

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Paiute Pipeline Company

Docket Nos. CP04-343-000
CP04-343-001
and CP04-343-002

ORDER ISSUING CERTIFICATE

(Issued December 22, 2004)

1. On October 25, 2004, Paiute Pipeline Company (Paiute) filed an amended application under section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting authorization to acquire and operate the H.G. Laub liquefied natural gas (LNG) storage facilities located near Lovelock, Nevada and an associated loop pipeline facility that Paiute currently leases and operates as part of its interstate pipeline system. Paiute is also seeking authorization to render new, long-term LNG storage services under its Rate Schedule LGS-1 to four of its local distribution company (LDC) customers.

2. For the reasons set forth below, we find that Paiute's proposal will benefit the public interest by providing for continued service LNG storage service for winter peak shaving from the subject facilities by Paiute. Therefore, we will grant the requested certificate authority, as modified and conditioned in this order.

Background

A. Paiute – Docket No. CP04-343-000

3. Paiute's predecessor and parent company, Southwest Gas Corporation (Southwest), constructed the LNG storage facilities and associated 61-miles of 20-inch

loop pipeline in 1982.¹ The storage facility and loop pipeline were constructed to provide service for high priority, peak demands. In order to finance the cost of the construction of the facilities, Southwest entered into a sale/leaseback arrangement in 1982, under which General Electric Credit Corporation (General Electric), predecessor in interest to Uzal, LLC (Uzal), became the beneficial owner and Southwest leased the facilities.² The current term of the lease expires on July 6, 2005. Paiute currently has case-specific certificate authorization to operate the subject facilities to provide LNG storage service to four LDC customers: Avista Corporation (Avista), Sierra Pacific Power Company (Sierra Pacific), Southwest-N. California, and Southwest-N. Nevada.³

4. Under the lease agreement, Paiute has three options to choose from at the termination of the lease.⁴ It may: (1) purchase the leased facilities at their fair market sales value; (2) elect to renew the lease for a three-year term at the facilities' fair market rental value; or (3) surrender the leased facilities to Uzal. After failing to reach an agreement on either of the first two options, Paiute ultimately elected the third option. To implement that decision, on May 21, 2004, in Docket No. CP04-343-000, Paiute filed an application requesting authorization to abandon operation of the leased LNG storage facilities and its services using those facilities. In the application, Paiute stated that it was unable to reach an agreement with Uzal on a reasonable purchase price or rental value for the LNG storage facilities that would enable Paiute to competitively market its LNG storage service and recover the cost of that service.

¹ *Southwest Gas Corp.*, 10 FERC ¶ 61,093 (1980) and 14 FERC ¶ 61,257 (1981), respectively. Southwest originally operated the leased facilities as part of its jurisdictional, northern Nevada transmission system. Following a corporate restructuring in 1988, Southwest's northern Nevada system was transferred to Paiute. *See Southwest Gas Corp.*, 43 FERC ¶ 61,257 (1988).

² *See Southwest Gas Corp.*, 20 FERC ¶ 61,172 (1982). In 1999, General Electric sold its ownership interest to Public Service Resources Corporation (Public Service). In 2004, Uzal, an affiliate of Public Service, became the sole beneficial owner of the facilities.

³ *See Southwest Gas Corp.*, 52 FERC ¶ 61,311 (1990), 54 FERC ¶ 61,338 (1991), 59 FERC ¶ 61,304 (1992).

⁴ While Paiute was authorized to assume operation of the LNG facilities, Paiute did not succeed to Southwest's interest as lessee of the facilities. Therefore, negotiations and actions with respect to the future disposition of the lease were formally taken by Southwest on behalf of its affiliate, Paiute.

5. As stated, the leased facilities include a 20-inch diameter loop pipeline. Paiute relies on the pipeline to meet its contractual obligations to transport gas. Paiute's original application stated that while it made several offers to purchase the pipeline, Uzal rejected all of Paiute's offers. To replace this capacity, Paiute requested authorization in the May 21 application to construct a new compressor station at its Wadsworth Junction.

B. Related Applications

1. Tuscarora – Docket No. CP04-344-000

6. To provide natural gas transportation service to fulfill Paiute's LNG storage customers' requirements in light of the potential abandonment of the LNG storage facilities,⁵ on May 21, 2004, Tuscarora Gas Transmission Company (Tuscarora) filed an application requesting authorization to construct a new compressor station and booster unit to increase the capacity on its existing pipeline system in California and Nevada. Tuscarora is a competitor and upstream transporter of gas supplies to Paiute's system. Tuscarora's and Paiute's largest customer is Sierra Pacific. Because of the relatively less expensive expansibility of Tuscarora's system, compared to that of Paiute's mainline systems, it was viewed as more economical for Paiute's customers to pay for new incremental capacity on Tuscarora.⁶ Sierra Pacific and Avista executed individual Precedent Agreements and Southwest executed two Transportation Service Agreements (for Southwest-N. California and Southwest N. Nevada) for service on Tuscarora's proposed facilities.

2. Uzal – Docket No. CP04-388-000

7. On July 30, 2004, Uzal filed an application requesting authorization to operate and maintain the existing LNG storage facility and related pipeline as a new natural gas company. Uzal also requested that the Commission hold a comparative hearing to consider Paiute's and Tuscarora's proposals along with its application, as competing projects. With its application, Uzal filed unexecuted service agreements for Southwest-N. California, Southwest-N. Nevada, and Avista as prospective customers. Uzal also

⁵ Southwest's and Avista's service agreements with Paiute expire in February and April 2005, respectively. Sierra Pacific's service agreement expired in February 2003.

⁶ Tuscarora was initially constructed as a long-line, 20-inch diameter pipeline without compression. Thus, the system can be expanded easily and relatively cost effectively by adding compression.

requested blanket certificates under Subpart F of Part 157 and Subpart G of Part 284 of the Commission's regulations.

**C. Amended Application and Settlement Agreements –
Docket Nos. CP04-343-001 and -002.**

8. On October 25, 2004, Paiute filed an amendment to its application stating that it had reached an agreement with Uzal to purchase the LNG storage facility and related 61-mile pipeline. The agreement to purchase the facilities is subject to two settlement agreements. The first was executed on September 30, 2004, by Paiute, Southwest, and Uzal and Public Service, Uzal's predecessor-in-interest (Uzal Agreement). The second settlement was executed on October 21, 2004, among Paiute, Southwest (N. California and N. Nevada), Avista, Sierra Pacific, Uzal, and Tuscarora (Joint Agreement).⁷

9. Under the Uzal Agreement, among other things, Paiute will purchase the LNG storage facility and 61-mile diameter loop pipeline from Uzal for \$21,970,000. Under the Joint Agreement, among other things:

- Uzal will pay Tuscarora \$1,880,000 in satisfaction of the obligations of Avista, Sierra Pacific, and Southwest (N. California and N. Nevada) under the Precedent/Transportation Agreements filed in Tuscarora's proceeding in Docket No. CP04-344-000 and withdraw its petition for judicial review of the Commission's orders issued in Tuscarora's 2002 Expansion proceeding.⁸

⁷ While Paiute states that the Joint Agreement was executed on October 21, Sierra Pacific notified the Commission on November 1, 2004, that its Board of Directors had approved its participation in the Joint Settlement.

⁸ See *Tuscarora Gas Transmission Co.*, 96 FERC ¶ 61,356 (2001), *order issuing certificate*, 98 FERC ¶ 61,071 (2002), *order denying reh'g and amending certificate*, 99 FERC ¶ 61,044 (2002), *order vacating certificate authorization, in part*, 103 FERC ¶ 61,204 (2003), *order denying reh'g*, 104 FERC ¶ 61,302 (2003), *appeal docketed sub nom., Public Service Resources Corp. v. FERC*, No. 03-1406 (D.C. Cir. Nov. 12, 2003)(*Tuscarora*).

- Tuscarora will release and terminate the Precedent/Transportation Agreements filed in Docket No. CP04-344-000.⁹
- Avista, Sierra Pacific, and Southwest (N. California and N. Nevada) will be responsible to Tuscarora for all incremental costs incurred with respect to the project proposed in Docket No. CP04-344-000 if the settlements do not become effective and Tuscarora proceeds with its expansion.
- Certain shippers, including Avista and Southwest (N. California and N. Nevada), will amend the existing transportation service agreements with Tuscarora by extending the terms of those agreements to July 6, 2020.
- Paiute will file to initiate a NGA section 4 general rate case on or before January 28, 2005, to revise its transportation and storage rates.

10. On October 26, 2004, Uzal filed a request to withdraw its application filed in Docket Nos. CP04-388-000, *et al.*, contingent on the Commission’s approval of the Joint Settlement and the sale of the LNG storage facilities and related pipeline.

D. Amended Proposal

11. Paiute requests authorization to acquire and operate the H.G. Laub LNG storage facility located at milepost (MP) 164.41 on Paiute’s mainline transmission system near Lovelock, Nevada. It also intends to acquire and operate approximately 61 miles of 20-inch diameter loop pipeline between the LNG storage facility and Paiute’s Wadsworth Junction at MP 225.52.

12. Paiute proposes to provide service under its existing Rate Schedule LGS-1 under four 15-year service agreements.

<u>Customer</u>	<u>Storage Capacity</u>	<u>Daily Delivery Capacity</u>	<u>Effective Date of Service</u>
Avista	86,267 Dth	6,535 Dth	5-1-05
Sierra Pacific	303,604 Dth	23,000 Dth	4-1-05
Southwest – N. California	64,219 Dth	4,865 Dth	3-1-05
Southwest – N. Nevada	495,782 Dth	37,559 Dth	3-1-05

⁹ On October 28, 2004, Tuscarora filed a request to withdraw its application filed in Docket No. CP04-344-000, contingent on the Commission’s approval of the Joint Settlement.

13. Paiute proposes to acquire the facilities for \$21,970,000. Paiute requests that the Commission determine that the acquisition cost represents a prudent expenditure and that Paiute may include the total cost in rate base in its next NGA section 4 rate proceeding. Paiute also states that it will allocate the cost between storage and transmission functions. Specifically, Paiute proposes to allocate \$12,970,000 to its storage function and \$9,000,000 to its transmission function for both rate and accounting purposes. Paiute requests a finding supporting rolled-in rate treatment for the \$9,000,000 to be allocated to its transmission function.

Procedural Matters

14. Notice of the application and amendments were published in the *Federal Register* on June 8, 2004 (69 *Fed. Reg.* 31,983) and November 19, 2004 (69 *Fed. Reg.* 67,713), respectively. Avista, Tuscarora, Sierra Pacific, Southwest, Uzal, the Nevada Attorney General, Bureau of Consumer Protection, and Northern Nevada Industrial Gas Users (Industrial Users) filed timely, unopposed motions to intervene.¹⁰ The Public Utilities Commission of Nevada filed a timely notice of intervention.¹¹

15. Industrial Users filed a limited protest in Docket No. CP04-343-000 objecting to Paiute's request to roll the cost of the compression facilities into its systemwide rates. In addition to its motion to intervene, Uzal filed a protest, a request to consolidate the Paiute and Tuscarora applications with the application it intended to file, and a request for a comparative hearing. Sierra Pacific, Southwest Gas, and Paiute filed answers to Uzal's protest. Paiute also filed a separate answer to Industrial User's protest. Uzal filed an answer to the answers. Rule 213(a)(2) of the Commission's Regulations prohibits answers to protests and other answers. Because the answers were filed prior to the filing of the settlement in the amended application, we will not waive this prohibition, and the unauthorized answers are rejected.

16. On October 27, 2004, Paiute, Southwest (N. Californian and N. Nevada), Avista, Sierra Pacific, Uzal, and Tuscarora filed the Joint Agreement. They request that the Commission approve the settlement. Sierra Pacific and Uzal filed comments in support of the settlement. No one contested the settlement.

¹⁰ Timely, unopposed motions to intervene are granted by operation of Rule 214(c). 18 C.F.R. § 385.214(c)(2004).

¹¹ A timely notice of intervention by a state regulatory Commission is granted by operation of Rule 214(b). 18 C.F.R. § 385.214(b)(2004).

Discussion

17. Since Paiute's proposal involves facilities that have been and will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction or acquisition and the operation of the facilities is subject to the requirements of subsections (c), and (e) of NGA section 7.

A. Settlement

18. When presented with a settlement, the first issue for the Commission is whether the settlement provides an acceptable outcome for the case that is consistent with the public interests protected by the Commission.¹² The Commission has relied on the usefulness of settlements, both in enabling the Commission to resolve the large number of cases it must process and in allowing the pipeline and its ratepayers to obtain greater rate certainty and to minimize their litigation costs. We find that this settlement provides an acceptable outcome consistent with the public interest.

19. Paiute states that it has been negotiating with Uzal and its predecessor concerning the possible sale or extended-term lease of the facilities since mid-2000. Paiute states that in February 2002, Sierra Pacific notified Paiute that it would terminate its LNG storage service effective February 2003. Paiute asserts that Sierra Pacific cited the high cost of the LNG service as one of its reasons for terminating the service.¹³ Paiute states that since May 2002, it has emphasized in its discussion with Uzal that the amount that it could pay for the LNG storage facilities and pipeline was based on Paiute's ability to price its storage service at a competitive rate.

20. Paiute contends that the value of the facilities is market-driven, and that its ability to recover its costs of operating the facilities was effectively constrained by the fact that Paiute's customers could pursue market supply alternatives in place of the storage

¹² *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345, at 62,341 (1998).

¹³ Paiute states that Sierra Pacific was responsible for 48.8 percent of the LNG storage service and associated firm transportation revenues. Paiute states that it has posted the available LNG storage and transportation capacity on its electronic bulletin board since December 23, 2002, but has not received a single bid for the capacity. Paiute states that while the loss of the Sierra Pacific revenue was offset by the lease payments being cut in half at the beginning of 2003, the termination of service to Sierra Pacific still resulted in a \$1.4 million loss per year. *See* Paiute application filed in Docket No. CP04-343-000 at 17.

service.¹⁴ Paiute states that its LNG storage customers had viable alternatives to those from that demonstrate the possibility of other pipeline capacity to northern Nevada, as well as access to less expensive and more flexible California storage services. Thus, Paiute explains that it needs long-term assurances as to its costs with respect to the leased facilities in order to market its storage service on a long-term basis and be reasonably assured of cost recovery.

21. Paiute states that it negotiated with Uzal into the summer of 2003. It contends that it submitted several offers, which were based on Paiute's knowledge and understanding of Tuscarora's system and input from Southwest and Paiute's remaining storage customers, as to how much they are willing to pay for continued storage service. Paiute contends that its offers to Uzal were designed to enable Paiute to continue providing LNG storage service at competitively attractive rates while recovering its cost of service associated with the leased facilities. Paiute states that Uzal rejected all its offers.

22. Paiute states that in July 2003, Tuscarora announced an open season for a systemwide expansion project that would offer a viable alternative to Paiute's remaining LNG storage customers. Paiute states that it was advised by its remaining LNG storage customers that they were considering taking service from Tuscarora to supplant their needs for continued LNG storage service by Paiute. Paiute states that it sent a letter to Uzal emphasizing that time was running out and that Paiute needed to reach an agreement. Paiute states that Uzal continued to reject all of its offers. As a result, Tuscarora and Paiute filed their respective applications in Docket Nos. CP04-344-000 and CP04-343-000, and Uzal subsequently filed by its application to operate the LNG storage facility in Docket No. CP04-388-000.

23. Paiute states that in spring 2004, Paiute and Uzal resumed discussions, which led to the September 30 Uzal Agreement to sell the facilities to Paiute. The Joint Agreement resolves, among other things, issues concerning: (1) Paiute obtaining commitments from customers to fully subscribe to the LNG storage capacity on a long-term basis; (2) Tuscarora releasing those customers from their contractual commitment to its system expansion; and (3) Uzal withdrawing various Commission and judicial filings.¹⁵

¹⁴ Sierra Pacific opted to contract with Tuscarora for firm transportation service on Tuscarora's 2002 Expansion project when its LNG storage contract with Paiute expired. *See Tuscarora, supra*, n. 8.

¹⁵ Uzal intends to withdraw its protests in Paiute's and Tuscarora's proceedings in Docket Nos. CP04-343-000 and CP04-344-000, respectively, as well as, its filing in Paiute's rate proceeding filed in Docket No. RP04-51-000. Additionally, it intends to
(continued)

24. The Commission finds that the Joint Agreement resolves a number of contentious issues raised by the applications filed in Docket Nos. CP04-343-000, CP04-344-000, and CP04-388-000. It is the result of extensive negotiations which have resulted in an outcome that promotes the public interest to the benefit of Paiute's existing LNG storage customers. At a marketable price, the LNG storage facility provides a valuable function as a source of winter peak shaving and emergency gas supplies. The settlement agreement also avoids the need to construct new facilities at this time, preserving the inexpensive expansibility on Tuscarora's system to meet future growth. Accordingly, we find the Joint Agreement provides an acceptable outcome consistent with the public interest.

B. Public Convenience and Necessity/Rolled-in Rate Treatment

25. The Commission's Policy Statement, on certification of new pipeline facilities provides guidance as to how the Commission will evaluate proposals for certificating new construction.¹⁶ The Policy Statement notes that facilities that improve existing service for existing customers, by replacing existing capacity, improving reliability and providing flexibility for existing customers are for the benefit of existing customers. Thus, increasing the rates of existing customers to pay for these improvements is not a subsidy.¹⁷

26. Paiute's proposal to acquire the LNG storage facility and related loop pipeline is necessary to maintain the status quo on Paiute's system. It does not create any new capacity or expand upon Paiute's existing capacity. Therefore, there will be no subsidization of the facilities by existing customers. We find that Paiute's purchase of these facilities is an appropriate action to maintain existing capacity and pipeline operations and that it is in the public convenience and necessity.

withdraw its judicial appeal of the Commission's orders issued in Tuscarora's 2002 Expansion project, *See Tuscarora, supra*, n.8, and the Nevada litigation. The Nevada litigation refers to *Uzal, LLC v. Southwest Gas Corp. and Paiute Pipeline Co.*, No. CV-N-04-0307-HDM-VPC, a pending case before the United States District Court for the District of Nevada (filed June 15, 2004).

¹⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *order clarifying statement of policy*, 90 FERC ¶ 61,128 (2000); *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000)(*Policy Statement*).

¹⁷ *Id.*, 88 FERC at n.12.

27. Paiute's acquisition of the facilities will not affect market shares of competing pipelines, because it is continuing an existing service. Moreover, we note that Paiute's competitor, Tuscarora, is a signatory to the Joint Agreement and fully supports Paiute's proposal.

28. Further, we will grant that Paiute's requests a predetermination that the costs associated with the purchase of the facilities to be used to perform a transmission function will be rolled-in with Paiute's systemwide transportation rates in its next NGA section 4 rate proceeding. Since these costs are attributable to facilities necessary to preserve Paiute's ability to meet its firm transportation service obligations, we find that rolled-in rate treatment for these costs is consistent with the Policy Statement.¹⁸

C. Acquisition Cost/Allocation

29. Paiute has agreed to pay \$21,970,000 for the leased facilities. It states that the parties to the Joint Agreement, in particular the four prospective storage service customers, have agreed to a \$12,970,000 and \$9,000,000 allocation of the acquisition costs to Paiute's storage and transmission functions, respectively. Paiute contends that it used the original cost of the LNG facility and the 61-mile loop pipeline, and by applying a reasonable service life to each, determined that the allocated amounts: (1) are reasonable; (2) are less than the actual depreciated values for each of the storage and transmission components of the leased facilities; and (3) will result in lower rates than using either the traditional lease values presently incorporated into Paiute's storage and transmission rates or the actual depreciated values. Therefore, Paiute contends that the proposed acquisition cost and agreed-upon allocation of the cost for rate base, rate and accounting purposes will be in the public interest.

30. Paiute requests that the Commission determine that the acquisition cost: (1) represents a prudent expenditure for Paiute to include in its rate base in its next NGA section 4 rate case; (2) shall be used as Paiute's starting rate base for the leased facilities for both rate and accounting purposes; and (3) shall be allocated between storage and transmission, with \$12,970,000 allocated to a storage function, and \$9,000,000 allocated to a transmission function.

31. The Commission has determined that Paiute's acquisition cost of \$21,900,000 is less than what the estimated depreciated value of the original cost would have been had

¹⁸ *Id.*

Paiute obtained ownership of the facilities and placed them in its plant account from the commencement of service in 1982. As a result, Paiute's acquisition cost of \$21,900,000 is not considered an acquisition premium. Therefore, the Commission will allow Paiute to capitalize its \$21,900,000 acquisition cost and allow its inclusion in rate base in Paiute's next general NGA section 4 rate case to be filed January 2005.

32. Paiute is proposing to change the allocation of the costs associated with the LNG facilities between storage and transmission functions from the historic allocation percentage currently reflected in its rates.¹⁹ Paiute states that the change is attributable to the fact that the storage and transmission assets have different depreciable lives.²⁰ The Commission will accept the allocation of the \$21,970,000 acquisition cost between storage and transmission, with \$12,970,000 allocated to Paiute's storage function and \$9,000,000 allocated to Paiute's transmission function. However, the Commission will deny Paiute's request that the proposed allocation be binding in all future rate cases. While the Commission finds that a predetermination supporting rolled-in rate treatment for the costs allocated to transmission is appropriate, determination of the allocation of plant cost between storage and transmission is appropriately addressed in the context of Paiute's next general NGA section 4 rate case, which Paiute intends to file in January 2005, where costs are fully examined.²¹ The Commission finds that parties should be given the opportunity to explore all issues material to the allocation of costs between the storage and transmission functions.

D. Rate Schedule LGS-1

33. Paiute requests that the Commission issue a case-specific certificate to provide Rate Schedule LGS-1 services to Avista, Sierra Nevada, and Southwest (N. California and N. Nevada) under the new storage service agreements. Paiute contends that the previous and existing storage services were certificated on a case-specific basis. Paiute asserts that the LNG storage service has never been subject to Part 284 of the Commission's regulations and that, for most of the time, the capacity of the LNG storage facility has been fully committed under long-term service agreements. It also claims that the plant's limited operational flexibility (*e.g.*, one cycle per year) renders an open-access operation impractical. Paiute states that with the new, long-term customer service

¹⁹See Paiute's November 8, 2004 data response to Commission Staff Data Request No. CB 2-1(b) in this proceeding.

²⁰*Id.*

²¹See *Questar Pipeline Co.*, 109 FERC ¶ 61,226 at P 26 (2004).

agreements that fully subscribe the plant's capacity, it does not intend to operate the plant under Part 284 of the Commission's regulations. It argues that during negotiations the four customers requested that Paiute make no changes to its tariff provisions governing the storage service.

34. The regulatory goals embodied in Order No. 636²² were intended to encourage interstate pipelines to provide open-access service, including storage. The Commission's application of its open access regulations to pipelines represents a policy decision not to issue case-specific, Part 157 transportation certificates.²³ Under current policy and regulations, the Commission prefers transportation and storage services be rendered under its open access regulations of Part 284, rather than under case specific certificates issued under Part 157, in order to ensure as competitive an environment as possible for natural gas services.²⁴ Given that the Commission has found that case-specific certificates are inconsistent with the aims of Order No. 636, it is not sufficient that Paiute states that all parties agree to the proposed service. Therefore, we will require that it file to provide the service under Part 284 when it files its NGA section 4 rate proceeding in January 2005.

E. Environmental Review

35. The Commission staff prepared an environmental assessment (EA) for Paiute's amended proposal. Because no new facilities would be constructed, and there would be no ground-disturbing activities, the continued operation of these facilities would not result in a significant impact on the quality of the human environment. However, we will require that Paiute comply with the Commission's LNG operations reporting

²² *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *aff'd in part, rev'd in part, United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), cert. denied, 137 L. Ed. 2d 845, 117 S. Ct. 1723, 117 S. Ct. 1724 (1997), *on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997), *order on reh'g*, Order No. 636-D, 83 FERC ¶ 61,210 (1998).

²³ *United Distribution Companies v. FERC*, 88 F.3d at 1123-25, fn 9.

²⁴ *See, e.g., Iroquois Gas Transmission System, L.P.*, 66 FERC ¶ 61,184, at 61,386 (1994).

requirements and inspection program listed in the conditions in the Appendix to this order.

36. 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 of facilities approved by this Commission.²⁵

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Paiute to acquire and operate the natural gas facilities, as described more fully in the application and in the body of this order.

(B) The certificate authorized in Ordering Paragraph (A) above is conditioned upon Paiute's compliance with all applicable Commission regulations under the NGA, particularly paragraphs (a), (c), (e), and (f) of section 157.20 of such regulations.

(C) Acquisition of the proposed facilities shall be completed and made available for service within 12 months from the date of this order in accordance with section 157.20(b) of the Commission's regulations.

(D) The Joint Agreement is fair and reasonable and in the public interest and is hereby approved.

(E) The \$21,970,000 acquisition cost is accepted as an appropriate amount to be included in rate base for rate and accounting purposes.

²⁵ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(F) Paiute's allocation proposal of acquisition costs between storage and transmission functions is accepted. However, parties will be free to raise issues with respect to cost allocation between storage and transmission in Paiute's next general NGA section 4 rate case in January 2005.

(G) Paiute's request for a predetermination of rolled-in rate treatment for the costs determined to be associated with its transmission function is granted.

(H) Paiute 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 Paiute. Paiute shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(I) All filed answers are rejected.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

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

1. **Semi-annual** operational reports shall be filed with the Secretary of the Commission (Secretary) to identify changes in facility design and operating conditions, abnormal operating experiences, activities (including quantity and composition of the LNG, vaporization quantities, boil-off/flash gas, etc.), and plant modifications including future plans and progress thereof. Abnormalities shall include, but not be limited to: potential hazardous conditions from offsite; storage tank stratification or rollover; geysering; storage tank pressure excursions; cold spots on the storage tanks; storage tank vibration and/or vibrations in associated cryogenic piping; storage tank settlement; significant equipment or instrumentation malfunctions or failures; non-scheduled maintenance or repair (and reasons therefore); relative movement of storage tank inner vessels; vapor or liquid releases; fires involving natural gas and/or from other sources; negative pressure (vacuum) within a storage tank; and higher than predicted boil-off rates. Adverse weather conditions and the effect on the facility shall also be reported. Reports shall be submitted **within 45 days after each period ending June 30 and December 31.**

In addition to the above items, a section entitled "Significant Plant Modifications Planned for the Next 12 Months" (provide tentative dates) shall also be included in the semi-annual operational reports. Such information will provide the Commission's staff with early notice of anticipated future construction/maintenance projects at the LNG facility.

2. The facility shall continue to be subject to regular Commission staff technical reviews and site inspections **on at least a biennial basis or more frequently** as circumstances indicate. Prior to each Commission staff technical review and site inspection, Paiute shall respond to a specific data request for information relating to possible design and operating conditions that may have been imposed by other agencies or organizations. Paiute shall also file with the Secretary up-to-date detailed piping and instrumentation diagrams reflecting facility modifications and other pertinent information not included in the semi-annual operational reports described above, including facility events that have taken place since the last semi-annual operational report was filed with the Secretary.
3. At any point the Director of OEP deems it necessary, the Director of OEP has delegated authority to take all steps necessary to ensure the protection of life,

health, property, and the environment during construction and operation of the project. This authority shall include:

- a. stop-work authority and authority to cease operation; and
 - b. the design and implementation of any additional measures deemed necessary to assure continued compliance with the intent of the conditions of this Order.
4. Significant non-scheduled events, including safety related incidents (i.e., LNG or natural gas releases, fires, explosions, mechanical failures, unusual over pressurization, and major injuries) shall be reported to the Commission's staff **within 48 hours**. In the event an abnormality is of significant magnitude to threaten public or employee safety, cause significant property damage, or interrupt service, notification shall be made immediately, without unduly interfering with any necessary or appropriate emergency repair, alarm, or other emergency procedure. This notification practice shall be incorporated into the LNG facility's emergency plan. Examples of reportable LNG related incidents include:
- a. fire;
 - b. explosion;
 - c. property damage exceeding \$10,000;
 - d. death or injury requiring hospitalization;
 - e. free flow of LNG for 5 minutes or more that results in pooling;
 - f. unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability, structural integrity, or reliability of an LNG facility that contains, controls, or processes gas or LNG;
 - g. any crack or other material defect that impairs the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG;
 - h. any malfunction or operating error that causes the pressure of a pipeline or LNG facility that contains or processes gas or LNG to rise above its maximum allowable operating pressure (or working pressure for LNG facilities) plus the build up allowed for operation of pressure limiting or control devices;
 - i. a leak in an LNG facility that contains or processes gas or LNG that constitutes an emergency;
 - j. inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of an LNG storage tank;
 - k. any safety related condition that could lead to an imminent hazard and cause (either directly or indirectly by remedial action of the

- operator), for purposes other than abandonment, a 20 percent reduction in operating pressure or shut down of operation of a pipeline or an LNG facility that contains or processes gas or LNG;
- l. safety related incidents to LNG trucks occurring at or in route to and from the LNG facility; or
 - m. the judgment of the LNG personnel and/or management even though it did not meet the above criteria or the guidelines set forth in an LNG facility's incident management plan.

Following the initial company notification, the Commission's staff will determine the need for a separate follow-up report or follow-up in the upcoming semi annual operational report. All company follow-up reports shall include investigation results and recommendations to minimize a reoccurrence of the incident.