

147 FERC ¶ 61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Sierrita Gas Pipeline, LLC

Docket Nos. CP13-73-000
CP13-74-000

ORDER ISSUING CERTIFICATE AND GRANTING PRESIDENTIAL PERMIT

(Issued June 6, 2014)

1. On February 7, 2013, in Docket No. CP13-73-000, Sierrita Gas Pipeline, LLC (Sierrita) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for a certificate of public convenience and necessity to construct and operate a new 60.9-mile³ interstate natural gas pipeline between Tucson and Sasabe, Arizona. Sierrita's proposed pipeline will provide transportation service for approximately 200,846 dekatherms (Dth) per day of natural gas to a new border crossing facility located near the international boundary between the United States and Mexico. Sierrita requests a Part 284 Subpart G blanket certificate to provide natural gas transportation services and a Part 157 Subpart F blanket certificate to construct certain facilities. Sierrita also requests approval for its proposed initial recourse rates for transportation service and for its *pro forma* tariff.⁴

2. On February 8, 2013, in Docket No. CP13-74-000, Sierrita filed an application requesting a Presidential Permit and authorization pursuant to section 3 of the NGA⁵ to construct and operate new border crossing facilities for the purpose of exporting natural

¹ 15 U.S.C. § 717f (c) (2012).

² 18 C.F.R. pt. 157 (2013).

³ In the original application filed on February 7, 2013 Sierrita proposed a 59.1-mile pipeline. Sierrita filed a route modification on March 25, 2013 to parallel State Highway 286 and Sierrita adopted another route modification subsequent to the draft EIS. The route changes added approximately 1.8 miles of pipeline to the project.

⁴ 18 C.F.R. pt. 284 (2013).

⁵ 15 U.S.C. § 717b(a) (2012).

gas to Mexico. The border crossing facilities are located at the international boundary between the United States and Mexico, in Pima County, Arizona, near the town of Sasabe, Arizona.

3. The 60.9-mile natural gas pipeline and the border crossing facilities are referred to as the Sierrita Pipeline Project. As discussed below, the Commission grants the requested authorizations, subject to conditions.

I. Background and Proposal

4. Sierrita is a limited liability company incorporated in the state of Delaware.⁶ Sierrita currently neither owns nor operates any interstate pipeline facilities nor does it provide any services subject to the Commission's jurisdiction. Upon acceptance of the certificate requested herein and construction of the facilities as proposed in this application, Sierrita will become a natural gas company within the meaning of section 2(6) of the NGA⁷ and will be subject to the jurisdiction of the Commission.

5. Sierrita requests authority to construct and operate approximately 60.9 miles of 36-inch diameter pipeline, two meter stations, six mainline valves, two pig launchers, two pig receivers, and appurtenant facilities.⁸ The proposed pipeline will provide transportation service for 200,846 Dth per day of natural gas from a tie-in with El Paso Natural Gas Company's (El Paso) existing South Mainline System near Tucson to a meter station at Sierrita's proposed border crossing facilities at the U.S.-Mexico border.

6. Sierrita also seeks Commission authorization under section 3 of the NGA and a Presidential Permit to construct, operate, and maintain a new border crossing facility for the purposes of exporting natural gas to Mexico. The proposed border crossing facilities will consist of approximately 60 feet of 36-inch diameter pipeline with a maximum daily export capacity sufficient to transport up to 200,846 Dth per day of natural gas, and will interconnect with the Sásabe-Guaymas Pipeline in Mexico.

7. Sierrita states that the Sierrita Pipeline Project is being proposed in response to increased demand for natural gas in Mexico. Sierrita explains that the Comision Federal de Electricidad (CFE), the Mexican state-owned electric utility, has developed a plan to convert several oil-fired power generation plants in northwestern Mexico to natural gas and to construct new natural gas fired-power generation plants. The CFE has specific

⁶ Sierrita is owned by Kinder Morgan Operating L.P. "A" (KMOLPA), MGI Enterprises US LLC, and MIT Pipeline Investment Americas, Inc. (Mitsui).

⁷ 15 U.S.C. § 717a(6) (2012).

⁸ There are no compression facilities proposed.

plans to convert one thermoelectric power plant, the Puerto Libertad Power Plant, in the Mexican state of Sonora, located approximately 150 miles south of the U.S.-Mexico border from oil to natural gas. Concurrent with the development of the Sierrita Pipeline Project, IENova, a natural gas utility of Sempra Energy, is constructing the Sasabe-Guaymas Pipeline in northwest Mexico to connect Sierrita's border crossing facilities with both the Puerto Libertad Power Plant and City of Guaymas, in the state of Sonora.

8. Sierrita states that the estimated cost of the Sierrita Pipeline Project is \$204,250,000.⁹ Sierrita proposes to provide firm service under Rate Schedule FT and interruptible service under Rate Schedule IT pursuant to Part 284 of the Commission's regulations at cost-based recourse rates. Sierrita also seeks authority to charge negotiated rates.

9. Sierrita conducted an initial open season from October 15 to November 15, 2012, to gauge interest and support for the proposed project. Sierrita offered both recourse rate options and negotiated rate options. At the conclusion of the open season, Sierrita received no bids. Sierrita held a second open season from January 8, 2013, to January 17, 2013. MGI Supply Ltd. (MGI) submitted a binding bid for a term of 25 years for the full design capacity of the Sierrita Pipeline Project.¹⁰ MGI has elected to pay the maximum recourse rate.

II. Notice, Interventions, Comments, and Protests

10. Notice of Sierrita's applications in Docket Nos. CP13-73-000 and CP13-74-000 was published in the *Federal Register* on February 28, 2013, 78 Fed. Reg. 13,659 and 13,658, respectively. The Commission issued a notice of the application for the Sierrita Pipeline Project setting the comment period deadline as March 15, 2013. In response to a request from the Tohono O'odham Nation, the Commission extended the comment period to April 15, 2013.

11. Altar Valley Conservation Alliance (Altar Valley Alliance), El Paso Electric Company, MGI, Pima County, Santa Margarita Ranch, Inc., and Southwest Gas Corporation (Southwest) filed timely, unopposed motions to intervene in both dockets.¹¹ El Paso Municipal Customer Group and its members, jointly and individually, filed a

⁹ Sierrita's Application at Exhibit K.

¹⁰ Sierrita and MGI executed a transportation services agreement (TSA) on February 8, 2013, and filed it with the Commission on February 20, 2013.

¹¹ Altar Valley Alliance, Pima County, and Santa Margarita Ranch also filed comments in opposition. MGI filed comments in support of the proposed project.

timely motion to intervene in only CP13-73-000.¹² Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹³

12. Pima Natural Resource Conservation District, the Tohono O'odham Nation, and jointly, UNS Gas, Inc. and Tucson Electric Power Company, filed untimely motions to intervene. Tohono O'odham Nation also filed comments in opposition. We will grant these late-filed motions to intervene because to do so at this stage of the proceeding will not unduly delay, disrupt, or otherwise prejudice the proceeding or other parties.¹⁴

13. Additionally, on April 15, 2013, Southwest, an existing firm shipper on El Paso's mainline system, filed a protest in Docket No. CP13-73-000. Southwest asserts that Sierrita's balancing and intraday take flexibility on El Paso's mainline system creates service and equity concerns for El Paso's existing shippers. Southwest also seeks clarification on Sierrita's requested waiver of the open-access segmentation requirement.

14. On April 16, 2013, the Altar Valley Alliance and the Santa Margarita Ranch filed a late, joint protest, in both dockets. Subsequently, motions for leave to answer and answers were filed by Sierrita on April 20, 2013 and Altar Valley Alliance and the Santa Margarita Ranch on May 21, 2013. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers,¹⁵ our rules do provide that we may, for good cause, waive this provision.¹⁶ We will accept the above-described protest and responsive pleadings because they have provided information that assisted us in our decision-making process.

15. Several commenters, including state and local politicians, filed comments in support of the proposed project based on the project's potential economic benefits. However, many other parties filed comments in opposition to the Sierrita Pipeline Project. The parties and commenters opposing the project include individuals

¹² The El Paso Municipal Customer Group comprises the following distributor-customers of El Paso Natural Gas: City of Mesa, Arizona; City of Safford, Arizona; City of Benson, Arizona; City of Willcox, Arizona; City of Las Cruces, New Mexico; City of Socorro, New Mexico; City of Deming, New Mexico; The Navajo Tribal Utility Authority; Graham County Utilities, Inc.; and Duncan Rural Service Corporation.

¹³ 18 C.F.R. § 385.214(c) (2013).

¹⁴ 18 C.F.R. § 385.214(d) (2013).

¹⁵ 18 C.F.R. § 385.213(a)(2) (2013).

¹⁶ 18 C.F.R. § 385.101(e) (2013).

who reside in Altar Valley, managing vegetation, raising livestock, and providing ecotourism activities, and others providing public services, such as public safety and conservation services. The comments and protests raise issues regarding the need for the proposed project; the impacts to existing customers; the impacts to the environment, to historic and cultural resources, and to recreational and commercial activities in the Altar Valley; the disruption to ongoing conservation efforts; and the potential increase in illegal activity at the international border. The issues raised in the comments were fully addressed in the draft and final Environmental Impact Statement (EIS) prepared for the proposed project and several major issues are also discussed further below.

III. Request for Formal Hearing

16. The Altar Valley Alliance, Santa Margarita Ranch, Pima County, and Tohono O'odham Nation request a formal, trial-type hearing. They believe such a hearing is necessary for the Commission to reach an informed and well-reasoned decision regarding the proposal and opposing positions or alternatives.

17. The parties have raised no issues of material fact that cannot be resolved on the basis of the written record in this proceeding.¹⁷ We find that there is no need for a trial-type evidentiary hearing as all interested parties have had a full opportunity to present their views through multiple written submissions. Therefore, the parties' requests are denied.

IV. Request for Consolidation

18. Altar Valley Alliance, Santa Margarita Ranch, and Tohono O'odham Nation request that the Commission consolidate Docket Nos. CP13-73-000 and CP13-74-000 for hearing and decision because of the interrelated nature of the applications.

19. Although the separate applications filed by Sierrita in the two proceedings are interrelated, the existing records in the two dockets are sufficient for us to consider and address both applications together in this order as related cases. Thus, we find no need for formal consolidation.¹⁸

V. Discussion

Section 7 Authorization

20. Since the proposed natural gas pipeline facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the

¹⁷ See, e.g., *Questar Pipeline Co.*, 140 FERC ¶ 61,040, at P 14 (2012).

¹⁸ See *Williams Natural Gas Co.*, 67 FERC ¶ 61,252, at 61,826 (1994).

construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁹

A. Certificate Policy Statement

21. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.²⁰ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding and of subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

22. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or 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, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

1. Subsidization

23. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Sierrita is a new interstate pipeline which will provide transportation service initially for a single firm customer, MGI. Sierrita has no existing customers. Therefore, there will be no subsidization by existing customers.

¹⁹ 15 U.S.C. § 717f (2012).

²⁰ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

2. Other Adverse Impacts

a. Existing pipelines and their captive customers

24. The Sierrita Pipeline Project will serve new demand for natural gas transportation by MGI, delivering natural gas to the border crossing facilities and on to Mexico. Sierrita's services will not replace any existing services by other pipelines.

25. The El Paso Municipal Customer Group, whose members are municipalities that own and operate distribution systems, expresses a concern about the future availability of capacity on El Paso's system and the potential for El Paso's system to be oversubscribed if Sierrita moves to expand its firm capacity. To the extent any customer holds a firm service contract on El Paso, Sierrita's contract with El Paso will not affect other customer's contracted capacity.

26. In its protest, Southwest posits that actions taken by El Paso pursuant to an operational balancing agreement (OBA)²¹ between it and Sierrita could trigger Strained or Critical Operating Conditions (SOCs or COCs) on El Paso's systems, thus impacting service to El Paso's customers.²² Southwest also expresses concern that MGI, by virtue of being the only shipper on Sierrita, will receive benefits of any greater balancing and intraday take flexibility that Sierrita receives through its OBA with El Paso that are not available to other shippers on El Paso.

27. Sierrita responds that existing and prospective shippers on El Paso's system have all the assurances within El Paso's tariff that service will be provided on an open-access and not unduly discriminatory basis. Sierrita contends that if its project were to ever adversely impact the quality of service offered by El Paso, affected customers could seek regulatory protection afforded by the Commission's regulations.

Commission Finding

28. El Paso is obligated to meet its firm transportation obligations to firm transportation customers. Therefore, to the extent Southwest or any other customer has a firm service contract on El Paso, that customer's contracted capacity should not be impacted by either Sierrita's provision of firm transportation service to MGI or El Paso's interconnection with Sierrita's pipeline.

²¹ An OBA is a contract between two parties which specifies the procedures to manage operating variances at an interconnect. (NAESB WGQ Flowing Gas Standards, Definition 2.2.1).

²² El Paso's Strained or Critical Operating Conditions are outlined in its *FERC Gas Tariff*, Third Revised Volume No. 1A.

29. Further, the specific assertions raised by Southwest regarding potential adverse operational impacts on El Paso's system are speculative. As Southwest notes, "recent COC and SOC notices on El Paso have been few."²³ There is nothing in the record that provides any support to Southwest's speculation that El Paso's system will experience a greater degree of operational failure as a result of interconnection with the Sierrita Pipeline Project, even if Sierrita proposes to offer its shippers greater levels of balancing and intraday take flexibility than available to shippers on El Paso. Given this, we find that Sierrita's proposed project should not have any adverse impact on existing pipelines in the market and their captive customers.

30. We similarly find Southwest's assertion that MGI will essentially receive a discriminatorily-better quality service on El Paso than is available to El Paso's other shippers by virtue, as Sierrita's only customer, of being the sole beneficiary of any flexibility available to Sierrita under an OBA with El Paso, is too speculative to be dealt with in this proceeding. In the event that a shipper on El Paso believes, once service on Sierrita has commenced, that it has experienced undue discrimination vis-à-vis the service being received on El Paso's system by MGI, it may file a complaint with the Commission.

b. Affected landowners and communities

31. As discussed in greater detail below in the environmental section, and in the EIS, the proposed project will cross public and private lands. Approximately 85 percent of total project land is owned by the State of Arizona, about two percent is owned by Pima County, and about 13 percent of the total project land is privately owned.²⁴

32. Many commenters raise concerns regarding the potential for property devaluation resulting from construction damage and maintenance of the permanent pipeline easement. Commenters contend that the Sierrita Pipeline Project would cause an increase in illegal immigration and drug trafficking which would increase the public perception of danger in the area. They also contend that this perception would lead to a decrease in recreational and ecotourism visits to the Altar Valley. Additionally, commenters contend that the construction and operation of a pipeline through Altar Valley will interfere with the use of these lands for ranching and ecotourism services. Pima County anticipates increased costs to the county's public services due to its prediction of a rise in illegal immigration and drug-trafficking activity.

²³ We note that Southwest acknowledges that recent COC and SOC notices on El Paso have been few. Southwest's Protest at 6.

²⁴ EIS at 4-173, 4-175.

33. Sierrita states that it designed its proposed route to minimize impacts on landowners and communities. Sierrita will negotiate easements with landowners for the temporary work spaces, as well as for the permanent right-of-way for the underground pipeline. Sierrita states that such easement agreements will ensure that landowners are adequately compensated and are able to request site-specific plans for their property. Sierrita's Reclamation Plan will work to minimize visual impacts along the permanent right-of-way. As discussed in more detail in the EIS, Sierrita proposes several measures to mitigate for a potential increase in illegal activities, resulting from constructing and operating the Sierrita Pipeline Project.²⁵

34. For purposes of our consideration under the Certificate Policy Statement, we find that Sierrita has taken steps to minimize any adverse impacts on landowners and surrounding communities.

c. Benefits and Project Need

35. Commenters question the need for the Sierrita Pipeline Project because all of the gas will be delivered to Mexico. Commenters state that the project serves no purpose for the U.S. public.

36. All of the proposed capacity at the project has been subscribed under a long-term contract with MGI, demonstrating the existence of market demand for the project.²⁶ In addition, as discussed in P 118 below, the project promotes our national interests by reducing barriers to foreign trade and stimulating the flow of goods and services under the North American Free Trade Agreement.²⁷

37. Based on the benefits the project will provide and the minimal adverse effects on existing shippers, other pipelines and their captive customers, landowners and surrounding communities, we find, consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, that the public

²⁵ EIS at 4.9.1 and 4.9.2.

²⁶ Service commitments for new capacity constitute important evidence of demand for a project. Certificate Policy Statement, 88 FERC at 61,748. *See, e.g., Turtle Bayou Gas Storage Co., LLC*, 135 FERC ¶ 61,233, at P 33 (2011), which found that the applicant had not sufficiently demonstrated the need for its particular project where the applicant did not conduct an open season or submit precedent or service agreements for the project's capacity and provided only vague and generalized evidence of need for natural gas at the regional and national level.

²⁷ Pub. L. No. 103-182, 107 Stat. 2057 (1993).

convenience and necessity requires approval of Sierrita's proposal, as conditioned in this order.

B. Rates

1. Initial Rates

38. Sierrita proposes to provide firm (Rate Schedule FT) and interruptible (Rate Schedule IT) transportation services under Part 284 of the Commission's regulations at cost-based recourse rates, and also requests the authority to offer service at negotiated rates. Sierrita states that because its pipeline will be configured like a "soda straw" with one receipt and one delivery point, its recourse rate proposal reflects a postage-stamp, straight-fixed variable rate design.

39. Sierrita derived its proposed recourse rates based on the full 200,846 Dth per day design capacity of the pipeline, a total projected construction cost of approximately \$204 million, and a total projected annual cost of service of \$35,988,484. Sierrita classified \$35,913,484 of the cost of service as fixed costs and \$75,000 as variable costs.²⁸ Sierrita proposes a maximum FT reservation recourse rate of \$14.9009 per Dth per month, and an FT commodity rate of \$0.0010 per Dth, based on annual transportation volumes of 73,308,790 Dths. The maximum IT recourse rate, \$0.4909 per Dth, is the 100 percent load factor daily derivative of the monthly FT rate.

40. The Commission has reviewed Sierrita's proposed cost of service, allocation and rate design and finds they reasonably reflect current Commission policy. The Commission accepts Sierrita's proposed recourse rates as initial rates for service on its new pipeline.

41. Sierrita does not project or allocate any costs to interruptible service. Instead, in General Terms and Conditions (GT&C) Section 15 of its *pro forma* tariff, Sierrita proposes that if natural gas is transported under Rate Schedule IT and revenues exceeding variable costs are realized, it will credit 100 percent of those revenues to Account No. 108, Accumulated Provision for Depreciation. Sierrita asserts this treatment will

²⁸ Sierrita's proposed cost of service consists of \$1,773,656 of operation and maintenance expenses, \$8,120,460 of depreciation expenses, \$21,163,977 of pre-tax return allowance (overall pre-tax return of 10.30 percent, based on a 14 percent rate of return on equity and a capital structure of 30 percent equity and 70 percent debt), and \$4,930,391 of taxes other than income taxes, for a total cost of service for year one of \$35,988,484.

ensure that over-recovery of its cost of service does not occur and that shippers will benefit “when the rates reset.”²⁹

42. The Commission rejects Sierrita’s IT revenue crediting proposal. Commission policy requires pipelines to allocate costs to all services (including interruptible and short-term firm transportation) or credit revenues generated by these services to maximum rate shippers. The purpose of interruptible revenue credits is to protect the pipeline’s customers from too low an allocation to interruptible service. Thus, it follows that the customers who receive the credits should be the customers harmed by the erroneously low allocation. An allocation of too little costs to interruptible service causes both the firm and interruptible maximum rates to be too high.³⁰ Sierrita’s proposal to credit revenues to Account No. 108 will delay any pass through of credits to maximum rate shippers whose rates are too high until Sierrita chooses to file a NGA general section 4 rate case. Under Sierrita’s proposal, shippers in addition to the ones who paid the higher maximum rates when the interruptible revenue credits were accrued may benefit. The Commission’s policy regarding new interruptible services requires either a 100 percent credit of the interruptible revenues, net of variable costs, to maximum rate firm and interruptible customers or an allocation of costs and volumes to these services.³¹ When Sierrita files its tariff in compliance with this order, Sierrita is required to revise its tariff accordingly.

2. Fuel, Lost and Unaccounted For

43. Sierrita initially proposed a lost and unaccounted for rate related to its operation of thermoelectric generators that would be located at its mainline block valves. In response to a staff data request, Sierrita states that it no longer plans to use thermoelectric generators,³² and that the 0.30 percent lost and unaccounted for reimbursement percentage will be solely for reimbursement related to ultrasonic meters. Sierrita states that “the ultrasonic meters used for Sierrita are designed, calibrated and installed to industry accepted standards that will have an expected uncertainty of at least +/- 0.25%.”³³ Sierrita states there will be no compression on the pipeline and no additional facilities requiring fuel use. Therefore, Sierrita proposes to be reimbursed only for its lost

²⁹ Sierrita’s Application at Exhibit N, P 3.

³⁰ *Transcontinental Gas Pipe Line Corp.*, 78 FERC ¶ 61,057, at 61,209 (1997).

³¹ *Georgia Strait Crossing Pipeline LP*, 98 FERC ¶ 61,271, at 62,055-62,056 (2002).

³² Sierrita’s December 23, 2013 Response to Data Request at 6.

³³ *Id.* at 7.

and unaccounted-for gas through a fixed lost and unaccounted for rate of 0.30 percent stated at Section 2, Statement of Rates, of its tariff.

44. Sierrita has proposed a fixed lost and unaccounted for rate; therefore, the proposed lost and unaccounted for percentage, though projected, should be justified by the industry standard for ultrasonic meters. As noted, Sierrita states that “the ultrasonic meters used for Sierrita are designed, calibrated and installed to industry accepted standards that will have an expected uncertainty of at least +/- 0.25%.” Consequently, the Commission requires Sierrita to revise its lost and unaccounted for percentage to reflect the 0.25 percent industry standard. In addition, Sierrita must file lost and unaccounted for data along with a cost and revenue study at the end of its first three years of service as required below. Given this is a new pipeline and little information has been presented to demonstrate the level of uncertainty attributed to these ultrasonic meters with a variance between -0.25 percent and +0.25 percent, the Commission finds it appropriate for Sierrita to provide such data at the end of its first three years in service.

3. Rate Changes and Three-Year Filing Requirements

45. Consistent with Commission precedent, Sierrita is required to file a cost and revenue study and file lost and unaccounted for data at the end of its first three years of actual operation to justify its existing cost-based firm and interruptible recourse rates.³⁴ In its filing, the projected units of service should be no lower than those upon which Sierrita’s approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission’s regulations to update cost of service data.³⁵ Sierrita’s cost and revenue study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, Sierrita is advised to include as part of the eFiling description, a reference to Docket No. CP13-73-000 and the cost and revenue study.³⁶ After reviewing the data, the Commission will determine whether to exercise its authority under NGA section 5 to investigate whether the rates remain just and reasonable. In the alternative, in lieu of this filing, Sierrita may make a NGA general section 4 rate filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

³⁴ *Bison Pipeline, LLC*, 131 FERC ¶ 61,013, at P 29 (2010); *Ruby Pipeline, LLC*, 128 FERC ¶ 61,224, at P 57 (2009); *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, at P 34 (2008).

³⁵ 18 C.F.R. § 154.313 (2013).

³⁶ *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

C. Rate Schedule FT

46. Rate Schedule FT, section 2.5, includes a reference to winter-time only service but the tariff does not appear to define when such service occurs. Furthermore, it is not clear how the availability or performance of such service would impact Sierrita's ability to offer FT service on a year-round basis. Sierrita is directed to include in its tariff a definition of winter-time only service, and explain the operational conditions that would enable Sierrita to provide such service. In the alternative, Sierrita may delete all references to such service from its tariff.

D. Pro Forma Tariff

1. Greenhouse Gas Costs

47. Proposed GT&C Section 28 would authorize Sierrita to recover any future mandatory greenhouse gas costs associated with operating the pipeline through a surcharge. The provision would allow Sierrita to recover the costs imposed on it by any statutory or regulatory framework, including taxes, cap and trade costs, or command and control costs. Sierrita acknowledges that currently there are no statutory or regulatory frameworks that impose costs for greenhouse gas emissions. Sierrita suggests if future mandatory costs associated with greenhouse gas emissions are incurred, it will make the appropriate tariff filing for recovery of such costs at that time, for Commission acceptance.

48. The Commission rejects the proposed GT&C Section 28 as inconsistent with Commission precedent. As the Commission noted in *Southern Natural Gas Co.*,³⁷ no legislation currently imposes greenhouse gas costs on pipelines. It is speculative to anticipate what types of costs Sierrita may be subject to under any future statutory or regulatory framework, whether such costs should be recoverable, and, if recoverable, the manner in which they should be recovered. This action is without prejudice to Sierrita filing a proposal in the future if it actually incurs such costs. Consistent with this determination, Sierrita is directed to delete references to greenhouse gas costs from Note 3 in Exhibits B and A, respectively, of Sierrita's FT and IT form of transportation service agreements.

2. Incidental Purchases and Sales

49. Sierrita proposes to include language in GT&C Section 27 for the purchase and sale of operational gas to the extent necessary to maintain reliable system operations

³⁷ 127 FERC ¶ 61,003, at P 28 (2009), *order following technical conference*, 128 FERC ¶ 61,211 (2009).

including, but not limited to, system pressure, fuel quantities and line pack. Sierrita states it will post operational sales quantities for bidding on its electronic bulletin board (EBB).

50. The Commission requires pipelines to include in their tariffs specific provisions addressing operational sales and purchases of natural gas.³⁸ These provisions include: (a) the specific circumstances in which the pipeline will perform an operational purchase or sale; (b) a statement that operational purchases or sales have a lower transportation priority than firm transportation and there will be no transportation service associated with its operational purchases or sales of gas; (c) a statement that operational sales service is unbundled from transportation service; (d) posting and bidding procedures for the purchase and sale of gas for operational purposes; and (e) a commitment to filing an annual report of sales and purchases and revenues derived from the sale of gas, and the crediting of revenues to shippers. The report must indicate the source of gas, date of the purchase/sale volumes, purchase/sale price, costs and revenues from purchase/sale, and the disposition of the costs and revenues.

51. Sierrita's proposed tariff language generally sets forth the circumstances in which it will perform operational purchases and sales and provides for posting and bidding procedures for the purchase and sale of natural gas for operational purposes. However, Sierrita's proposal fails to include several other provisions that the Commission has required. Therefore, we will require Sierrita to revise its operational sales and purchases tariff language to include the following provisions:

- a. a statement that operational purchases or sales have a lower transportation priority than firm transportation;
- b. a statement that operational sales service is unbundled from transportation service; and,
- c. a commitment to the filing of an annual report in order to justify each operational purchase and sale and revenues derived from the sale of gas and the crediting of revenues from such sales to shippers. The report must indicate the source of the purchase or sale, date of the purchase/sale volumes, purchase/sale price, costs and revenues from the purchase/sale, and the disposition of the costs and revenues, an explanation as to the purpose of any operational purchase and or sale, and identification of all entities, including affiliates, from which the pipeline purchases operational gas.

³⁸ *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 57 (2005); *Colorado Interstate Gas Co.*, 107 FERC ¶ 61,312, at P 15 (2004), *order on reh'g*, 111 FERC ¶ 61,216, at P 57 (2005); and *Dominion Transmission, Inc.*, 106 FERC ¶ 61,029 (2004).

3. North American Energy Standards Board (NAESB)

52. Sierrita adopted the Business Practices and Electronic Communications Standards of NAESB Wholesale Gas Quadrant's (WGQ) Version 2.0. Sierrita has identified those standards incorporated by reference in GT&C Section 23. Those standards not incorporated by reference by Sierrita have also been identified, along with the tariff record in which they are located. In the event an updated version of the NAESB WGQ standards is adopted by the Commission prior to Sierrita's in-service date, the Commission directs Sierrita to file revised tariff records consistent with the then current version.

4. Exemptions, Waivers and Variances

a. Request for Exemption from Segmentation and Flexible Point Policies

53. Sierrita requests exemption from section 284.7(d) of the Commission's regulations requiring pipelines, to the extent operationally feasible, to permit shippers to segment firm capacity either for their own use or for the use of replacement shippers in capacity release transactions.³⁹ Sierrita also requests exemption from the Commission's policy that in a segmentation transaction, both releasing and replacement shippers may choose primary receipt and delivery points equal to their contract demand.⁴⁰ Sierrita states that such policies are not applicable to its system because it has only one receipt point and one delivery point. Sierrita represents that if it offers additional points or constructs a lateral in the future, it will re-examine the implementation of such policies in its tariff.

54. Southwest protests Sierrita's request for exemptions from the segmentation and flexible point policies. Southwest acknowledges that the Commission has waived its flexible-point policy requirement on pipelines with only one receipt and one delivery point. However, Southwest asserts that development along the Sierrita pipeline is feasible and therefore requests clarification that Sierrita's requested waiver will not foreclose service to or from a shipper at a future Sierrita interconnection downstream of the currently proposed El Paso delivery point should a shipper be willing to pay for the interconnect.

³⁹ 18 C.F.R. § 284.7(d) (2013).

⁴⁰ This policy is commonly referred to as the *Texas Eastern/El Paso* policy. *Texas Eastern Transmission Corp.*, 63 FERC ¶ 61,100, at 61,452 (1993); *El Paso Natural Gas Co.*, 62 FERC ¶ 61,311, at 62,991 (1993).

55. Sierrita responds that it currently has no plans to expand its system and therefore there is no need for the Commission to address such a hypothetical situation as described by Southwest.

56. The Commission finds that because Sierrita has only one receipt point and one delivery point, segmentation is not operationally feasible on the currently configured system. Therefore, we will grant Sierrita a limited waiver from implementing segmentation on its system. For the same reason, Sierrita is granted a limited waiver from implementing our flexible point policy. Both waivers are granted only until Sierrita adds a point to its system making segmentation operationally feasible. Before such additional point is placed in service, Sierrita must file new or revised tariff records in accordance with the Commission's regulations to provide for segmentation and flexible point rights. Consequently, Southwest's protest in this regard is denied.

57. Further, we will deny Southwest's request for clarification that the requested waivers from segmentation and flexible point policies will not foreclose service to or from a shipper at a future Sierrita interconnection downstream of the currently proposed El Paso delivery point should a shipper be willing to pay for the interconnect. Such clarification is unnecessary because under the Commission's policy set forth in *Panhandle Eastern Pipe Line Co.*,⁴¹ a party desiring access to a pipeline must be allowed to obtain an interconnection if the party satisfies five conditions, including that the party seeking the interconnection must be willing to bear the costs of the construction if the pipeline performs that task, the proposed interconnection must not adversely affect the pipeline's operations, and the interconnection and resulting transportation must not diminish service to the pipeline's existing customers.

b. GT&C Section 23 – Waiver of Pooling Standards

58. NAESB Standard 1.3.17 states that “[i]f requested by a shipper or supplier on a transportation service provider's system, the transportation service provider should offer at least one pool.” Sierrita requests waiver of NAESB WGQ Version 2.0 standards 1.3.17, 1.3.18 and 3.3.6, governing pooling. Sierrita maintains the indicated standards are not applicable to a pipeline with its operational characteristics. Sierrita states that in the event the pipeline's configuration changes and pooling is applicable, it will implement the pooling standards as appropriate.

59. Sierrita's request for waiver of pooling standards is denied without prejudice to its ability to request a waiver in the future. Sierrita has not supported its claim that pooling could not be implemented on its system in the future and, at any rate, it is not obliged to offer a pool unless requested to do so.

⁴¹ 91 FERC ¶ 61,037, at 61,142 (2000).

c. **GT&C Section 6.1 – Request to Extend NAESB Nomination Deadlines**

60. Sierrita requests, for each of the nomination cycles described in NAESB Standard 1.3.2 and set forth in GT&C Section 6.1, a fifteen minute extension of the deadlines for nominations leaving the control of the nominating party, and for receipt of nominations by transporter, in order to match the same extended deadlines on El Paso's system, Sierrita's sole upstream pipeline. Sierrita points out that all volumes transported for its only shipper, MGI, are received at the interconnection with El Paso, and argues that such extensions of time will ease scheduling for MGI and future shippers utilizing both systems.

61. The Commission finds that the proposed extensions will provide greater nominating flexibility than the standard NAESB deadlines, and will enable Sierrita to synchronize its nomination process with the process on El Paso, its only upstream interconnected party. Further, extending the nominating deadlines will not affect Sierrita's interaction with other off-system parties since other deadlines in each cycle, such as receipt of confirmation from the downstream operator or the effective flow times of scheduled quantities will remain as set forth in Standard 1.3.2. Therefore, we will approve Sierrita's proposal based on its currently proposed operational circumstances, but the extension of the deadlines for nominations will be subject to further review if another point or interconnection is added to its system.

5. **GT&C Section 3.1 – Gas Quality Specifications**

62. GT&C Section 3.1 of Sierrita's *pro forma* tariff sets forth Sierrita's gas quality and interchangeability standards for natural gas on its system. On June 15, 2006, the Commission issued its *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*.⁴² Paragraph 45 of the *Policy Statement* states that the Commission intends to apply its new policy on gas quality and interchangeability in its review of *pro forma* tariffs filed as part of section 7(c) certificate applications. Specifically, paragraph 45 states that applicants: (1) should ensure that their Exhibit P *pro forma* tariff include general terms and conditions addressing quality and interchangeability; (2) should include relevant information about the gas quality and interchangeability specifications of interconnecting pipelines and of the competing pipelines serving customers to be served directly by the new entrant as well as the relevant information about the gas supplies to be received by the new entrant for transportation or storage; and (3) must show how they derived gas quality and interchangeability specifications stated in their *pro forma* tariff.

⁴² 115 FERC ¶ 61,325 (2006) (Policy Statement).

63. Sierrita has complied with Part (1) of this policy statement by including gas quality and interchangeability standards in its pro forma tariff, but has not complied with parts (2) and (3). Therefore, when Sierrita files actual tariff sheets, as conditioned in the ordering paragraphs of this order, Sierrita should include relevant information about the gas quality and interchangeability specifications of interconnecting pipelines and of the competing pipelines serving customers to be served directly by Sierrita, as well as the relevant information about the gas supplies to be received by Sierrita for transportation. In addition, Sierrita should show how it derived the gas quality and interchangeability specifications stated in its pro forma tariff.

6. Nominations and Scheduling

a. Scheduling Priorities

64. During the nomination cycles described in NAESB Standard 1.3.2., Sierrita proposes to schedule nominations for capacity in accordance with the priorities set forth in GT&C Section 6.3(a) through (g),⁴³ as follows:

(a) first, Primary Capacity, allocated pro rata based on contract entitlements at the point or path location where a capacity limitation occurs; then

(b) Flow Path Secondary Capacity based on the highest rate being paid, with the highest rate scheduled first and same rates scheduled pro rata based on contract entitlements; then

(c) fuel gas required for incidental operational purchases and sales under GT&C Section 27, and Operator make-up/payback quantities under Operational Balancing Agreements (OBA); then

(d) Secondary Capacity based on the rate being paid, with the highest rate scheduled first and same rates scheduled based on contract entitlements; then

(e) FT authorized overrun capacity, with the highest rate being paid scheduled first and same rates scheduled pro rata based on contract entitlements; then

⁴³ Priorities (a), (b), and (d) are for nominations by firm shippers. Flow path Secondary Capacity in priority (b) is defined by GT&C Section 1.17 as transportation utilizing a point or some portion of the capacity path that is within the shipper's primary capacity path. Secondary Capacity in priority (d) is defined by GT&C Section 1.43 as capacity other than Primary or Flow Path Secondary Capacity.

(f) IT capacity based on the rate being paid, with the highest rate being paid first and shippers paying the same commodity rate scheduled pro rata based on nominated and confirmed quantities; then

(g) imbalance and makeup/payback quantities under Rate Schedules FT and IT, scheduled pro rata based on nominated and confirmed quantities.

Commission Response

65. In *Entrega Gas Pipeline LLC*,⁴⁴ the Commission found that transportation services associated with operational sales and purchases to the extent necessary to perform normal system management and operational functions should be scheduled after all firm services and before interruptible services.⁴⁵ In *Ingleside Energy Center, LLC*,⁴⁶ the Commission made the same finding as to operator make-up/payback quantities under an OBA. These determinations in *Entrega* and *Ingleside* apply to capacity currently described in priority (c). Therefore, Sierrita should revise GT&C Section 6.3 to schedule capacity currently described in priority (c) after secondary capacity currently described in priority (d).

66. Sierrita proposes to schedule nominations for authorized overrun capacity under Rate Schedule FT in current priority (e) ahead of nominations for capacity under Rate Schedule IT in current priority (f). The Commission has determined that nominations for authorized overrun and interruptible services should have the same scheduling priority.⁴⁷ Sierrita is directed to revise GT&C Section 6.3 by combining priorities (e) and (f) into a single scheduling priority.

b. Scheduling of Nominations for Flow-Path Secondary and Secondary Capacity

67. Sierrita proposes to prioritize scheduling among nominations for flow-path secondary capacity in current priority (b), and among nominations for secondary firm capacity in current priority (d), by the highest rate paid. In *Tennessee Gas Pipeline Co., L.L.C.*, the Commission stated that when scheduling nominations of released capacity

⁴⁴ 114 FERC ¶ 61,326, at P 42 (2006) (*Entrega*).

⁴⁵ However, emergency purchases and sales to protect system integrity can be scheduled before all nominations, if defined and authorized in the tariff.

⁴⁶ 112 FERC ¶ 61,101, at P 54 (2005) (*Ingleside*).

⁴⁷ *Central New York Oil and Gas Co., LLC*, 114 FERC ¶ 61,105, at P 9 (2006) (citing *CNG Transmission Corp.*, 81 FERC ¶ 61,346, at 62,592 (1997) and *Tennessee Gas Pipeline Co.*, 62 FERC ¶ 61,250, at 62,676 (1993)).

“pipelines may propose to use either the releasing shipper’s or the replacement shipper’s rate as the price.”⁴⁸ Sierrita is therefore directed to add language to GT&C Section 6.3 describing the rate it will use to determine the priority of replacement shippers’ nominations of flow-path secondary capacity and secondary capacity.

c. **Bumping of Previously Scheduled Nominations for Secondary Flow Path Capacity and Secondary Capacity**

68. GT&C Section 6.2(c)(viii) states as follows:

Transporter will re-determine scheduled quantities, pursuant to the scheduling priorities of Section 6.3, at the Evening, Intraday 1 and Intraday 2 Nomination Cycles when such scheduled quantities are affected by a discount requested by Shipper and granted by Transporter. Such re-determination may cause a discounted firm Shipper that receives a discount after Gas has been scheduled to be Bumped.

69. Also, GT&C Section 1.4, defines “Bump,” in part, as follows:

(b) In the event a discount is granted pursuant to Section 3.2 of Rate Schedule FT that affects previously scheduled quantities, ‘Bumping’ or ‘Bump’ shall . . . mean the reduction of a firm transportation quantity previously scheduled and confirmed to permit Transporter to schedule and confirm a firm transportation intraday nomination which has a higher priority.⁴⁹

70. Although GT&C Section 6.2(c)(viii) is not clearly expressed, we interpret these proposed sections, together, to permit previously scheduled nominations of secondary flow path capacity and secondary capacity at discounted rates to be to be bumped by subsequent nominations submitted by firm shippers paying higher rates. While the Commission approves the use of economic criteria to determine priorities among shippers requesting scheduling of flow path secondary and secondary capacity,⁵⁰ the Commission has not changed its long-standing general policy that for the purpose of bumping, scheduled firm service is equal in priority to all other firm services, without distinction as

⁴⁸ 139 FERC ¶ 61,050, at P 41 (2012) (*Tennessee*).

⁴⁹ Section 3.2 of Rate Schedule FT, among other things, permits Sierrita to offer discounted transportation service.

⁵⁰ *Tennessee*, 139 FERC ¶ 61,050.

to whether the firm service uses primary or secondary capacity.⁵¹ In *Algonquin Gas Transmission Co.*,⁵² the Commission explained that this policy would prohibit a nomination of secondary capacity scheduled in a Timely Nomination Cycle from being bumped as a result of the scheduling process occurring in subsequent nomination cycles. Therefore, Sierrita's proposed GT&C Sections 6.2(c)(viii) and 1.4(b) are rejected as contrary to Commission policy.

7. GT&C Section 6.5 – Allocation of Capacity for Curtailment

71. GT&C Section 6.5 sets forth curtailment priorities when transportation service is interrupted due to capacity limitations. As, proposed GT&C Section 6.5 would curtail services in the reverse order from which they were scheduled in GT&C Section 6.3, except that services utilizing primary firm and flow-path secondary capacity would be curtailed last within the same priority. In pertinent part, Sierrita proposes to interrupt firm Secondary Capacity (GT&C Section 6.5(d)) ahead of firm Primary and/or Flow Path Secondary Capacity (GT&C Section 6.5(f)).

72. Sierrita's proposal is inconsistent with the Commission's policy that once scheduled, all firm service is assigned the same priority for curtailment purposes, irrespective of whether the capacity is utilized on a primary, secondary, or flow-path secondary basis.⁵³ The Commission directs Sierrita to revise GT&C Section 6.5 accordingly.

⁵¹ *Southern Natural Gas Co., L.L.C. and High Point Gas Transmission, LLC*, 139 FERC ¶ 61,237, at P 195 (2012).

⁵² 106 FERC ¶ 61,314, at PP 49-50 (2004), wherein the Commission stated:

although not entirely clear, the proposed tariff appears to allow a primary firm shipper that is nominating at the Evening Nomination Cycle to bump a secondary firm shipper whose nomination was scheduled at the Timely Nomination Cycle. . . . The issue is not whether flowing gas can be bumped, but rather, whether an intraday nomination by a shipper to a primary point can bump an already scheduled secondary firm nomination. . . . Commission policy is that "once secondary firm capacity is scheduled, primary firm capacity does not have a higher priority for purposes of bumping or curtailing firm service." Thus, once a shipper is scheduled at a secondary point at the 11:30 a.m. Timely Nomination Cycle, it cannot be bumped by an intra-day nomination made by a primary firm shipper at the Evening Cycle or later cycles.

⁵³ *Dominion South Pipeline Company, L.P.*, 113 FERC ¶ 61,064, at P 41 (2005).

73. Also, consistent with our determination earlier in this order that authorized overrun and IT services should have the same priority for scheduling purposes, Sierrita is directed to revise GT&C Section 6.5 to curtail authorized overrun and IT services together in the same allocation priority immediately after priority (a).

8. Right of First Refusal (ROFR) under GT&C Section 4.9

a. Shipper's Notice of Intent to Exercise ROFR

74. GT&C Section 4.9(a) sets forth the eligibility requirements for transportation service agreements to include a regulatory right of first refusal (ROFR),⁵⁴ and in pertinent part, GT&C Section 4.9(f) permits Sierrita and a shipper to negotiate a contractual ROFR in a firm transportation service agreement not otherwise eligible for the regulatory ROFR. Finally, GT&C Section 4.9(c)(ii) requires a shipper initiating the ROFR process to notify Sierrita in writing that it intends to exercise its ROFR on or before the earlier of:

- A. six months prior to the expiration date of the shipper's transportation service agreement, or
- B. the date of the notice period provided in the transportation service agreement.

75. The Commission has previously held that a generally applicable ROFR process stated in the tariff cannot be superseded by contract.⁵⁵ Therefore, Sierrita is directed to remove subparagraph B. from proposed GT&C Section 4.9(c)(ii) because it impermissibly allows the deadline for a shipper to notify Sierrita that it intends to exercise its ROFR to be negotiated apart from the generally applicable notice deadline in subparagraph A.

b. Clarification as to When a Shipper Must Elect to Retain Less than the Full Amount of Its Expiring Capacity

76. Although GT&C Section 4.9(b) states, in part, that "[a] shipper may exercise its ROFR to retain only a percentage of the MDQ in a Transportation Service Agreement subject to ROFR," GT&C Section 4.9 does not clearly indicate when such election may be made. GT&C Section 4.9(d) requires Sierrita to solicit bids "for the subject capacity," stating that any qualified party "may submit a bid for all, or any portion of the subject

⁵⁴ 18 C.F.R. § 284.221(d)(2)(ii) (2013).

⁵⁵ *Wyoming Interstate Co., L.L.C.*, 145 FERC ¶ 61,289, at P 6 (2013) (citing *Kinder Morgan Interstate Gas Transmission, LLC*, 119 FERC ¶ 61,225 (2007)).

capacity;” and GT&C Section 4.9(e) then requires Sierrita to notify the shipper “of the best offer or offers received for the expiring capacity.” Finally, in pertinent part, GT&C Section 4.9(e) states that the shipper “must notify [Sierrita] of its intent to match the best offer(s),” and that “[i]f the existing Shipper does not agree to match the best offer(s), then the existing Shipper relinquishes all rights to such capacity.” [Emphasis supplied]

77. The Commission finds that although GT&C Section 4.9(b) gives a shipper the right to match bids for only the capacity it elects to retain, GT&C Section 4.9 does not expressly indicate when, in the ROFR bid matching process, the shipper can make such election. Our finding is based on the long-standing policy that such election is not required until the service provider has notified the existing shipper of the best bid(s) received from third parties for all or a portion of the expiring capacity.⁵⁶ However, the wording of GT&C Section 4.9(e) which simply requires a shipper to “notify [Sierrita] of its intent to match the best offer(s)”, and further states that “[i]f the existing Shipper does not agree to match the best offer(s), then the existing Shipper relinquishes all rights to such capacity” could be interpreted as inconsistent with the shipper’s right to match bids for only a portion of its expiring capacity, and does not indicate when such election may be made.

78. Therefore, Sierrita is directed to clarify GT&C Section 4.9(e) to provide that a shipper does not have to elect how much capacity it will seek to retain through the ROFR process until after receiving notification from Sierrita as to the best offer(s) for its expiring capacity, and may notify Sierrita of its intent to match the best offer(s) for all or a volumetric portion of its capacity. Sierrita must also make any additional revisions of GT&C Section 4.9 necessary for consistency with this directive.

c. **Elimination of the ROFR Rights of Shippers Whose Contracts will Expire within 36 Months of the Proposed In-Service Date of an Expansion Project**

79. Under proposed GT&C Section 4.9(c)(v), if Sierrita conducts an open season for an expansion project the sizing of which could be affected by a shipper’s plans regarding continuation of service under a ROFR, Sierrita may issue a separate notice during or after the project’s open season to all shippers whose transportation service agreements include a ROFR and will also expire within 36 months from the proposed in-service date of the expansion project requiring the shippers to elect one of the following options:

- (1) terminate their respective transportation service agreements at the end of the primary term;

⁵⁶ See, e.g., *Transcontinental Gas Pipe Line Corp.*, 101 FERC ¶ 61,267, at P 26 (2002).

(2) extend the term of their respective transportation service agreements at the maximum recourse rate, to a term that is no less than the term established in the open season; or

(3) initiate ROFR notice processes concurrently with the open season instead of under GT&C Section 4.9(c)(i).

80. Shippers so notified will have 20 business days from the date of Sierrita's notice or until the end of the open season, whichever is longer, to notify Sierrita of their elections to initiate ROFR bidding processes.

81. The Commission rejects GT&C Section 4.9(c)(v) as contrary to policy developed in *Southern Natural Gas Co.*⁵⁷ and *Gas Transmission Northwest Corp.*,⁵⁸ under which pipelines, after a fully subscribed open season for a proposed expansion project, may issue a notice initiating an early ROFR process to shippers whose contracts will expire within 36 months before the projected in-service date of the expansion. The Commission explained that such an early ROFR process can help the pipeline to ensure that its proposed expansion project is correctly sized.⁵⁹ The Commission clarified in *Southern* that such early ROFR process is to be conducted under generally applicable ROFR provisions of the pipeline's tariff. Under such general procedures, once an existing shipper issues a notice to the pipeline that it may wish to retain its expiring capacity through the ROFR process, the pipeline must hold an open season requesting bids from third parties for all or a portion of the shipper's capacity, after which the shipper may decide whether to match the best bid or bids for all or a volumetric portion of the capacity it seeks to retain. However, the Commission also held that under the early ROFR process, pipelines are prohibited from holding one open season under which third parties would submit bids for a combination of the shipper's capacity and the proposed expansion capacity. Instead, bids for the shipper's capacity may be submitted only in a separate open season occurring after an open season for an expansion that has been fully subscribed.

82. Sierrita's proposal in general, and particularly with regard to option (3) is contrary to the Commission's requirements that the early ROFR notice be issued only after a fully subscribed expansion open season, and that the ROFR process for the shipper's capacity be conducted in a manner consistent with the generally applicable ROFR process contained in the pipeline's tariff.

⁵⁷ 128 FERC ¶ 61,211, at PP 88-89 (2009) (*Southern*).

⁵⁸ 117 FERC ¶ 61,315 (2006) (*GTN*).

⁵⁹ *Southern*, 128 FERC ¶ 61,211 at P 88 (citing *GTN*, 117 FERC ¶ 61,135 at P 55).

83. Further, as we found regarding a similar proposal in *Southern*, Sierrita's proposed option (2) requiring ROFR shippers with expiring contracts to extend the term of their respective Transportation Service Agreements at the maximum recourse rate to a term that is no less than the term established in the open season effectively turns the open season for the expansion capacity and the ROFR capacity into a single open season contrary to *GTN*. That is because under such option, the existing shippers would have to match bids received in the expansion open season, up to the maximum recourse rate and to a term that is no less than the term established in the expansion open season. They would have no opportunity to match bids for their own expiring capacity submitted in a separate ROFR open season, as required by *GTN*.

84. Moreover, similar to our finding in *Southern*,⁶⁰ Sierrita's proposal is unduly discriminatory because it would require shippers with ROFR rights, whose contracts expire during a period an expansion is being planned, to match rates and/or contract terms bid in an expansion open season. However, shippers with ROFR rights whose contracts expire after the expansion has gone into service would not be subject to any similar requirement to match rates and/or contract terms in the expansion shippers' contracts.

9. GT&C Section 4.10 – Extension Rights

85. Consistent with our determinations regarding GT&C Section 4.9(c)(v), Sierrita is directed to eliminate the last two sentences from GT&C Section 4.10 (Extension Rights) referencing Sierrita's early notice to shippers terminating contract rights in connection with an open season for an expansion project.

10. GT&C Section 14.2 – Crediting of Penalties

86. Sierrita proposes language in GT&C Section 14.2(c) addressing how Strained Operating Conditions/Critical Operating Conditions daily imbalance charges and/or unauthorized overrun penalties will be handled in the event there are no non-offending firm transportation shippers for a given month. Specifically, Sierrita proposes that the applicable credit amounts shall be booked to Account No. 108, Accumulated Provision for Depreciation.

87. The Commission finds that the use of Account No. 108 for the purpose of applying daily imbalance charges and overrun penalties incurred on Sierrita's pipeline is inappropriate. This proposed crediting mechanism would only provide a benefit to shippers during the pipeline's next rate case. However, Sierrita is not obligated to file a rate case, and pass the credits on in the form of a reduction to rate base through accumulated depreciation, which may not result in a 100 percent benefit to any future

⁶⁰ *Id.* P 89.

recourse rate payers. Rather such credits should be applied to Account No. 495,⁶¹ Other Gas Revenues, and passed on to shippers on a yearly basis. Sierrita is directed to revise GT&C Section 14.2 accordingly.

11. GT&C Section 11.3 - Force Majeure

88. In GT&C Section 11.3(a) Sierrita seeks to include the clauses “compliance with any court order, law, regulation or ordinance promulgated by any governmental authority having jurisdiction ...” and “testing (as required by governmental authority)” within the definition of a *force majeure* event.

89. Sierrita’s force majeure clause is overbroad and may include matters that might not be *force majeure* events. Consistent with the Commission’s finding in *TransColorado Gas Transmission Co., LLC*,⁶² we will require Sierrita to modify GT&C Section 11.3(a) to exclude from the definition of *force majeure* matters that do not comply with Commission policy of limiting *force majeure* events to unanticipated matters outside Sierrita’s control.

12. GT&C Section 16 - Reservation Charge Crediting

a. GT&C Section 16.1 – Exemptions from Crediting

90. GT&C Section 16.1 exempts Sierrita from reservation charge crediting if its “failure to deliver Gas is due to Shipper’s failure to perform in accordance with the terms of the Transportation Service Agreement and the Tariff, including but not limited to, Cautionary Condition orders, failure to meet all applicable Gas quality specifications, and failure of supply, transportation and/or market upstream of or downstream from [Sierrita’s] pipeline system.”

91. While the Commission has permitted pipelines to have tariff exemptions from providing reservation charge credits in situations such as those proposed by Sierrita, the Commission has required pipelines to clarify that such exemptions are only applicable when the pipeline’s failure to perform is caused solely by the conduct of others not controllable by the pipeline. Sierrita is directed to revise proposed GT&C Section 16.1 to make clear that Sierrita is exempted from issuing credits only when its failure to deliver gas is due solely to the conduct of others or events not controllable by Sierrita, i.e.

⁶¹ See 18 C.F.R. pt. 201, Account 495 (2013).

⁶² 144 FERC ¶ 61,175, at PP 9 and 34-35 (2013).

operating conditions on upstream or downstream facilities or a shipper's inability to obtain gas supplies or find a purchaser to take delivery of the supplies.⁶³

b. GT&C Section 16.4 – Calculation of Quantities Subject to Crediting

92. GT&C Section 16.4 applies reservation charge credits to “the lesser of” the following quantities described in subsections (a) through (c):

(a) the applicable MDQ;

(b) the nominated and confirmed quantities that [Sierrita] was not able to either schedule or deliver solely as a result of [its] inability to make deliveries;

(c) the difference between the quantities delivered and the average of the daily quantities delivered for the shipper (not to exceed shipper's MDQ) at primary point(s) during a seven-day period as set forth below:

i. where planned maintenance or another non-*force majeure* outage is announced via a notice posted on the EBB prior to the Timely Nomination Cycle deadline for the first day of outage (also hereinafter, “advance notice”), then the seven days immediately preceding such posting; or

ii. in the seven days immediately preceding the announcement of a *force majeure* event via a notice posted on the EBB.

93. In the event shipper has no nomination in place, then the credit shall be applied to the lesser of Section 16.4(a) or Section 16.4(c). Should the Transporter's notice of a non-*force majeure* service interruption not be provided until after the Timely Nomination Cycle, then the 7-day average criteria in Section 16.4(c) shall not apply.⁶⁴ The Commission requires several changes to Sierrita's proposal concerning how it will calculate the level of reservation credits it will provide. As discussed in *Southern*

⁶³ See, e.g., *Gulf South Pipeline Co., LP*, 141 FERC ¶ 61,224, at P 84 (2012); *Iroquois Gas Transmission Sys., L.P.*, 145 FERC ¶ 61,233, at PP 43-44 (2013); *Gas Transmission Northwest LLC*, 141 FERC ¶ 61,101, at P 42 (2012); *Paiute Pipeline Co.*, 139 FERC ¶ 61,089, at P 31 (2012).

⁶⁴ Sierrita's proposed tariff language refers to GT&C Section 16.3(a) to 16.3(c). However, it clearly intends to refer to Sections 16.4(a) and 16.4(c). The Commission directs Sierrita to correct this mistake.

Natural Gas Co.,⁶⁵ if Sierrita has not given advance notice of an outage before the first opportunity to nominate service for the day, the shipper's credits must be based on the quantities it nominates for scheduling up to its MDQ which were not delivered, as proposed in subsection 16.4(b), and not on any measure of historical usage. Similarly, if Sierrita has given notice of the outage before the first opportunity to submit a scheduling nomination, then the shipper must be given credits based upon an appropriate historical usage up to its MDQ, as proposed in Section 16.4(c), and not on the shipper's scheduling nominations.⁶⁶ Accordingly, there is never a situation where both (b) and (c) could apply, depending upon which alternative provides the least credits.⁶⁷

94. Sierrita's proposed GT&C Section 16.4 is not fully consistent with the policy set forth in *Southern RCC*. While the last paragraph of Section 16.4 includes a sentence providing that, if a shipper is not given advance notice of a non-*force majeure* outage, credits will not be calculated based on the historical usage provided for in Section 16.4(c), there is no corresponding sentence providing that if advance notice is given, credits will be calculated based on historical usage, and not the shippers' nominations. Therefore, the Commission directs that Sierrita revise Section 16.4 to include a provision that, when advance notice is given, credits must be calculated based on historical usage. In addition, the Commission directs Sierrita to remove the first sentence of the last paragraph of subsection 16.4(c), which provides that when the shipper has no nomination in place, Sierrita will base credits on the "lesser of" Section 16.4(a) or Section 16.4(c). This sentence should be deleted because it would require the "lesser of" methodology as the default crediting method where no nomination is in place instead of distinguishing between the crediting methods in (b) and (c) based on whether the pipeline has given notice of an outage before the first opportunity to schedule service for a Gas Day.

95. Although the discussion in *Southern RCC* pertained to credits for outages due to non-*force majeure* events, the Commission has similarly differentiated the methods for calculating credits due to *force majeure* events based on whether such advance notice has been posted.⁶⁸ Therefore, Sierrita's revisions to GT&C Section 16.4 concerning the calculation of credits should clearly indicate that the crediting methods in subsections (b) and (c) discussed above are applicable to both *force majeure* and non-*force majeure*

⁶⁵ 135 FERC ¶ 61,056, at P 32, *order on reh'g*, 137 FERC ¶ 61,050 (2011) (*Southern RCC*).

⁶⁶ *Rockies Express Pipeline LLC*, 142 FERC ¶ 61,075, at P 32 (2013) (*Rockies Express*).

⁶⁷ *Id.* (citing *Southern RCC*, 135 FERC ¶ 61,056 at P 32).

⁶⁸ *Midwestern Gas Transmission Co.*, 137 FERC ¶ 61,257, at P 22 (2011).

outages.⁶⁹ Subsection (b) applies credits to “the nominated and confirmed quantities that [Sierrita] was not able to either schedule or deliver solely as a result of [its] inability to make deliveries, as discussed above.” [Emphasis supplied.] The Commission directs Sierrita to delete the phrase “solely as a result of [its] inability to make deliveries” from this provision. This phrase is unnecessary and potentially confusing, because proposed Section 16.2, with the revisions we require above, already provides for an exemption from crediting in situations where Sierrita’s inability to make deliveries is due solely to the conduct of others or events not controllable by Sierrita.

96. The third sentence of the last paragraph of subsection 16.4(c) provides: “Transporter will provide a reservation charge adjustment as set forth in Section 16.5 for the period of service interruption, as specified in Section 16.3, unless Transporter’s failure to schedule or deliver quantities results from the application of the scheduling priorities described in GT&C Sections 6.3 and 6.5.” [Emphasis supplied] We direct Sierrita to delete the emphasized language from this sentence. GT&C Section 6.3 sets forth the priorities Sierrita will use to schedule service, with primary firm nominations provided the highest priority, followed by flow path secondary capacity, fuel use gas, secondary capacity, authorized overrun quantities and interruptible transportation nominations. GT&C Section 6.5 sets forth the priorities Sierrita will use when it must curtail service after it has been scheduled, as amended in this order. Sierrita’s proposed Section 16.2 already limits any obligation for Sierrita to provide reservation credits to transactions scheduled at primary points and certain limited transactions which it is unable to schedule because of a constraint occurring on the shipper’s primary path.⁷⁰ Therefore, the exemption from crediting in subsection 16.4 for transactions Sierrita does not schedule because of the Section 6.3 scheduling priorities is unnecessary and potentially in conflict with its proposal in Section 16.2 to provide credits for certain within path secondary firm transactions.

97. Moreover, Sierrita’s proposed exemption from reservation charge crediting when it curtails service pursuant to GT&C Section 6.5 is inconsistent with Commission policy. The Commission rejected a similar provision in *Granite State Gas Transmission, Inc.*⁷¹

⁶⁹ *Viking Gas Transmission Co.*, 143 FERC ¶ 61,095, at P 7 (2013).

⁷⁰ GT&C Section 16.2 provides: “Unless otherwise agreed between Transporter and Shipper, no reservation charge adjustment shall be made with respect to any service nominated at Secondary or Flow Path Secondary receipt or delivery Points. However, . . . credits shall be applicable to quantities scheduled to delivery points not listed as primary points on Shipper’s TSA (Transportation Service Agreement), to the extent Transporter is unable to schedule Shipper’s nominated quantities due to a constraint occurring on the portion of the Primary Receipt to Delivery Flow path utilized by that Shipper for that Gas Day.”

⁷¹ 141 FERC ¶ 61,193, at P 8 (2012).

Commission policy generally requires pipelines to provide some level of reservation charge credits whenever the pipeline is unable to provide primary firm service. For example, the Commission has held that the issuance of an Operational Flow Order (OFO) cannot justify a complete exemption from reservation charge crediting. The only issue is whether the OFO or curtailment order is the result of a *force majeure* event outside the control of the pipeline, in which case only partial credits are required, or a non-*force majeure* event, requiring full credits.

98. Finally, the last sentence in GT&C Section 16.4(c) states that “...credits will not be due to Shipper on any quantities that are scheduled in a later cycle for that Gas Day.” This sentence does not fully reflect Commission policy regarding rescheduled nominations as discussed in *Wyoming Interstate Co., Ltd.*⁷² There, the Commission made determinations that shippers would not be required to re-submit a nomination beyond the Evening nomination cycle in order to receive a reservation charge credit for service curtailed in the Timely Cycle. Moreover, it ruled that in the limited case where a shipper nominates on another pipeline after being curtailed, the shipper should receive reservation charge credits for the curtailed amount without having to re-submit a now unnecessary nomination in the Evening cycle, and if the shipper subsequently uses more capacity in the Intraday cycles, its credits may appropriately be reduced. Sierrita is directed to revise its proposal consistent with *Wyoming Interstate*.

E. Precedent Agreement Containing Potential Material Deviations from Rate Schedule FT Form of Transportation Service Agreement (TSA)

99. On February 20, 2013, Sierrita filed a precedent agreement with MGI for service under Rate Schedule FT (Agreement). On October 29, 2013, in response to a Commission staff data request, Sierrita submitted a redline/strikeout version of the service agreement with MGI identifying where the Agreement differed from Sierrita’s *pro forma* Transportation Service Agreement. Sierrita states that it will execute a Transportation Service Agreement prior to its in-service date that will include all but two paragraphs of the precedent agreement, and that some of the provisions in the Transportation Service Agreement will be potentially non-conforming material deviations from its *pro forma* Rate Schedule FT Transportation Service Agreement. Sierrita maintains that such non-conforming provisions, discussed below, were essential to securing MGI’s commitment as an anchor shipper to support the development and construction of the pipeline project. Sierrita asserts that the following material deviations are not impermissible because they are not unduly discriminatory or preferential, and therefore requests their pre-approval by the Commission.

⁷² 130 FERC ¶ 61,091, at PP 14-18 (2010) (*Wyoming Interstate*). See also subsequent Commission orders addressing such issues.

1. Request for Additional Capacity

100. Paragraph 17.A. of the Agreement would allow MGI to request, at any time during the initial term of the Transportation Service Agreement, that Sierrita offer additional capacity up to a maximum aggregate amount of 875,000 Dth per day assuming a minimum delivery pressure of 980 psig at Sasabe, Arizona, through an open season. In the event MGI makes such a request Sierrita will conduct an open season offering the capacity to all interested parties at a recourse rate that Paragraph 17 describes as “computed.” The “computed recourse rate” would be determined by either Sierrita initiating an NGA general section 4 rate case, or by calculating such rate using the following formula:

- (i) the original cost of the Sierrita Pipeline facilities adjusted for depreciation and deferred income taxes (using the depreciation rate approved in the determination of the original recourse rates) plus the additional cost of the expansion capacity, depreciated over the remaining or extended MGI contract life;
- (ii) the total capacity of the Sierrita Pipeline (including the expansion capacity); and
- (iii) the ratemaking principles and methodology utilized by the Commission in approving the most recent recourse rates for the Sierrita Pipeline, adjusted for any significant changes to the cost of service components in determining the rates.”⁷³

101. In its transmittal letter, Sierrita describes this “computed rate” as a “negotiated rate for a superseding Transportation Service Agreement.”⁷⁴

102. Paragraph 17.B. provides that MGI will submit a bid for all the additional capacity for a term at least equal to the depreciation life of the expansion facilities used in determining the rate.

Commission Response

103. Section 154.1(d) of the Commission's regulations requires pipelines to file with the Commission contracts that materially deviate from the pipeline's form of service agreements. In *Columbia Gas Transmission LLC*,⁷⁵ the Commission clarified that a

⁷³ Sierrita's February 20, 2013 Executed Transportation Service Agreement Transmittal Letter at n.3.

⁷⁴ *Id.* at 2.

⁷⁵ 97 FERC ¶ 61,221 (2001) (*Columbia Gas*). See also *ANR Pipeline Co.*, 97 FERC ¶ 61,224 (2001) (*ANR*).

material deviation is any provision in a service agreement that: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties. However, not all material deviations are impermissible. As explained in *Columbia Gas*, provisions that materially deviate from the corresponding pro forma service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.⁷⁶

104. The Commission has made upfront determinations in the past, as discussed in *Tennessee Gas Pipeline Co., L.L.C.*,⁷⁷ when the pipeline files redline/strikeout versions of the service agreement, as Sierrita has done in this proceeding. Furthermore, the Commission has found that some non-conforming provisions may be necessary to reflect the unique circumstances involved with the construction of new infrastructure and to provide the needed security to ensure the viability of a project.⁷⁸ For example, the Commission has found that giving an anchor shipper certain priority rights to future expansion capacity is a permissible material deviation from the pro forma service agreement because such provision reflects the unique circumstances of the initial project.⁷⁹ We find Sierrita's agreement in Paragraph 17 to conduct, at MGI's request, an open season for additional expansion capacity, to be a contractual incentive for obtaining MGI's binding commitment as an anchor shipper to the current project. Moreover, such provision would not change the quality of service performed for any shipper by Sierrita. Therefore, we find this aspect of Paragraph 17 to be a permissible material deviation from Sierrita's *pro forma* Rate Schedule FT Transportation Service Agreement.

105. In the event MGI were to request additional capacity from Sierrita in the form of an expansion project as stated in Paragraph 17 of the Agreement, Sierrita should file an application pursuant to NGA section 7(c) at which time the Commission would fully address the appropriateness of such expansion and its associated recourse rate. With regard to the language in Paragraph 17 which would allow MGI to request such additional capacity up to a maximum aggregate amount of 875,000 Dth per day, the Commission finds this language permissible as Sierrita stated it will conduct an open season to determine the interest of other shippers in the expansion of the pipeline.

⁷⁶ *Columbia Gas*, 97 FERC at 62,002; *ANR*, 97 FERC at 62,022.

⁷⁷ 144 FERC ¶ 61,219, at P 31 (2013).

⁷⁸ *Transcontinental Gas Pipeline Co., LLC*, 145 FERC ¶ 61,152, at P 34 (2013).

⁷⁹ *Id.*

106. However, we cannot approve the provisions in Paragraph 17 describing alternative methods by which Sierrita would determine the “computed” recourse rate for capacity offered in a potential open season. One described alternative method would be for Sierrita to initiate an NGA general section 4 rate case. This method could not generate a rate reflective of the anticipated expansion since NGA section 4 rates can only reflect the plant that is in service. By definition, the open season for the anticipated new capacity would involve a new plant that does not exist. Therefore, the expansion plant could not be included in the NGA section 4 rate base and the rate calculated in such a proceeding would not necessarily be appropriate for use as the initial recourse rate for any new expansion capacity.

107. The other stated method for calculating a recourse rate involves use of a formula that includes the costs and capacity not only associated with the future expansion, but also of the existing project. Such a rate would effectively be a new rolled-in rate for the entire, expanded Sierrita system. While it is conceivable that the Commission, “based on the facts and circumstances relevant to the application [for a proposed expansion] and apply[ing] the criteria [of the Certificate Policy Statement] on a case-by-case basis”⁸⁰ might find such a rate to be acceptable as a recourse rate for the expansion, that is not a determination we can make at this time. Therefore, we find the provisions of Paragraph 17 establishing the methodologies by which Sierrita would establish a recourse rate for use in an open season for expansion capacity to be an impermissible material deviation from Sierrita’s *pro forma* Transportation Service Agreement.

2. Creditworthiness

108. In GT&C Section 4.12 Sierrita proposes provisions for shippers that are not determined to be creditworthy to provide adequate credit assurance in order to receive service.⁸¹ MGI opted to use the assurance method in GT&C Section 4.12(d)(iii), which allows a shipper to provide a guarantee by another entity that satisfies its credit appraisal. Sierrita states that Pemex Gas y Petroquimica Basica, MGI’s parent entity, has provided an acceptable parental guarantee. Sierrita believes this non-conforming provision is consistent with its proposed tariff and is not unduly discriminatory or preferential as all shippers would have this same option.

109. The Commission agrees, and finds this provision to be a permissible material deviation. Therefore, we will approve this alternative method for maintaining

⁸⁰ *Id.*

⁸¹ Sierrita’s *FERC Gas Tariff* GT&C Section 4.12.

creditworthiness because all shippers have the option of providing a guarantee as set forth in Sierrita's tariff.⁸²

3. Invoice Delivery Mechanism

110. In GT&C Section 12.1 Sierrita proposes to allow a shipper to elect an alternative invoice delivery mechanism. MGI has elected to receive an original invoice from Sierrita through overnight mail at least ten days prior to the payment date. Additionally, any retroactive adjustment invoice shall be subject to the same procedure. Sierrita believes this is an acceptable non-conforming provision given that MGI is a foreign, state-owned entity. Further, Sierrita asserts that this provision is not unduly discriminatory or preferential as its tariff provides that any shipper may elect to have invoices rendered via U.S. mail.

111. The Commission finds this provision to be a permissible material deviation. Therefore, the Commission will approve this method of invoicing because all shippers have the option of making such an election within GT&C Section 12.1 of Sierrita's tariff. Further, the proposed method is not inconsistent with NAESB invoicing standards, in particular Standard 3.3.14, which does not address the time period between the required payment date and the date on which a "postmarked" invoice is rendered.

4. Meter Facilities

112. In GT&C Section 2.3 Sierrita proposes to include language stating that it will install, maintain and operate measuring stations equipped with flow meters and other necessary equipment by which the volumes of gas received and delivered shall be determined. Sierrita also proposes to provide the records from the measurement equipment to the operator/interconnecting party for review per its tariff. Exhibit A, footnote 4 of the Agreement states that Sierrita will install metering facilities which will include a C9+ gas chromatograph near the U.S.-Mexico border and MGI will be given access to the data from the measurement system. Sierrita maintains that the non-conforming language relating to metering facilities is consistent with its tariff and does not provide any additional rights to MGI and is not unduly discriminatory or preferential.

113. The Commission will approve the language as proposed by Sierrita to allow records from the installed measurement equipment to be provided to the operator/interconnecting party for review, since all shippers have the option of requesting such data, per GT&C Section 2.3. We find this non-conforming language to be a permissible material deviation from the *pro forma* service agreement.

⁸² See GT&C Section 4.12(b)(iv).

5. Miscellaneous Nonconforming Provisions

114. Throughout the Agreement, Sierrita made modifications to provide further clarification to the language contained in the *pro forma* agreement. Sierrita believes these clarifications do not constitute unduly discriminatory or preferential provisions.⁸³ Additionally, Sierrita notes certain provisions that reflect pre-construction requirements will be removed from the agreement prior to the in-service date of the facilities. The provisions to be removed are located in Paragraphs 18 and 19 of the Agreement and pre-approval is not being sought for these provisions.

115. At the time Sierrita files its non-conforming service agreement, the Commission directs Sierrita to identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement. This required disclosure includes any such transportation provision or agreement detailed in a precedent agreement that survives the execution of the service agreement.

116. Sierrita must file not less than 60 days before the in-service date of the proposed facilities, an executed copy of each non-conforming agreement reflecting all non-conforming language and a tariff record identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations. In addition, the Commission emphasizes that the above determinations relate only to those items as described by Sierrita in section VII of its application and not to the entirety of the precedent agreements or the language contained in the precedent agreements.

Section 3 Authorization and Presidential Permit

117. Since the proposed Sierrita Pipeline Project's border crossing facilities will be used to export natural gas across the U.S.-Mexico international boundary, these facilities are subject to the Commission's jurisdiction and the requirements of section 3 of the NGA.⁸⁴

⁸³ Sierrita's October 29, 2013 Response to Data Request at 4.

⁸⁴ The regulatory functions of section 3 were transferred to the Secretary of Energy (DOE) in 1977 pursuant to section 301(b) of the Department of Energy Organization Act. 42 U.S.C. § 7151(b) (2012). In reference to regulating imports or exports of natural gas, the DOE Secretary subsequently delegated to the Commission the authority to approve or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports. The DOE Secretary's current delegation of authority to the Commission relating to import and export facilities was renewed by the Secretary's Delegation Order No. 00-004.00A, effective May 16, 2006.

118. Section 3 provides for the Commission's approval of an application under that section "unless it finds that the proposal will not be consistent with the public interest."⁸⁵ Section 3 further provides that the exportation and importation of natural gas between the United States and "a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with public interest... ."⁸⁶ The requested authorization will enable the export of natural gas to Mexico for ultimate delivery to Mexican electric power generation plants. Granting the requested authorization will provide additional volumes of natural gas for use in Mexico and promote national economic policy by reducing barriers to foreign trade and stimulating the flow of goods and services between the United States and Mexico, both of which are signatories to the North American Free Trade Agreement (NAFTA),⁸⁷ providing for fewer restrictions on natural gas imports and exports. As discussed above, we have found construction and operation of Sierrita's proposed interstate pipeline which will transport gas to the proposed border crossing facilities is required by the public convenience and necessity.

119. On March 7, 2013, pursuant to Executive Orders Nos. 10485 and 12038, the Commission sent letters to the Secretaries of State and Defense seeking their recommendations on Sierrita's requested issuance of a Presidential Permit to construct and operate facilities at the international border between the United States and Mexico. By letters dated May 13, 2013, and August 9, 2013, the Secretaries of Defense and State, respectively, indicated that they have no objections to the issuance of a Presidential Permit to Sierrita.⁸⁸

⁸⁵ 15 U.S.C. § 717b(a) (2012).

⁸⁶ *Id.*

⁸⁷ Pub. L. No. 103-182, 107 Stat. 2057 (1993); Implementation of the North American Free Trade Agreement Act, Executive Order No. 12889, 58 Fed. Reg. 69,681 (December 30, 1993).

⁸⁸ On March 19, 2013, Altar Valley and Santa Margarita Ranch filed letters with the Secretaries of State and Defense, requesting that they withhold comments until the Commission conducts an evidentiary hearing on Sierrita's proposal. Sierrita filed a response to the Secretaries of State and Defense on April 2, 2013 (and filed those letters with the Commission on April 3) stating that the comments should not be withheld because the Commission is unlikely to conduct an evidentiary hearing and border security issues will be addressed by the U.S. Customs and Border Protection, which is participating in the proceeding as a cooperating agency. As indicated, the Secretaries of Defense and State have submitted their concurrences to the Commission.

120. Accordingly, the Commission finds the approval of Sierrita's proposal is consistent with the public interest. Thus, the Commission will issue a Presidential Permit, set forth in Appendix B to this order, and NGA section 3 authorization to construct and operate Sierrita's proposed border crossing facilities for the exportation of natural gas to Mexico.

F. Environmental Analysis

1. Pre-filing Review

121. Commission staff began its initial review of the Sierrita Pipeline Project following its approval, on April 27, 2012, for El Paso⁸⁹ to use the pre-filing process in Docket No. PF12-11-000. As part of the pre-filing review, staff issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Sasabe Lateral Project and Request for Comments on Environmental Issues* (NOI) on August 1, 2012. This notice was published in the *Federal Register* on August 7, 2012,⁹⁰ and sent to 279 interested parties on the staff's environmental mailing list, including federal, state, and local agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners; local libraries and newspapers; and other stakeholders who had indicated an interest in the project.

122. Commission staff issued a *Notice of Public Scoping Meetings for the Planned Sasabe Lateral Project* on September 24, 2012, which also announced a closing date for the scoping period of October 27, 2012. This notice was published in the *Federal Register* on September 28, 2012,⁹¹ and was sent to 301 interested parties. Two public scoping meetings were held in October 2012 to provide the public with opportunities to learn more about the project and to comment on environmental issues that should be addressed in the draft EIS.⁹²

123. In total, approximately 50 people attended the public scoping meetings, including representatives from El Paso, Commission staff, and cooperating agencies. A total of

⁸⁹ El Paso was the entity that initiated the pre-filing process for the Sasabe Lateral Project. Upon formal filing of the applications, the project sponsor was changed to Sierrita Gas Pipeline LLC, an affiliate of El Paso, and the project name was changed to the Sierrita Pipeline Project.

⁹⁰ 77 Fed. Reg. 47,052 (2012).

⁹¹ 77 Fed. Reg. 59,607 (2012).

⁹² The public scoping meetings were held in Three Points, Arizona on the evening of October 18, 2012, and in Sasabe, Arizona during the day of October 20, 2012.

16 individuals provided oral comments on the project at the scoping meetings. In addition, 106 letters were filed by federal, state, and local agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners; and other interested stakeholders providing written scoping comments regarding the project.⁹³ During the environmental review process, Commission staff also conducted numerous meetings and site visits with agencies and stakeholders, including multiple meetings with the U.S. Border Patrol and a stakeholder meeting to specifically discuss Sierrita's proposed restoration methods.

2. Application Review

124. As stated above, on February 7 and 8, 2013, Sierrita filed its applications with the Commission for a Certificate of Public Convenience and Necessity, and section 3 authorization and a Presidential Permit, respectively. At this point, the project name was established as the Sierrita Pipeline Project.

125. Sierrita filed a proposed route modification on March 25, 2013, and on April 12, 2013, Commission staff issued a Supplemental Notice of Intent to Prepare an Environmental Impact Statement for the Sierrita Pipeline Project and Request for Comments on Environmental Issues⁹⁴ for the approximately 12-mile-long reroute. This supplemental notice was sent to 301 interested parties.

126. Commission staff evaluated the potential environmental impacts of the proposed project in the draft and final environmental impact statements (EIS), in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA).⁹⁵ The U.S. Fish and Wildlife Service (FWS) – Arizona Ecological Services Office; the FWS – Buenos Aires National Wildlife Refuge; the Arizona Game and Fish Department (AGFD); and U.S. Customs and Border Protection all participated as cooperating agencies in the preparation of the EIS.

127. Commission staff issued a draft EIS on October 25, 2013, that addressed the issues raised during the scoping period, with a 45-day public comment period.⁹⁶ The draft EIS

⁹³ Table 1.3-1 of the final EIS provides a detailed and comprehensive list of issues raised during scoping.

⁹⁴ 78 Fed. Reg. 23,554 (2013).

⁹⁵ 42 U.S.C. §§ 4321 *et seq.* (2012). *See* 18 C.F.R. Part 380 for the Commission's NEPA-implementing regulations.

⁹⁶ 78 Fed. Reg. 65,637 (2013). A Notice of Availability for the draft EIS was published by the U. S. Environmental Protection Agency. 78 Fed. Reg. 65,643 (2013).

was mailed to the environmental mailing list which was expanded to include additional interested parties who were added since issuance of the NOI. Two public meetings were held to receive comments on the draft EIS in December 2013.⁹⁷ A total of 17 people provided comments at the meetings, and 51 stakeholders submitted a total of 55 letters in response to the draft EIS.

128. On March 28, 2014, Commission staff issued a final EIS for the Sierrita Pipeline Project, and a public notice of the availability of the final EIS was published in the *Federal Register*.⁹⁸ The final EIS addresses timely comments received on the draft EIS.⁹⁹ The final EIS was mailed to the same parties as the draft EIS, as well as to parties that commented on the draft EIS.¹⁰⁰ The EIS addresses geology; soils; water resources; wetlands; vegetation; wildlife and fisheries; special status species; land use, recreation, and visual resources; illegal immigration and unauthorized right-of-way use; socioeconomics; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives.

129. The final EIS concludes that if the project is constructed and operated in accordance with applicable laws and regulations, the project will result in some adverse environmental impacts. Most of these impacts described in the EIS will be reduced to less-than-significant levels with the implementation of Sierrita's proposed mitigation and staff's recommendations (now adopted as conditions in the attached Appendix A of this order). However, even with mitigation, the EIS finds that impacts on the Pima pineapple cactus, a federally endangered species, will be significant. In addition to these issues, other major issues of concern that the final EIS addresses are summarized below and include: soils; construction across washes and associated riparian areas; revegetation and monitoring; cultural resources; migratory birds; wildlife and federally listed species; land use (including grazing and local planning); illegal immigration and human and drug trafficking; cumulative impacts; and route alternatives and alternative delivery points along the U.S.-Mexico border.

⁹⁷ The draft EIS comment meetings were held in Three Points, Arizona on the evening of December 12, 2013, and in Sasabe, Arizona during the day of December 14, 2013.

⁹⁸ A Notice of Availability for the final EIS was published by the U. S. Environmental Protection Agency. 79 Fed. Reg. 18,908 (2014).

⁹⁹ Appendix Z of the final EIS includes responses to comments on the draft EIS.

¹⁰⁰ The distribution list is provided in Appendix A of the final EIS.

3. Major Environmental Issues Addressed in the EIS

a. Soils

130. Several commenters expressed concern about the fragile nature of the soils in the project area. The commenters state that by disturbing the erodible desert soils, Sierrita will be unable to adequately revegetate and restore the right-of-way. Commenters stated that construction during the monsoon season (mid-June to mid-September) when flash flooding occurs could present challenges related to erosion control, and that following construction, dry wash channel scouring could increase if erosion control issues are not addressed. The EIS finds that construction activities associated with the project, such as clearing, grading, trenching, and backfilling, could adversely affect soil resources by causing erosion, compaction, and loss of soil productivity and fertility by mixing of topsoil and subsurface soil horizons and changing drainage patterns.

131. Sierrita will implement the mitigation measures contained in its Upland Erosion Control, Revegetation, and Maintenance Plan (Plan), Wetland and Waterbody Construction and Mitigation Procedures (Procedures), Reclamation Plan, and Post-Construction Vegetation Monitoring Document to control erosion, promote successful revegetation, and minimize adverse impacts on soil resources. Furthermore, Sierrita will have a hydrogeologist on site during construction to identify soil type and the need for any additional stabilization measures at each dry wash crossing. Environmental Condition 11 of this order requires Sierrita to revise its Plan to incorporate rock terraces as an additional measure to control erosion. The EIS concludes that with the implementation of these mitigation measures, Sierrita will adequately minimize impacts on soils for all areas that will be temporarily disturbed by construction. Permanent impacts on soils will occur at the proposed aboveground facility locations where the sites (a total of 10.2 acres) will be graveled and converted to natural gas facility use.

b. Dry Wash Crossings, Watershed, and Riparian Areas

132. Both scoping and draft EIS comments noted concerns about the restoration of wash crossings, watershed impacts (e.g., headcutting), and impacts on riparian areas. As described in the final EIS, Sierrita will cross one perennial waterbody, the Central Arizona Project Canal, using the horizontal directional drill method. Sierrita will use standard upland construction techniques to cross 206 ephemeral water bodies (dry washes) when they are dry and significant rainfall is not anticipated. Sierrita consulted with the Pima County Regional Flood Control District (RFCD) and developed a Scour and Lateral Bank Migration Analysis to identify the erosion hazard setback and proper depth of cover at each waterbody crossing to provide additional cover above the pipeline and prevent scour, as the channels are highly erodible.

133. The EIS further discusses that at riparian areas, Sierrita will maintain the riparian shrub root crowns during clearing and grading activities; revegetate disturbed Pima

County Regulated Riparian Habitat with conservation grasses and legumes or native plant species; and place cut woody vegetation along the top of the ephemeral wash banks above the normal high water line to provide stabilization, obstruct vehicular traffic, provide cover, and increase wildlife habitat value. As previously mentioned, Sierrita also committed to retaining a hydrogeologist during construction at dry washes to evaluate erosion potential, check calculated scour depth/setback distances, and make site-specific recommendations to reduce erosion and sedimentation. Following construction, Sierrita will implement the measures identified in its *Post-Construction Vegetation Monitoring Document*. This document also clarifies that Sierrita will evaluate alternative revegetation measures, in conjunction with Commission staff and other appropriate agencies, if revegetation efforts are not trending toward meeting the established performance criteria.

134. The EIS concludes that the measures in Sierrita's Plan, Procedures, *Reclamation Plan*, and *Post-Construction Vegetation Monitoring Document* will promote the restoration of washes, prevent further degradation of the watershed, and promote re-establishment of riparian vegetation.

c. Revegetation and Monitoring

135. Vegetation impacts and revegetation of the right-of-way were noted as a concern in comments during scoping and on the draft EIS. Commenters argue that the disturbance of large areas of soil and vegetation required for the project will cause long-term damage to the area. The final EIS concludes that the project will impact 13 vegetation community types and acknowledges that impacts on vegetation types will range from short to long term and that some impacts will be permanent. To promote revegetation, Environmental Condition 12 requires Sierrita to finalize seed mixes, rates, and timing, and requires it to incorporate changes to the location and/or number of representative monitoring plots, based on consultations with the Natural Resources Conservation Service.

136. Noxious weeds and invasive species were also noted as a concern. Sierrita's various plans (including a *Noxious Weed Control Plan*) contain numerous measures that Sierrita will implement to reduce construction-related impacts on vegetation, reduce the spread of noxious weeds and invasive species, and promote restoration of the right-of-way. Following construction, Sierrita will monitor disturbed areas annually for at least 5 years. The EIS concludes that the measures in Sierrita's Plan, Procedures, *Reclamation Plan*, *Post-Construction Vegetation Monitoring Document*, and *Noxious Weed Control Plan* will adequately promote the re-establishment of vegetation.

137. Commenters also contend that Sierrita will not be held to its many mitigation commitments and measures, and question who will enforce those that become a part of the authorized project. The Commission has a compliance inspection program in which Commission staff (or a designated contractor) conducts periodic inspections of project

construction as well as right-of-way revegetation and restoration. Such inspections begin with the start of construction and continue until the right-of-way is determined to be effectively restored – a period which often lasts several years or longer for a major project such as the Sierrita Pipeline Project. In addition, Sierrita has agreed to use the Commission’s third-party monitoring program, which allows environmental monitors to be in the field for the duration of construction and initial restoration. These monitors report directly to the Commission staff and provide an additional level of compliance oversight. The inspection and monitoring programs will ensure compliance with the environmental conditions in the attached appendix. The Sierrita Pipeline Project will not be authorized to be placed into service until the Commission is satisfied that the applicable project conditions have been met and that the right-of-way restoration is proceeding as required.

d. Cultural Resources

138. The project’s potential impact on cultural resources was another major issue raised by commenters, especially by the Tohono O’odham Nation. The Tohono O’odham Nation states that the placement of the pipeline and border crossing facilities will have an adverse effect on cultural resources sites. Tribes consider much of the land crossed by the pipeline project to contain sensitive cultural resources, which include locations where tribal members conduct traditional cultural practices.

139. Section 4.11.1 of the EIS describes the cultural resource survey work completed. The EIS concludes that the Sierrita Pipeline Project may affect 25 historic properties, including four historic properties that would require data recovery. Determinations regarding the effects the project would have on these sites and the sites’ eligibility for listing on the National Register of Historic Places have been completed. After Sierrita files its final Historic Properties Treatment Plan to mitigate impacts on sites that cannot be avoided during construction, the staff will execute a Memorandum of Agreement with the appropriate parties.¹⁰¹ As such, the consultation required under the National Historic Preservation Act (NHPA) has not yet been completed. To ensure that the Commission’s responsibilities under section 106 of the NHPA¹⁰² are met, Environmental Condition 16 requires Sierrita to complete the appropriate studies, reports, and treatment plans so that staff can conclude the necessary consultations before treatment or construction is authorized.

¹⁰¹ On April 16, 2014, the Advisory Council on Historic Preservation filed a letter indicating that it declined to participate in the project. On May 15, 2014, Sierrita filed a draft Historic Properties Treatment Plan. Environmental Condition 16 reflects this new information.

¹⁰² See 16 U.S.C. § 470f (2012).

140. Sierrita will also complete a cultural landscape study in coordination with the Tohono O’odham Nation to address concerns that have been identified by the tribe. Information presented in the study will include that identified through interviews with tribal elders and a tour of the project area.

141. As stated above, Sierrita will prepare treatment plans to address any historic properties that could be adversely affected by the project. These treatment plans are subject to review and approval by the appropriate agencies. Commission staff initiated consultation with Native American tribes early in the pre-filing process by sending notices and consultation letters to tribes and conducting meetings and field visits to elicit concerns and identify sensitive resources. The tribes also received the draft and final EIS and copies of survey reports, upon request.

e. Migratory Birds

142. The EIS describes a variety of migratory bird species, including both songbirds and raptors, that are associated with the habitats along the project. Construction could cause direct and indirect impacts on raptors and other migratory birds. Sierrita conducted raptor surveys of the project area in 2013 to identify specific areas where construction may affect active nests and where buffer zones may be required. Prior to construction, Sierrita will remove inactive raptor nests that are within the construction right-of-way to prevent nesting of species. During construction, Sierrita will adopt species-specific buffers around identified active raptor nests, limit construction vehicle traffic around active raptor nests to one pass per crew, and consult with the FWS on mitigation measures if an active raptor nest is located near a proposed blasting location. Sierrita will conduct pre-construction surveys to document local occurrences of nesting birds, including raptors, unless construction will take place outside of the nesting periods. Environmental Condition 13 requires Sierrita to file this information prior to construction.

f. Wildlife and Federally Listed Species

143. The EIS acknowledges that the project will affect wildlife and wildlife habitats; these impacts could be temporary, short term, long term, or permanent. Construction of the project will also cause habitat fragmentation, especially in scrub/shrub habitats where vegetation could take many decades to recover. The EIS describes numerous ways that Sierrita will protect wildlife, such as adding wildlife ramps in the pipeline trench, leaving breaks in the welded pipe string and stockpiles, inspecting the open ditch and removing wildlife, checking under vehicles prior to use, and restoring the construction right-of-way in accordance with its *Reclamation Plan*, *Post-Construction Vegetation Monitoring Document*, and *Noxious Weed Control Plan*.

144. The EIS includes an analysis of the project’s impact on five federally listed threatened or endangered species and one critical habitat; three additional species that are

proposed, candidates, or special-status species; and one species with proposed critical habitat. Staff provided the draft EIS as its Biological Assessment to the FWS initiating formal, informal, and conference consultations under the Endangered Species Act.¹⁰³ Environmental Condition 14 ensures that no construction will occur until the appropriate Endangered Species Act section 7 consultation is complete between the Commission and the FWS.

145. In addition, the EIS discusses the Arizona Wildlife of Special Concern, Species of Greatest Conservation Need, and plants protected by the Arizona Native Plant Law that occur in the project area. The EIS concludes that given the nature of the species occurrence and the measures that will be implemented as part of the project, impacts on state-sensitive species will be avoided or adequately minimized.

g. Land Use

146. Throughout the NEPA review process, commenters expressed concerns about the project's impacts on grazing practices and local planning and conservation goals outlined in Pima County's various plans (e.g., the Sonoran Desert Conservation Plan and the Multi-Species Conservation Plan).

147. The EIS identifies that construction will impact livestock grazing by disturbing foraging areas and interrupting/displacing grazing activities for the duration of construction. Further, construction could cause damage to or require removal of fences or other natural barriers used for livestock control, could block access to water sources or other grazing areas, and could cause risk of livestock injury from falling into or becoming entrapped in open trenches. As described in the EIS, Sierrita will coordinate with landowners and/or the land-managing agency to install measures such as temporary fence gaps, salt licks, and wind-rowed brush during construction. Sierrita committed to restoring fences and gates that have been disturbed by construction activities to their pre-construction condition or better. Sierrita will implement the same measures identified for wildlife species (e.g., inspecting open trench, installing ramps) and will offer manpower and/or equipment assistance to remove animals, as appropriate, from the trench. Sierrita states that it will provide fair compensation to landowners for easements to convey both temporary (for construction) and permanent (for operation) rights-of-way on private lands. Sierrita also committed to compensating landowners for damages associated with construction of the pipeline. The EIS finds that Sierrita's implementation of the measures in its Plan, Procedures, *Reclamation Plan*, and *Post-Construction Vegetation Monitoring Document* will reduce impacts on grazing practices and promote re-establishment of vegetation.

¹⁰³ Our conclusions and the outcome of the section 7 consultation are discussed below in paragraphs 174-177 which summarize FWS' Biological Opinion.

148. The EIS describes the project-related impacts on local planning and conservation land areas. The EIS recognizes that construction will result in impacts on resources covered by these plans such as fragmentation of vegetation and short term, long term, and permanent impacts on wildlife habitat. As previously discussed, Sierrita consulted with the Pima County Regional Flood Control District regarding reducing impacts on riparian habitat, which aids in reducing erosion at dry washes and provides habitat for species. The EIS also describes project-related impacts on Pima County-designated conservation lands. Mitigation identified by Pima County for use of conservation lands includes conservation of additional land for every acre disturbed. The EIS states that Sierrita continues to consult with Pima County regarding necessary permits and approvals, mitigation measures required by the county, and temporary and permanent easement agreements.

h. Illegal Immigration and Human and Drug Trafficking

149. Throughout the scoping and NEPA review processes commenters expressed concerns about the potential that the project will increase illegal immigration and human and drug trafficking. The EIS, produced in cooperation with U.S. Customs and Border Protection, acknowledges that the project may exacerbate illegal activity already occurring within the Altar Valley, but also discloses that the amount of illegal activity at and near U.S.-Mexico border crossings is dependent on many variables that are not directly measurable. The EIS also recognizes that the project could provide a new pathway for existing illegal activity within the Altar Valley. However, the EIS concludes that there are no objective criteria to determine the level of significance of a project's effect on or contribution to illegal activities.

150. The EIS concludes that the various measures (reclamation measures and right-of-way deterrents) Sierrita proposes would reduce the potential use of the right-of-way by unauthorized entities. Sierrita commits to working closely with land management agencies, private landowners, grazing lessees, and U.S. Border Patrol personnel to deter unauthorized access to and use of the right-of-way. Sierrita will coordinate with these same land management agencies, landowners, and U.S. Border Patrol personnel to determine the adequacy and appropriateness of the proposed countermeasures as necessary throughout project construction. Environmental Condition 15 requires that Sierrita provide a statement documenting its consultations with U.S. Customs and Border Protection and other appropriate law enforcement agencies regarding the development of its *Right-of-way, Security, and Access Control Plan* (Security Plan).

151. The EIS also notes that the U.S. Border Patrol is responsible for responding to any possible increase in human trafficking, drug trafficking, and cross border-related illegal activity resulting from the project. The U.S. Border Patrol has stated that it has sufficient resources to respond to any additional illegal activity potentially induced by the project.

i. Cumulative Impacts

152. Numerous comments were received on the draft EIS pertaining to cumulative impacts, including additional actions to be considered and the environmental setting descriptions. The EIS analyzes three types of projects (past, present, and reasonably foreseeable projects) that could contribute to cumulative impacts when considered in the region of influence. In particular, commenters took issue with the EIS description of grazing impacts in the Altar Valley, which has progressed from being historically uncontrolled to managed using scientifically based range management practices, such as pasture rotation, brush management, water development, and prescribed fires.

153. In summary, the EIS finds that the project area has been significantly impacted by past human actions such as planting of non-native vegetation, over and uncontrolled grazing, fire suppression, urban and road development, off-road foot and vehicle traffic, and the impacts associated with those activities (e.g., spread of noxious weeds, creation of gullies, erosion, littering). The significant impacts of past actions are related mainly to water bodies, vegetation, and wildlife. Therefore, the EIS concludes that the cumulative impacts of past actions when considered in conjunction with the project and other present and reasonably foreseeable actions, regardless of magnitude, will be significant. For this reason, many of Sierrita's mitigation measures were developed to address these sensitive resources (water bodies, vegetation, and wildlife). The EIS concludes that the impacts of the project on other resource areas when considered in conjunction with past, present, and reasonably foreseeable actions will not be significant.

j. Alternatives

154. During scoping, commenters expressed concern with the pipeline's proposed route and stressed the need for additional analysis of alternative routes, including a route within the Buenos Aires National Wildlife Refuge and alternative delivery locations along the U.S.-Mexico border. The EIS evaluates a range of alternatives for the Sierrita Pipeline Project, including the No-Action Alternative, system alternatives, route alternatives, and route variations. After the draft EIS was issued, Sierrita incorporated a route variation into its project as a result of a landowner recommendation.

155. Section 3.0 of the EIS evaluates alternatives to the proposed Sierrita Pipeline Project to determine whether they are technically and economically feasible and environmentally preferable.

156. Section 3.5 of the EIS identifies eight major route alternatives, including one within the Buenos Aires National Wildlife Refuge, to determine if the route alternatives will avoid or reduce impacts on environmentally sensitive resources. The EIS concludes that these alternatives do not convey any type of significant environmental advantage compared to the proposed route and/or were not permissible at the federal level (such as the alternative route through the Buenos Aires National Wildlife Refuge).

157. The final EIS considers the use of alternative delivery points other than the proposed border crossing at Sasabe, Arizona, and provides additional information on route alternatives. While two routes associated with the alternative delivery points would result in less environmental impacts when compared to the proposed route, delivery of the gas transported on the Sierrita pipeline to a different delivery point would not meet the market needs of the customer subscribing capacity on Sierrita's project. As a result, the EIS did not recommend any alternative delivery points.

158. The final EIS examines two route variations requested by property owners in response to the draft EIS. The Santa Margarita Route Variation, proposed by one landowner, would add an additional four to five miles to the pipeline route, with concomitant added expense and environmental impacts. In addition, it would cross more private land, riparian habitat, waterbodies, and roads and railroads.¹⁰⁴ Accordingly, the final EIS did not recommend adoption of this alternative, and we concur.

159. The second variation, the Sierra Vista Route Variation, was based on the concerns of a second landowner. While the final EIS found that the impacts of either the proposed or Sierra Vista Route Variation were acceptable and could be mitigated, it acknowledged that there were additional impacts associated with the Sierra Vista Route Variation.¹⁰⁵ This variation would result in an additional mile of pipeline route. It would have generally similar impacts on environmental resources as the proposed route, although it would affect substantially more agave plants and Saguaro Cactii,¹⁰⁶ which provide habitat and food for indigenous animal species. The variation would be located in steeper, rougher terrain than the proposed route, increasing the difficulty of construction, potentially requiring blasting, and resulting in additional long-term or permanent impacts.¹⁰⁷

160. On balance, we approve the proposed route, which will be shorter, easier to construct, and have somewhat fewer environmental impacts. We note that the record reflects that Sierrita has not been able to gain access to the land on which the proposed route will be located in order to conduct civil surveys and review the details of construction with the landowner. To the extent that the landowner is willing to discuss

¹⁰⁴ See final EIS at 3.39.

¹⁰⁵ See *id.* at 3-43.

¹⁰⁶ See *id.* at 3-41 (Table 3.6-2).

¹⁰⁷ See *id.* at 3-43.

with the company alterations in the route as it crosses her property or construction methods that may ameliorate some of her concerns, we expect Sierrita to do so.¹⁰⁸

4. Late Comments Not Addressed in the Final EIS

161. We received a comment from Rancho Sierra Vista de Sasabe, LLC, that was filed too late to be addressed in the final EIS, which reiterated the concerns (e.g., regarding negative impacts on economic interests, illegal immigration and drug activity, and the Sierra Vista route variation) noted by the property owners throughout the environmental review process relating to the proposed route across the Sierra Vista Ranch. The paragraphs above address these matters.

162. The Hopi Tribe provided a response to the Commission's February 19, 2014 *Notification of Adverse Effects* to the Advisory Council on Historic Preservation (ACHP) for the Sierrita Pipeline Project. The Hopi Tribe declared its support for the Tohono O'odham Nation resolution in opposition to the Sierrita Pipeline Project. The Hopi Tribe also noted its interest in mitigation of adverse effects on the Altar Valley and Baboquivari Peak, and noted that it supports Sierrita's cultural landscape study to be coordinated with the Tohono O'odham Nation. Furthermore, based on review of addendum reports filed after the February 19, 2014 letter to the ACHP, the Hopi Tribe recommended revision of the adverse effect findings to include three additional sites, and requested continuing consultation on the Sierrita Pipeline Project. The Hopi Tribe reviewed the Historic Properties Treatment Plan and provided comments that reiterated its previous concerns.

163. As expressed in the EIS, staff will continue consultations with interested tribes throughout the project. Environmental Condition 16 requires that Sierrita provide interested federally recognized Indian tribes an opportunity to comment on all reports and treatment plans and file any comments received.

5. Comments and New Information Received After Issuance of the Final EIS

a. Pima County Administrator's Office and Sierrita's Response

164. We received comments on the final EIS from the Pima County Administrator's Office and a response by Sierrita. In general, Pima County expresses concerns that construction and operation of the project would compromise U.S. border security, put the

¹⁰⁸ Good faith communication can often resolve land use concerns. For example, while the landowner has expressed concern that the proposed route would affect stock tanks on the property, a review of the route indicates that the pipeline will be located some 200 feet from them.

safety and well-being of Pima County residents at much higher risk, greatly increase costs to Pima County for public safety and land management, and result in significant environmental impacts on the biological integrity and watershed function of the Altar Valley. Additional concerns raised by Pima County include pipeline safety design and support for the major route alternative through the Buenos Aires National Wildlife Refuge, with a requirement for compensatory mitigation to the FWS. These issues were addressed in the final EIS, both in the textual analysis and in Appendix Z (Responses to Comments on the draft EIS). Pima County's pipeline design concerns regarding pipe wall thickness are under the jurisdiction of the U.S. Department of Transportation. We find no cause to respond in detail to post-EIS comments that revisit matters previously raised and that are fully addressed in the final EIS.

165. In addition, Pima County also provides updated status information regarding permits required from the county by Sierrita, updated income the county would realize from permit fees and taxes, updated estimated costs to public service agencies and departments as result of the project, and a recommendation for a mitigation fund to offset project impacts.

166. The final EIS acknowledges that the pipeline would cross land owned by Pima County and land leased by Pima County from the Arizona State Land Department. Easement negotiations for a right-of-way are between a landowner and the pipeline company and are not subject to review by the Commission. The Commission does not engage in monetary negotiations between the company and the landowner, land-managing agency, or other third parties.

167. Sierrita responds by providing an update of its status in obtaining Pima County permits. Sierrita reiterates its continuing efforts to consult with Pima County.

168. Sierrita's response includes updated information on the assessments of the fees and taxes it anticipates would be received by Pima County during construction and operation of the project. Sierrita contends it would adequately compensate Pima County for impacts. Sierrita estimates that overall, Pima County would recover \$11 million in revenue gain over the next 25 years, and total cash payments from Sierrita to Pima County associated with the *ad valorem* tax revenues will total almost \$53 million over 25 years. We note that payments requested by or received by Pima County for this project are outside of our jurisdiction.

169. Pima County also indicates that detailed assessments and restoration plans should be funded by Sierrita. Pima County states that an oversight committee and a mitigation endowment fund should be created to cover the costs of long-term and ongoing monitoring and repair of environmental damage resulting from the project. Pima County also states that five years of monitoring is not sufficient.

170. The EIS presents a detailed assessment of the impacts of the project, and contains detailed restoration plans including Sierrita's *Reclamation Plan* and *Post-Construction Vegetation Monitoring Document* which have been developed in response to stakeholder comments. The EIS also emphasizes that Sierrita is responsible for restoration of the right-of-way and all project-disturbed areas, including access roads. Although Sierrita has committed to five years of monitoring, if the right-of-way is not restored in the five-year timeframe, Sierrita is responsible for continuing restoration efforts. Specifically, the EIS clarifies that Sierrita is required to continue annual monitoring and restoration activities until the Commission determines that the restoration and revegetation goals have been achieved. Sierrita's *Reclamation Plan* and *Post-Construction Vegetation Monitoring Document* identify the procedures that will be used to promote restoration of the right-of-way to pre-construction conditions. Sierrita is required to submit weekly reports documenting its construction and restoration activities. Further, a third-party compliance monitor under Commission staff's direction will be onsite daily during construction documenting Sierrita's construction and restoration. Commission staff will also periodically inspect the project area during construction and restoration to ensure restoration occurs and, if any issues arise, that they are addressed. Our third-party compliance monitoring program and pipeline restoration requirements are, in fact, the federally required oversight of restoration of the project, and the Commission has the regulatory authority to mandate any required remediation that a county-directed "oversight committee" would lack for non-county lands or for activities not permitted by Pima County.

171. Pima County requests that the Commission require offsite mitigation measures in addition to the onsite mitigation measures proposed by Sierrita or required by the Commission. This was addressed in Appendix Z (Responses to Comments on the draft EIS) of the final EIS. The Commission has no authority to authorize offsite mitigation removed from the project that is not directly related to the installation of interstate natural gas facilities. We note that offsite mitigation would not result in any direct reduction of impacts or "speeding up" restoration of the right-of-way. We conclude that Sierrita's efforts are best spent on restoring the right-of-way, as most commenters have indicated this is the priority.

172. Pima County provided photo examples representing what it believes is incomplete restoration of a Kinder Morgan petroleum pipeline right-of-way. Appendix Z of the EIS addresses similar comments regarding pipelines and rights-of-way that are not under the jurisdiction of the Commission, such as a petroleum pipeline. Here, the EIS notes that the Commission cannot comment on what methods were used or required for non-jurisdictional projects in comparison to the mitigation measures that will be required of Sierrita by the Commission. Further, older existing pipelines and those not under our jurisdiction may not provide an accurate comparison of what restoration will look like for the Sierrita Pipeline Project. The EIS further notes that if restoration is not proceeding

satisfactorily, the Commission will continue to require Sierrita to implement additional measures to ensure the restoration progresses.

173. Pima County also states that the EIS did not demonstrate an understanding of the challenges of achieving on-site restoration goals and did not recognize impacts outside of the proposed right-of-way. Section 4.4 of the EIS discloses possible challenges to restoration and the timeframe it would take to restore the right-of-way. The EIS thoroughly discusses throughout section 4 the indirect impacts that could occur to various resources outside of the temporary and permanent rights-of-way during and after construction. To further promote restoration, Sierrita has agreed to adopt an adaptive management approach to address issues that could arise as a result of the project. The EIS finds that this approach and the multitude of onsite mitigation measures Sierrita has agreed to will minimize off-right-of-way impacts and promote restoration of the right-of-way.

174. Pima County submitted technical concerns and requirements on behalf of the Pima County Regional Flood Control District and notes that these concerns and requirements should be incorporated in any Commission approval of the project. As stated in the EIS, Sierrita filed a permit application with the Pima County Regional Flood Control District in September 2013, and we note that the Pima County Regional Flood Control District has provided Sierrita with the information necessary to process the permit application. Furthermore, we expect that Sierrita will comply with conditions or specific mitigation measures provided in non-federal agency permits, to the extent that such permits do not unreasonably delay, conflict with, or prevent implementation of federal requirements.

175. Additionally, Pima County states that the EIS requires a plan view of the pipeline alignment that indicates the anticipated locations for rock terraces. We note that Appendix Z (Responses to Comments on the draft EIS) specifically states that the exact placement and method used to control erosion will be determined based on current, site-specific conditions during construction and restoration. Sierrita's environmental inspector, along with the hydrogeologist that Sierrita has agreed to utilize, will design and determine the appropriate location for the erosion control devices to appropriately minimize erosion.

b. U.S. Fish and Wildlife Service – Arizona Ecological Services Office

176. The FWS issued a Biological Opinion (BO) for the project on April 14, 2014. The subject of the BO is the endangered Pima pineapple cactus, which the project is likely to adversely affect. The BO documented that the project is not likely to jeopardize the continued existence of the Pima pineapple cactus.

177. Further, Sierrita's commitment to implement a plan, developed through consultation with the FWS, for transplanting and monitoring Pima pineapple cacti

directly impacted by construction supports the FWS's conservation recommendations listed in the BO for the Pima pineapple cactus.

178. The BO also documented the FWS concurrence with Commission staff's determinations that the proposed action is not likely to adversely affect the lesser long-nosed bat, the masked bobwhite quail, the jaguar and its designated critical habitat, and the threatened Chiricahua leopard frog and its designated critical habitat.

179. The FWS also agreed to a conference on the northern Mexican gartersnake (proposed as a threatened species) and its proposed critical habitat. The FWS concluded that the proposed action will not jeopardize the northern Mexican gartersnake and that the proposed action will not destroy or adversely modify proposed northern Mexican gartersnake critical habitat. As stated above, Environmental Condition 14 requires ESA consultation to be completed before any construction will occur.

c. U.S. Fish and Wildlife Service – Buenos Aires National Wildlife Refuge

180. The FWS – Buenos Aires National Wildlife Refuge issued a Draft Compatibility Determination on March 31, 2014, based on a request from Sierrita to use existing roads that cross the Buenos Aires National Wildlife Refuge as part of construction of the project. The Compatibility Determination helps the FWS evaluate proposed uses, including anticipated impacts and stipulations that will ensure compatibility; addresses potential damage to roads and wildlife habitat and for disturbance to the visiting public; and addresses stipulations by which Sierrita can mitigate these impacts. The 30-day public review of the FWS' Compatibility Determination ends April 29, 2014. As required by Environmental Condition 8, Sierrita must provide documentation that it has received FWS approval for the access roads in the Buenos Aires National Wildlife Refuge prior to any construction approval.

d. San Carlos Apache Tribe

181. The San Carlos Apache Tribe provided responses to Sierrita's Historic Properties Treatment Plan and the final EIS. Both responses indicated that "there is not a likelihood of eligible properties of religious and cultural significance to the San Carlos Apache Tribe in the project area;" however, the tribe defers to the Tohono O'odham Nation and supports concerns they may have regarding heritage and cultural resources. As mentioned earlier in this order, Environmental Condition 16 requires that Sierrita provide interested tribes, including the Tohono O'odham Nation, an opportunity to comment on all outstanding reports and on the Historic Properties Treatment Plan. Commission staff will continue consultation with the Tohono O'odham Nation throughout the project.

e. **Arizona State Historic Preservation Officer**

182. The Arizona State Historic Preservation Officer (SHPO) provided comments on recent archaeological survey reports submitted to that office by Sierrita. The SHPO requested the following: the Commission's findings on the sites' eligibility for listing in the National Register of Historic Places; potential impacts on those sites; the status of Buenos Aires National Wildlife Refuge and Arizona State Lands Department concurrence on site eligibility determinations; the revision of the draft Memorandum of Agreement (MOA) to include any additional adversely affected historic properties; and the status of Native American consultation efforts. We will provide our findings and effect determinations on sites within the area of potential effects and seek the concurrence of the FWS – Buenos Aires National Wildlife Refuge and Arizona State Lands Department on those findings. Those findings will be sent to the Arizona SHPO for comment. As mentioned earlier in this order, Commission staff will continue to consult with federally recognized Indian tribes with an interest in the project.

f. **John and Patricia King**

183. John and Patricia King commented that the EIS does not discuss the East Route Alternative and reiterated their support for this alternative. They also discussed the FWS – Buenos Aires National Wildlife Refuge's decisions relating to the project. General comments on security, topography, and cultural resources pertaining to the proposed route were also provided.

184. Section 3.5.1 of the final EIS examines the East Route Alternative, and finds that there would be fewer environmental impacts associated with the East Route alternative on the Buenos Aires National Wildlife Refuge. Due to permitting issues and refuge policy prohibiting construction of the pipeline within the Buenos Aires National Wildlife Refuge, the EIS finds no reason to recommend the East Route Alternative, which would effectively be the No-Action Alternative. Decisions made by FWS – Buenos Aires National Wildlife Refuge or the National Wildlife Refuge System are not subject to review or approval by the Commission. As such, we have no regulatory authority to interfere with decision making on by FWS – Buenos Aires National Wildlife Refuge or within the National Wildlife Refuge System. In addition, the EIS concludes that the proposed route for the Sierrita Pipeline Project, which avoids the Buenos Aires National Wildlife Refuge, can be constructed with an acceptable level of environmental impact.

185. The final EIS addresses these issues, both in the textual analysis and in Appendix Z (Responses to Comments on the draft EIS). We find no cause to respond in detail to post-EIS comments that revisit matters previously raised and that are fully addressed in the final EIS.

g. Rancho Sierra Vista de Sasabe LLC

186. Rancho Sierra Vista de Sasabe LLC reiterated the concerns relating to the project impact on its property and requested the Commission require Sierrita to adopt the route variation that would avoid the ranch as described in the EIS. We refer to the discussion and our determination presented above.

187. Rancho Sierra Vista de Sasabe LLC also noted concerns of possible impact on two stock tanks on its property. Section 4.3.2.1 of the EIS states that the closest two stock tanks to the project are 275 feet from the proposed pipeline centerline. One of these stock tanks is on ranch property and the other stock tank is over 275 feet from the proposed centerline. The EIS notes that direct impacts would be avoided on stock tanks; however, indirect impacts such as downstream sedimentation were possible. In section 4.3.2.6, the EIS discusses mitigation measures Sierrita would implement to minimize indirect impacts (such as impacts from sedimentation) on the stock tanks on the Rancho Sierra Vista de Sasabe LLC property.

h. United States Environmental Protection Agency

188. The U.S. Environmental Protection Agency (EPA) reviewed the final EIS and acknowledges that the EIS addressed most of the comments the EPA provided on the draft EIS. The EPA did note that in a phone conversation with the U.S. Army Corps of Engineers (USACE), it learned that Sierrita intends to fulfill its section 404 permit obligations for the project through a Nationwide Permit 12 (Utility Line Activities). The EPA recommends specifically that this be documented in the FERC Record of Decision, and that the Commission and Sierrita continue to work with the USACE and Pima County to ensure that impacts on riparian habitat is minimized to the greatest possible extent. Table 1.5-1 of the EIS acknowledges that Sierrita will be seeking a Nationwide Permit 12 from the USACE. The EIS also presents mitigation measures committed to by Sierrita and required by FERC that are designed to minimize impacts on riparian areas. As required by Environmental Condition 8, Sierrita is required to provide documentation that it has received USACE approval prior to the Commission's construction approval of the project.

i. David Lutz

189. Mr. Lutz provides general comments on the Sierrita Pipeline Project's impact on Rancho Sierra Vista de Sasabe, revegetation and conservation efforts within the Altar Valley, and the Buenos Aires National Wildlife Refuge. Mr. Lutz also indicated that an alternative that follows existing infrastructure should be utilized. These comments are thoroughly addressed throughout the EIS and we do not feel they warrant further discussion.

6. Conclusion

190. We have reviewed the information and analysis contained in the EIS regarding potential environmental effects of the project. Based on our consideration of this information and the discussion above, we agree with the conclusions presented in the EIS and find that the Sierrita Pipeline Project, if constructed and operated as described in the EIS, is an environmentally acceptable action. We are accepting the environmental recommendations in the final EIS and are including them as conditions to this order in Appendix A.

191. 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.¹⁰⁹

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Sierrita pursuant to section 7 (c) of the NGA authorizing construction and operation of new interstate natural gas pipeline facilities as described and conditioned herein, and as more fully described in the application.

(B) A blanket construction certificate is issued to Sierrita under Subpart F of Part 157 of the Commission's regulations.

(C) A blanket transportation certificate is issued to Sierrita under Subpart G of Part 284 of the Commission's regulations.

(D) A Presidential Permit and NGA section 3 authority are issued authorizing *Sierrita to site, construct, connect, operate and maintain natural gas export and border crossing facilities*, as described in this order and subject to the conditions of the Presidential Permit.

¹⁰⁹ See, 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); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(E) The requests for consolidation of Docket Nos. CP13-73-000 and CP13-74-000 are denied.

(F) The requests for a formal, trial-type evidentiary hearing are denied.

(G) Sierrita shall sign and return the testimony of acceptance of all provisions, conditions, and requirements of the Presidential Permit to the Secretary of the Commission within 30 days of the issuance of this order.

(H) The authorized pipeline shall be completed and placed in service within 18 months of the date of issuance of this order.

(I) The authorized export/border crossing facilities shall be completed and placed in service within 18 months of the date of issuance of this order.

(J) Sierrita's initial rates and tariff are approved, as conditioned and modified in this order.

(K) Sierrita shall file actual tariff records that comply with the requirements contained in the body of this order no less than 30 days and no more than 60 days prior to the commencement of interstate service consistent with Part 154 of the Commission's regulations.

(L) Sierrita must file not less than 60 days before the in-service date of the proposed facilities an executed copy of the non-conforming agreements reflecting the non-conforming language and a tariff record identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.

(M) Within three years after its in-service date, as discussed herein, Sierrita must make a filing to justify its existing cost-based firm and interruptible recourse rates. Sierrita's cost and revenue study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, Sierrita is advised to include as part of the eFiling description, a reference to Docket No. CP13-73-000 and the cost and revenue study.¹¹⁰

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

¹¹⁰ *Electronic Tariff Filings*, 130 FERC ¶ 61,047 at P 17.

(O) Sierrita must comply with the environmental conditions set forth in Appendix A to this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A
Environmental Conditions for the
Sierrita Pipeline Project
Docket Nos. CP13-73-000 and CP13-74-000

As recommended in the final Environmental Impact Statement (EIS), this authorization includes the following conditions. As stated in the conditions, “file” means file with the Secretary of the Commission. The section number in parentheses at the end of a condition corresponds to the section number in which the measure and related resource impact analysis appears in the EIS.

1. Sierrita Gas Pipeline, LLC (Sierrita) shall follow the construction procedures and mitigation measures described in its applications and supplements, including responses to staff data requests and as identified in the EIS, unless modified by the Order. Sierrita must:
 - a. request any modification to these procedures, measures, or conditions in a filing;
 - 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 the 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**, Sierrita shall file an affirmative statement, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI’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 EIS, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Sierrita shall file any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Sierrita's exercise of eminent domain authority granted under Natural Gas Act section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Sierrita's right of eminent domain granted under Natural Gas Act section 7(h) does not authorize it to increase the size of its natural gas (pipeline/facilities) to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Sierrita shall file 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 will be used or disturbed and have not been previously identified in filings. 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, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species will 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 Sierrita's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or 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. **Within 60 days of the acceptance of the Certificate and before construction begins**, Sierrita shall file an Implementation Plan for review and written approval by the Director of OEP. Sierrita must file revisions to the plan as schedules change. The plan shall identify:
- a. how Sierrita will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EIS, and required by the Order;
 - b. how Sierrita 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;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Sierrita will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change with the opportunity for OEP staff to participate in the training sessions);
 - f. the company personnel (if known) and specific portion of Sierrita's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Sierrita will follow if noncompliance occurs; and
 - h. 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 environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Sierrita shall file updated status reports **on a weekly basis until all construction activities are complete and FERC staff determine that weekly reports are no longer required**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Sierrita's efforts to obtain the necessary federal authorizations;

- b. the 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;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs 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);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Sierrita from other federal, state, or local permitting agencies concerning instances of noncompliance, and Sierrita's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Sierrita shall file documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Sierrita must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the authorized facilities in service**, Sierrita shall file an affirmative statement, 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 Sierrita has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **Prior to construction**, Sierrita shall file a revised version of its *Upland Erosion Control, Revegetation, and Maintenance Plan* that identifies rock terraces as a measure to control erosion. (Section 4.2.2)

12. **Prior to construction**, Sierrita shall file revised versions of its *Reclamation Plan* and *Post-Construction Vegetation Monitoring Document* that identifies its final seed mixes, rates, and timing and incorporates changes to the location and/or number of representative monitoring plots based on consultations with the Natural Resources Conservation Service. (Section 4.4.8.2)
13. **Prior to construction**, Sierrita shall file the results of pre-construction surveys completed within the temporary construction and permanent right-of-way for:
 - a. Arizona native plants; and
 - b. wildlife species and bird nest sites. (Sections 4.4.8.2 and 4.5.1)
14. **Sierrita shall not begin construction of the project facilities until:**
 - a. the FERC staff completes any necessary consultation with the U.S. Fish and Wildlife Service for federally listed species; and
 - b. Sierrita has received written notification from the Director of OEP that construction and/or use of mitigation (including implementation of conservation measures) may begin. (Section 4.7.1)
15. **Prior to construction**, Sierrita shall file a statement documenting its consultations with U.S. Customs and Border Protection and other applicable law enforcement agencies regarding Sierrita's *Right-of-way, Security, and Access Control Plan*. (Section 4.9.1)
16. Sierrita shall not begin construction of project facilities or use of new contractor yards or temporary work areas and to-be-improved access roads **until:**
 - a. Sierrita files:
 - (1) all evaluation reports and treatment plans; and
 - (2) comments on all survey reports, evaluation reports, and treatment plans from the Arizona State Historic Preservation Office, as well as any comments from federally recognized Indian tribes, the Buenos Aires National Wildlife Refuge, the Arizona State Land Department, the Arizona State Museum, and Pima County Cultural Resources and Historic Preservation Division, as applicable; and
 - b. the FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Sierrita in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

All material filed with the Commission that contains **location, character, and ownership** information about cultural resources must have the cover and any

relevant pages therein clearly labeled in bold lettering “**CONTAINS PRIVILEGED INFORMATION - DO NOT RELEASE.**” (Section 4.11.4)

17. **Within 2 days of the start of the horizontal directional drill activities at the Central Arizona Project Canal**, Sierrita shall file a noise survey demonstrating that the noise at the noise sensitive areas nearest to the north and south staging areas that is attributable to the horizontal directional drill is either equal to or below a day-night sound level of 55 decibels on the A-weighted scale or is not more than 10 decibels over the existing ambient noise levels as determined by preconstruction surveys. (Section 4.12.2.3)

APPENDIX B**PERMIT AUTHORIZING SIERRITA GAS PIPELINE, LLC (SIERRITA)
TO SITE, CONSTRUCT, AND OPERATE NATURAL GAS FACILITIES
AT THE INTERNATIONAL BOUNDARY
BETWEEN THE UNITED STATES AND MEXICO**

FEDERAL ENERGY REGULATORY COMMISSION
Docket No. CP13-74-000

(Issued)

1. Sierrita Gas Pipeline, LLC (Sierrita), a limited liability corporation organized under the laws of the State of Delaware, filed on February 8, 2013, in Docket No. CP13-74-000, an application pursuant to Executive Order Nos. 10485 and 12038, and the Secretary of Energy's Delegation Order No. 00-004.00A, requesting that the Commission issue an order under section 3 of the Natural Gas Act (NGA) and a Presidential Permit authorizing Sierrita to site, construct, and operate a new border crossing pipeline facility at the international boundary of the United States and Mexico to accommodate the exportation of natural gas between the United States and Mexico.

2. By letter dated May 13, 2013, the Secretary of Defense, and by letter dated August 9, 2013, the Secretary of State, indicated that they have no objections to the issuance of this Permit. The Federal Energy Regulatory Commission finds that the issuance of this Permit, allowing the export permission requested by Sierrita, is appropriate and consistent with the public interest.

3. Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 1, 1953 and February 3, 1978, respectively, the Secretary of Energy's Delegation Order No. 00-004.00A, effective May 16, 2006, and the Commission's regulations, permission is granted to Sierrita (Permittee) to operate and maintain the natural gas facilities described in Article 2 below, upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Energy Regulatory Commission and may be amended by the Federal Energy Regulatory Commission, upon proper application therefore.

Article 2. The following facilities are subject to this permit:

Approximately 60 feet of 36-inch diameter pipeline with a maximum daily export

capacity of 200,846 dekatherms per day, designed to transport natural gas to a new delivery interconnect with the Sasabe-Guaymas Pipeline at the international boundary between the United States and Mexico in Pima County, Arizona, near the town of Sasabe, Arizona.

Article 3. The natural gas facilities subject to this Permit, or which may subsequently be included herein by modification or amendment, may be utilized for the transportation of natural gas between the United States and Mexico only in the amount, at the rate, and in the manner authorized under section 3 of the Natural Gas Act.

Article 4. The operation and maintenance of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States. The Permittee shall allow officers and employees of the United States, showing proper credentials, free and unrestricted access to the land occupied by the facilities in the performance of their official duties.

Article 5. If in the future, it should appear to the Secretary of the Defense that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of Defense, to remove or alter the same so as to render navigation through such water free and unobstructed.

Article 6. The Permittee shall be liable for all damages occasioned to the property of others by the operation or maintenance of the facilities, and in no event shall the United States be liable therefore. The Permittee shall do everything reasonable within its power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittee agrees to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas exported, imported, or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.

Article 8. Neither this Permittee nor the facilities, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittee shall maintain the facilities in a condition of repair for the efficient transportation of natural gas and shall make all necessary renewals and replacement.

Article 9. Upon the termination, revocation, or surrender of this Permit, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The facilities authorized shall be removed within such time as the Commission may specify, and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, or any portion thereof, the Commission may direct that possession of the same be taken and the facilities be removed at the Permittee's expense, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agrees that when, in the opinion of the President of the United States, evidenced by a written order addressed to its holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed at the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to any action which the Government of the United States may in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittee to any foreign government.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.