

119 FERC ¶ 61,251
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wyoming Interstate Company, Ltd.

Docket No. CP07-14-000

ORDER ISSUING CERTIFICATE

(Issued June 7, 2007)

1. On October 23, 2006, Wyoming Interstate Company, Ltd. (WIC) filed an application under section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity to construct and operate pipeline facilities to provide approximately 406,000 dekatherms (Dth) per day of firm lateral transportation capacity out of the Uintah Basin and up to 150,000 Dth per day of additional firm transportation capacity on WIC's mainline (Kanda Lateral and Mainline Expansion Project). For the reasons discussed below, the requested certificate authorization is granted subject to certain conditions.

I. Background and Proposal

2. WIC is a natural gas company as defined in the NGA and is subject to the jurisdiction of the Commission. WIC is engaged solely in the business of transporting natural gas in the states of Colorado and Wyoming.

3. Continued development of the Uintah Basin in western Colorado and Utah has resulted in increased natural gas production. WIC states it is proposing its Kanda Lateral and Mainline Expansion Project in response to the demand for additional pipeline capacity to transport natural gas volumes from production areas in the Uintah Basin to other markets and, more specifically, to meet demand for additional lateral and mainline capacity by a major Uintah Basin natural gas producer, Kerr-McGee Oil & Gas Corporation (Kerr-McGee). WIC states that Kerr-McGee has entered into two separate long-term precedent agreements supporting the Kanda Lateral and Mainline Expansion Project facilities.

4. Increased natural gas production in the Uintah Basin has outgrown the available pipeline take-away capacity. In response to the demand for additional pipeline take-away

capacity from the Uintah Basin, WIC states it entered into negotiations with Kerr-McGee in mid-2005. Kerr-McGee sought expanded pipeline infrastructure that would permit it to transport its increasing natural gas production volumes to WIC's mainline and also to move its gas downstream on WIC's mainline.

5. In order to meet Kerr-McGee's transportation requirements, WIC requests authorization to construct and operate facilities necessary to increase its natural gas transmission system capacity from the Uintah Basin area in Utah, and to increase its mainline capacity east to Colorado Interstate Gas Company's (CIG) Wamsutter Compressor Station (Wamsutter Station). WIC states that increasing capacity from the Uintah Basin will allow shippers access to additional markets by way of interconnects with WIC's mainline, Northwest Pipeline Corporation, Questar Pipeline Company (Questar), Questar's Clay Basin Storage facilities and CIG.

6. WIC states that the proposed new facilities will increase its capacity out of the Uintah Basin area by approximately 406,000 Dth per day and its mainline capacity by up to 150,000 Dth per day. Specifically, the Kanda Lateral facilities will comprise approximately 123 miles of 24-inch diameter pipeline, with appurtenances, beginning at a new interconnect with Kerr-McGee in Uintah County, Utah. WIC asserts that the pipeline facilities will be designed to transport and deliver up to 406,000 Dth per day into WIC's mainline. WIC states that it will also install numerous interconnecting metering facilities at various points along the proposed Kanda Lateral. WIC asserts that the mainline expansion capacity will require the installation of two compressor units totaling approximately 20,620 horsepower (hp) sited inside CIG's existing Wamsutter Station property located in Sweetwater County, Wyoming. WIC estimates the project's cost to be approximately \$143 million.

A. Open Season

7. In October and November 2005, WIC conducted two open seasons offering interested parties the opportunity to place bids for new pipeline capacity (1) from the Uintah Basin to WIC's mainline where it connects with Questar near Kanda in Sweetwater County, Wyoming, and (2) from Kanda eastward on WIC's mainline to the existing Wamsutter Station in Sweetwater County, Wyoming. Kerr-McGee submitted bids in both the WIC mainline and Kanda Lateral open seasons and was awarded 112,000 Dth per day on the WIC mainline expansion and 225,000 Dth per day on the proposed Kanda Lateral. Fifteen-year precedent agreements for the two increments of capacity were executed in January of 2006. No other shippers submitted bids in either of the open seasons.

8. After the initial open seasons, Kerr-McGee requested the opportunity to increase its capacity commitments on both the lateral and the mainline expansion. Therefore, WIC conducted supplemental open seasons for the Kanda Lateral and the mainline expansion

in July of 2006. Subsequently, the precedent agreements with Kerr-McGee were revised to provide for 400,000 Dth per day of firm capacity on the Kanda Lateral and 137,500 Dth per day on the WIC mainline expansion from Kanda to Wamsutter for the first two years of the agreement, increasing to 150,000 Dth per day on the second anniversary of the in-service date of the mainline expansion facilities.

B. Proposed Rate Treatment

1. Kanda Lateral

9. WIC proposes incremental firm and interruptible recourse rates for service on the Kanda Lateral based on the cost of the facilities. In the Kanda Lateral precedent agreement with Kerr-McGee, Kerr-McGee has agreed to pay negotiated reservation rates, as discussed further below. WIC states that the incremental recourse rates will be applicable to shippers that utilize the Kanda Lateral facilities on an alternate or secondary basis.

2. Mainline Expansion

10. WIC proposes to charge its maximum existing recourse reservation rates for transportation service for Kerr-McGee on the WIC mainline. WIC requests a pre-determination supporting rolled-in rate and fuel treatment for the cost of the mainline expansion facilities. Specifically, WIC is requesting that it a predetermination supporting roll in of the costs of two Taurus 70 compressor units totaling, approximately 20,620 horsepower, to be installed inside CIG's existing Wamsutter Compression Station, estimated at \$22.2 million.¹ WIC estimates that the first year cost of service for the Wamsutter facilities will be \$4,883,885.

II. Notice, Interventions, Comments and Protests

11. Notice of WIC's application was issued on November 2, 2006, and published in the *Federal Register* on November 9, 2006 (71 Fed. Reg. 65800) with comments due by November 24, 2006. Chevron Natural Gas and Marathon Oil Company filed timely, unopposed interventions. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.² No protests or adverse comments were filed.

¹ Exhibit K to WIC's application.

² 18 C.F.R. § 385.214(a)(3) (2006).

III. Discussion

12. Since the application is for facilities that will be used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, WIC's proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Certificate Policy Statement

13. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.³ 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.

14. Under this policy, the threshold requirement for 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.

15. WIC's proposal meets the threshold requirement of the Policy Statement since the mainline expansion will not be subsidized by existing customers. With respect to service on the proposed Kanda Lateral, WIC is proposing to charge incremental rates, thereby insulating existing customers and ensuring no subsidization. With respect to the mainline

³ *Certification of New Interstate Natural Gas Pipeline Facilities (Certificate Policy Statement)*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000).

expansion service, WIC proposes to charge its maximum existing recourse reservation rates and, as discussed below, revenues from this service will exceed the cost of service associated with mainline expansion capacity.⁴

16. WIC states that there will be no negative impacts on existing pipelines in the market or their captive customers because the purpose of the proposed project is to respond to the demand for additional pipeline transportation capacity out of the Uintah Basin Area and on WIC's mainline as a result of new production. WIC asserts that failure to respond to this demand could result in adverse impacts on the Uintah Basin producers and shippers who might otherwise not be able to have their natural gas supplies transported from the producing areas to their respective markets. No existing shippers or pipelines located in WIC's market area protested WIC's application, supporting a finding that WIC's proposed project will have no adverse impact on other pipelines or their captive customers or on existing shippers on WIC's system.

17. WIC designed the Kanda Lateral and Mainline Expansion Project to minimize its impact on landowners and the environment. New pipeline segments will be constructed adjacent to or within existing rights-of-way, significantly reducing impacts to undisturbed land. Compression and measurement modifications and additions will occur within the confines of existing stations or immediately adjacent thereto. As discussed below, this order includes conditions to mitigate any environmental impacts.

18. For these reasons, we conclude that the benefits of WIC's proposed project, including providing an outlet for gas supplies from the Uintah Basin and increased access to the interstate market, outweigh any adverse impacts. Accordingly, we find that approval of WIC's proposal is required by the public convenience and necessity.

B. Rates

1. Kanda Lateral

19. WIC proposed incremental firm and interruptible recourse rates for the Kanda Lateral based on the cost of the facilities. Kerr-McGee agreed to pay negotiated reservation rates, discussed further below.

20. The proposed incremental firm maximum monthly reservation recourse rate for transportation service on the Kanda Lateral is \$5.4484 per Dth, plus a commodity recourse rate of \$0.0001 per Dth. The proposed maximum recourse rate for interruptible

⁴ Consistent with Commission practice, we will condition WIC's certificate authority to require that prior to commencement of construction WIC execute final contracts for firm transportation volumes equivalent to the volumes in its precedent agreements with Kerr-McGee.

service on the Kanda Lateral is \$0.1792 per Dth, which is the 100 percent load factor derivative of the firm incremental transportation rate. WIC states that the incremental recourse rates will be applicable to shippers that utilize the Kanda Lateral facilities on an alternate or secondary basis.

21. The proposed maximum reservation rate for the Kanda Lateral is based on the calculated first year cost-of-service of \$26,555,362.⁵ In developing the proposed cost-of-service rates for the new Kanda Lateral facilities, WIC has utilized the pre-tax return approved by the Commission in WIC's last general rate case.⁶ WIC proposes to depreciate its new gas transmission plant using a 6.67 percent, fifteen year straight-line depreciation rate which is based on the contract terms associated with the facilities.

22. The Commission has reviewed WIC's proposed cost-of-service, allocation and rate design for its initial recourse rates and finds the projected operation and maintenance expense, other taxes and return calculations reasonably reflect current Commission policy. However, WIC's proposed depreciation rate is not appropriate. WIC has used a fifteen year depreciation period based on the economic life of the facilities as determined by contract term to calculate recourse rates for these incremental facilities. The Commission's general policy with respect to pipeline expansions is to use the depreciation rate and rate of return approved in the pipeline's last general rate proceeding. While the Commission has deviated from this general policy, particularly with respect to delivery laterals to single customers, WIC has not demonstrated why the Commission should provide similar treatment for a supply lateral.⁷ Since this area is a growing producing region, it is reasonable to expect the useful life of this facility will be well beyond 15 years. Accordingly, WIC should use the depreciation rate underlying its currently-approved mainline rates (2.79 percent) or some other rate supported by a fully developed depreciation study. Therefore, we will direct WIC to recalculate its proposed rates based on a depreciation rate which reflects the economic life of the lateral facilities, rather than the contract life.

23. Additionally, we find that the Kanda Lateral recourse rates contain no provision for interruptible service revenue crediting. The Commission's policy regarding interruptible services requires either a 100 percent credit of the interruptible revenues, net

⁵ WIC's application, Schedule at pp. 6 and 14.

⁶ *Wyoming Interstate Gas*, 92 FERC ¶ 61,256 (2000) (order approving settlement).

⁷ *Pinnacle Pipeline Co.* 105 FERC ¶ 61,051 (2003) (order approving depreciation rate based on remaining useful life of existing supply lateral).

of variable costs, to firm and interruptible customers or an allocation of costs and volumes to these services.⁸ We therefore will direct WIC to revise its tariff to include a provision for interruptible service revenue crediting.

24. As discussed above, WIC is charging Kerr-McGee a negotiated rate for lateral service, as opposed to the recourse rate proposed in its application. Further, WIC may enter into negotiated rate agreements for the remaining capacity of the proposed lateral and mainline expansion. For any negotiated rate contracts, WIC must file either the contracts or numbered tariff sheets not less than 30 days and no more than 60 days prior to the commencement of service on the expansion facilities.⁹ The tariff filing must state the negotiated rates, all applicable charges, the applicable receipt and delivery points, the volume to be transported, the applicable rate schedule for the service, and a statement affirming that the affected service agreements do not deviate in any material aspect from the form of service agreement in WIC's FERC Gas Tariff. WIC must also disclose any other agreement, understanding, negotiation, or consideration associated with the negotiated agreements. Finally, WIC must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future section 4 or 5 rate case. The Commission will not permit WIC to recover from existing shippers any revenue shortfall due to the charging of negotiated rates.

2. Mainline Expansion

25. WIC requests a determination supporting rolled-in rate and fuel treatment for its project costs associated with the mainline expansion. Specifically WIC is requesting a predetermination supporting roll in of the costs of two Taurus 70 compressor units, totaling approximately 20,620 horsepower, inside CIG's existing Wamsutter Compression Station. WIC estimates that the first year cost-of-service for the Wamsutter facilities will be \$4,883,885.

26. The mainline expansion will increase mainline capacity by 150,000 Dth per day. Kerr-McGee has entered into a precedent agreement for fifteen years of firm mainline service: 137,500 Dth per day of mainline capacity for the first two years of the agreement, increasing to 150,000 Dth per day on the second anniversary of the in-service date of the mainline expansion facilities. WIC estimates that the revenues generated by the additional throughput will exceed the cost of service in Years 1 and 2, and significantly exceed cost of service in Years 3-10. WIC also estimates that the fuel

⁸ *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177 at P 51 (2005).

⁹ *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 (1996) at 61,241. *See also NorAm Gas Transmission Company*, 77 FERC ¶ 61,011 (1996).

charge associated with the new compression will be 0.65 percent, which is lower than the current mainline fuel charge of 0.94 percent. WIC believes that the reduction in fuel consumption combined with increased throughput as a result of the compression will lead to a lower mainline fuel charge percentage in future fuel tracker filings. Additionally WIC claims that the new compression will assist in overall system reliability by accommodating pressure drops at the end of WIC's system.

27. The information provided by WIC shows that the mainline expansion will not be subsidized by existing shippers. Projected revenues from mainline service for Kerr-McGee should exceed in all years the additional cost-of-service associated with the mainline expansion capacity, and WIC estimates that its system fuel charge will be lower as a result of the project. Based on these considerations, we will grant WIC's request for predetermination supporting rolled-in rate treatment for the costs of its mainline expansion when it files to recover these costs in a future NGA section 4 rate proceeding, absent any material change in circumstances.

3. WIC's Request for Acceptance of Non-Conforming Agreements

28. Kerr-McGee is the only firm shipper that has subscribed for capacity on the Kanda Lateral or mainline expansion. As discussed above, Kerr-McGee has signed two separate precedent agreements with WIC. WIC states that both contain certain non-conforming provisions.

29. The precedent agreement for Kanda Lateral service provides for 400,000 Dth per day of firm transportation service for Kerr-McGee for fifteen years. WIC indicates that the agreement is potentially non-conforming because during the first two years of service for Kerr-McGee, the negotiated monthly reservation rate of \$5.3838 will apply only to the first 275,000 Dth per day and a negotiated commodity-only rate of \$0.1310 will apply to any additional quantities up to the maximum daily quantity (MDQ) of 400,000 Dth per day. During the third year of service for Kerr-McGee, the portion of the MDQ subject to the reservation rate will be 350,000 Dth per day. After three years of service, the reservation rate will apply to full MDQ of 400,000 Dth per day. Additionally, the precedent agreement for Kanda Lateral service provides that Kerr-McGee may increase the contract quantity that is subject to reservation charges and decrease the quantity subject to the commoditized firm usage charges. WIC states that if Kerr-McGee elects to utilize this provision, the negotiated rate will be adjusted to preserve the overall revenue levels.

30. WIC's precedent agreement with Kerr-McGee for service on the Kanda Lateral also addresses possible future expansion of the Kanda Lateral by providing that, if the Kanda Lateral is fully subscribed and WIC has not conducted an open season for expansion, Kerr-McGee may, at any time before January 1, 2011, request that WIC conduct an open season for expansion of at least 150,000 Dth per day. The open season

and any resulting capacity awards would be subject to Commission policy and WIC's tariff.

31. Finally, WIC's precedent agreement with Kerr-McGee for service on the Kanda Lateral includes a 'most favored nations' (MFN) provision should any future shipper contract with WIC for equivalent service. Under the MFN provision, if WIC offers an equivalent shipper a firm transportation rate less than Kerr-McGee's rate, WIC will be required to reduce Kerr-McGee's rate. WIC states that it agreed to these unique provisions for Kerr-McGee in order to secure the anchor load necessary to support the Kanda Lateral project and argues they should not be made applicable to other shippers on WIC's system.

32. The precedent agreement with Kerr-McGee for firm mainline expansion capacity is for 137,500 Dth per day at the maximum recourse rate for the first two years of the agreement, increasing to 150,000 Dth per day at the maximum recourse rate on the second anniversary of the in-service date of the mainline expansion facilities. Kerr-McGee's MDQ is 137,500 Dth for the first two years of the contract and increases to 150,000 Dth on the second anniversary of the project's in-service date. If the additional 12,500 Dth per day is not available, the precedent agreement provides that WIC and Kerr-McGee shall negotiate to execute one or more new agreements, or modify the existing agreements, in a manner to provides WIC incremental revenue equal to the amount WIC would have receive if the 12,500 Dth per day were available for service for Kerr-McGee at the maximum recourse rate. Also, the precedent agreement provides that if capacity becomes available on WIC's mainline between the Wamsutter Station and the Cheyenne Hub, and is not requested by another party, Kerr-McGee shall have the opportunity to move its primary point of delivery from the Wamsutter Station to the Cheyenne Hub. WIC avers that these provisions in the precedent agreement with Kerr-McGee for mainline expansion capacity are critical to the development and ultimate construction of the project and therefore should be accepted by the Commission.

33. We will deny WIC's request that we accept the precedent agreements and non-conforming provisions in this order. The Commission usually does not usually address negotiated rate agreements in certificate orders, and WIC has not provided a convincing rationale for doing so here.¹⁰ WIC must file, at least 30 days, but no more than 60 days before the in-service date of the proposed facilities, executed copies of the firm service agreements with Kerr McGee and a tariff sheet identifying these agreements as non-conforming. The Commission will conduct a thorough review of the provisions, and address them when WIC makes the required filings.

¹⁰ See *Rockies Express*, 116 FERC ¶ 61,272 at p. 68

C. Environmental Assessment

34. On February 8, 2006, the Director of the Commission's Office of Energy Projects approved WIC's request to use the Commission's pre-filing process for this project. The purpose of the pre-filing process is to involve interested stakeholders early in the project planning process and to identify and resolve issues prior to filing.

35. On April 7, 2006, the Commission issued a Notice of Intent to Prepare an Environmental Assessment and Proposed Land Use Plan Amendment for the Proposed Kanda Lateral and Mainline Expansion Project, Request for Comments on Environmental Issues, Notice of Public Scoping Meetings, and Notice of Site Visit (NOI) in FERC Docket No. PF06-15-000 and BLM Reference No. 2880/UTU-82750 and WYW-67229. A total of eight comments were received during the scoping period, which was held during the pre-filing process, and no comments were filed after the application was filed in Docket No. CP07-14-000. In addition, two public scoping meetings were held, one on April 24, 2006 in Rock Springs, Wyoming and the other on April 25, 2006 in Vernal, Utah. On April 25 and 26, 2006, a public site visit for the project was conducted.

36. The environmental assessment (EA) prepared for WIC's proposal addressed all substantive comments. The EA was issued and placed in the public record for this proceeding on March 30, 2007.¹¹ The EA addresses geology and soils, water resources, wetlands, vegetation, fisheries and wildlife, threatened and endangered species, land use, cultural resources, socioeconomics, air quality and noise, safety and reliability and alternatives. The comment period for the EA expired on April 30, 2007.

37. Comments on the EA were received from WIC, the Wyoming Game and Fish Department (WGFD), U.S. Fish and Wildlife Service (FWS), C.E. Brooks & Associates, P.C. on behalf of Vermillion Ranch Limited Partnership (Vermillion Ranch) and Sweetwater County Conservation District (SWCCD).

38. WIC's comment relates to a statement on page 2-42 of the EA in the first paragraph under the heading of Federally Endangered Fish Species. The EA states that the Brown's Park (northern) crossing of the Green River would be constructed using a dry-crossing method. In actuality, WIC proposes to utilize an open-cut, wet crossing method of the Green River at this location. WIC contends the sentence in the EA should read: The Brown's Park (northern) crossing would be performed according to the procedures and mitigation measures detailed in WIC's Procedures for use of the open-cut crossing method.

39. This mischaracterization of the WIC's proposed construction method for the northern crossing of the Green River does not change the results of the analysis in the

¹¹ 72 Fed. Reg. 16781 (April 5, 2007).

EA. Page 1-13 of the EA clearly states that WIC proposes to cross the Green River at two locations, using a different crossing method at each location. An open-cut, wet crossing is proposed for its Brown's Park location at the Green River near milepost (MP) 69.0. A horizontal directional drill crossing is planned for the southern crossing location near MP 31.4. The EA includes several references to these crossing methods at the two crossing locations and the analysis in the EA is accurately based on WIC's proposal.

40. The WGFD stated in their comment letter that if the project proponents adhere to their previous recommendations from their April 18, 2006 letter, terrestrial wildlife impacts will be minimized. They also stated that if this project adheres to the Commission's best management practices addressing erosion, sediment deposition in waterways, and impacts from perennial waterway crossings, impacts on aquatic wildlife will be minimized.

41. Staff believes that if WIC follows its Upland Erosion Control, Revegetation and Maintenance Plan (Plan), its Wetland and Waterbody Construction and Mitigation Procedures (Procedures) and implements the mitigation measures as recommended in the EA, the WGFD recommendations are adequately addressed.

42. Comments were received from the Vermillion Ranch and SWCCD concerning livestock operations and impacts on grazing. Specifically, they would like to have the opportunity to coordinate and work closely with WIC and the Bureau of Land Management (BLM) in ensuring that any disruptions to livestock operations are reduced to the greatest extent possible, coordinate with the livestock operators in a timely manner, and reclamation planning. WIC filed a response stating that it would contact BLM lessees (including Vermillion Ranch) to notify them of anticipated construction timelines, determine grazing patterns (gates to be left opened/closed, livestock crossovers and escape ramps) and to share BLM and Natural Resource Conservation Service (NRCS) recommended seed mixes for WIC's project reclamation. As stated in WIC's Plan (Appendix A of the EA), as part of their preconstruction planning, WIC shall develop grazing deferment plans with willing landowners, grazing permittees, and land management agencies to minimize grazing disturbance of revegetation efforts. WIC also stated that it is in progress of coordinating the same with private landowners and lessees.

43. Vermillion Ranch and SWCCD have requested copies of other agency comments that FERC received during the scoping period. Staff has directed the SWCCD to these comments on FERC's e-library under Docket No. PF06-15-000.

44. Vermillion Ranch and SWCCD commented on seed mixes, weed control, and that successful reclamation is achieved. Specifically, that affected grazing permittees, landowners, and local conservation districts should be consulted in developing seed mixes and weed control plans. As stated in the Plan, WIC would seed disturbed areas in accordance with written recommendations for seed mixes, rates, and dates obtained from

the local soil conservation authority or the request of the landowner or land management agency. WIC's filed response states that final seed mixes are under development with the BLM, private landowners, and the NRCS for various seeding requirements on individual properties. Final seed mixes will be included in BLM's Plan of Development (POD), which will be part of the BLM Right-of-Way Grant that will be publicly available from the BLM once it's completed. As stated in the EA, WIC has developed a Noxious and Invasive Weed Control Plan to control the spread of noxious weeds. In its response, WIC further states that it would continue to coordinate and receive approvals from the BLM, NRCS, and local offices regarding weed control along the pipeline right-of-way. Finally, as stated in WIC's Plan and WIC's Wetland and Waterbody Construction and Mitigation Procedures, it would continue revegetation efforts until revegetation is successful.

45. The FWS commented on the Thunder Ranch wetland enhancement project, timing restrictions for various species, conservation measures for the sage grouse, and possible habitat for the Ute ladies'-tresses. WIC's response indicates that it will re-contact the NRCS to make sure that the project does not adversely affect any mitigation efforts underway at Thunder Ranch. WIC also stated that it will make any necessary changes suggested by the FWS to the POD in order to address project-wide rules governing the protection of migratory birds and eagles and noted that lekking sage grouse should not be affected by construction because of the construction schedule. WIC has agreed to survey any locations that were not previously surveyed for the Ute ladies'-tresses and to only work in these areas if no Ute ladies'-tresses are found.

46. The FWS also expressed concern about impacts of noise on animals, stating that noise may interfere with birds' acoustic signals during courtship and breeding, and it may also cause some wildlife to temporarily leave or avoid the project area. As described in section 2.3.4.2 of the EA, the noise from pipeline construction would be temporary (limited to the relatively short period of active construction) and wildlife would be expected to return once construction is complete. It is not expected to result in a significant or long-term change in wildlife populations in the project area. Although noise impacts created from a compressor station would be long term, most wildlife either becomes habituated to the noise levels or avoids the area altogether.

47. In its Biological Opinion dated March 29, 2007, the FWS concurred with staff's conclusion that the proposed project is not likely to adversely affect the bald eagle, black-footed ferret, Ute ladies'-tresses, and Uinta Basin hookless cactus. The FWS also concluded that the project is not likely to jeopardize the continued existence of the endangered Colorado pike minnow, humpback chub, bonytail, and razorback sucker or their critical habitats. The Biological Opinion includes Terms and Conditions which must be implemented for compliance with the Endangered Species Act. In a May 2, 2007 filing, WIC indicated that it will comply with the Reasonable and Prudent Measures and all terms and conditions as represented in the FWS's March 29, 2007 Biological Opinion to FERC. Formal consultation with the FWS is completed with receipt of the

Biological Opinion; thus, Environmental Condition Number 13 of the EA is not included in this Order.

48. 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.¹² WIC 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 WIC. WIC shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

49. Based on the discussion in the EA, we conclude that if built and operated in accordance with WIC's application, supplements filed, and the environmental conditions in the appendix of this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

D. Conclusion

50. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to WIC authorizing it to construct, own, operate, and maintain natural gas facilities, as described and conditioned herein, and as more fully described in the application.

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

- (1) WIC's completing authorized construction within one year of this order;

¹² 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).

- (2) WIC's complying with paragraphs (a), (c), (e) and (f) of section 157.20 of the Commission's regulations; and
- (3) WIC's compliance with the environmental conditions listed in the appendix of this order.

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

(D) WIC's request for a presumption of rolled-in rate treatment for the proposed Mainline Expansion facilities is granted, subject to the conditions described in the body of this order.

(E) WIC must maintain its records for the Kanda Lateral in a manner to comply with the requirements of section 154.309 of the Commission's regulations.

(F) WIC must file the recalculated recourse rate for the Kanda Lateral facilities and file the rate with the Commission no less than 30 days, but no more than 60 days, prior to commencement of service. WIC shall use the depreciation rate underlying its currently approved mainline rates (2.79 %) or some other rate supported by a fully developed depreciation study and reflecting the economic life of the lateral facilities, rather than the contract life.

(G) WIC is directed to file, no less than 30 days but no more than 60 days prior to commencement of service of the authorized facilities, a tariff provision crediting revenue from interruptible services on the Kanda Lateral.

(G) For negotiated rate contracts, WIC must file either the contracts or numbered tariff sheets not less than 30 days and no more than 60 days prior to the commencement of service on the expansion facilities. The tariff filing must state for each shipper being charged a negotiated rate, all applicable charges, the applicable receipt and delivery points, the volume to be transported, the applicable rate schedule for the service and a statement either identifying the agreement as non-conforming or affirming that the service agreements does not deviate in any material aspect from the form of service agreement in WIC's FERC Gas Tariff. WIC must also disclose any other agreement, understanding, negotiation, or consideration associated with the negotiated agreements. WIC must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future Section 4 or 5 rate case. WIC will not be permitted to recover from existing shippers any revenue shortfall due to the charging of negotiated rates.

(I) WIC's certificate authority is conditioned to require that, prior to commencement of construction of the authorized facilities, WIC execute final contracts for firm transportation volumes equivalent to the volumes in its precedent agreements with Kerr-McGee.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A**Environmental Conditions**

1. WIC shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to a staff data request) and as identified in the EA, unless modified by this Order. WIC must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**

2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

3. **Prior to any construction**, WIC 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 EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, WIC shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designed on these alignment maps/sheets.

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

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

This requirement does not apply to extra workspace allowed by WIC's approved Upland Erosion Control, Revegetation, and Maintenance Plan, minor field realignments per landowner needs, and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and before construction begins**, WIC shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how WIC will implement the mitigation measures required by

this Order. WIC must file revisions to the plan as schedules change. The plan shall identify:

- a. how WIC 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;
 - b. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions WIC will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - e. the company personnel (if known) and specific portion of WIC's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) WIC will follow if noncompliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. WIC shall employ at least one EI per construction spread. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental

- conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
- 8. WIC shall file updated status reports prepared by the head EI with the Secretary on a **weekly** basis **until all construction and restoration activities are complete**. On request, these status reports also will be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. the current 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;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) 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);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by WIC from other federal, state or local permitting agencies concerning instances of noncompliance, and WIC's response.
- 9. WIC must receive written authorization from the Director of OEP **before commencing service** from the project. 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 certificated facilities in service**, WIC 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 WIC 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. If WIC is not able to complete the horizontal directional drill (HDD) at the lower Green River crossing near milepost 31.4, WIC shall not proceed with an alternative crossing method until it has filed a site-specific Alternate Crossing Plan. The Alternate Crossing Plan shall include site-specific drawings identifying all areas that would be disturbed by construction and identify measures that would avoid or minimize potential impacts on federally listed fishes. WIC shall provide its Alternative Crossing Plan to the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), U.S. Army Corp of Engineers, Utah Division of Environmental Quality, and other agencies responsible for issuing permits to implement this plan. WIC shall not begin a non-HDD crossing of the lower Green River until the FERC completes any necessary Endangered Species Act Section 7 consultation with the FWS, and the Director of OEP notifies WIC in writing that it may proceed with the alternate river crossing method.
12. If a black-footed ferret is found in the Kanda Lateral and Mainline Expansion Project area during construction, WIC shall stop construction within 0.5 mile of the black-footed ferret siting and notify the FWS, BLM, and FERC. WIC shall not restart construction in that area until FERC staff has reviewed the information, completed any necessary consultation with the FWS, and the Director of OEP has notified WIC in writing that construction or use of mitigation may begin.
13. WIC shall **defer construction and use** of facilities and staging, storage, and temporary work areas and new or to-be-improved access roads **until**:
 - a. WIC files with the Secretary additional information regarding National Register of Historic Places eligibility requested by the Utah State Historic Preservation Officer (SHPO), all remaining cultural resource inventory and evaluation reports, and necessary avoidance or treatment plans;
 - b. WIC provides Unanticipated Discovery Plans for Wyoming and Utah to deal with the unexpected discovery of historic properties and human remains during construction;
 - c. WIC files the BLM's and the Utah and Wyoming SHPOs' comments, as applicable, on all 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 Director of OEP reviews and approves all reports and plans and notifies WIC in writing that it may proceed with any treatment or construction.

All material 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. WIC shall file a noise survey with the Secretary **no later than 60 days** after placing the authorized equipment at the WIC Wamsutter Compressor Station in service. If the noise attributable to the operation of all of the equipment at WIC Wamsutter Compressor Station at full load exceeds an L_{dn} of 55 dBA at any nearby noise-sensitive areas, WIC shall file a report on what changes are needed and shall install additional noise controls to meet the level **within 1 year** of the in-service date. WIC shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.