

119 FERC ¶ 61,250
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulfstream Natural Gas System, L.L.C.

Docket No. CP00-6-014

ORDER AMENDING CERTIFICATE

(Issued June 7, 2007)

1. On August 15, 2006, Gulfstream Natural Gas System, LLC (Gulfstream) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting a further amendment to the certificate of public convenience and necessity issued by the Commission on February 22, 2001,¹ as amended by orders issued in 2002² and 2003.³ In the instant application, Gulfstream proposes to modify the currently authorized Phase III facilities and its initial recourse rates. We find the proposed amendment to be in the public interest, and will grant Gulfstream's request to amend its certificate, subject to certain conditions.

Background

2. Gulfstream is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Tampa, Florida. Gulfstream is owned by the Spectra Energy Corporation and The Williams Companies, Inc.

¹ *Gulfstream Natural Gas System, L.L.C.*, 94 FERC ¶ 61,185 (2001), *order denying rehearing*, 95 FERC ¶ 61,100 (2001).

² *See Gulfstream Natural Gas System, L.L.C.*, 98 FERC ¶ 61,349 (2002) (authorizing Gulfstream to construct the facilities approved in the 2001 order in two phases, Phase I and Phase II, and to modify its initial recourse rates).

³ *See Gulfstream Natural Gas System, L.L.C.*, 105 FERC ¶ 61,052 (2003) (authorizing Gulfstream to construct Phase II in two phases, new Phase II and Phase III, and to establish new Phase II recourse rates).

3. When all of its facilities are constructed and placed into service, Gulfstream will transport natural gas from supply areas in Alabama and Mississippi across the Gulf of Mexico to new incremental markets in central and southeastern Florida. Gulfstream has completed construction of Phase I and Phase II, initiating service on the Phase I facilities on May 28, 2002, into central Florida, and on the Phase II facilities on February 1, 2005, into southeastern Florida. Upon completion of the Phase III facilities, Gulfstream will initiate service into south Florida.

Proposal

4. Gulfstream has executed an agreement with Florida Power & Light Co. (FPL) to provide 345,000 dekatherms per day (Dth/d) of long-term firm transportation service to FPL's West County Energy Center in Palm Beach County, Florida, a new 2,200 Mw natural gas-fired electric generation facility servicing South Florida. To provide this service to FPL, Gulfstream proposes to modify the construction of the Phase III facilities by: expanding the previously approved 24-inch, 32.14-mile segment of Phase III, which was to extend from Station 712 to Station 700, such that the segment will be a 30-inch, 34.30-mile pipeline extending from Station 712 to new Station 705. Gulfstream asserts that no additional environmental impact will result from increasing the diameter of the pipe from 24 to 30 inches.⁴ The estimated cost of the modified Phase III construction is \$129,258,511.

5. Gulfstream proposes to commence service on Phase III by July 1, 2008, to supply initial start-up and testing fuel needs for FPL's new generation facility. Gulfstream intends to complete construction in order for FPL to commence receipt of its full maximum daily requirements levels by June 1, 2009.

6. The previously authorized recourse rates for transportation service by Gulfstream include costs for completed facilities and are system-wide postage stamp rates. Thus, Gulfstream proposes to revise the previously authorized Phase III initial recourse rates to reflect facility modifications and updated construction costs. Accordingly, Gulfstream's revised Phase III rates are derived to reflect the previously approved Phase II rates plus capital and additional operating and other related costs associated with Phase III.

⁴ The Commission has concluded in other certificate proceedings that no additional environmental impact resulted from similar changes in pipe diameter. *See, e.g., Maritimes & Northeast Pipeline, L.L.C.*, 99 FERC ¶ 61,277, at P 20 (2002).

Notice and Interventions

7. Notice of Gulfstream's application was published in the *Federal Register* on August 30, 2006 (71 Fed. Reg. 51,595). The Florida Gas Transmission Company filed a timely motion to intervene.⁵ Lake Point LLC and Mayaca LLC filed motions to intervene and protests out of time. Gulfstream filed an answer to the protests. However, on May 14, 2007, Lake Point, LLC and Mayaca, LLC withdrew their interventions and protests, stating that they have reached an agreement on the Phase III pipeline route with Gulfstream.

Discussion

8. Gulfstream's initial certificate was authorized pursuant to the Commission's optional certificate regulations, putting Gulfstream at risk for recovering the cost of the facilities, but obviating the need for showing market demand.⁶ While the Commission has since eliminated the optional certificate procedures, that does not change the rationale relied upon in authorizing Gulfstream's original project.

9. In certificating the project, the Commission found that Gulfstream's proposal for new service will introduce substantial new volumes of natural gas to Florida markets, thus fostering increased competition and options in the transportation and sale of natural gas in Florida.⁷ Further, Gulfstream is solely at risk for recovery of its construction and operating costs.⁸ While the Phase III facilities would change from those currently authorized, they nevertheless substantively reflect the overall project that the Commission reviewed and approved in its entirety. Under the circumstances, we believe it is in the public interest to amend the certificate order to authorize the proposed revisions to Phase III for essentially the same reasons that we previously approved the project.

⁵ Timely unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2006).

⁶ The Commission's optional certificate regulations set forth in Subpart E of Part 157 of the regulations were eliminated by Order No. 615, 92 FERC ¶ 61,034 (2000).

⁷ *Gulfstream Natural Gas System, L.L.C.*, 91 FERC ¶ 61,119 at 61,462 (2000).

⁸ *Id.*

A. Rates

10. Gulfstream requests revision of its approved Phase III recourse rates⁹ to reflect the proposed modifications of its Phase III facilities and the most currently available cost information. We will approve the revised Phase III recourse rates.

11. The Commission previously approved Gulfstream's rate design method for its initial recourse rates for its Firm Transmission Service (FTS), Interruptible Transmission Service (ITS) and Park and Loan Service (PALS).¹⁰ Gulfstream's rates are "postage stamp" rates since they apply to service rendered anywhere on the system. Gulfstream refers to its initial recourse rates as "all-in" since they are updated upon completion of each particular phase of the pipeline to include the costs of the newly completed phase. Specifically, the Phase III initial recourse rates include the cost of service associated with Phases I, II and III. Gulfstream notes that since all of its existing firm shippers (as well as FPL pursuant to the firm service agreement for the West Coast Energy Center) have elected to pay negotiated rates, their rates will not change as a result of this proposal to revise the original Phase III recourse rates.

12. Gulfstream's firm rates are designed to accommodate the incremental gas service needs of existing and proposed electric power generation facilities and other shippers with similar requirements located in Florida. The recourse rates for firm transportation service use the straight fixed variable rate design, and the rationale of the Equitable Gas Company (Equitable) method,¹¹ although slightly modified to allow multiple firm transportation service offerings to correspond with varying hourly needs. Gulfstream offers firm transportation service that allows its shippers to take their maximum daily

⁹ *Gulfstream*, 105 FERC ¶ 61,052 (2003).

¹⁰ *Gulfstream*, 105 FERC ¶ 61,052 (2003), 98 FERC ¶ 61,349 (2002), 94 FERC ¶ 61,185, and 91 FERC ¶ 61,119 (2000).

¹¹ *Equitable Gas Co.*, 36 FERC ¶ 61,147 (1986). Under the Equitable method typically used for storage services, one-half of fixed costs are assigned to a deliverability component and the other half of fixed costs are assigned to a capacity component. One-half of the variable costs are assigned to an injection usage charge and the other half to a withdrawal usage charge. Gulfstream slightly modifies the Equitable method by using a single usage charge to recover its variable costs. Also, while Equitable establishes a monthly deliverability charge, Gulfstream establishes daily deliverability charges that vary to reflect different hourly services offered.

quantities in 12.5 hours, 14.286 hours, 16.667 hours, 20 hours, or 24 hours. Correspondingly, Gulfstream calculated different FTS deliverability recourse rates to reflect different maximum hourly quantities.

13. Gulfstream calculates its ITS and PALS rates based on a 100 percent load factor derivative of the FTS rates that assumes a maximum hourly quantity adjusted to correspond with 12.5 hours of delivery service per day. Instead of crediting any revenues from its ITS and PALS services to its firm customers, Gulfstream has elected to allocate \$10 million of its cost of service to its ITS and PALS services, thus reducing the cost of service for firm customers. Accordingly, Gulfstream will retain all revenues from its ITS and PALS services. In addition, Gulfstream charges an overrun penalty for FTS or ITS service when a shipper exceeds 110 percent of its scheduled quantity of gas or effective maximum daily quantity. The overrun penalty for FTS and ITS services uses the same rate design as the ITS rate for quantities under the 110 percent threshold.

14. Summing the deliverability, capacity and usage components, the proposed Phase III FTS recourse rates range from \$.05827/Dth to \$0.8482/Dth, depending on the hourly flow rate. Phase III ITS/PALS recourse rates range from a minimum of \$0.0055/Dth to a maximum of \$0.8482/Dth. Gulfstream's Phase III recourse rates are based on an all-inclusive rate base of \$1.41 billion for the first year Phase III facilities are in operation and the previously approved cost-of-service inputs.¹² The recourse rates are calculated at full design capacity of 1,095,000 Dth daily or 399,675,000 Dth annually. Gulfstream assumes all risk for underutilization of capacity and is prohibited from decreasing its billing determinants as authority to construct the pipeline was granted under the optional certificate procedures in effect at the time the initial application was filed.¹³

15. Consistent with Commission practice,¹⁴ and prior orders in this proceeding,¹⁵ we will require Gulfstream to file a cost and revenue study no later than 90 days after the end

¹² Gulfstream employs a straight-line depreciation rate of 1.67 percent for transmission plant, 5 percent for intangible plant, and 20 percent for computer equipment. Its capital structure is composed of 70 percent debt and 30 percent equity, with an 8 percent cost of debt and 14 percent return on equity, translating to an overall rate of return of 9.8 percent.

¹³ See 91 FERC ¶ 61,119 (2000).

¹⁴ See, e.g., *Natural Gas Pipeline Co. of America*, 118 FERC ¶ 61,211 at P 44 (2007); *Trunkline LNG Co., LLC*, 117 FERC ¶ 61,339 at P 25 (2006).

of the three-year period commencing with the effective date of Phase III service to justify its existing cost-based firm and interruptible rates. In this filing, Gulfstream's projected units of service should be no lower than those upon which Gulfstream's approved initial Phase III rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost-of-service data, including the cost of plant-in-service. After reviewing the data, we will determine whether we should exercise our authority under NGA section 5 to establish just and reasonable rates. In the alternative, in lieu of this filing, Gulfstream may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date of its proposed facilities.

B. Environment

23. On September 8, 2006, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Gulfstream Natural Gas System, L.L.C.'s Phase III Project and Notice of Site Visit and Request for Comments on Environmental Issues (NOI). We received responses to the NOI from the Florida Department of Transportation, Lake Point LLC, Mayaca LLC and Mr. Panagiotti E. Tsolkas. Our staff addressed all substantive comments in the environmental assessment (EA). The EA addresses geology, soils, water resources, wetlands, vegetation, wildlife, fisheries, endangered and threatened species, land use, cultural resources, air and noise quality, reliability and safety, and alternatives.

24. The EA was issued on March 30, 2007 with a 30-day comment period. The EA was mailed to federal, state, and local agencies, Native American tribes, public libraries, interveners to the FERC proceeding, and other interested parties. We received two comment letters on the EA, from the U.S. Fish and Wildlife Service (FWS) and Ms. Patricia D. Curry.

25. The FWS filed comments on April 17, 2007. In its comments, the FWS concurred with Commission's determinations that the project "may affect, but is not likely to

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¹⁵ See *Gulfstream*, 105 FERC ¶ 61,052 at P 32-33 (2003); 94 FERC ¶ 61,185 at ordering para. (G); 91 FERC ¶ 61,119 at 61,466 (2000). On September 27, 2005, Gulfstream's filed cost and revenue study for Phase I and Phase II was accepted by letter order issued by the Director, Division of Tariffs and Market Development – South.

adversely affect” the federally listed threatened and endangered wood stork, bald eagle and the eastern indigo snake.

26. Ms. Curry filed comments, on April 4, 2007, stating that a number of environmental impacts may result from the project and objecting to its construction and operation. She noted that two commercial/industrial buildings are located within 50 feet of the project’s construction workspace. These structures are discussed in section B.5.a of the EA. The construction and operation of the project is not anticipated to affect the operation of these commercial/industrial buildings and Gulfstream would notify the landowner and/or owner of these facilities prior to construction. Following completion of major construction, the property would be restored in accordance with our Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and any agreements between Gulfstream and the landowner/facility owner.

27. Ms. Curry stated that 12 active water supply wells are located within 150 feet of the construction workspace. Section B.2.a of the EA discusses the 12 water supply wells and mitigation measures Gulfstream would employ should project construction adversely affect the water supply. All 12 wells are used for non-potable water and are located within agricultural lands. Gulfstream would make necessary repairs and/or replacements to restore the water supply system to its pre-construction capacity by re-working the existing well or installing a comparable replacement in the event the water supply is impacted from construction activities. Furthermore, in the interim, Gulfstream would provide a temporary source of water.

28. Ms. Curry noted that one upland hardwood forest is located within the construction area. Sections B.3.0 and B.5.0 of the EA discusses upland forest land that would be impacted by the project. Less than two percent of the total acres of land affected by the project is designated as upland hardwood forest. Gulfstream would seed disturbed areas with grasses based on recommendations from the Natural Resources Conservation Service and the areas would be allowed to revegetate naturally. On the temporary right-of-way and extra work areas, trees would be allowed to reestablish. In addition, Gulfstream would implement the measures outlined in the Plan, as well as follow our Wetland and Waterbody Construction and Mitigation Procedures (Procedures).

29. Ms. Curry also expressed concern regarding the federally listed threatened and endangered species that may be within the project area. Section B.4.0 of the EA addresses the federally listed threatened and endangered wood stork, bald eagle and eastern indigo snake. The FWS has concurred with our determinations that the project may affect, but is not likely to adversely affect, these threatened and endangered species.

30. Ms. Curry commented that two wetlands would be affected by the project. Section B.2.c of the EA discusses the two wetlands that would be crossed by the project. The proposed Gulfstream right-of-way largely avoids impacts to wetlands. Approximately five percent of the total acres of land affected by the project is wetland habitat. Gulfstream would implement our Procedures to minimize any permanent impacts to the wetlands. One wetland is an emergent wetland and the other is a scrub-shrub wetland; both wetlands are expected to revegetate fairly rapidly after the project is constructed.

31. Ms. Curry stated that the pipeline would cross 224 waterbodies. Section B.2.b of the EA discusses the waterbody crossings included in the project. All of the waterbodies are associated with either agricultural activities or flood management conveyances. The larger canals (St. Lucie and L-8 Canals) are associated with the South Florida Water Management District (SFWMD) flood control operations, which ultimately supply irrigation water to small agricultural ditches through culverts. Due to the connectivity of the waterbodies, their biological, ecological and water quality characteristics are relatively homogeneous. Gulfstream would implement our Plan and Procedures, and additional mitigation measures that are described in the EA.

32. Ms. Curry commented that the end destination of the pipeline, which is the West County Energy Center, would be 1,000 feet from the Arthur G. Marshall Loxahatchee National Wildlife Refuge. However, the pipeline end point is approximately 6,000 feet north of the refuge. No impacts to the refuge from pipeline construction and operation are anticipated and environmental impacts from the construction and operation of the power plant are under the jurisdiction of the Florida Department of Environmental Protection (FDEP). In addition, Ms. Curry noted that an approved new housing development is planned in direct proximity to the pipeline and the power plant. Section B.5.a of the EA discusses residential areas within the vicinity of the project. There are no residences within 50 feet of the construction workspace. Any planned development outside the pipeline easement is regulated by the U.S. Department of Transportation (DOT). Section B.8.0 of the EA discusses the safety and reliability of pipeline facilities, according to DOT regulations.

33. Ms. Curry also expressed concern over the project's proximity to active or proposed rock-mining operations and the associated blasting activities that would occur near the proposed pipeline. Section B.1.a of the EA addresses mining activities within the project area. The project would not cross any present mining operations and impacts from nearby present or planned mining activities are not anticipated. We note that FPL purchased the land for the West County Energy Center from Palm Beach Aggregates.

Gulfstream has reviewed the Palm Beach County Development Order relative to Palm Beach Aggregates' blasting, Exhibit B Blasting Agreement from the Real Estate Purchase Agreement between Palm Beach Aggregates and FPL, and the Blasting Conditions Report at the West County Energy Center (collectively referred to as the blasting documents). Based on its review of these blasting documents, Gulfstream has designed its pipeline to operate safely under the maximum allowable ground vibration associated with these operations, as allowed under the blasting documents and under the Florida State Fire Marshall's rules regarding blasting.

34. Ms. Curry also commented on the additional air pollution and large amounts of water consumption that would result from operating FPL's proposed power plant, which the pipeline would service. Section A of the EA discusses the power plant, which is under the jurisdiction of the FDEP.

35. Lastly, Ms. Curry provided files pertaining to the L-8 Reservoir Project (L-8 project) sponsored by the SFWMD. Based on the information we reviewed, the L-8 project appears to be more than 2,000 feet from Gulfstream's project area. No impacts from pipeline construction and operation to the L-8 project are anticipated.

36. Based on the discussion in the EA, we conclude that if constructed in accordance with Gulfstream's application and supplements, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

37. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹⁶ Gulfstream shall notify the Commission's environmental staff by telephone, e-mail or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Gulfstream. Gulfstream shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

¹⁶See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

38. The Commission on its own motion received and made a part of the record in this proceeding all filed evidence, including the application and the supplements and exhibits thereto, and upon consideration of the record,

The Commission orders:

(A) The certificate of public convenience and necessity issued to Gulfstream in this docket is amended as described and conditioned herein, as more fully described in the application as amended and in the body of this order.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned as discussed in the order and on the following:

1. Gulfstream completing the authorized construction and making the facilities available for service within two years of this order in accordance with section 157.20 (b) of the Commission's regulations;
2. Gulfstream complying with paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and,
3. Gulfstream complying with the environmental conditions listed in the appendix to this order.

(C) The authorization granted in Ordering Paragraph (A) above is conditioned on Gulfstream's filing, not less than 30 days nor more than 60 days prior to the proposed effective date of the Phase III facilities operation, revised Phase III rates and tariff sheets consistent with the modifications discussed in the body of this order

(D) Gulfstream shall make the cost and revenue filing for Phase III as discussed in the body of this order.

(E) Gulfstream shall notify the Commission's environmental staff by telephone, e-mail and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Gulfstream. Gulfstream

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shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions

1. Gulfstream 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. Gulfstream 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 delegated 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.

3. **Prior to any construction**, Gulfstream 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 location 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**, Gulfstream 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. Gulfstream shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the *Upland Erosion Control, Revegetation, and Maintenance Plan*, 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.
6. Gulfstream shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract 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.
7. Gulfstream shall not begin construction activities **until**:
 - a. the staff receives comments from the FWS regarding the proposed action;
 - b. the staff completes formal consultation with the FWS, if required; and
 - c. Gulfstream has received written notification from the Director of OEP that construction or use of mitigation may begin.
8. In the event the HDD of a waterbody is unsuccessful, Gulfstream shall file with the Secretary a site-specific plan for the crossing of each waterbody that includes scaled drawings identifying all areas that would be disturbed by construction. The Director of OEP must review and approve this plan in writing **before construction of the crossing**.