

102 FERC ¶ 62,165

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Southern Star Central Gas Pipeline, Inc.

Docket No. CP02-416-000

## ORDER ISSUING CERTIFICATE

( March 12, 2003 )

This order grants, subject to certain conditions, the authority requested by, Southern Star Central Gas Pipeline, Inc.(Southern Star), formerly known as Williams Gas Pipelines Central, Inc., on July 31, 2002, in the above docket.

**BACKGROUND/ PROPOSAL**

Southern Star<sup>1</sup> requests authorization to construct approximately 15.67 miles of 20-inch pipeline from the Southern Trunk 20-inch Loop Line "FR" in Cherokee County, Kansas to Jasper County, Missouri to an interconnect with an existing 16-inch lateral which serves Empire District Electric Company's (Empire) State Line power plant. Southern Star also proposes to install piping upgrades at its Saginaw compressor station in Newton County, Missouri. The estimated cost of the project \$10.5 million. Southern Star requests a determination that costs of the proposed facilities should be rolled-in with existing facility costs in its next general rate case.

Southern Star states it conducted an open season to identify potential market area demand for expansion of its system. Two shippers, Empire and Kansas Gas Service (KGS) submitted bids totaling 66,800 Dth per day (Dth/d). Both shippers subsequently executed precedent agreements for incremental long-term (15-year) firm service covering the volumes identified in their bids. Empire has contracted for 63,800 Dth/d, of which it

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<sup>1</sup> Southern Star is a natural gas company engaged in the interstate transportation of natural gas, operating facilities in the states of Colorado, Kansas, Missouri, Nebraska, Oklahoma, Texas, and Wyoming, transporting and delivering gas along its transmission facilities either for consumption or for further transportation. Southern Star was formerly known as Williams Gas Pipelines Central, Inc. (Williams Central). On November 15, 2002, Williams Central was acquired by Southern Star Central Corp., a subsidiary of AIG Highstar Capital, L.P. The name change to Southern Star became effective December 9, 2002.

will use 28,800 Dth/d to meet expanded natural gas requirements at its existing State Line South generating plant and 35,000 Dth/d for new generation at its La Russell Energy Center plant. Both plants are located in Jasper County, Missouri. KGS will use its contracted volumes to support additional growth in its market area. Following authorization of the project, Empire and KGS will execute service agreements for a 15-year term. Southern Star asserts that the precedent agreements covering all of the proposed incremental capacity represent strong evidence of market demand and indication of need for the project.

Southern Star proposes to charge its existing firm Part 284 rates for service to KGS and a negotiated rate, which is currently in excess of the existing approved maximum Part 284 rates, for service to Empire. Southern Star states that Empire preferred the rate certainty afforded by negotiated rates rather than risk the potential uncertainty associated with Southern Star's Part 284 rates over the 15 year term of the agreement. Southern Star requests that its negotiated rate agreement with Empire be approved and found to be in compliance with Southern Star's tariff and the Commission's negotiated rate policy. Southern Star asserts that the project will provide a net revenue benefit to the system and result in reduced rates. Specifically, Southern Star estimates that the revenues from the contracted project capacity will be approximately \$2,374,181 per year as compared to an annual incremental project cost of service of \$1,970,824, a net revenue benefit of approximately \$403,357 per year. Southern Star estimates that the project would result in a reduction of its 100 percent load factor rates for firm transportation across both its production and market areas from \$0.3065 per Dth to \$0.3049, a decrease of 0.5 percent. Accordingly, Southern Star believes its request for a pre-determination of rolled-in rate treatment should be approved.

Southern Star proposes to commence service to Empire and KGS, respectively, on June 1 and October 1, 2003.

## **INTERVENTIONS**

After notice by publication in the Federal Register on August 14, 2002 (67 FR 52965), timely, unopposed motions to intervene were filed by Missouri Gas Energy, KGS, and Kansas Corporation Commission(KCC).<sup>2</sup> No protests to the application were filed. In a comment, KCC expressed its support, in general, for the project, but requested that any determination on rolled-in rate treatment be conditioned upon costs

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<sup>2</sup> Timely motions to intervene are automatically granted pursuant to 18 CFR § 385.214.

not exceeding the \$10.5 million estimate in the application. Out-of-time motions to intervene were filed by the Missouri Public Service Commission and Empire. Southern Star filed an answer supporting Empire's filing.<sup>3</sup> Empire's motion requested expedited processing of the application.

## ENVIRONMENT

In response to the September 11, 2002, Notice of Intent to Prepare an Environmental Assessment for the Proposed Southwest Missouri Expansion Project and Request for Comments on Environmental Issues, four comment letters were received. The U.S. Centers for Disease Control and Prevention did not have site-specific comments, but requested that the environmental assessment (EA) address such topics as water quality and wetlands. The Kansas Department of Transportation indicated no concerns regarding environmental impacts, but stated that there would be a future road construction project near Columbus. The U.S. Environmental Protection Agency (EPA) requested to remain on the environmental mailing list. Norman and Mary Hayes had comments about potential impacts on pasture, livestock grazing, waterbodies, property values, mines, and safety. All substantive environmental comments were addressed in the EA.

The EA addresses geology, soils, water resources, wetlands, vegetation, wildlife, cultural resources, land use, air and noise quality, safety, and alternatives. Based on the discussion in the EA, if constructed and operated in accordance with Southern Star's application and supplements filed September 9, October 8, and December 6, 2002, and January 21, 2003, and the environmental conditions set forth in the Appendix, approval of Southern Star's proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities

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<sup>3</sup> Granting the out-of-time motions to intervene and answer will not delay the proceeding or prejudice any party, and for good cause shown, the motion to intervene out-of-time is granted pursuant to 18 CFR §385.214(d).

approved by this Commission.<sup>4</sup> Southern Star will notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Southern Star. Southern Star will file written confirmation of such notification with the Secretary of the Commission within 24 hours.

## FINDINGS

At a hearing held on the issue date noted above, all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, became part of the record in this proceeding.

On September 15, 1999, the Commission issued a Policy Statement providing guidance as to how proposals for certificating new construction will be evaluated.<sup>5</sup> It provides that a pipeline must financially support the project without relying on subsidization from the existing customers. It also established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. Specifically, the Policy Statement explains that the Commission, in deciding whether to authorize the construction of new pipeline facilities, balances the public benefits against the potential adverse consequences.<sup>6</sup>

Southern Star has satisfied the threshold no subsidy requirement. Southern Star has provided a cost and revenue study which shows that revenues attributable to the project would exceed the estimated increase in cost of service attributable to the project. Moreover there is a long-term assurance of revenues, given the 15-year terms of the contract commitments. Thus, there should be a positive rate impact from the project over a significant period of time. Specifically, Southern Star has estimated that the project will result in a 0.5 percent reduction in its firm rates, when calculated on a 100 percent load factor basis. Based on the analysis presented, since the project will not result in

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<sup>4</sup>See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

<sup>5</sup>Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement), 88 FERC ¶ 61,227 (1999); Order Clarifying Statement of Policy, 90 FERC ¶ 61,128 (2000); Order Further Clarifying Statement of Policy, 92 FERC ¶ 61,094 (2000).

<sup>6</sup>Policy Statement, 88 FERC ¶ 61,227 at 61,745.

financial subsidies, it is appropriate to permit Southern Star, in its next general Natural Gas Act Section 4 rate case, to roll-in the projected costs, absent changed circumstances. As to the KCC's concern about potential cost overruns, it is emphasized that the pre-determination of rolled-in rate treatment relies on the facts, estimates, and assumptions presented here and that changed circumstances are a basis for revisiting the issue.

The project will have minimal adverse impacts. As to effects on Southern Star's existing customers, as noted, the project will add to existing system revenues and the project has been designed to perform the proposed services without degradation of service to existing customers. In fact, the project will enhance reliability on this portion of Southern Star's system. Since the project will serve expanded markets which are incremental to Southern Star's existing requirements, other pipelines and their captive customers will not be adversely affected by the project. Finally, the project will not significantly impact landowners. Approximately 58 percent of the pipeline route follows existing pipeline, railroad, or power line rights-of-way and Southern Star has obtained easement agreements or commitments for most of the parcels crossed by the pipeline and is in the process of negotiating for the remaining parcels.

The project will provide definitive public benefits. Physically, the project will increase the transportation capacity and deliverability of Southern Star's Southwest Missouri gas transportation system. The facilities will provide needed gas supplies to fuel new electric generation capability which is required to keep pace with the growing demand for electricity this region. The facilities will also support new growth in an existing local distribution company market. Finally, since the proposal is fully integrated both physically and operationally with existing facilities, existing downstream customers will benefit from enhanced performance and greater delivery security. On balance, the benefits of the project outweigh any potential adverse impacts and the proposal is therefore required by the public convenience and necessity.

Southern Star states that Empire has agreed to a negotiated rate. In 2000 in Docket No. RP00-425-000,<sup>7</sup> the Commission granted Southern Star the authority to offer negotiated rates. Any service agreement signed with Empire must comply the Commission's Alternative Rate Policy Statement.<sup>8</sup> Although, as proposed, Southern

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<sup>7</sup>92 FERC ¶ 61,190 (2000).

<sup>8</sup> 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 (1996);

(continued...)

Star's negotiated rate with Empire will exceed the recourse rate, Southern Star is nonetheless advised that under the Alternative Rate Policy Statement, as affirmed by the Commission in NorAm Gas Transmission Company (NorAm),<sup>9</sup> any revenue shortfall due to negotiated rates lower than recourse rates cannot be recovered from existing shippers. Further, consistent with NorAm, we will require Southern Star to file either its negotiated rate contract or numbered tariff sheets reflecting the essential elements of its negotiated rate agreement necessary to permit shippers that believe they are similarly situated with respect to a particular negotiated rate customer, to make such a determination. Southern Star must disclose all considerations linked to the agreement. In addition, Southern Star's negotiated rate authority is subject to the Commission's policy regarding protecting the recourse rate-paying shippers against inappropriate cost shifting with negotiated rates and discount adjustments, and what deviations are permitted as part of a negotiated rate agreement. Finally, Southern Star must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with the negotiated rate in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA §4 or 5 rate case.

Pursuant to 18CFR 375.308, it is ordered that:

(A) A certificate of public convenience and necessity is issued authorizing Southern Star to construct and operate the facilities, as more fully described in this application, as amended, and in this order, subject to the conditions in the following Ordering Paragraphs and the environmental conditions contained in the Appendix.

(B) The authority issued in Paragraph (A) above is conditioned on Southern Star's compliance with the NGA and all relevant parts of the Commission's regulations, in particular with the generic terms and conditions set forth in 157.20(a), (c), (e) and (g) of the regulations.

(C) Construction of the proposed facilities will be completed and made available for service within one year from the date of this order in accordance with Section 157.20(b) of the Commission's Regulations.

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<sup>8</sup>(...continued)

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>9</sup>77 FERC ¶ 61,011 (1996).

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(D) The authority issued in Paragraph (A) above is conditioned on Southern Star's compliance with the environmental conditions set forth in the Appendix.

(E) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 CFR § 385.713.

William L. Zoller,  
Acting Director  
Division of Pipeline Certificates  
Office of Energy Projects

**Appendix****Environmental Conditions**

As recommended in the EA, the certificate authorization issued to Southern Star Central Gas Pipeline, Inc.(Southern Star) in Docket No. CP02-416-000 is subject to the following conditions:

1. Southern Star Central Gas Pipeline, Inc.(Southern Star) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by this Order. Southern Star must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of this Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Southern Star shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Southern Star shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.
  
5. Southern Star shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction** in or near that area.

This requirement does not apply to minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
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6. **Within 60 days of the acceptance of this certificate and before construction** begins, Southern Star shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Southern Star will implement the mitigation measures required by this Order. Southern Star must file revisions to the plan as schedules change. The plan shall identify:

- a. how Southern Star will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
- b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
- c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
- d. what training and instructions Southern Star will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
- e. the company personnel (if known) and specific portion of Southern Star' organization having responsibility for compliance;
- f. the procedures (including use of contract penalties) Southern Star will follow if noncompliance occurs; and
- g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
  - (1) the completion of all required surveys and reports;
  - (2) the mitigation training of onsite personnel;
  - (3) the start of construction; and,
  - (4) the start and completion of restoration.

7. Southern Star shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:

- a. responsible for monitoring and ensuring compliance with all mitigative measures required by this Order and other grants, permits, certificates, or other authorizing documents;
- b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
- c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
- d. a full-time position, separate from all other activity inspectors;
- e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other Federal, state, or local agencies; and
- f. responsible for maintaining status reports.

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

implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. **Prior to construction**, Southern Star shall consult with the U.S. Environmental Protection Agency (EPA), and the Kansas Department of Health and Environment, Bureau of Environmental Remediation (KDHE), and conduct a geotechnical investigation of the subsidence potential in the area of the historic lead mines crossed by the pipeline. Southern Star shall file with the Secretary documentation of all consultations and the results of the geotechnical investigation. If the geotechnical investigation indicates that potentially unstable mine shafts would be crossed, which could pose a subsidence hazard to the pipeline, then Southern Star shall develop, in consultation with the EPA and KDHE, a plan to protect the pipeline from future subsidence, and file the plan for the review and written approval of the Director of OEP.
12. **Prior to construction**, Southern Star shall file with the Secretary a project-specific hydrostatic testing plan which provides the volume of hydrostatic test water to be used, and lists all discharge locations, and discharge rates. Southern Star shall also document that it has obtained all National Pollutant Discharge Elimination System and state-issued discharge permits necessary for the hydrostatic testing.
13. Southern Star shall document in a filing with the Secretary that it successfully completed the horizontal directional drill (HDD) crossing of the Spring River (between approximately milepost [MP] 9.9 to MP 10.3) **before beginning construction of any other facilities between MP 7.5 and MP 11.5**, except for access roads and extra workspaces necessary to support the HDD. Southern Star shall not initiate construction activities within that segment until the Director of OEP issues written authorization to proceed. If the Spring River cannot be crossed using the HDD along the proposed route, Southern Star shall:
  - a. provide an analysis of rerouting the pipeline to a location where geotechnical investigations indicate an HDD of the Spring River would be feasible. This analysis should include environmental, engineering, and economic analysis of the reroute in comparison to an open-cut crossing at the proposed location; or
  - b. file a site-specific open-cut plan for the crossing of the Spring River that addresses the U.S. Department of the Interior, Fish and Wildlife Service concerns regarding impacts of open-cut methods on federally-listed species, and identified mitigation.

14. During construction across the Hayes' property, in the vicinity of MP 12.0, Southern Star shall use silt fence on the north side of the construction right-of-way to prevent any inadvertent runoff or erosion which might reach the Hayes' pond. The environmental inspector shall monitor the fencing and construction on the Hayes' property, and make a specific note about the prevention of runoff and erosion on this tract within the bi-weekly report required under environmental condition 8.