arrangements under which the Foundation Shippers agreed to provide the critical contractual support for construction of the Project. Accordingly, such provision is a reasonable accommodation to address the future capacity needs of Foundation Shippers during the limited specified time period.

3. Scheduling Priorities. GT&C Sections 2.3 through 2.5 set out detailed scheduling priorities, including priorities for authorized overrun service. This priority system is as follows:

- Firm (primary points and primary paths)
- Firm (secondary points within the primary path)
- Firm (secondary points outside the primary path)
- Interruptible service, including authorized overrun service

This scheduling priority system affords highest priority to service under Rate Schedule FTS, consistent with Commission policy. Such a priority system assures that the firm shippers that provide the assured revenue stream to support the FEP System through reservation charges, and that make construction of the FEP System possible, have the maximum opportunity to use any available capacity.⁶

4. Flexible Delivery Point Capacity. As set forth in Section 2.3(b) of Rate Schedule FTS, FEP will reserve at physical delivery points capacity sufficient to permit firm shippers to deliver up to 125 percent (125%) of the primary delivery point capacity

⁶ See Revisions to Blanket Certificate Regulations and Clarification Regarding Rates, FERC Stats. & Regs., ¶32,606 at P 93 (2006).

under their Firm Transportation Agreements at any such point on any day, on a primary firm basis. However, a shipper's aggregate firm deliveries on any day at all of its primary delivery points may not exceed its Contract MDQ. Such a provision provides shippers with added flexibility to deliver additional gas supplies on a firm basis at their primary delivery points in order to capture commercial opportunities at markets served by such delivery points and to respond quickly to changes in these market opportunities. This additional delivery point flexibility was another critical feature in the design of the FEP System, and is available to all firm shippers on the FEP System on a non-discriminatory basis. This additional delivery point capacity was taken into account when FEP sized its firm delivery meters. The Commission has previously approved similar provisions in other pipeline proceedings.⁷

5. Pooling Points. As set out in GT&C Section 6.12, FEP has established one pooling point for use under either Rate Schedule FTS or ITS. The pooling point is not a physical point, but is a paper point located on the Supply Leg⁸ used for aggregation and nomination purposes to facilitate shippers' use of the FEP System. Gas may be scheduled for delivery to, or receipt from, the pooling point.

The following rules apply to the use of the pooling point and the related charges:

- A shipper may nominate gas quantities to the Pooling Point, for aggregation purposes, without incurring transportation commodity charges or mainline Fuel Gas, or Lost and Unaccounted for Gas ("GLU").

⁷ See Columbia Gas Transmission Corp., 99 FERC ¶ 61,053 (2002).

⁸ As defined in the Tariff, the Supply Leg means the pipeline segment that is west of (but not including) the NGPL Interconnect.

- A shipper may nominate quantities from the Pooling Point for further delivery on the FEP System under an FTS or ITS Agreement and will pay all the applicable reservation, commodity, Fuel Gas and GLU charges.
- For scheduling purposes, the priority of service for transportation to or from a Pooling Point is based on the transportation agreement nominating gas away from the Pooling Point.

6. Segmentation. Shippers on the FEP System have the right to segment their primary path under a firm transportation agreement to the extent operationally feasible through the nomination process or pursuant to a release of firm capacity (GT&C Section 6.13). In that regard, shippers may segment at any point on the FEP System, including the Pooling Point. For purposes of segmentation, the Pooling Point shall be deemed to be located at the interconnect between FEP and NGPL in White County, Arkansas (the “NGPL Interconnect”).

7. Gas Quality. The quality standards applicable to gas received by FEP are set out in GT&C Section 19.1. FEP’s proposed gas quality provisions conform to the Commission’s Policy Statement on Natural Gas Quality and Interchangeability and the NGC Guidelines for Interchangeability.⁹ The proposed standards as to interchangeability parameters are as follows:

- WOBBE Index: not greater than 1,400
- BTU: no less than 975 Btu/cf and not greater than 1,110 Btu/cf
- Butane plus: combined composite of not more than 1.5 mole percentage of butane plus

⁹ Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs, 115 FERC ¶61,325 (2006).

- Inert gases: not more than 4 mole percent by volume

In addition, the Tariff provides that gas received from a shipper shall not contain more than two percent (2%) by volume of carbon dioxide. However, in order to accommodate the needs of FEP's shippers with respect to the gas quality of Fayetteville shale production, FEP will accept gas pursuant to GT&C Section 19.1(a)(5) from any shipper that exceeds the two percent (2%) carbon dioxide limit at individual receipt points upstream of the NGPL Interconnect under certain circumstances. FEP will accept such gas if FEP determines that the blended stream will meet the two percent (2%) limit immediately upstream of the NGPL Interconnect and will not cause operational or downstream delivery problems for FEP. This provision will provide all shippers additional flexibility in transporting gas supplies on the FEP System. The other gas quality specifications are established at levels which are consistent with the existing quality specifications of downstream interconnecting pipelines. FEP is not obligated, however, to receive gas that cannot be delivered to a downstream entity. Support for the interchangeability and gas quality standards is contained in Exhibit Z-2 attached hereto.

8. Imbalances, Scheduling Charges and Penalty Provisions. In GT&C Sections 9 and 10, FEP proposes imbalance resolution provisions, including penalty and cashout charges, that will help maintain necessary operational control on the FEP System. Such provisions are consistent with similar provisions previously approved by the Commission.¹⁰ The nature and level of the charges reflect FEP's very limited operational flexibility, given that FEP will have no storage and only limited line pack flexibility. It is anticipated, however, that the majority of receipt and delivery points will

¹⁰ Midcontinent Express Pipeline LLC, 124 FERC ¶61,089 (2008).

have Operational Balancing Agreements (“OBAs”) in place, which will help to minimize the possibility that shippers might incur penalty charges. Services available under Rate Schedule PALS will also assist shippers in avoiding penalties. The penalty, cashout charge and revenue crediting provisions are described briefly below:

- a) Unauthorized Overrun. To the extent that receipt and delivery point imbalances are not resolved under an OBA, the maximum Unauthorized Overrun Gas Charge equal to two (2) times the maximum Rate Schedule ITS commodity rate will apply.
- b) Operational Flow Orders. Penalties apply if a shipper fails to comply with an Operational Flow Order (“OFO”). The level of the charge increases during a Critical Time.
- c) Balancing Service Charges. FEP will assess charges on a tiered basis applicable to differences between confirmed quantities and allocated quantities. Such charges will vary depending on whether FEP is experiencing ordinary operational conditions, has issued an OFO or is in a critical time period.
- d) Imbalance Resolution/Cashout. The Tariff provides at GT&C Section 10.4 for netting and posting (for trading) of imbalances, consistent with Commission policy. Imbalances remaining after netting and trading are cashed out monthly.
 - Netting and Cashouts are implemented by Operational Impact Area (OIA).
There are two OIAs:
 - > The area west of and including the NGPL Interconnect.
 - > The area east of the NGPL Interconnect.

- The cashout prices used for each OIA are prices reported in *Gas Daily* that represent the value of gas in that OIA. For each month, FEP will utilize the highest weekly average price for gas owed to FEP or the lowest weekly average price for gas owed to the shipper.
- Support for the price point liquidity of the *Gas Daily* price indices for each OIA is contained in Exhibit Z-1 attached hereto.

f) Crediting of Penalty Revenue. Pursuant to GT&C Section 9.3, MEP refunds penalty revenues annually to firm and interruptible shippers after it deducts ordinary costs. The remaining net penalty revenue will be credited based on each shipper's total Maximum Daily Quantity under its FTS agreements plus:

- nominated and confirmed quantities under Rate Schedule ITS; and
- the quantities of gas parked or loaned each month under each PALS agreement.

If a shipper fails to comply with an OFO, then its monthly volumes will be excluded for that month in which it failed to comply with an OFO for purposes of calculating the crediting of penalty revenue.

9. Creditworthiness. GT&C Section 12 sets out detailed credit provisions that generally reflect those previously approved by the Commission for new construction projects. The credit evaluation criteria, including a potential shipper's ratings by S&P and Moody's, as well as alternative means of appraisal, are detailed in the Tariff. Under these provisions, a shipper which contracts for capacity prior to the in service date of the FEP System must provide credit up to thirty (30) months of reservation fees and

other charges if that shipper does not otherwise satisfy the creditworthiness requirements in the Tariff. In accordance with Commission policy, a non-creditworthy shipper which contracts for capacity following the in-service date of the FEP System will be required to provide collateral in an amount equal to three months of charges under its service agreement.¹¹

The Commission has clearly recognized that, in conjunction with the construction of new facilities, the interstate pipeline can require more than the standard three (3) months of collateral from a shipper which contracts for capacity prior to the in service date of the pipeline if the shipper is not creditworthy.¹² The Commission has further stated that collateral requirements relating to construction of new facilities should be reflected in precedent agreements.¹³ Thus, it is appropriate that agreements entered into prior to the in service date of the FEP System reflect such higher credit requirements. Just as any other project lender would require credit assurance from shippers sufficient to support a project, FEP determined that thirty (30) months' worth of reservation fees backed by a creditworthy source is the minimum amount of security required to justify taking the risk of the Project. This level of security reflects a reasonable balance between FEP and the shippers that have contracted for capacity to support construction of the Project. At the negotiated rates that these shippers have agreed to pay, calculated as though the FEP System were fully contracted, thirty (30)

¹¹ Policy Statement on Creditworthiness Issues for Interstate Natural Gas Pipelines, 111 FERC ¶61,412 (2005).

¹² See, e.g., Calpine Energy Services, L.P. v. Southern Natural Gas Company, 103 FERC ¶61,273 at P 31(2003) (approving a 30-month collateral requirement). See also Policy Statement on Creditworthiness Issues for Interstate Natural Gas Pipelines, 111 FERC ¶61,412 at P 17 (2005).

¹³ North Baja Pipeline, LLC, 100 FERC ¶ 61,183 (2002), reh'g granted, 102 FERC ¶61,239 at P 15 (2003).

months of credit covers approximately thirty-six percent (36%) of the estimated construction costs of the Project.

With respect to non-creditworthy permanent replacement shippers, FEP understands that the Commission's policy allows such shippers acquiring capacity from an initial shipper to be subject to the three (3) month credit requirement. However, the Commission has also recognized that a pipeline can minimize its risk by refusing to allow a permanent release if it is not financially indifferent to the release.¹⁴ Accordingly, consistent with such orders, FEP proposes a provision that allows it not to accept a permanent capacity release if it is not financially indifferent to the release.

10. Fuel Gas, Lost and Unaccounted for Gas and Booster Compression Fuel Rates. GT&C Section 36 sets out procedures for recovery of: (1) Fuel Gas, (2) GLU, and (3) Booster Compression Fuel. Booster Compression Fuel is defined as the applicable fuel used or incurred by FEP in operating gas compressors at specified locations to facilitate the receipt of gas into the FEP System. A separate tracking mechanism is established for each of these categories, along with the respective deferred accounts to measure and track over and under recoveries. At this time, as currently configured, the design of the FEP System does not contain booster compression.

FEP proposes an exemption from Fuel Gas charges for gas received by FEP upstream of the NGPL Interconnect and delivered at or upstream of such interconnect, provided that such deliveries are made without the use of compression as set forth in GT&C Section 36.1(c), and also certain gas quantities that are delivered off the pipeline without the use of compression will be exempted per Section 5.8 of Rate Schedules

¹⁴ Midcontinent Express Pipeline LLC, 124 FERC ¶61,089 at PP 121-123 (2008).

FTS and ITS. However, GLU and applicable Booster Compression Fuel charges shall apply to such quantities. As discussed below in Section X of this Application, certain shippers have negotiated a fuel gas cap in their Precedent Agreements. In calculating the charges under FEP's fuel gas tracking mechanism, however, full fuel recovery is assumed for such shippers' quantities, thereby assuring that there will not be subsidization for fuel gas charges by other shippers.

11. NAESB Standards. FEP is in full compliance with Commission-approved North American Energy Standards Board ("NAESB") standards in effect as of the date hereof. A cross reference table identifying these standards is set out at Exhibit Z attached hereto.

IX **RATES**

FEP's Tariff includes transportation recourse rates for the FEP System. As of the filing date hereof, all four Foundation and Standard Shippers¹⁵ have elected to pay negotiated rates for transportation on the FEP System. Details of the negotiated rate authority (under which the shippers made these elections) are contained in GT&C Section 30. Under the Commission's Alternative Rate Policy Statement, if a pipeline enters into negotiated rate agreements, the pipeline must provide recourse rates as an alternative.¹⁶ FEP offered recourse rates as an alternative to negotiated rates to all potential shippers. This filing includes recourse rates as set forth on Sheet Nos. 5 through 7 of the proposed Tariff. GT&C Section 34 sets out the discounting provisions applicable to FEP's maximum recourse rates.

¹⁵ See Section X of this Application for a definition of Standard Shipper.

¹⁶ 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), reh'g and clarification denied, 75 FERC ¶61,024, reh'g. denied, 75 FERC ¶61,066.

Proposed initial maximum and minimum recourse reservation and commodity rates are set out for Rate Schedules FTS, ITS and PALS. Included are two separate sets of rates. These include (a) Interim Period rates which would be applicable if and when certain portions of the FEP System go into service but before the entire system is in service (no Interim Period rates are established for Rate Schedule PALS) and (b) rates which are applicable when the entire FEP System goes into service. FEP has developed rates under the applicable Rate Schedules, including Fuel Gas, and GLU charges. Initially, there will be no Booster Compression installed on the FEP System.

a) Interim Period Rates

Rates for Interim Period Service are included for Rate Schedules FTS and ITS. The pipeline will be installed by multiple construction teams, simultaneously laying pipe along different sections of the FEP route. Given current construction plans, FEP anticipates that it will be able to offer interim service on the portion of pipeline upstream of the NGPL delivery point for delivery to NGPL during the fourth quarter of 2010. FEP has developed interim rates for this service based on the minimum facilities required to be in service and the anticipated capacity that would be available. Should additional interim service be available downstream of the NGPL delivery point prior to the System being fully operational, FEP would propose to charge its full system rates for such service.

b) Factors Used in Developing Rates

FEP has developed the proposed recourse rates in a manner consistent with the Commission's policy related to the straight-fixed-variable rate design.¹⁷ FEP proposes

¹⁷ 18 C.F.R. Section 284.7 (2009); Northern Natural Gas Co., 105 FERC ¶61,299 at P 14 (2003) (where the Commission indicated its preference for the straight fixed-variable rate design).

two-part recourse rates for firm transportation service under Rate Schedule FTS based on the applicable cost of service. The major factors underlying the proposed firm and interruptible transportation rates include the following:

- Capital Structure of 50% Debt / 50% Equity
- 8.75% Cost of Debt
- 14% Return on Equity
- 3% Depreciation Rate

The capital structure, as well as the debt and equity return rates, are in line with those that have been approved by the Commission for other new construction projects in their initial certificates.¹⁸

A 3% depreciation rate approximates a 33-year life, which exceeds the primary terms of all of the executed Precedent Agreements. It is also consistent with depreciation rates accepted by the Commission in Midcontinent Express Pipeline LLC, Docket No. CP08-6, Horizon Pipeline Co. L.L.C., Docket No. CP00-129, Kinder Morgan Louisiana Pipeline LLC, Docket No. CP06-449, White River Hub, LLC, Docket No. CP08-398, and Rockies Express Pipeline LLC, Docket No. CP06-354.¹⁹

c) Rate Design

FEP has utilized a straight-fixed-variable rate design in allocating costs and designing rates. Rate design units are based on the design capacity of the entire System and include an allocation of costs to interruptible services.

¹⁸ See, e.g., MarkWest Pioneer, L.L.C., 125 FERC ¶61,165 (2008); Corpus Christi LNG, L.P., 111 FERC ¶61,081 (2005) (order approving initial rates reflecting 14 percent rate of return on equity); T.W. Phillips Pipeline Corporation, 126 FERC ¶62,132 (2009) (order approving initial rates reflecting 14 percent rate of return on equity).

¹⁹ Midcontinent Express Pipeline LLC, 124 FERC ¶61,089 (2008). Horizon Pipeline Co. L.L.C., 92 FERC ¶61,205 at 61,688 (2000); Kinder Morgan Louisiana Pipeline LLC, 118 FERC ¶61,211 at P 42 (2007); Rockies Express Pipeline LLC, 116 FERC ¶61,272 at P 47 (2006).

FEP has designed rates for Rate Schedule ITS and Authorized Overrun service to be based on a 100% load factor derivative of the Rate Schedule FTS reservation and commodity rates, which is consistent with general Commission policy.²⁰ The Rate Schedule PALS rate is derived from the Rate Schedule ITS rate.

Shippers under Rate Schedule PALS are charged a usage charge multiplied by the total quantity of gas either parked or borrowed each day for the account of shipper during the month.

A credit was applied to the total cost of service in order to allocate costs to interruptible transportation services, *i.e.*, ITS, PALS and authorized overrun service under Rate Schedule FTS service. The Commission has previously recognized that a credit to the cost of service has the same effect as allocating cost to such services.²¹

Attached as Part I of Exhibit P is a Derivation of Rates, which includes the schedules and work papers supporting all of the proposed initial recourse rates for FEP including: maximum and minimum recourse reservation rates; maximum and minimum commodity rates; and maximum and minimum rates for Rate Schedules ITS and PALS. As previously noted, maximum and minimum rates are also provided for interim service in Part II of Exhibit P.

FEP's shippers also will be responsible for charges related to the Annual Charges Adjustment ("ACA") surcharge, when that surcharge goes into effect, and for applicable Fuel Gas, Booster Compression Fuel, and GLU. Consistent with the

²⁰ Kinder Morgan Illinois Pipeline, LLC, et al., 120 FERC ¶61,050 (2007); Rockies Express Pipeline LLC, 116 FERC ¶61,272 (2006); Kinder Morgan Louisiana Pipeline LLC, 118 FERC ¶61,211 (2007), citing Southern Natural Gas Company v. SCG Pipeline, 99 FERC ¶61,345 at P87 (2002).

²¹ See Midcontinent Express Pipeline LLC, 124 FERC ¶61,089 at P 93 (2008).

Commission's Regulations,²² the ACA surcharge will not be assessed initially under the proposed Tariff. Once the Commission bills FEP an ACA assessment, FEP will file to revise its Tariff to implement an ACA surcharge.

Fuel Gas, Booster Compression Fuel, and GLU charges are discussed above in Section VIII of this Application. Fuel Gas, Booster Compression Fuel and GLU charges for full operation are shown on Sheet No. 8 of the proposed Tariff and those charges for interim service are shown on Sheet No. 9 of the proposed Tariff.

X **PRECEDENT AGREEMENTS**

The Precedent Agreements provide the firm contractual support for the Project. They have been the product of extensive negotiations with shippers in a highly competitive environment. FEP attaches the Precedent Agreements hereto as Exhibit I under a request for confidentiality pursuant to the Commission's Rules of Practice and Procedure.²³ These Precedent Agreements contain provisions that address the specific circumstances and requirements of each shipper and provide the contractual incentives necessary for each of them to make a binding commitment to the Project.

The Precedent Agreements contain the particular agreements between FEP and the various shippers supporting the Project, the most important of which are described generally in this section. It is important to emphasize, however, that these provisions do not define or affect the nature of service under the FEP Tariff. Rather, they define negotiated rates; spell out certain rights (termination/liquidated damages) prior to the FEP System in-service date and provide limited rights as to future capacity becoming available on the FEP System.

²² 18 C.F.R. Part 381 (2009).

²³ 18 C.F.R. Section 388.112 (2009).

Contracts have been entered into with two categories of shippers. While these shipper categories are identified in the FEP Tariff, tariff rights do not vary between shipper classes. Shipper rights may, however, vary by shipper category in certain respects under the Precedent Agreements.

The two categories of shippers are:

- Foundation Shippers: Shippers that entered into agreements prior to the commencement of service of at least 375,000 Dth/d for a 10-year term.
- Standard Shippers: Any shipper that does not meet the criteria to be a Foundation Shipper.

By execution of these Precedent Agreements, the Foundation and Standard Shippers have provided the financial support for the Project. Absent these contractual commitments, the Project could not go forward. Thus, other shippers or potential shippers cannot be viewed as similarly situated to these initial shippers. Moreover, none of the provisions in the Precedent Agreements affects the actual terms of any service. Therefore, none of these contract provisions creates the risk of undue discrimination. Under the Commission's existing negotiated rates and discount policies, project sponsors may provide rate incentives to shippers on a number of grounds including volumes to be transported, without constituting undue discrimination.²⁴ For these reasons, FEP does not believe that any aspect of the Precedent Agreements results in a material deviation from the *pro forma* service agreements contained in the Tariff. If the Commission determines that a deviation exists, that deviation should be acceptable and not material. Based on the foregoing, FEP seeks a preliminary determination from the Commission that even if some contractual provisions could be

²⁴ See, supra, footnote 4.

construed to constitute a material deviation from the form of service agreement, no provision of any Precedent Agreement is unduly discriminatory.²⁵

1. Most Favored Nation Provision for Rates. Under Foundation Shipper Precedent Agreements, shippers are entitled to any lower rate paid for the same service by any future shipper meeting defined criteria. These provisions assure the shippers under such Precedent Agreements that, if FEP offers a negotiated or discount rate to another shipper that is more favorable than the negotiated rates agreed to in the Precedent Agreement, FEP will be required to also provide the more favorable rate to the Precedent Agreement shipper. This provision reflects the reasonable commercial expectation that Foundation Shippers entering into Precedent Agreements to support the Project will not be put in the position of subsidizing other shippers that are likely to be competitors for the sale and purchase of gas in the area. This is an acceptable form of negotiated rate provision. The Commission has previously accepted this type of rate provision.²⁶

2. Liquidated Damages Provision. Under one Foundation Shipper Precedent Agreement, the shipper has defined rights to liquidated damages if FEP fails to meet a specified in-service date, subject to certain conditions. This Precedent Agreement provides contractual support to make construction of the FEP System possible. Since this arrangement pre-dates the actual construction of the FEP System, it is reasonable that FEP and a shipper share the construction and start-up risk through a liquidated

²⁵ See, e.g., CenterPoint Energy Gas Transmission Co., 104 FERC ¶61,280 at P 7 (2003) (permitting non-conforming material deviation reflecting unique status of shipper), citing Tennessee Gas Pipeline Company, 97 FERC ¶61,225 at 62,029 (2001); ANR Pipeline Co., 97 FERC ¶61,223 at 62,017 (2001); see also, Gulfstream Natural Gas System, LLC, 100 FERC ¶61,036 at PP 14-15 (2002).

²⁶ See, e.g., Wyoming Interstate Co., Ltd., 112 FERC ¶61,327 at P 18 (2005); Gulfstream Natural Gas System, LLC, 100 FERC ¶61,036 at PP 16-18, order on reh'g, 101 FERC ¶61,368 (2002).

damages provision. The liquidated damages provision of that certain Precedent Agreement puts FEP at risk for not placing the Project in service on schedule. The liquidated damages provision was an integral component of the negotiation with that shipper. This provision, together with other considerations, led to the shipper's participation supporting the Project at the contractual level agreed upon. Liquidated damages in no way affect the terms of service once the FEP System goes into operation.

3. Termination Rights. Shippers entering into Precedent Agreements that support this Application have the right to terminate their FTS Agreements under certain circumstances prior to the in-service date. Such termination rights are reasonable provisions of a Precedent Agreement with shippers that provide the contractual support for this Application and for construction of the System. These rights have no effect on the nature of service once the FEP System becomes operational. Termination provisions are a reasonable means to address the risks being taken by these shippers during the certification and construction phase in contracting for capacity on the new pipeline.

4. Interruptible Revenue Crediting. Under the proposed Tariff and rate design, all interruptible revenues collected by FEP will be retained by FEP. Consistent with that approach, FEP has allocated costs to interruptible services in the design of its recourse rates.²⁷ All shippers benefit in the form of lower recourse rates from this allocation of costs.

In Foundation Shipper Precedent Agreements, however, FEP has agreed to provide an additional credit for interruptible revenues. Specifically, these arrangements

²⁷ See, e.g., Entrega Gas Pipeline Inc., 112 FERC ¶61,177 at P 51 (2005).

provide for a defined negotiated percentage of revenue from Rate Schedule ITS transportation services to be credited. This revenue crediting approach is an integral part of the negotiated rate arrangements with these shippers.

Foundation Shippers entering into Precedent Agreements provide the critical contractual support for the System that enables FEP to go forward with the Project. It is reasonable as part of a negotiated rate agreement that these shippers can negotiate in the Precedent Agreement to obtain some additional benefit if interruptible shippers utilize the capacity for which the Foundation Shippers contracted on the front end to build and make possible in the first place.

5. Fuel Caps. Certain Precedent Agreements set out a cap on the Fuel Gas and GLU which may be assessed to these shippers. This represents a negotiated fuel arrangement, which is permissible under Commission policy. The Commission has accepted negotiated rate tariff provisions which encompass the negotiation of fuel rates.²⁸ Also consistent with Commission policy, FEP will calculate fuel and GLU percentages on the assumption that full fuel and GLU recovery will be achieved from all shippers. Hence, no other shipper will be subsidizing these negotiated rate arrangements.

6. Future Capacity. As discussed in Section VIII (2) hereof, a Foundation Shipper has the right under FEP's capacity award procedures, commencing October 8, 2009 through October 7, 2013, to acquire available unsubscribed firm capacity on the FEP System or any expansion (but not extension) of the FEP System. This right is for a minimum term coincident with the then remaining primary term of its existing firm

²⁸ Florida Gas Transmission Company, 93 FERC ¶61,203 at 61,677 (2000), citing Noram Gas Transmission Co., 77 FERC ¶61,011 at 61,035-36 (1996).

transportation service agreement at the negotiated rates provided for in such agreement, pursuant to the terms of the Precedent Agreement entered with such Foundation Shipper.

Such provision is a reasonable accommodation to address the future capacity needs of Foundation Shippers in relation to remaining unsubscribed capacity during the limited specified time period.

XI **PARTICIPATION IN NEPA PRE-FILING PROCESS**

FEP has sought direct landowner, community and federal, state and local agency input in designing the Project. FEP initiated the Commission's National Environmental Policy Act ("NEPA") pre-filing procedures by its request letter to the Commission on November 14, 2008. On November 25, 2008, the Director of the Office of Energy Projects agreed with FEP's participation in the NEPA pre-filing process.²⁹ As part of this process, FEP has been involved in on-going consultations with the applicable federal, state and local government agencies. Likewise, on the following dates and places, FEP held open houses to provide information about the Project to potentially interested persons:

1. December 2, 2008 Searcy, Arkansas
2. December 3, 2008 Conway, Arkansas
3. December 4, 2008 Forrest City, Arkansas
4. December 9, 2008 Helena, Arkansas
5. December 10, 2008 Marks, Mississippi

On January 30, 2009, the Commission issued its Notice of Intent to Prepare an Environmental Assessment for the Project, Request for Comments on Environmental

²⁹ Letter Order dated November 25, 2008, Docket No. PF09-4-000.

Issues and Notice of Public Scoping Meetings. The following scoping meetings along the proposed pipeline route were hosted by the Commission's Environmental staff:

1. February 17, 2009 Searcy, Arkansas
2. February 18, 2009 Forrest City, Arkansas
3. February 19, 2009 Batesville, Mississippi

FEP will continue to work with all affected landowners in identifying any potential issues of concern. An FEP hotline (1-501-268-7314) has been installed to address any concerns raised by landowners before, during or after construction of the Project. Furthermore, a website (www.fepipeline.com) has been created to provide detailed information about the Project.

XII **ENVIRONMENTAL COMPLIANCE**

Through its participation in the Commission's NEPA pre-filing process, FEP has developed and provided a significant record of environmental data and public comment. FEP has incorporated this information into the environmental resource reports filed as part of this Application.³⁰ FEP has solicited public comments and concerns and has engaged in good faith efforts to amicably resolve those concerns. As a result of this coordinated effort with the Commission staff, third-party environmental contractors, local, state and federal environmental agencies, and other interested parties, including affected landowners, this Application and the accompanying environmental reports, are ready for Commission review. FEP, in conjunction with Commission staff, will continue to work with stakeholders to resolve environmental issues throughout the certificate process.

³⁰ On May 8, 2009, the Commission Staff Project Manager issued a letter order in Docket No. PF09-4-000 that an Environmental Impact Statement was not warranted for the FEP Project and that an Environmental Assessment would be prepared.

The Project has been designed, and will be constructed, in a manner that will enhance energy efficiencies and minimize environmental impacts.

FEP is actively engaged in consultations and coordination with the affected federal, state and local government agencies concerning the proposed construction activities associated with the Project. FEP has met with agency officials to explain the Project and discuss its specific requirements. The proposed routing of the pipeline reflects comments received from these agencies. FEP continues to actively engage in discussions with those impacted in an attempt to resolve, where practicable, any remaining concerns that they may have.

Construction of the FEP facilities will have a minimal effect on existing landowners and communities. As set forth in the environmental resource reports, FEP has complied, and will continue to comply, with the Commission's landowner requirements set forth in 18 C.F.R. Section 157.6(d) (2009). A list of affected landowners is included in Volume III. FEP has already contacted all affected landowners about the Project by mail, phone or direct contact.

Within three business days following the Commission's issuance of a notice of this Application, FEP will mail the required notification letter to each affected landowner and governmental agency involved in the Project. Further, within three business days after the Commission assigns a docket number to this Application, a copy of this Application will be made available for inspection, either in hard copy or electronic disc, in centrally located public libraries in each of the counties where construction will occur. A hard copy of this Application will be furnished to any requesting party. Within 14 days

after the assignment of a docket number, a notice that this Application has been filed will be published twice in newspapers of general circulation in the affected counties.

XIII COMPLIANCE WITH THE COMMISSION'S CERTIFICATE POLICY STATEMENT

On September 15, 1999, the Commission issued a Policy Statement to provide guidance regarding the evaluation of applications to certificate new construction (“Policy Statement”).³¹ The Policy Statement established criteria for determining whether there is a need for a proposed project and whether a proposed project will serve the public interest.

In deciding whether to authorize the construction of major new pipeline facilities, the Commission, under the Policy Statement, will balance the public benefits created by a proposed project against the potential adverse consequences that could result from the project. Pursuant to this balancing process, the Commission has stated that its goal in evaluating new pipeline construction is to give appropriate consideration to: (i) the enhancement of competitive transportation alternatives; (ii) the possibility of overbuilding; (iii) subsidization by existing customers; (iv) the applicant’s responsibility for unsubscribed capacity; (v) the avoidance of unnecessary disruptions of the environment; and (vi) the unneeded exercise of eminent domain.³²

Pursuant to the Policy Statement, the threshold requirement for a pipeline proposing a new project is that the applicant must be prepared to financially support the project without relying on subsidization from any existing customers. Once the no-

³¹ Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶61,227 (1999), modified by, 89 FERC ¶61,040, Order Clarifying Statement of Policy, 90 FERC ¶61,128 (2000), and Order Further Clarifying Statement of Policy, 92 FERC ¶61,094 (“Policy Statement”).

³² See, e.g., Dominion Transmission, Inc., 104 FERC ¶61,267 (2003), reh’g denied, 105 FERC ¶61,350 (2003).

subsidization requirement has been considered, the next inquiry is to determine whether the applicant has made efforts to eliminate or minimize any adverse effect the project might have on (1) the applicant's existing customers, (2) existing pipelines in the market and their captive customers, or (3) landowners and communities affected by the route of the 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 these residual adverse effects. The Commission has stated that this is essentially an economic test.³³ Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

As set forth below, the Project meets the threshold requirement and the additional tests set forth in the Policy Statement.

1. No Subsidization by Existing Shippers

The threshold requirement for certification of major new facilities is a finding that the applicant will financially support the project without relying on subsidization from its existing shippers.³⁴ The purpose of this Project is to provide transportation for an important additional source of natural gas to the nation's pipeline grid via interconnection with other interstate natural gas pipelines. FEP is a new pipeline company with new shippers subscribing for pipeline capacity. There are no existing shippers; thus, there is no possible subsidization issue. It follows that FEP meets the threshold requirement of the Commission's Policy Statement.

³³ See Policy Statement, 88 FERC at 61,745.

³⁴ Williston Basin Interstate Pipeline Co., 103 FERC ¶61,269 at P 21 (2003).

2. Effect of the Project on Other Constituent Groups

i. Existing Shippers

FEP is a new pipeline company with new shippers. Therefore, the Project will have no effect on existing shippers.

ii. Other Pipelines in the Market and Their Customers

No existing service by any other pipeline system will be displaced. The transportation service provided by the FEP System will be utilized for new sources of gas supply not currently available to existing pipelines that will be interconnected with FEP.³⁵

iii. Private Landowners

FEP believes its facilities and its outreach efforts have been designed and implemented in a manner to maximize information and education and to minimize the impact on landowners and the environment. FEP is continuing to work with landowners to address their concerns and to make design changes to the extent feasible. FEP will also ensure that restoration and timely follow-up actions are completed satisfactorily and according to servitude and easement agreements. FEP will negotiate to acquire rights-of-way whenever possible and will seek to minimize use of eminent domain procedures.

3. Benefits Analysis

As noted above, under the Policy Statement, the Commission will evaluate a proposed project by balancing the evidence of public benefits to be achieved against residual adverse effects. FEP clearly meets this test because the Project's benefits will

³⁵ See Policy Statement, 88 FERC at 61,748.

outweigh any adverse impacts. Specifically, FEP will provide much needed pipeline transportation service accessing an important new source of natural gas supplies. FEP will help address, in part, the growing imbalance between domestic supply and demand.

XIV RELATED APPLICATIONS

FEP has no other related applications or filings pending before the Commission. Moreover, FEP is not aware of any other filings pending before the Commission that could directly and/or significantly affect this filing.

XV CERTIFICATION

FEP states that it is willing and able to do the acts for which application is herein made, and in so doing, to conform to the provisions of the NGA and the Commission's Regulations promulgated thereunder. FEP's verification is attached hereto.

Pursuant to the Natural Gas Pipeline Safety Act of 1968, FEP certifies that the facilities proposed herein will be designed, constructed, tested, operated, replaced, and maintained in accordance with the requirements of Title 49, Part 192 of the Code of Federal Regulations, or any superseding state or Federal safety code applicable to gas transmission pipelines. In addition, all construction and restoration activities will be performed in accordance with the environmental plans, procedures and guidelines included in the Environmental Resource Reports in Exhibit F-1.

XVI PUBLIC CONVENIENCE AND NECESSITY

The certificate authorization to construct and operate the facilities necessary to implement the Project, requested by FEP herein, is required by the present and future public convenience and necessity. The Project, upon completion, will provide an

important transportation link for a new source of natural gas supplies from the Fayetteville Shale to several other pipeline systems and numerous natural gas markets in the United States. Approval of the Project meets the primary goal of the Commission's Strategic Plan for the fiscal years 2006 through 2011, which is to "Promote the Development of a Strong Energy Infrastructure." FEP submits that its proposal is in the present and future public convenience and necessity, and authorizations as requested herein should be granted promptly.

XVII
WAIVER

FEP respectfully requests that this Application be disposed of in accordance with the shortened procedures as provided in Rule 802 of the Commission's Rules of Practice and Procedure.³⁶ Accordingly, FEP requests that the intermediate decision procedure be omitted, and waives oral hearing and opportunity for filing exceptions to the decision of the Commission. As set forth under these procedures, the decision of the Commission will be final, yet subject to reconsideration by the Commission upon request for rehearing as provided by statute.

XVIII
NOTATIONAL VOTING

In recognition of the considerable demands placed on the time and resources of the Commission, and the accelerated nature of the review required, FEP respectfully requests that the Commission, if appropriate, act by notational voting on this Application.

³⁶ 18 C.F.R. Section 385.802 (2009).

XIX
EXHIBITS

In accordance with Section 157.14 of the Commission's Regulations, the following exhibits are attached or have been omitted for the reason indicated.

EXHIBIT A Articles of Incorporation and By-Laws

Submitted herewith are the Certificate of Formation and the Limited Liability Company Agreement.

EXHIBIT B State Authorization

FEP was authorized to do business in the state of Mississippi on January 13, 2009 and in the state of Arkansas on January 14, 2009.

EXHIBIT C Company Officials

Submitted herewith.

EXHIBIT D Subsidiaries and Affiliation

Submitted herewith.

EXHIBIT E Other Pending Applications and Filings

There are no other applications or filings made by FEP or any other party that are pending before this Commission that directly and significantly affect this Application. This exhibit is therefore omitted.

EXHIBIT F Location of Facilities

Submitted herewith.

EXHIBIT F-I Environmental Report

Submitted herewith. (See Volumes I-A, I-B, II and III)

EXHIBIT G, Flow Diagrams

GI

Submitted herewith. (See Volume II)

EXHIBIT GII Flow Diagram Data

Submitted herewith. (See Volume II)

EXHIBIT H Total Gas Supply Data

Submitted herewith.

EXHIBIT I Market Data

The Precedent Agreements are being filed under seal pursuant to a request for confidential treatment and are located in Volume III of this Application. The supply basins to be served by the Project and the related design capacities of the Project's different segments are discussed at length above. (See Volume III)

EXHIBIT J Federal Authorizations

Submitted herewith.

EXHIBIT K Cost of Facilities

Submitted herewith.

EXHIBIT L Financing

Submitted herewith.

EXHIBIT M Construction, Operation and Management

FEP will cause the facilities to be constructed. Operations and management of the facilities will be carried on in the ordinary course of business. Submitted herewith, as an attachment to the Limited Liability Company Agreement, is a copy of the Operations and Reimbursement Agreement for the Fayetteville Pipeline Express Project between Energy Transfer Partners L.P. and FEP (see Exhibit A).

EXHIBIT N Revenues-Expenses-Income

Submitted herewith.

EXHIBIT O Depreciation and Depletion

Submitted herewith.

EXHIBIT P Tariff

Submitted herewith are the following:

- Part I – Full Service Recourse Rate Computation
- Part II – Interim Rate Computation
- Part III - Tariff

Other Exhibits

EXHIBIT Z NAESB Standards Cross-Reference Chart

EXHIBIT Z-1 Index Price Point Liquidity Documentation

EXHIBIT Z-2 Gas Quality Standards

XX
FEDERAL REGISTER NOTICE

Attached herewith is a notice, prepared in conformity with Sections 2.1 and 157.6(b)(7) of the Commission's Regulations, 18 C.F.R. Sections 2.1 and 157.6(b)(7) (2009), suitable for publication in the Federal Register.

XXI
AUTHORIZATIONS REQUESTED

Wherefore, FEP respectfully requests:

1. a certificate of public convenience and necessity to construct and operate the FEP System facilities as described herein;
2. authorization for FEP's proposed interim and full service recourse rates for transportation service and approval of its *Pro Forma* Tariff; and

3. authorization for future construction of facilities pursuant to blanket certificate authority under Part 157, Subpart F of the Commission's Regulations, and the undertaking of self-implementing interstate transportation of natural gas under Part 284, Subpart G of the Commission's Regulations.

Respectfully submitted,

FAYETTEVILLE EXPRESS PIPELINE LLC

/s/ Bruce H. Newsome

Bruce H. Newsome

Vice President

Dated this 15th day of June, 2009.

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VERIFICATION

State of Illinois)
)
County of DuPage) SS.

Bruce H. Newsome, being duly sworn upon his oath says that he is a Vice President of Fayetteville Express Pipeline LLC; that he has read the foregoing Application of Fayetteville Express Pipeline LLC for Certificates of Public Convenience and Necessary and knows the contents thereof; that the facts therein stated are true to the best of his knowledge and belief; and that the information on the paper copies of this filing is the same information as contained on the electronic version.

/s/ Bruce H. Newsome
Bruce H. Newsome

Subscribed and sworn to before me
this 15th day of June, 2009

/s/ Rita Thomas
Notary Public
In and for the State of Illinois