140 FERC ¶ 61,212
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Alliance Pipeline L.P. Docket No. CP12-50-000

ORDER ISSUING CERTIFICATE

(Issued September 20, 2012)

1. On January 25, 2012, Alliance Pipeline L.P. (Alliance) filed an application under section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing it to construct and operate pipeline and appurtenant facilities in North Dakota (Tioga Lateral Project). Alliance states that the proposed pipeline is designed to connect natural gas production from the Bakken shale formation in Eastern Montana and Western North Dakota to Alliance's mainline. Alliance also requests a waiver of the hydrocarbon dewpoint specifications in its tariff and approval of a non-conforming firm transportation agreement to provide transportation service through the proposed facilities. The Commission will grant the requested authorization and waiver, subject to conditions, as discussed below.

I. Background and Proposal

2. Alliance is a natural gas company that transports gas in interstate commerce subject to the Commission's jurisdiction. Alliance's pipeline system is approximately 886 miles long, extending from the United States-Canada border in Renville County, North Dakota southeast through North Dakota, Minnesota, Iowa, and Illinois. The pipeline terminates at the Aux Sable processing plant in Grundy County, Illinois, near Chicago.[1]

3. Alliance proposes to construct and operate approximately 79.3 miles of 12-inch diameter pipeline and appurtenant facilities, extending from a gas processing facility near Tioga, North Dakota east through Williams, Montrail, Burke, and Renville

[1] Aux Sable Liquid Products LP, an affiliate of Alliance, processes gas at the Aux Sable processing plant.

Counties, North Dakota to an interconnection with Alliance's mainline near Sherwood, North Dakota. Alliance also proposes to construct and operate: (1) a 6,000 horsepower compressor station, containing three electric-driven compressors, and a meter station near Tioga; and (2) a pressure regulating station at the pipeline's initiation point. The proposed facilities are designed to have a capacity of 106,500 Mcf per day. Alliance estimates that the proposed facilities will cost approximately $141 million.

4. Alliance proposes an incremental firm monthly reservation recourse rate of $20.1533 per dekatherm (Dth), with a usage charge of $0.0594 per Dth and an availability of service charge of $0.6626 per Dth, and an interruptible rate of $0.7220 per Dth. Alliance does not seek approval to roll the costs of the project into its existing rates, but reserves the right to do so in the future as part of a general rate case.

5. On June 22, 2011, Alliance entered into a precedent agreement with Hess Corporation (Hess) to transport up to 61,500 Mcf per day for 10 years at negotiated rates. Subsequent to the Hess agreement, Alliance states that it held an open season from September 28 to October 27, 2011 but did not receive any bids for capacity. Alliance states that it continues to pursue additional commitments for firm capacity on the Tioga Lateral.

6. Alliance requests a waiver of the hydrocarbon dewpoint specifications in section 2.1 of the General Terms and Conditions (GT&C) of its tariff in order to transport natural gas from the Bakken shale region. In its application, Alliance filed a nonconforming firm transportation service agreement granting a hydrocarbon dewpoint waiver to Hess.[2] Alliance states that it offered waivers to similarly-situated potential shippers in the open season and will grant any additional waives on a first-come, first-served basis if operational conditions permit. Alliance states that, since gas quality specification waivers are available to all shippers on a first-come, first-served basis under the tariff, its proposal does not present a risk of undue discrimination.

7. Alliance states that the proposed Tioga Lateral Project responds to the demand for natural gas transportation capacity from the Bakken shale formation in Eastern Montana and Western North Dakota to the Chicago, Illinois market area. Although the Bakken formation is primarily a crude oil play, Alliance states that natural gas is produced in

[2] Revised section 2.3(b) of Alliance's tariff provides that Alliance will waive the hydrocarbon dewpoint specification in section 2.1(b) on a non-discriminatory, first-come first-served basis. Pursuant to section 2.3(b), Alliance will grant waivers if operating conditions permit the blending of gas subject to any waivers with other receipts in a manner which allows Alliance to maintain prudent and reliable operations. If Alliance grants more than one waiver under section 2.3(b), it will determine the priority on a first-come, first-served basis.

association with oil. Alliance asserts that some of the natural gas is currently being flared because the Bakken shale region lacks adequate natural gas processing infrastructure because natural gas from the Bakken formation generally requires additional processing before it can be delivered for customer end-use. Alliance states that, under current operating conditions, it can receive Bakken shale gas in North Dakota because it can blend that gas with gas received from upstream supply sources without adverse operational impact to its system. Alliance contends that the proposals herein would enable it to transport Bakken natural gas to the Aux Sable processing plant, thus allowing producers access to the Chicago market.

II. Interventions, Comments, and Answers

8. Notice of Alliance's application was published in the Federal Register on February 7, 2012.[3] Hess and Constellation Energy Commodities Group, Inc. filed timely, unopposed motions to intervene.[4] In addition, EOG Resources, Inc. and Pecan Pipeline (North Dakota), Inc. (EOG/Pecan) and BP America Production Company and BP Energy Company filed timely joint, unopposed motions to intervene.[5] We also received numerous comments from individuals about the Tioga Lateral Project. The issues raised in these comments will be discussed below.

9. ConocoPhillips Company (ConocoPhillips), the Dakota Resource Council, and a group of landowners whose property would be crossed by the proposed pipeline[6] filed late motions to intervene. These movants have demonstrated an interest in this proceeding. The untimely motions to intervene will not delay, disrupt, or unfairly prejudice any parties to this proceeding. Thus, we will grant the late motions to intervene pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.[7]

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[3] 77 Fed. Reg. 7,572.

[4] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(d) (2012).

[5] Id.

[6] These landowners are: Boyd and Connie Anderson, Bruce Ankenbauer, Brian Ankenbauer, Dennis Bauer, Douglas Beard, Jacquelynn Blikre, Frederick Cart, Elroy Hanson, Anita Jacobson, Allan Jacobson, Tilmer Jacobson, Marlin and Pauline Jacobson, Joan Jensen, Dennis Johnson, Tim Knutson, Mary Ann Matson, Jon Sagness, Ron Sagness, Marian Morris, and Natalie Wade.

[7] *See* 18 C.F.R. § 385.214(d) (2012).

III. Discussion

10. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Application of the Certificate Policy Statement

11. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.[8] The Certificate Policy Statement established 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 explained 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, 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.

12. 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.

13. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Since Alliance proposes to charge incremental recourse rates for the proposed service, the proposal will not result in subsidization by Alliance's existing customers. If

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

Alliance seeks to roll the costs associated with the project into its rates in the future, it must demonstrate that rolling the costs into its rates will not result in any subsidization by existing customers.

14. The proposed project will have no adverse impact on Alliance's existing customers. In addition, existing pipelines in the region do not have the capacity to transport Bakken shale gas unless they construct new aboveground facilities, including gas processing facilities to remove liquids from the gas prior to transportation. Further, no pipeline company in the market area has protested the application. Thus, we find that there will be no adverse impact on other pipelines or their captive customers.

15. The proposed facilities have been designed to minimize the impact on landowners and the environment. We find that Alliance has taken appropriate steps to minimize impacts on landowners and surrounding communities.

16. The Tioga Lateral Project will allow Alliance to transport liquids rich gas produced from the Bakken shale formation to the Chicago market area. Without the proposed facilities, the gas could be flared or vented due to a lack of infrastructure in the Bakken region. Based on the benefits the project will provide and the minimal adverse impacts on Alliance's existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find that, consistent with the Certificate Policy Statement and section 7(c) of the Natural Gas Act, the public convenience and necessity requires approval of Alliance's proposal, subject to the conditions set forth herein.

B. Initial Recourse Rates

17. Alliance proposes to provide service on the proposed facilities under Rate Schedules FT-1 and IT-1 and to charge incremental firm and interruptible recourse rates for service on the lateral. Alliance proposes that Rate Schedule FT-1 shippers designating the Tioga receipt point will be assessed a maximum incremental reservation charge of $20.1533 per Dth and a usage charge of $0.0594 per Dth. Aliance also proposes a maximum Tioga Lateral Incremental Usage Charge for Interruptible Transportation of $0.7220 per Dth. The incremental firm recourse rate is based on the first-year cost of service of $28,202,697 associated with the construction of the project facilities. The rate is based on a straight fixed-variable rate design and reflects billing determinants based on the full 106,500 Mcf per day capacity of the expansion. A projected level of costs associated with the electric driven compressors is included in the cost of service and will be recovered from project shippers in the usage charge.

18. We have reviewed Alliance's proposed cost of service, allocation, and rate design used to develop the incremental rates and find that, with the exception of the rate of return on equity (ROE), they reasonably reflect current Commission policy. Alliance proposes to use a 14 percent ROE in calculating its cost of service, stating that is the rate

of return the Commission has traditionally approved for new greenfield pipeline projects and that is the rate of return it used in establishing Alliance's own initial recourse rates when the Alliance system went into service in December 2000.[9] Alliance states that it has not filed an NGA section 4 rate case since its in-service date.

19. The Commission has generally approved higher rates of return on equity for greenfield projects to reflect the higher risks associated with such a project.[10] With respect to developing incremental rates for expansions of existing pipeline systems, our general policy is to use the rate of return components approved in the pipeline's last NGA section 4 general rate proceeding.[11]

20. Although Alliance has not filed a section 4 rate case since it went into service, we do not believe it is appropriate to use the 14 percent ROE used in Alliance's initial certificate application in determining the cost of service for the Tioga Lateral expansion, because it would not reflect the lower risks associated with expanding an existing pipeline system. Since the lateral pipeline Alliance is proposing has more in common with the incremental expansions constructed by existing pipelines than with greenfield pipeline projects the Commission believes it is more appropriate to use the most recent ROE approved in a litigated section 4 rate case as the ROE for designing the incremental rates for this project. This is the approach the Commission adopted in determining the ROE to be used in developing initial rates for existing facilities being acquired by a new interstate pipeline and the Commission believes it is appropriate to use in these circumstances.[12] The last litigated ROE applicable for this situation is 12.99 percent.[13] Thus, we will require Alliance to revise its proposed initial incremental recourse rates to reflect this revised rate of return on equity.

21. Alliance included the income tax gross-up on the equity component of Allowance for Funds Used During Construction (AFUDC) of $2,650,369 as part of the AFUDC amount and included it as a part of gas plant in service for rate purposes. In response to a data request, Alliance states that it intends to reflect the income tax gross-up for the

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[9] *See* Alliance's July 11, 2012 data response.

[10] *See, e.g., Ruby Pipeline, L.L.C.,* 128 FERC ¶ 61,224 (2009).

[11] *See, e.g., Texas Eastern Transmission, LP,* 129 FERC ¶ 61,151 (2009).

[12] *Southern Natural Gas Company, L.L.C.; High Point Gas Transmission, LLC,* 139 FERC ¶ 61,237 (2012).

[13] *Portland Natural Gas Transmission System,* 134 FERC ¶ 61,129 (2011).

equity component of AFUDC for accounting purposes in the proper deferred income tax account and as a regulatory asset in accordance with Commission accounting requirements.

22. This classification is not consistent with our accounting instructions, which require that the deferred tax liability for the equity component of AFUDC be recorded in Account 282, Accumulated Deferred Income Taxes – Other Property, and any corresponding regulatory asset in Account 182.3, Other Regulatory Assets. Since Alliance improperly reflected the income tax gross-up on the equity component of AFUDC of $2,650,369 as a part of gas plant in service for cost of service purposes in determining its rates, we will require Alliance to reflect the proper accounting treatment of equity AFUDC income tax gross-up in its rate calculation. Thus, Alliance is instructed to recalculate its incremental recourse rates in accordance with this clarification.

C. Reporting Incremental Rates

23. To assure that costs are properly allocated between Alliance's existing shippers and the incremental services authorized in this proceeding, we will require Alliance to keep separate books and accounting of costs attributable to the proposed incremental services. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710. Such measures protect existing customers from cost overruns and from subsidization that might result from under-collection of the project's incremental cost of service, as well as help the Commission and parties to the rate proceedings determine the costs of the project.[14]

D. Negotiated Rates

24. Alliance states that it will provide service to Hess under a negotiated rate agreement. Alliance must file all negotiated rate agreements or a tariff record describing the negotiated rate agreements associated with this project in accordance with the Alternative Rate Policy Statement and the Commission's negotiated rate policies.[15]

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[14] 18 C.F.R. § 154.309 (2012).

[15] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines* (Alternative Rate Policy Statement), 74 FERC ¶ 61,076, *reh'g and clarification denied*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066 (1996), a*ff'd sub nom.*, *Burlington*

(continued…)

E. Waiver of the Hydrocarbon Dewpoint Tariff Provisions

25. Alliance states that a waiver of the hydrocarbon dewpoint specifications in section 2.1(b) of the GT&C of its tariff is needed in order to recieve the rich natural gas from the Bakken shale formation in its system.[16] Section 2.3(b) of Alliance's GT&C provides that Alliance will waive the hydrocarbon dewpoint specification in section 2.1(b) on a nondiscriminatory, first-come first-served basis if operating conditions permit the blending of gas, subject to any waivers with other receipts, in a manner which allows the maintenance of prudent and reliable operations on Alliance. Alliance states that, under current operating conditions and in conjunction with the appropriate provisions of a proposed gas quality specification waiver, it can receive additional quantities of rich natural gas from the proposed Tioga, North Dakota receipt point and blend them with gas received from upstream sources without jeopardizing the pipeline integrity of its system. Therefore, Alliance proposes to waive the hydrocarbon dew point specification in its Section 2.3(b) of its GT&C in order to allow the transportation of rich natural gas from the Bakken Shale under its agreement with Hess. *Pro forma* Sheet No. 209 identifies the proposed waiver and specifies the maximum volumes eligible for the waiver, the hydrocarbon specification at the new receipt point, and specific restrictions which apply to gas tendered at that receipt point.

26. We recognize that in order for Alliance to bring liquids-rich natural gas from the Bakken shale formation to its system, it needs to waive the hydrocarbon dewpoint specifications in its tariff. Alliance states that it will continue to assess its ability to grant additional hydrocarbon dewpoint waivers and will consider all requests for such waivers on a nondiscriminatory basis. We find that the proposed hydrocarbon dewpoint waiver is just and reasonable and not unduly discriminatory. Accordingly, we will approve Alliance's proposed tariff provision providing for a waiver of its hydrocarbon dewpoint specifications for the Tioga receipt point.

F. Proposed Nonconforming Firm Transportation Agreement

27. Alliance states that Exhibit I of its application included a nonconforming firm transportation agreement with Hess for transportation on the proposed Tioga Lateral and

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Resources Oil & Gas Co. v. FERC, 172 F. 3d (D.C. Cir. 1998); and *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006).

[16] The Commission has approved a revised section 2.3(b) of Alliance's GT&C establishing a mechanism by which Alliance may grant waiver of the hydrocarbon dewpoint specifications in its tariff. See *Alliance Pipeline L.P.*, 125 FERC ¶ 61,109 (2008).

requests the Commission approve the nonconforming agreement as nondiscriminatory. Alliance's application includes only a redacted version of its precedent agreement with Hess. While Commission regulations require certain information to be submitted as Exhibit I to an application for a certificate of public convenience and necessity,[17] the precedent agreement included in Exhibit I may not be the final service agreement between Alliance and Hess under which service is ultimately provided. Hence, if Alliance wants the Commission to review any nonconforming provisions in its service agreement at an earlier date than required by Commission regulations, it may submit the complete service agreement for review, clearly highlighting any nonconforming provisions. However, Alliance must file an executed copy of each non-conforming agreement 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 no earlier than 60 days, and no later than 30 days, before the in-service date of the proposed facilities.

G. Environmental Analysis

28. On August 25, 2011, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

29. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), our staff prepared an environmental assessment (EA) for Alliance's proposal. The EA was prepared with the cooperation of the U.S. Fish and Wildlife Service (FWS) and the U.S. Army Corps of Engineers. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. In response to the NOI, we received 48 written comment letters. All substantive comments received in response to the NOI were addressed in the EA.

30. The primary issues raised by commenters include impacts on native prairie habitat, migratory birds, and the depth of pipeline burial on agricultural lands.

31. Construction of the project would affect approximately 90.4 acres of native prairie and grassland habitat. As discussed in section 3.a. of the EA, Alliance proposes to implement a Native Prairie Restoration and Mitigation Plan (NPRM Plan), which will minimize and mitigate the impacts resulting from the construction and increase the

[17] 18 C.F.R. § 157.14(a)(11) (2012).

likelihood of successful native prairie revegetation. In addition, the NPRM Plan states that Alliance will provide funds to the FWS for the purchase of 90.4 acres of conservation easements as compensatory mitigation. The EA finds that the measures presented in the NPRM Plan, as modified by environmental recommendation 13, would result in no significant impact on native prairie habitat.

32. Section 3.c. of the EA addresses impacts on migratory birds and the project-specific migratory bird conservation measures Alliance incorporated within its NPRM Plan. These measures were developed in consultation with the FWS. Based on Alliance's proposed construction schedule, the characteristics and habitat requirements of the migratory birds, the amount of similar habitat adjacent to and in the vicinity of the project, and Alliance's implementation of its NPRM Plan and other mitigation, the EA concludes that constructing and operating the proposed project would not result in population-level impacts on migratory birds. We agree.

EA Comments

33. The EA was issued for a 30-day comment period and placed into the public record on July 13, 2012. In response to the EA, we received comments from Alliance, Mountrail County, and the Dakota Resource Council. We also received six comment letters from landowners. These comments are discussed below.

34. In comments on the application, several landowners expressed concern over the depth of pipeline burial on agricultural lands and impacts to farming practices. Section B.5.a of the EA states that Alliance's burial depth of more than 42 inches is sufficient. However, several landowners identified specific farming practices or equipment that may require modifications to the burial depth. Thus, the EA recommended (environmental recommendation 12) that Alliance work with those landowners to find a mutually acceptable depth of burial. This recommendation is included as a condition in this order.

35. Comments were also received regarding restoration and revegetation of disturbed land. As addressed in section B.3.a. of the EA, the implementation of Alliance's Restoration and Revegation Plan would minimize impacts on vegetation and ensure proper restoration.

36. Alliance filed supplemental information on August 7, 2012, indicating several corrections to the EA based on information previously filed with the Commission. We acknowledge these corrections and accept them. None of the corrections affect the conclusions presented in the EA.

37. Alliance also filed supplemental information on August 13, 2012, indicating that subsurface conditions would make it difficult to complete a horizontal directional drill (HDD) under the White Earth Creek. Therefore, Alliance now proposes to cross

White Earth Creek and an associated tributary to the White Earth River using the dam-and-pump method. This construction method would cause a slight pipeline alignment shift and change in workspace configurations between mileposts 12.5 and 13.3. In addition to the two waterbodies that would be affected by the revised construction method, 0.4 acre of wetland would also be affected. No new landowners would be affected.

38. We have determined that Alliance's implementation of its Wetland and Waterbody Construction and Mitigation Procedures and its Plan for Construction and Stabilization in Winter Conditions will adequately minimize impacts on the wetland within the construction right-of-way. As stated in the EA, the primary effect of construction and operation activities on wetlands would be the temporary removal of vegetation during construction. Alliance's construction impacts on emergent wetland vegetation would be relatively short-term and minor, because it would revegetate within two to three growing seasons.

39. While a successfully completed HDD would be environmentally preferable, the Commission recognizes the probability of failure of crossing White Earth Creek using this method. We further find the newly proposed method to construct across White Earth Creek, and the associated tributary to White Earth River, to be environmentally acceptable.

40. Alliance also filed a series of minor route adjustments between mileposts 69.1 and 69.9. All of the changes will be on land managed by the FWS and the FWS approved the changes. The newly proposed route adjustments would result in about 0.16 acre of additional impact on cropland, 0.06 acre of additional impact on upland forest, and no net change in the acreage of wetland that would be affected by the project. However, the newly-proposed changes would avoid crossing 0.14 acre of FWS-protected wetland within a wetland conservation easement in Renville County, North Dakota. Thus, we find these route adjustments environmentally acceptable.

41. Alliance also commented on staff's environmental recommendation number 13, which addresses changes to its NPRM Plan. Based on Alliance's comments and the staff's subsequent consultation with the FWS regarding these comments, we believe that Alliance has adequately addressed staff's concerns with the NPRM Plan. Thus, we believe that the revisions to this plan identified in the EA are no longer necessary. Accordingly, environmental recommendation 13 of the EA has been omitted from the environmental conditions included in the appendix to this order.

42. Several comments were received from Brenda Jorgenson, Richard Jorgenson, on behalf on the Bicker Township Board, and Mountrail County regarding designated recreational and agricultural areas located within the White Earth Valley. As stated in section B.5.e. of the EA, the project would not cross any "designated natural, recreation, or scenic areas". Comments received from the landowners on this issue state that the

White Earth Valley is zoned for recreational and agricultural use by Mountrail County, and should be considered “designated” areas as well. We disagree. In the context of our NEPA review, the term "designated" refers to officially designated special-use areas such as wildlife refuges, waterfowl production areas, state or national parks, or state or national preserves, which are managed by resource agencies. Zoning districts, on the other hand, are tools used by planners to manage development within an area, such as a city or county.

43. Comments were received from the Dakota Resource Council requesting that the Commission evaluate the proposed route to follow two existing pipeline routes. Section C.6. of the EA evaluated the existing Williston Basin Interstate Pipeline Company and Prairie Rose Pipeline routes and found neither route provides an environmental advantage over Alliance’s proposed route.

44. The Commission received several comments about the health risk of releasing radon when natural gas is burned in the home. Section 9.c of the EA found that naturally-occurring radon and solid particles of radioactive material would be removed from the natural gas stream prior to transfer to the transmission pipeline or that the radiation would decay to negligible levels before reaching end-users. Thus, the EA concluded that radon poses no risk to end users of the gas stream.

45. Comments were received from landowners regarding the potential noise impacts on wildlife resulting from operation of pipeline and the Tioga Compressor Station. The EA states that the compressor station will be located adjacent to an existing gas processing plant and in an area with a mix of agricultural, industrial and residential properties. Therefore, wildlife in the area are already habituated to similar noise and activity levels. The EA also states the project is not likely to adversely affect any federally listed threatened or endangered species and that the predominant wildlife habitats in the project area are occupied by commonly found species. The EA states that the predicted noise levels from the compressor station would be below our limit of 55 decibels at nearby residences and environmental condition 14 will ensure that this standard is met. The operation of the pipeline will not generate noise.

46. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Alliance’s application and supplements, and in compliance with the environmental conditions in the Appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

47. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage 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.[18]

48. At a hearing held on September 20, 2012, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Alliance to construct and operate the Tioga Lateral Project facilities, as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Alliance's:

(1) completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) compliance with all applicable Commission regulations including, but limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) compliance with the environmental conditions listed in the Appendix to this order.

(C) Prior to the commencement of construction, Alliance shall execute firm transportation agreements equal to the levels and terms of service reflected in the precedent agreement submitted in support of its proposal.

(D) Alliance's request for authority to charge incremental rates for the Tioga Lateral is approved, subject to Alliance's refiling the rates with a revised rate of return on equity and recalculating the incremental recourse rates to reflect the proper accounting treatment of equity AFUDC income tax gross-up in its rate calculation.

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

(E) Alliance shall file actual tariff records with the revised incremental rates and changes to its tariff no earlier than 60 days, and no later than 30 days, prior to the date the Tioga Lateral goes into service.

(F) Alliance shall file its negotiated rate agreements or a tariff record describing the negotiated rate agreements no earlier than 60 days, and no later than 30 days, prior to the date the Tioga Lateral goes into service.

(G) Alliance shall submit an executed copy of each non-conforming agreement reflecting the non-conforming language and a tariff record identifying these agreements as non-conforming agreements no earlier than 60 days, and no later than 30 days, prior to the date the Tioga Lateral goes into service.

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

(I) The untimely motions to intervene are granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Alliance shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the Environmental Assessment (EA), unless modified by the Order. Alliance must:
   a. request any modification to these procedures, measures, or conditions in a filing with the 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, operation, and activities associated with abandonment 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, operation, and activities associated with abandonment.

3. **Prior to any construction**, Alliance shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EI), and contractor personnel will be informed of the EIs' authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets, and as identified in Alliance's revised route alignments filed on August 13, 2012. **As soon as they are available, and before the start of construction**, Alliance shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by 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.

Alliance'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. Alliance'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 pipelines or aboveground facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Alliance 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, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

   This requirement does not apply to extra workspace allowed by the *Upland Erosion Control, Revegetation, and Maintenance Plan*, 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, Alliance shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Alliance must file revisions to the plan as schedules change. The plan shall identify:
   a. how Alliance will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;

b. how Alliance 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 Alliance will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change);
f. the company personnel and specific portion of Alliance's organization having responsibility for compliance;
g. the procedures (including use of contract penalties) Alliance will follow if noncompliance occurs; and
h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
   (i) the completion of all required surveys and reports;
   (ii) the environmental compliance training of onsite personnel;
   (iii) the start of construction; and
   (iv) the start and completion of restoration.

7. Beginning with the filing of its Implementation Plan, Alliance shall file updated status reports with the Secretary on a biweekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
   a. an update on Alliance’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 EI 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 Alliance from other federal, state, or local permitting agencies concerning instances of noncompliance, and Alliance's response.

8. **Prior to receiving written authorization from the Director of OEP to commence construction of any Project facilities**, Alliance shall file with the Secretary documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).

9. Alliance 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**, Alliance shall file an affirmative statement with the Secretary, certified by a senior company official:

a. that the facilities have been constructed and installed 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 Alliance 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. Alliance shall revise its Restoration and Revegetation Plan to be consistent with the definition of successful revegetation in the Staff's Upland Erosion Control and Revegetation Plan (January 2003 version) at section VII.A.2.

12. **Prior to construction,** Alliance shall file for review and approval by the Director of OEP, environmental surveys for the remaining unsurveyed segments of the construction right-of-way, including Additional Temporary Work Space and access roads.

13. Alliance shall not begin implementation of any treatment plans/measures (including archaeological data recovery); construction of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:

c. Alliance files with the Secretary cultural resources survey and evaluation reports, any necessary treatment plans, and the State Historic Preservation Office's comments on the reports and plans;
d. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
e. the Commission's staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Alliance in writing that treatment plans/mitigations may be implemented and/or construction may proceed.

All materials filed with the Commission containing **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**."

14. Alliance shall make all reasonable efforts to ensure its predicted noise levels from the compressor station are not exceeded at nearby Noise Sensitive Areas (NSA) and file noise surveys showing this with the Secretary **no later than 60 days** after placing the compressor station in service. However, if the noise attributable to the operation of the compressor station at full load exceeds an average day-night ambient sound level (Ldn) of 55 decibels on the A-weighted scaled (dBA) at any nearby NSAs, Alliance shall file a report on what changes are needed and shall install additional noise controls to meet the level **within one year** of the in-service date. Alliance shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

15. **Prior to construction** across actively cultivated properties owned by Wayne Jacobson, Leo and Joanne Christiansen. Ronald Sagness and Jon Sagness, Alliance shall determine, in consultation with these landowners, a pipeline burial depth that is consistent with farming practices used in each field and file the results of the consultation with the Secretary.