

123 FERC ¶ 61,207
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

CenterPoint Energy Gas Transmission Company

Docket No. CP08-69-000

ORDER ISSUING CERTIFICATE

(Issued May 27, 2008)

1. On February 4, 2008, CenterPoint Energy Gas Transmission Company (CEGT) filed an application under section 7(c) of the Natural Gas Act (NGA) for a certificate to construct and operate the Tontitown Project. The project consists of a 16-mile natural gas pipeline loop in Arkansas and a new compressor station in Oklahoma. The proposed facilities are needed to transport natural gas to meet the requirements of Southwestern Electric Power Company's (SWEPCO) Harry D. Mattison Power Plant. For the reasons discussed herein, the requested certificate is granted, subject to certain conditions.

Background and Proposal

2. CEGT is a wholly-owned subsidiary of CenterPoint Energy, Inc. CEGT transports and delivers natural gas to destinations in Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas.

3. The proposed Tontitown Project includes construction of the proposed approximately 16-mile long, 24-inch diameter Line OM-1-A in Logan and Franklin Counties, Arkansas. The new pipeline will loop the existing Line OM-1. In addition, a 10,310 horsepower Poteau compressor station is proposed to be constructed on CEGT's parallel Lines O and O-1-O near the city of Poteau in Le Flore County, Oklahoma. These pipeline and compression facilities will add approximately 132 MMcf/d of incremental capacity to CEGT's system, a portion of which will transmit up to 90 MMcf/d for electric generation requirements at SWEPCO's power plant in Tontitown, Arkansas.

4. Estimated project costs are \$52.3 million. CEGT seeks a pre-determination supporting rolled-in rate treatment for the project's costs.

Notice and Interventions

5. Public notice of CEGT's February 4, 2008 application was published in the *Federal Register* on February 20, 2008 (73 Fed. Reg. 9,313). A timely, unopposed notice of intervention was received from the Arkansas Public Service Commission. This timely notice of intervention is granted by operation of Rule 214(a)(2) of the Commission's Rules of Practice and Procedure.¹

Discussion

6. Since the subject facilities will be used to provide natural gas service in interstate commerce subject to the jurisdiction of the Commission, CEGT's proposal is subject to the requirements of the sections 7(c) and (e) of the NGA.

A. Certificate Policy Statement

7. The Commission's Certificate Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction.² The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of new pipeline facilities, the Commission balances 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, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

8. 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

¹18 C.F.R. § 385.214(a)(2) (2007).

²*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).

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.

9. 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. The proposed Tontitown Project's pipeline loop and compression facilities will add approximately 132 MMcf/d of incremental capacity to CEGT's system. Ninety MMcf/d of this new capacity is needed for SWEPCO's new power plant. As will be discussed, the projected long-term revenues from services using the proposed capacity exceed the cost of service associated with the project, so the project will not be subsidized by existing customers. Thus, the Commission finds that CEGT has satisfied the threshold requirement of the Certificate Policy Statement.

10. CEGT's facility additions will increase CEGT's system capability beyond that necessary to meet SWEPCO's additional requirements. The uncontracted project capacity will be posted and made available in accordance with CEGT's tariff provision. Therefore, there should be no negative impact on existing customers. Additionally, no pipeline company in the CEGT market area has protested the CEGT application. Since the proposed pipeline facilities are located parallel to existing right-of-way for most of their length, there should be minimal effects on adjacent landowners. Accordingly, consistent with the Certificate Policy Statement and NGA section 7, we find approval of CEGT's proposal to be in the public convenience and necessity.

B. Rolled-in Rate Treatment

11. CEGT proposes to charge SWEPCO a negotiated rate for service under their 10-year firm transportation service agreement. The negotiated rate is higher than CEGT's currently effective maximum Part 284 rate. As reflected in Exhibit N (Revised),³ the cost of service attributable to the project will exceed the revenues from the SWEPCO service in the first three years of the contract.⁴ However, the cumulative revenues over the ten-year primary term of the agreement (\$83.1 million) will exceed the cumulative project cost of service (\$72.6 million) by \$10.5 million. CEGT submits that rolling in the costs

³In response to Commission staff's verbal request, CEGT made a supplemental filing on March 21, 2008 in order to replace the Exhibit N submitted in its original filing, which was based on the volumetric, negotiated, firm transportation rate with SWEPCO. CEGT's supplemental filing contained Exhibit N (Revised), which is based on CEGT's current maximum rates.

⁴CEGT's Exhibit N (Revised) shows that revenues from the SWEPCO contract would exceed the cost of service attributable to the expansion project beginning in the fourth year of the service.

and revenues of this project using CEGT's currently effective maximum Part 284 rates would decrease its existing rates by \$0.0048 per Dth, or 1.90 percent, from \$0.2528 per Dth to \$0.2480 per Dth on a 100 percent load factor basis.⁵ CEGT also asserts that operation of the additional facilities, including the additional compression, will not increase CEGT's currently effective fuel percentages for existing shippers.⁶ No CEGT customer has expressed any concerns regarding CEGT's proposal.

12. In view of the above considerations, we find that it will be appropriate for CEGT to roll the project costs into its system rates in a future general section 4 rate proceeding, absent any material change in circumstances. However, should CEGT elect to file a section 4 rate case at any point while it is still under-recovering the project's associated cost of service,⁷ CEGT will have the burden of demonstrating that rolled-in rate treatment is appropriate.

13. As noted above, CEGT's precedent agreement with SWEPCO is a negotiated rate agreement. Any service agreement signed with an expansion shipper containing a negotiated rate must be consistent with the Commission's policies regarding negotiated rates.⁸ CEGT follows specific procedures for negotiated rate contracts set forth in its FERC Gas Tariff, Section 12, General Terms and Conditions, which provide that CEGT will file all negotiated rate contracts with the Commission "no later than the Business Day on which Transporter commences service at a negotiated rate (or if the day on which Transporter commences such service is not a Business Day, then the next Business Day after Transporter commences such service)."⁹ Accordingly, CEGT must file the

⁵See Exhibit N (Revised), Page 9.

⁶We note that CEGT makes semi-annual fuel tracker filings.

⁷Exhibit N (Revised) to CEGT's application reflects a cost of service under-recovery of \$1,691,712 over the first 3 years.

⁸See *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996). See also *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003). In compliance with the Commission's policies regarding negotiated rates, CEGT 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 the cost and revenue data related to the subject expansion can be identified in Statements G, I and J in any future NGA Section 4 or 5 cases.

⁹See Section 12.3, Second Revised Sheet No. 455 of CEGT's FERC Gas Tariff Sixth Volume No. 1.

negotiated rate contract with SWEPCO pursuant to Section 12 of the General Terms and Conditions of its tariff.

Environmental Analysis

14. On September 5, 2007, we granted CEGT's request to use the pre-filing process and established Docket No. PF07-14-000. Site visits associated with the proposed facilities were held on September 26, 2007 and September 28, 2007. On September 26, 2007, we issued a Notice of Intent to Prepare an Environmental Assessment (EA) for the proposed Tontitown Project and Request for Comments on Environmental Issues (NOI). The NOI was sent to approximately 186 individuals, organizations, federal and state agency representatives, county and local government agencies, elected officials, the local newspaper and library, property owners in the proposed project area, and other interested individuals.

15. Our staff prepared an EA for CEGT's proposal which was entered into the record on May 5, 2008. The EA addresses geology and soils, surface water resources, ground water resources, vegetation, wildlife and fisheries, threatened and endangered species, land use, cultural resources, air and noise quality and alternatives. The EA also addresses comments raised during the scoping process. These comments are also discussed below. Copies of the EA were sent to recipients on the environmental mailing list.

16. In response to the NOI, we received comments from the Oklahoma Natural Heritage Inventory (ONHI), the Department of Arkansas Heritage (DAH), Ms. Jeanette Colwell, Ms. Marie Akins, and the Bureau of Reclamation (BOR or Reclamation). We also received comments from the U.S. Fish and Wildlife Service (USFWS), the United Keetoowah Band of Cherokee Indians in Oklahoma, the U.S. Environmental Protection Agency (EPA), and the Arkansas Department of Health (ADoH).

17. The ONHI informed staff that no records of elements of concern at or near the proposed project locations were found. The ADoH stated that it does not anticipate adverse impacts to public water supply sources. The BOR indicated that the proposed project does not affect any Reclamation properties. The EPA concluded that the proposed project was not located within the boundaries of a designated sole source aquifer. Each of these comments were incorporated into our environmental review and noted in the EA.

18. The DAH submitted two letters regarding the proposed project. In its first letter to the Commission, the DAH recommended that a cultural resources survey be conducted and that additional information be provided. In its second letter, the DAH acknowledged the receipt of additional information and stated that if the proposed access road associated with the archaeological site 3LO794 was eliminated, there would be no effect on historic properties. CEGT completed the recommended survey and provided the additional information. Based on the information provided, the staff determined that the project

would not affect any significant archaeological sites or other historic properties. In letters dated January 10, 2008, and March 24, 2008, the Arkansas State Historic Preservation Officer concurred.

19. Ms. Colwell and Ms. Akins both own property in the vicinity of the proposed Poteau Compressor Station and commented on the visual impacts that would result. CEGT has developed a site-specific visual screening plan for the compressor station, which includes the planting of trees outside the station fence line where the station would be visible to nearby residences. We have reviewed this plan and find it acceptable.

20. The USFWS' Southeast Regional Office provided comments on the importance of riparian zones and the potential presence of several federally-listed threatened and endangered species. Because the proposed pipeline would be collocated with an existing natural gas transmission pipeline and CEGT would implement approved measures to minimize construction impacts, the EA states vegetative resources would not be significantly affected by construction and operation of the project. The staff also determined that construction and operation of the project would result in "no effect" and "is not likely to adversely affect" federally-listed threatened and endangered species. In letters dated December 13, 2007, and February 21, 2008, the USFWS provided concurrence with these determinations.

21. The United Keetoowah Band of Cherokee Indians in Oklahoma requested that the initiation of Section 106 consultation be made. CEGT consulted with the United Keetoowah Band of Cherokee Indians in Oklahoma and they indicated that they have no objections to the proposed project, but also requested copies of the cultural resource reports for the proposed project. In response to that request, CEGT provided copies of the cultural resource reports to them on December 17, 2007.

22. Based upon the analysis described in the EA, the staff concluded that if constructed and operated in accordance with CEGT's application, supplements, and staff's recommendations, and the environmental conditions in the Appendix to this order, approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

23. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or

local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹⁰

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to CEGT pursuant to section 7(c) of the Natural Gas Act authorizing CEGT to construct, own, and operate the Tontitown Project, as described and conditioned herein and as more fully described in the application.

(B) The certificate granted in Ordering Paragraph (A) is conditioned on the following:

- 1) CEGT's completing the authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations;
- 2) CEGT's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and,
- 3) CEGT's compliance with the environmental conditions listed in the appendix to this order.

(C) CEGT shall execute service agreements equal to the level of service represented in its precedent agreement prior to commencing construction.

(D) CEGT must file its negotiated rate contract with SWEPCO in accordance with Section 12 of the General Terms and Conditions of its tariff.

(E) There will be presumption of roll-in rate treatment for the Tontitown Project's costs in a future general rate case under NGA section 4, provided that there are no material changes in the relevant facts and circumstances associated with the proposals at the time CEGT seeks to roll in the costs, and further provided that CEGT will have the burden of demonstrating that rolled-in rate treatment is appropriate if it elects to file a

¹⁰See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

section 4 rate case at any point while it is still under-recovering the project's associated cost of service.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions

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

1. CEGT shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff information requests), and as identified in the EA, unless modified by the Commission's Order. CEGT 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 OEP before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the Project. This authority shall allow:
 - a. the modification of conditions of the Commission's 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**, CEGT shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, EIs, 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 and as supplemented by filed alignment sheets. **As soon as they are available, and prior to the start of construction**, CEGT 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 Commission's Order. All requests for modifications of environmental conditions of the Commission's Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

CEGT's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to the Commission's Order must be consistent with these authorized facilities and locations. CEGT'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. CEGT 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 the 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:

- i. implementation of cultural resources mitigation measures;
 - ii. implementation of endangered, threatened, or special concern species mitigation measures;
 - iii. recommendations by state regulatory authorities; and
 - iv. agreements with individual landowners that affect other landowners or would affect sensitive environmental areas.
6. **Within 60 days of the acceptance of a certificate and prior to construction,** CEGT shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how CEGT will implement the mitigation measures required by the Commission's Order. CEGT must file revisions to the plan as schedules change. The plan shall identify:
 - a. how CEGT will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required

- b. at each site is clear to onsite construction and inspection personnel; 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. what training and instructions CEGT will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session;
 - e. the company personnel (if known) and specific portion of CEGT's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) CEGT will follow if noncompliance occurs; and
 - g. 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 mitigation training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. CEGT shall employ one or more EIs per construction spread. The environmental inspectors shall be:
- a. responsible for monitoring and ensuring compliance with all mitigative measures required by the Commission's 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 and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Commission's 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 the 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. CEGT shall file updated status reports prepared by the lead EI with the Secretary on a **biweekly** basis **until all construction-related activities, including restoration, are complete for each phase of the Project**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

- a. the current construction status of each spread, 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. a description of 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 that may relate to compliance with the requirements of the Commission's Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by CEGT from other federal, state or local permitting agencies concerning instances of noncompliance, and CEGT's response.
9. CEGT must receive written authorization from the Director of OEP **before commencing** service for each phase of the Project. Such authorization will only be granted following a determination that rehabilitation and restoration of areas affected by the Project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, CEGT shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions CEGT 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. CEGT shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the Project and restoration of the right-of-way. **Prior to construction**, CEGT shall mail the complaint procedures to each landowner whose property would be crossed by the Project.

In its letter to affected landowners, CEGT shall:

- a. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a

- response;
- b. instruct the landowners that, if they are not satisfied with the response, they should call CEGT's Hotline; the letter should indicate how soon to expect a response; and
- c. instruct the landowners that, if they are still not satisfied with the response from CEGT's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030, or at hotline@ferc.gov.

In addition, CEGT shall include in its biweekly status report a copy of a table that contains the following information for each problem/concern:

- i. the date of the call;
 - ii. the identification number from the certificated alignment sheets of the affected property and approximate location by milepost;
 - iii. the description of the problem/concern; and
 - iv. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
12. CEGT shall file **with its Project Implementation Plan**, the plan developed in consultation with the COE describing construction and restoration requirements in the Lake Dardanelle WMA.
13. **Prior to beginning any HDD where drilling would take place 24 hours per day**, CEGT shall file with the Secretary for review and written approval by the Director of OEP, an HDD Noise Analysis and Mitigation Plan for each HDD entry and exit location with NSAs within 0.5 mile. The plan shall include:
- a. all NSAs within 0.5 mile of the HDD entry or exit location;
 - b. the estimated number of days of drilling required for each location;
 - c. a topographic map showing the distance and direction of the nearest NSAs;
 - d. the existing day-night average noise (Ldn) at the nearest NSAs and the proposed noise impacts at the NSAs during drilling activities; and
 - e. a description of any noise mitigation or alternate measures (such as temporary relocation and compensation) that would be implemented prior to the start of and/or during drilling activities to reduce noise impacts.
14. CEGT shall make all reasonable efforts to assure its predicted noise levels from the proposed Poteau Compressor Station are not exceeded at all nearby NSAs and file noise surveys showing this with the Secretary **no later than 60 days** after placing the Poteau Compressor Station into service. However, if the noise attributable to the operation of the new compressor station at full load exceeds an Ldn of 55 dBA at any nearby NSA, CEGT shall file a report on what changes are needed and shall install additional noise controls to meet that level **within 1 year** of the in-service date. CEGT 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.