

119 FERC ¶ 61,111
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Natural Gas Company

Docket Nos. CP06-433-000
CP06-433-001

ORDER ISSUING CERTIFICATE
AND GRANTING ABANDONMENT AUTHORITY

(Issued May 2, 2007)

1. On August 29, 2006, Northern Natural Gas Company (Northern) filed an application in Docket No. CP06-433-000 under section 7 of the Natural Gas Act (NGA)¹ for certificate authorization to construct, modify and operate certain compression, pipeline, and meter station facilities, with appurtenances, located in various counties in Iowa, Nebraska and South Dakota, and authority to abandon and relocate certain compression facilities located in Clay County, Kansas. On December 6, 2006, in Docket No. CP06-433-001, Northern filed an amendment to the application proposing to construct two additional meter station facilities to be located in Clay and Sioux counties, Iowa. The project, known as the Palmyra North Expansion, will increase the capacity of Northern's West Leg pipeline segment of its Market Area facilities. Northern also requests a predetermination supporting rolled-in rate treatment for the expansion costs. In this order, the Commission grants the requested certificate and abandonment authority and predetermination supporting rolled-in rate treatment, subject to the conditions below.

¹ 15 U.S.C. § 717f (2005).

Background

2. Northern is a corporation organized under the laws of the State of Delaware with its principal office located in Omaha, Nebraska. Pursuant to existing certificates of public convenience and necessity issued by the Commission, Northern is engaged in the transportation of natural gas in interstate commerce and is therefore a natural gas company within the meaning of section 2(6) of the NGA and is subject to the Commission's NGA jurisdiction.

3. The facility modifications and expansions proposed by Northern as the Palmyra North Expansion constitute the second project within the larger Northern Lights expansion project.² Northern describes Northern Lights as a multi-year commitment to expand Northern's Market Area capacity in response to its customers' future growth requirements through 2026.

4. Northern announced the Northern Lights Expansion project in an open season held May 2, through June 30, 2005, and then extended through August 4, 2005. All current or potential shippers had the opportunity to participate in the open season. The open season was held to solicit interest and identify and quantify market growth opportunities and the need to construct facilities to meet these requirements. Northern states that in response to customer request, it held another open season from September 13, through October 2, 2006, to solicit bids for excess capacity from the additional two metering stations proposed in the December 6, 2006 amended application. According to Northern, the facilities proposed in the instant application are required to fulfill certain of the requests received during the Northern Lights open seasons.

5. Northern states that as a result of the open seasons described above, six of its market area customers -- LSCP, LLLP; Millennium Ethanol, LLC; Cargill Incorporated; Superior Ethanol, LLC; Verasun Hartley, LLC; and Siouxland Energy & Livestock Cooperative Ethanol Plant -- entered into precedent agreements for a total of 44,200 Dth per day of capacity to be created by the project.³ Northern notes that it did not receive any requests from shippers to turn back peak day capacity on the West Leg segment of its system.

² The first project within the Northern Lights expansion project was approved by the Commission in Docket No. CP06-403-000 on February 21, 2007. *Northern Natural Gas Co.*, 118 FERC ¶ 61,136 (2007).

Proposal

6. For the Palmyra North Expansion, Northern requests authorization to: (1) construct and operate new meter stations located in Lincoln County, South Dakota; Clay County, Iowa; Sioux County, Iowa; and Dickinson County, Iowa; (2) construct and operate approximately two miles of a new 6-inch branchline in Dickinson County, Iowa; (3) modify the existing Cargil #1 meter station located in Washington County, Nebraska; (4) perform pipeline tie-over modifications in Cherokee County, Iowa; (5) perform regulator modifications in Saunders County, Iowa; and (6) install a new 4,083-horsepower turbine at its existing Palmyra compression station in Otoe County, Nebraska. In addition, Northern requests authority to abandon a compressor unit with appurtenant facilities at its existing Clifton compressor station in Clay County, Kansas, and to relocate and install a portion of those facilities, including the compressor unit, at the Palmyra compression station.

7. Northern estimates that the proposed project will cost \$8,968,331. Northern estimates it will realize a capital cost savings of approximately \$2 million by relocating the existing compressor unit and associated facilities from the Clifton compressor station as opposed to the purchase of a new unit. Northern states that it plans to finance the project with internally generated funds. Northern requests a predetermination supporting rolled-in rate treatment for the proposed project, asserting that the estimated costs of the expansion are less than projected revenues from the incremental service the project will support.

8. Northern states that most of the proposed facilities and modifications are required to serve new and existing ethanol production plants. Therefore, Northern asserts that the project will facilitate the national objectives articulated in the Energy Policy Act of 2005 through the production of biofuels as required by the Renewable Fuel Standard.

Notice, Interventions, and Comments

9. Notice of Northern's application in Docket No. CP06-433-000 was issued on September 6, 2006, and published in the *Federal Register* on September 13, 2006. Notice of Northern's amendment to its application in Docket No. CP06-433-001 was issued on December 12, 2006, and published in the *Federal Register* on December 19, 2006. Timely, unopposed motions to intervene in CP06-433-000 were filed by Alcoa Inc., jointly with United States Gypsum Company and USG Interiors, Inc.; Aquila, Inc. d/b/a Aquila Networks; Minnesota Energy Resources Company; and Northern Municipal Distributors Group, jointly with the Midwest Region Gas Task Force Association

(Distributors). MidAmerican Energy Company filed a timely, unopposed motion to intervene in Docket No. CP06-433-001.⁴

10. Madison Gas and Electric Company filed a late motion to intervene in CP06-433-000. No party opposes the motion to intervene. Madison Gas and Electric Company has a demonstrated interest in this proceeding, and the proceeding will not be disrupted nor will any party's interests be unfairly prejudiced by granting intervention at this stage of the proceeding. Accordingly, pursuant to Rule 385.214(d) of the Commission's Rules of Practice and Procedure, the Commission will grant Madison Gas and Electric Company's motion for late intervention.⁵

11. Comments were received from the Kansas State Historic Preservation Officer (Preservation Officer) and from the Iowa Utilities Board. These comments are detailed below in the section of this order discussing environmental matters.

12. The Distributors' motion to intervene also included comments seeking assurances that other existing customers will not be asked to subsidize the customers that contract for the incremental capacity that would result from Northern's proposal. They state that they have protested filings by Northern in other dockets requesting approval of non-conforming contracts and associated discounts and benefits for some of its incremental shippers. The Distributors seek assurance that none of the findings, conclusions or decisions issued in this docket will be determinative of any future issues raised in future rate proceedings concerning discounts and benefits granted to these parties. Unless they receive such assurance, they protest Northern's application.

13. Northern filed an answer to Distributor's comments on October 12, 2006. While answers to protests are generally prohibited by our Rules of Practice and Procedure,⁶ the Commission finds good cause to waive Rule 213(a) to allow Northern's answer because

⁴ The timely, unopposed motions to intervene are automatically granted under Rule 214(c) of the Commission's Rules of Practice and Procedure, 18 CFR § 385.214(c) (2006).

⁵ 18 CFR § 385.214(d) (2006).

⁶ 18 C.F.R. §385.213(a)(2) (2006).

it provides information that has assisted us in our decision-making.⁷ Distributors' comments are addressed below.

Discussion

A. Certificate Policy Statement

14. To determine whether a proposed project is required by the public convenience and necessity, we consider whether it satisfies the criteria set forth in the Commission's 1999 Policy Statement on New Facilities.⁸ In this policy statement, the Commission established criteria for determining whether there is a need for a proposed project, balancing the public benefits against potential adverse impacts, and determining whether the proposed project serves the public interest. Our goal in evaluating proposed projects is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions to the environment, and avoidance of the unnecessary exercise of eminent domain.

15. Under the Certificate Policy Statement, 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 existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the new 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 location of the new facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we evaluate the project by balancing the public benefits to be achieved against the residual adverse effects. This is essentially an economic test. If the benefits outweigh the adverse effects on economic interests we will proceed to complete the environmental analysis where other interests are considered.

⁷ See *Northern Natural Gas Company*, 60 FERC ¶ 61,098 (1992).

⁸ *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 at 61,748 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000).

16. Northern has entered into precedent agreements with six shippers for services commencing November 1, 2007.⁹ These commitments total an aggregated incremental peak-day entitlement of 44,200 Dth per day for the 2007-2008 heating season.

17. As discussed below, Northern has presented evidence that the incremental revenue from services using the proposed facilities will exceed the incremental costs of constructing and operating the proposed facilities. If this proves to be the case, there will be no subsidization of the facilities by existing customers, and rolled-in rate treatment for the project's costs should have a positive impact on rates for existing customers. As discussed below, if incremental revenues are not sufficient to cover costs, this order's finding supporting rolled-in rate treatment will not apply. Therefore, we find that Northern's proposal satisfies the threshold requirement of the Certificate Policy Statement.

18. The majority of the proposed improvements will occur within Northern's existing facility sites and rights-of-way, thus impacting only previously disturbed areas. Approximately 0.9 acre of new land will be permanently impacted. The use of existing land rights minimizes the number of new landowners affected by construction. The proposed branchline located in Dickinson County, Iowa will be constructed on cultivated agricultural land, but once the pipeline segment is constructed, the landowner will be able to resume farming activities.

19. Northern's project will not adversely affect other existing pipelines in the market or their captive customers since the purpose of the proposal is to serve new gas requirements, not displace loads on other systems. The proposed facilities may benefit Northern's existing customers since they will be operated in an integrated manner with Northern's existing facilities and therefore may provide additional pipeline reliability and flexibility.

20. Based on the demand demonstrated for the proposed expansion and the minimal adverse impacts on existing customers, other pipelines, landowners, or communities, we find, consistent with the Certificate Policy Statement, that approval of the project is required by the public convenience and necessity.

⁹ Consistent with our standard practice, we will condition our certificate authorization so that construction may not commence until after Northern executes contracts that reflect the levels and terms of service represented in its precedent agreements.

B. Northern's Request for Presumption of Rolled-In Rate Treatment

21. Northern requests that the Commission make a finding supporting rolled-in rate treatment for the costs of the proposed Palmyra North Expansion. Northern states that the incremental revenues from the proposed project will exceed the incremental cost of service and, therefore, the costs can be rolled in without existing customers subsidizing the project. Northern will provide the new services at either negotiated, discounted or maximum reservation and commodity rates under Rate Schedules TF and TFX.¹⁰ The expansion shippers will also pay applicable electric compression charges, any other Commission-approved reservation and/or commodity surcharges, plus reimbursements for fuel use and unaccounted for-gas losses.

22. Northern's Revised Exhibit N shows calculations for the estimated \$1.19 million cost-of-service projected for year 1 for the proposed construction and abandonment of facilities using cost elements underlying its currently effective maximum tariff rates, including the 9.39 percent overall rate of return (based on a pretax return of 13.42 percent), a 1.5 percent annual depreciation rate and the straight fixed-variable rate design approved in Northern's rate case settlement in Docket No. RP04-155-000.¹¹ Northern's comparison of the cost-of-service for the expansion over the first three years of operation to projected contract revenues from the 44,200 Dth per day of incremental capacity shows that revenues will exceed costs by \$4.21 million in the first year (\$5.14 million incremental revenues minus \$1.19 million incremental cost of service), by \$4.13 million in the second year (\$5.06 million incremental revenues minus \$1.19 million incremental cost of service), and by \$4.16 million in the third year (\$5.06 million incremental revenues minus \$1.19 million incremental cost of service). Northern also includes a rate impact comparison at Revised Exhibit P which shows that rolled-in treatment for the project's costs would decrease its currently effective Rate Schedule TFX and TF summer and winter rates by 0.8 percent.

23. Based on Northern's projections, incremental revenues from the additional capacity created by the expansion project should exceed the estimated costs of the expansion. Therefore, we will grant Northern's request for a predetermination supporting

¹⁰ Rate Schedule TF applies to firm transportation service from Northern's Field Area to the Field-to-Field/Market Demarcation Point. Rate Schedule TFX applies to firm transportation service solely for the Market Area, the Field Area or a combined service for both Northern's Market and Field Areas.

¹¹ *Northern Natural Gas Company*, 111 FERC ¶61,144 (2005).

rolled-in rate treatment for the costs of the expansion and abandonment proposal in its next rate case, absent a significant change in circumstances forming the basis for this presumption.

C. Distributors' Request for Clarification Regarding Discounted Rates

24. In the event we approve Northern's project and its request for rolled-in rate treatment for the project's costs, Distributors ask that we confirm that the "approvals do not constitute any approval of the transactions, including any proposed rates, for rate-making purposes at this time".¹² Emphasizing that the threshold test for a presumption of rolled-in rate treatment is that there will be no subsidization of a project's costs by existing customers, Distributors assert that the Commission also should provide assurance that existing customers will not be forced to pay higher rates as the result of Northern's decision to offer discounts to shippers using the proposed expansion facilities. Distributors express concern that the Commission may not adhere to its usual practice of requiring pipelines to support any discounts and other benefits in a general rate case.

25. As discussed above, the Commission has found, based on the information in Revised Exhibits N and P of Northern's amended application, that incremental expansion revenues will exceed project costs, notwithstanding that some of the expansion services will be provided at discounted rates. If this proves not to be the case at such time as Northern seeks to roll the costs of these facilities into its system rates, then Northern will bear the burden of demonstrating that a roll in is nevertheless warranted. In the event Northern files under section 4 to adjust its rate design to account for any rate discounts to expansion shippers, Northern will have the burden of proof to justify its discounts in the rate case where all parties will have an opportunity to challenge the discounts and to seek discovery regarding the purpose and level of any discounts.¹³ The Commission grants Distributors' request for clarification consistent with this discussion.

D. Environmental

26. On September 12, 2006, the Commission issued a Notice of Intent to Prepare an Environmental Assessment (EA) for the Proposed Palmyra North Expansion Project and Request for Comments on Environmental Issues (NOI). Following Northern's filing of its amendment to its application, the Commission issued a Supplemental NOI on December 18, 2006. The NOIs were published in the Federal Register and also mailed to

¹² Distributors' Intervention, p. 5.

¹³ See *Northern Natural Gas Company*, 115 FERC ¶ 61,146 at P 11 (2006).

114 interested parties, including federal, state, and local officials; agency representatives; conservation organizations; Native American groups; local libraries and newspapers; and property owners affected by the proposed facilities.

27. Our staff addressed all substantive comments in the EA. The EA addresses Purpose and Need; Construction, Operation, and Maintenance Procedures; Land Requirements; Permits; Water Resources and Wetlands; Vegetation; Soils; Land Use; Cultural Resources; Air and Noise Quality; and a consideration of Alternatives.

28. The Kansas Preservation Officer filed comments in response to the NOI on October 2, 2006. In its comments, the Preservation Officer requested additional information regarding the type of proposed activities involving ground modification or structure removal occurring during the Clifton Compressor Station abandonment. As stated in the EA, Northern contacted the Preservation officer and forwarded the requested information. The Preservation Officer's comments submitted October 26, 2006, state that its concerns have been satisfied and concludes that there would be no effect on historic properties.

29. The Iowa Utilities Board filed comments in response to our NOI on September 20, 2006. In its comments, the Iowa Utilities Board expressed concern regarding the impacts to agricultural land during and after pipeline construction and recommended adoption of the Agricultural Impact Mitigation Agreement (AIMA). Before filing its application, Northern entered into an AIMA with the State Agricultural Departments of Iowa and Minnesota for the proposed project. Therefore, as discussed in the EA, Northern has agreed to follow the AIMA and the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* to minimize impacts to soils and agricultural land during construction and operation of the proposed facilities.

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

31. 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 and replacement of

facilities approved by the Commission.¹⁴ Northern shall notify the Commission's environmental staff by telephone, e-mail, or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Northern. Northern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

Summary

32. For the reasons discussed above, we find the benefits of Northern's proposed Palmyra North Expansion project will outweigh any potential adverse effects, that the proposed project is consistent with the Commission's Certificate Policy Statement on new facilities, and that the proposed new facilities and proposed abandonment of facilities are required and permitted, respectively, by the public convenience and necessity. We further find that, absent a significant change in circumstances, the costs associated with the Palmyra North Expansion will qualify for rolled-in rate treatment when Northern makes a future NGA section 4 rate filing to recover these costs.

The Commission orders:

(A) In Docket Nos. CP06-433-000 and CP06-433-001, a certificate of public convenience and necessity is issued to Northern under section 7(c) of the Natural Gas Act, authorizing the Palmyra North Expansion, as described herein and more fully described in the application, as amended and as conditioned herein.

(B) Permission for and approval of Northern's abandonment of facilities, as more fully described herein and in the application, as amended, are granted. Northern shall notify the Commission of any abandonment of facilities within 10 days thereof.

(C) The authorizations issued in Ordering Paragraphs (A) and (B) are conditioned on Northern:

(1) constructing and making available for service the facilities described herein, pursuant to paragraph (b) of section 157.20 of the Commission's regulations, within two years of the issuance of this order;

¹⁴See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(2) complying with all Commission regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20;

(3) executing contracts for the levels and terms of service represented in the precedent agreements with its customers; and

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

(D) Northern is granted a predetermination supporting rolled-in rate treatment for the costs of the project authorized by this order in a future NGA section 4 rate proceeding, provided there are no material changes in the relevant facts and circumstances forming the basis for this predetermination.

(E) Northern's answer is accepted. Distributors' request for clarification is granted, consistent with the discussion in this order.

By the Commission.

(S E A L)

Philis J. Posey,
Deputy Secretary.

APPENDIX

Northern Natural Gas Company, Docket Nos. CP06-433-000, CP06-433-001

Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. Northern shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by this order. Northern must:
 - a. request any modifications to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the Project. This authority shall allow:
 - a. the modification of conditions of this order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impacts resulting from the Project's construction and operation.
3. Northern shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally

sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

4. Northern shall file noise surveys with the Secretary no later than 60 days after placing in service the facilities authorized to be relocated to the Palmyra Compressor Station in Otoe County, Nebraska to increase horsepower at the station. If the noise attributable to the operation of the Palmyra Compressor Station at full load exceeds a day-night sound level (L_{dn}) of 55 decibels (dBA) at any nearby noise sensitive areas, Northern shall install additional noise controls to meet that level within 1 year of the in-service date. Northern shall confirm compliance with the L_{dn} 55 dBA requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.