

127 FERC ¶ 61,009
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northwest Pipeline GP

Docket No. CP08-477-000

ORDER ISSUING CERTIFICATE

(Issued April 2, 2009)

1. On September 24, 2008, Northwest Pipeline GP (Northwest) filed an application under section 7(c) of the Natural Gas Act (NGA) for a certificate authorizing it to construct and operate the Colorado Hub Connection Project (Colorado Hub Project) in Rio Blanco County, Colorado. The Colorado Hub Project will allow Northwest to provide 582,000 dekatherms per day (Dth/d) of firm natural gas service,¹ increase Northwest shippers' access to additional gas supplies from the Piceance Basin, and interconnect Northwest's system with the Meeker Gas Processing Plant (Meeker Plant) and the White River Hub.² For the reasons discussed below, we will grant Northwest's requests.

I. Background

2. Northwest owns and operates an interstate natural gas transmission system extending from points of interconnection with El Paso Natural Gas Company (El Paso) and Transwestern Pipeline Company, LLC (Transwestern) near Blanco, New Mexico,

¹ As explained below, although a new extension of the mainline can transport 582,000 Dth/d, Northwest's existing mainline cannot transport that volume of gas. Therefore, until mainline expansion projects, including one already under consideration by the Commission, are implemented, the Colorado Hub Project will provide 363,615 Dth/d of service.

² The Meeker Plant is owned by Enterprise Production Operating, LLC (Enterprise). The White River Hub Project, in which Enterprise has an interest, connects the Meeker Plant with five interstate pipelines. *See White River Hub, LLC*, 124 FERC ¶ 61,132 (2008) (White River).

through that state, Colorado, Utah, Wyoming, Idaho, Oregon and Washington, to the Canadian border near Sumas, Washington, where it interconnects with Spectra Energy Transmission and Terasen Huntington, Inc. Northwest also interconnects with El Paso at Ignacio, Colorado; Colorado Interstate Gas Company (CIG), Questar Pipeline Company (Questar) and Kern River Gas Transmission Company at points in southwest Wyoming; Pauite Pipeline Company at the Idaho/Nevada border; and Gas Transmission Northwest Corporation at Stanfield, Oregon, Palouse, Washington and near Spokane, Washington.

3. Northwest's transmission system is bidirectional and relies on a combination of physical and displacement capacity to serve its firm market requirements. Displacement capacity is generated by other shippers flowing gas in the opposite direction. Pan Alberta Gas (U.S.) Inc. (PAGUS) currently has contractual obligations to flow significant levels of gas, 243,467 Dth/d, in a southerly direction from various points as far north as Stanfield, Oregon for delivery to Ignacio/LaPlata, Colorado. However, PAGUS' contract is due to terminate on October 31, 2012.³ Without that southerly flow of gas, displacement capacity on the system would be seriously constrained for existing north-flow contracts. In addition, Northwest would lose significant revenues if the PAGUS capacity is not re-subscribed.

4. Currently, Northwest's shippers have access to transportation capacity from the Piceance Basin for approximately 46,000 Dth/d of natural gas. This access is through a portion of Northwest's mainline system known as the Piceance Lateral. The Piceance Basin, located in the Central Rocky Mountain area, is one of the fastest growing supply basins in the nation and has experienced significant growth in drilling and production activity since 2005. Northwest is proposing the Colorado Hub Project in response to demand for increased access to additional supplies from the Piceance Basin. The Colorado Hub Project will connect and extend Northwest's mainline to the proposed Meeker Plant/White River Hub, where projected supplies of approximately 2,500 MDth/d can be accessed.

5. For the Colorado Hub Project, Northwest plans to use 363,615 Dth/d of its existing southbound mainline capacity from various receipt points as far north as Stanfield, Oregon, for delivery to Ignacio/LaPlata, Colorado, on a long-term basis at

³ PAGUS originally used its capacity to transport natural gas supplies from western Canada through Northwest's system for delivery to California markets. After the termination of associated California commitments, the producers underlying the PAGUS contract directed their supplies to other markets and no longer utilized the capacity contracted on Northwest. Since that time, Northwest's south-bound capacity has been underutilized and generally subscribed only at steeply discounted rates. Northwest and PAGUS have been working together for several years to re-contract this capacity.

maximum rates.⁴ Northwest conducted a non-binding open season from April 27 to May 31, 2007, to determine the potential interest in a variety of service options to access supplies from the Piceance Basin. The majority of the participants expressed interest in a service option that would provide access to the Piceance Basin using firm southbound capacity on Northwest's existing mainline.

6. To assure availability of the southbound capacity for the proposed Colorado Hub Project, Northwest entered into a Memorandum of Agreement with PAGUS whereby, subject to the capacity being subscribed as part of the project, PAGUS would relinquish its firm southbound capacity in the Stanfield, Oregon to Ignacio, Colorado corridor, and would also waive its right of first refusal for the portion of its capacity that is currently released, which releases are scheduled to terminate in October 2012. Northwest also reserved other firm southbound capacity with various receipt points between Stanfield, Oregon, and Clay Basin for delivery to Ignacio, Colorado for project use. Consistent with Commission policy, Northwest then held a reverse open season from July 19 to July 27, 2007, to solicit capacity relinquishment offers from any other shippers with existing firm southbound transportation rights between Stanfield, Oregon, and Ignacio, Colorado. No shippers besides PAGUS were willing to relinquish capacity.

7. Northwest conducted a binding open season from August 3 to September 28, 2007, offering service on the Colorado Hub Project at Northwest's rolled-in, system-wide Rate Schedule TF-1 reservation and usage charges. Potential shippers were offered the following options: 1) firm southbound transportation service from the Greasewood Hub and Meeker Plant/White River Hub with delivery to Ignacio, Colorado, at Northwest's interconnects with El Paso and Transwestern; and 2) firm southbound transportation service from receipt points as far north as Stanfield, Oregon, with delivery to points as far south as Ignacio, Colorado, with segmentation rights at the Greasewood Hub or Meeker Plant/White River Hub. Northwest later revised its project to terminate at the Meeker Plant/White River Hub rather than at the Greasewood Hub, because White River announced its plans to construct the White River Hub Project, which duplicated the last seven miles of Northwest's originally proposed project facilities between the Greasewood Hub and the Meeker Plant.

8. Pursuant to the award criteria delineated in Northwest's binding open season posting, Northwest reviewed all maximum rate bids requesting primary receipt points for the longest available path of capacity, and awarded that capacity to the shipper providing the bid with the highest net present value on a per dekatherm basis. Northwest used the same process for each of the next-longest requested mainline paths, until all capacity at each of the available points had been considered and awarded. This award process was

⁴ See *infra* P 10.

specifically designed to use the southbound capacity that was either unsubscribed or under agreement which would terminate in the near future.⁵ While the proposed facilities between Sand Springs and the Meeker Plant/White River Hub will not be in service until November 1, 2009, certain shippers have elected to begin service using their mainline capacity as early as November 1, 2008.

9. As a result of its open season, Northwest executed precedent agreements for all of the southbound capacity it had targeted for use for the Colorado Hub Project. Further, Northwest offered existing shippers with southbound capacity under existing transportation service agreements from Stanfield, Oregon, through Sand Springs, to Ignacio, Colorado, the opportunity to use the project facilities by segmenting their capacity at the Meeker Plant/White River Hub in exchange for contract extensions. Northwest entered into precedent agreements with nine shippers for a total of 363,615 Dth/d of firm, long-term capacity.

10. The 363,615 Dth/d consists of 243,467 Dth/d of capacity previously held by PAGUS (including 43,629 Dth/d permanently released to another shipper by PAGUS), 98,148 Dth/d of previously unsubscribed capacity, and 22,000 Dth/d of segmented capacity from Stanfield, Oregon, to Elmore, Idaho, which has been subscribed by a new shipper under a long-term firm contract.⁶

11. The Colorado Hub Project shippers will execute Transportation Service Agreements in the customary form for service under Rate Schedule TF-1 within 30 days of Northwest's acceptance of any certificate issued to it in this proceeding. Since some project shippers will already have such agreements for the existing mainline capacity, upon Northwest's acceptance of a certificate, those shippers will amend their existing service agreements to include service on the newly extended mainline.

⁵ Northwest's approach to obtaining capacity for the Colorado Hub Project is consistent with section 25 of the General Terms and Conditions of its FERC Gas Tariff (tariff) which governs the posting of available capacity and reservation of unsubscribed capacity for a future project.

⁶ The last increment of capacity was created when 22,000 Dth/d of subscribed southbound capacity was re-contracted in two parcels of 22,000 Dth/d each. The original 22,000 Dth/d of capacity is reflected in the 243,467 Dth/d of PAGUS capacity.

II. The Proposal

12. Northwest estimates total capital cost for the Colorado Hub Project of approximately \$60.4 million. In addition to the requisite certificate authorizations for construction and operation of facilities, Northwest requests a predetermination of rolled-in rate treatment for the cost of the project.

A. Facilities

1. Colorado Hub Connection Pipeline

13. Northwest proposes to construct and operate approximately 27.4 miles of 24-inch diameter pipeline and appurtenant facilities extending from an interconnect with its mainline near Sand Springs, Colorado, to interconnect with the Meeker Plant and the White River Hub, all located in Rio Blanco County, Colorado. The maximum allowable operating pressure (MAOP) of the new pipeline will be 1,440 psig. Appurtenant facilities will include block valves, valves and appurtenances to accommodate future pig launching and receiving facilities, and a regulator station. This segment of pipeline is an extension of Northwest's mainline.

14. Flow studies submitted by Northwest in the application show a firm design capacity for the proposed new pipeline of 582,000 Dth/d. However, the Colorado Hub Project, will only use 341,615 Dth/d⁷ of the 582,000 Dth/d. Northwest states that it has reserved, in accordance with section 25.2(c) of its tariff, approximately 128,000 Dth/d of the capacity of the proposed mainline extension for its Sundance Trails Expansion Project which is projected to go into service in late 2010.⁸ Northwest anticipates offering the remaining 112,385 Dth/d of firm capacity through open seasons in conjunction with later mainline expansions and/or offering segmentation rights to the Meeker Plant/White River Hub pursuant to its tariff. Northwest asserts that any revenues from utilization of the

⁷ The 22,000 Dth/d of segmented capacity between Stanfield, Oregon and Elmore, Idaho is not located on the proposed mainline extension between Sand Springs and the Meeker Plant/White River Hub.

⁸ Northwest's Sundance Trails Expansion Project, Docket No. PF08-30-000, is currently in the pre-filing process. On September 8, 2008, Northwest filed a Draft Environmental Impact Statement for the Sundance project, which involves constructing pipeline loop and compression facilities to transport 128,000 Dth/d from the White River Hub and 22,000 Dth/d from the Greasewood Hub, to the Opal Hub in Lincoln County, Wyoming.

unsubscribed firm capacity in connection with such mainline expansions will serve to reduce its revenue deficiency in a future Northwest case.

2. Meeker Plant Meter Station

15. Northwest proposes to construct and operate the Meeker Plant Meter Station located at the outlet of the Meeker Plant near milepost 27.4 on the proposed mainline extension. The station will consist of two eight-inch ultrasonic meters, gas chromatograph, filtration/separation equipment, electronic flow measurement equipment, communications equipment for voice and data transfer, a building to house the equipment, and approximately 500 feet of 12-inch diameter station piping from the tail gate of Meeker Plant to the inlet of the meter station. The maximum design capacity of this meter station will be approximately 340 MDth/d at a pressure of approximately 1,200 psig.⁹

3. White River Hub Interconnect

16. Northwest proposes to construct and operate an interconnect tap valve and appurtenances to interconnect with the proposed White River Hub near MP 27.4 on the proposed mainline extension.¹⁰ These facilities will be co-located in the same yard with the Meeker Meter Station facilities.

B. Rolled-In Rates

17. Northwest requests an upfront determination that the costs of the Colorado Hub Project can be rolled into Northwest's existing rates in its next NGA section 4 general rate case. To demonstrate that existing shippers will not subsidize this project, as required by the Commission's Certificate Policy Statement,¹¹ Northwest provides studies demonstrating that revenues from the project exceed costs over the first ten years of the

⁹ Northwest will negotiate an operational balancing agreement (OBA) with Enterprise, the owner of the Meeker Plant, prior to placing the facilities into service.

¹⁰ White River will install metering facilities pursuant to its blanket certificate authority. Northwest will negotiate an OBA with White River prior to placing the facilities into service.

¹¹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,277, at 61,746 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

project's operation. Thus, Northwest asserts that it has satisfied the no-subsidization test and, therefore, the Commission should grant it a presumption of rolled-in rate treatment.

18. As explained, Northwest has executed nine precedent agreements at maximum rates for service totaling 363,615 Dth/d as a result of its open season, although as described, 22,000 Dth/d of the newly contracted capacity from Stanfield, Oregon to Elmore, Idaho, is not on the proposed mainline extension, but only on the existing mainline. Northwest maintains that since 243,467 Dth/d of the subscribed capacity is attributable to PAGUS' contract (or shippers that hold capacity released by PAGUS), it is not newly subscribed capacity because that capacity is currently being used and bringing in revenues. Rather, Northwest based its roll-in analysis on 120,148 Dth/d, which represents newly-subscribed capacity resulting from the proposed Colorado Hub Project. Specifically, the 120,148 Dth/d represents the 98,148 Dth/d of unsubscribed southbound capacity that has only been sold intermittently at discounted rates and 22,000 Dth of additional southbound capacity that was created when the 22,000 Dth/d of southbound capacity was segmented between two shippers on the project.

19. Northwest also asserts that the Colorado Hub Project meets other criteria in the Certificate Policy Statement because the project will have no adverse impact on existing Northwest shippers, on captive customers on other pipelines in the geographic market, or on landowners and communities along the project route. Moreover, Northwest emphasizes that the Colorado Hub Project will confer significant benefits on existing shippers because it insures that the current PAGUS capacity will be used on a firm basis going forward, avoiding the risk of having up to 243,615 Dth/d of unsubscribed capacity and the resultant loss of revenues, as well as utilizing other southbound capacity that has been unsubscribed on a long-term basis for years. A further benefit cited by Northwest is that having the system's southbound capacity subscribed will assure displacement capacity for Northwest's north-flow contracts. Finally, Northwest's shippers will have increased access to new gas supplies from the Piceance Basin. For all of these reasons, Northwest maintains that the Commission should grant it a presumption of rolled-in rate treatment when it seeks to roll the costs of the project into its systemwide rates.

III. Interventions

20. Notice of Northwest's application in Docket No. CP08-477-000 was published in the *Federal Register* on October 10, 2008 (73 Fed. Reg. 59,616). Seventeen timely, unopposed motions to intervene were filed.¹² Questar and White River filed motions to

¹² 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 (2008). The following filed timely, unopposed motions. Chevron U.S.A. Inc., Colorado Interstate Gas Co. and Wyoming Interstate Co., Ltd. (filing jointly), Exxon Mobil Gas & Power

(continued...)

intervene out of time. These parties have demonstrated an interest in these proceedings and granting their late interventions at this stage of the proceeding will not unduly delay resolution of the issues or unfairly prejudice other parties. Therefore, for good cause shown, we are granting these late motions.¹³

21. Chevron Inc, IGI Resources, Inc., Intermountain Gas Company, Northwest Industrial Gas Users; Pan-Alberta Gas (US) Inc., Portland General Electric Company, Puget Sound Energy, Inc., and Williams Gas Marketing, Inc., filed comments in general support of the application. Shell Frontier Oil & Gas Inc. (Shell Frontier), an affiliate of Shell Exploration and Production Company, filed comments noting that it was a landowner on part of the proposed mainline extension's route and expressed concern that the project might have an impact on Shell Frontier's research associated with the extraction of shale oil deposits from its property. On January 29, 2009, Shell Frontier filed a Notice of Withdrawal of its comments because of discussions it has had with Northwest regarding its concerns. No party filed an opposition to Shell Frontier's Notice and the Commission has no objection to the withdrawal of the comments.¹⁴

IV. Discussion

22. Since the subject 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 NGA.

Marketing Co., a Division of Exxon Mobil Corp., Idaho Power Co., Northwest Natural Gas Co., IGI Resources, Inc., Intermountain Gas Co., Northwest Natural Gas Co., Northwest Industrial Gas Users, Occidental Energy Marketing, Inc.; Pan-Alberta (U.S.) Inc., Portland General Electric Co., Puget Sound Energy, Inc., Shell Energy North America (US), Shell Frontier Oil & Gas Inc., L.P.; Southwest Gas Corp. and Williams Gas Marketing, Inc.

¹³ See Rule 214(d), 18 C.F.R. § 385.214(d) (2008).

¹⁴ See Rule 216, 18 C.F.R. § 385.216 (2008). Under this Rule, if no party opposes the withdrawal of a pleading and the Commission has no objections, the withdrawal will be effective within 15 days of its filing. Shell Frontier did not withdraw its intervention; therefore, it continues to be a party to this proceeding.

A. Certificate Policy Statement

23. On September 15, 1999, the Commission issued a Certificate Policy Statement¹⁵ on the certification of new interstate natural gas pipeline facilities to provide guidance on how the Commission will evaluate proposals for new construction. In the Certificate Policy Statement, the Commission 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 explains that in deciding whether to authorize the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's 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.

24. Under the Certificate Policy Statement, the threshold requirement for applicants proposing new construction projects is that the applicant must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market area and their captive customers, or landowners and communities affected by the route of a new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission 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 the Commission then proceed to complete the environmental analysis where other interests are considered.

25. The Commission has determined that Northwest's proposal satisfies the threshold requirement that the project can proceed without subsidization from existing shippers because the annual revenues that would be generated from the new firm contracts attributable to the project at the current maximum cost-based rates under Rate Schedule TF-1 exceed the estimated yearly costs of service of the project for each of the first ten years of service.¹⁶ We further note that no existing or prospective shippers have protested the request for rolled-in rate treatment. Therefore, the Commission grants a

¹⁵ See *supra* note 11.

¹⁶ See *Wyoming Interstate Co., Ltd.*, 119 FERC ¶ 61,251, at P 26 (2007) (utilizing the first ten years of a project to justify rolled-in rate treatment).

predetermination that Northwest should be permitted to roll the costs associated with the Colorado Hub Project into its Rate Schedule TF-1 rates in Northwest's next NGA section 4 rate proceeding, absent materially changed circumstances.

26. We also find that the Colorado Hub Project will have no adverse effects on existing shippers. Service to these shippers will not be degraded. Further, the extension of Northwest's mainline will permit existing shippers to access additional supplies from the Piceance Basin and will give the shippers access to the Meeker Plant/White River Hub. It will also utilize significant levels of existing capacity that could become unsubscribed in the near future, as well as existing capacity which historically has not be subscribed on a long-term basis. Finally, the re-contracting of the existing southbound mainline capacity will assure existing Northwest shippers that north-flow displacement capacity will continue to be available.

27. No other existing pipelines and/or their captive shippers will be adversely affected by authorization of the Colorado Hub Project. The project is designed to provide capacity that will permit Northwest's shippers to access new supplies of gas. Such volumes represent new load and do not result in a competing pipeline losing a portion of its existing load.

28. Further, the Commission finds that construction of the Colorado Hub Project facilities will not have an adverse impact on landowners or communities along or near the proposed mainline extension's route. Northwest represents that it has designed the proposed facilities to minimize the impact on landowners and the environment. The proposed facilities will be installed primarily parallel to existing utility and transportation corridors. Northwest notes that the construction of the 27.4-mile mainline extension and related above-ground facilities will require temporary easements on approximately 476 acres of land and permanent easements of 186 acres.

29. Northwest further explains that 78 percent of the land required for the proposed facilities is held and managed by the Bureau of Land Management. There are only three other landowners that will be affected by the project. Northwest indicates that during the pre-filing review process for this project, it attended meetings with affected landowners, including government agencies, and has made efforts to address any concerns raised by them. Northwest states that it expects to obtain the necessary easements without the need to exercise eminent domain authority. The Commission notes that no landowners filed protests to the application. Therefore, we find that Northwest has made efforts to minimize or eliminate adverse impacts on landowners from the project.

30. To the extent there are any residual adverse impacts on the groups of concern described in the Certificate Policy Statement, the Commission finds that, as set forth above, the Colorado Hub Project facilities will have significant benefits for Northwest's existing shippers as well as to the public because the new facilities will provide access to new gas supplies. For all of these reasons, we find that Northwest has met the criteria of

B. Services

31. Northwest indicates that the transportation service agreements supporting this project will contain certain non-conforming provisions. Section 154.112(b) of the Commission's regulations¹⁷ requires that transportation service agreements that deviate in any material aspect from the form of service agreement in a pipeline's tariff must be filed with the Commission for approval. The Commission will review and address the provisions of the service agreements when Northwest makes the required filings.

V. Engineering

32. Commission staff completed an engineering review of the information submitted by Northwest in its application and exhibits. Simulations of Northwest's system show that the proposed construction and operation of the Colorado Hub Project will allow Northwest to meet its contractual obligations. The design is based on an East and West Case scenario. East flow volumes are wholly dependent on pressures at the White River Hub Interconnect being low enough to make the delivery and/or sufficient receipt volumes at the White River Hub to net the delivery volumes to zero. Staff concludes that the facilities can support a maximum of 582,000 Dth/d of firm transportation from the proposed Meeker Plant/White River Hub. The Commission adopts these findings.

VI. Environmental

33. On April 21, 2008, a Notice of Intent to Prepare an Environmental Assessment for the Proposed Colorado Hub Connection Project and Request for Comments on Environmental Issues (NOI) was issued. The NOI was sent to almost 230 recipients, including affected landowners; federal, state, and county agencies; Native American tribes; nongovernmental and/or environmental organizations; libraries and newspapers in the project area; and other potentially interested parties. Three substantive responses to the NOI were received, including responses from the U.S. Fish and Wildlife Service (FWS), the Colorado Division of Wildlife (CDOW), and the Colorado Division of Water Resources (CDWR).

34. Commission staff prepared an environmental assessment (EA) for Northwest's proposal, which was placed in the public record in this proceeding on February 20, 2009. The EA was prepared with the cooperation of the Bureau of Land Management (BLM)

¹⁷ 18 C.F.R. § 154.112(b) (2008).

and addresses geology and paleontology; soils; water resources and wetlands; vegetation, fisheries, and wildlife (including threatened and endangered species); land use, recreation, and visual resources; cultural resources; air quality and noise; safety and reliability; socioeconomics; hazardous and solid wastes; and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

35. In its comment letter, the FWS identified 10 federally threatened, endangered, and candidate plant, fish, and animal species, and certain designated critical habitat, that may be present in the project area. Based on surveys conducted by Northwest and staff's analysis, the EA concludes that the project would not affect listed plants or animals but may affect four Colorado River system fish, including the Colorado pikeminnow, razorback sucker, bonytail chub, and humpback chub. Therefore, the staff has initiated formal consultation with the FWS. While project construction and operation would not directly affect the listed fish species, water depletions (in this case associated with pipeline hydrostatic testing) are one of the primary concerns relating to these species. Staff recommends that the Commission's authorization of the project be conditioned on receipt of a Biological Opinion from the FWS and completion of formal consultation.¹⁸ The Commission concurs with this recommendation.

36. The FWS also requested that the EA discuss compliance with the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act, and the potential impact on the greater sage grouse. Concerns relating to the sage grouse, as well as on the potential impacts on mule deer range and migratory corridors, and black-footed ferret were expressed by the CDOW. The EA discusses the potential impact on migratory birds and concludes that although project activities could cause some migratory birds to avoid the construction areas, the impact would be limited to the relatively short period of active construction. Further, the project is not expected to result in a significant or long-term change in migration patterns through the area. Additionally, the EA discusses Northwest's raptor survey of the project area in spring 2008, which found no active or inactive bald eagle nests within 0.5 mile of any project facility. Northwest will repeat its nest survey prior to beginning construction this spring, and will not conduct any surface-disturbing activities within 0.5 mile of any active nest during the nesting period (or within 0.5 mile of an roost site if winter construction is necessary) without prior authorization from Commission environmental staff.

37. With regard to the sage grouse, the EA concludes that while the pipeline route crosses approximately 7 miles of potentially suitable sage-grouse nesting and brood-rearing habitat, no known active or inactive sage-grouse leks¹⁹ would be disturbed by

¹⁸ See Environmental Condition 11, attached hereto in the Appendix.

¹⁹ A lek is an area where grouse and other animals gather to engage in courtship

construction or operation of the project. Northwest's plan to reestablish vegetation conducive to sage grouse will mitigate habitat loss, while its buffer zones and construction timing will effectively mitigate impacts resulting from construction activities.

38. Mule deer are present year-round in the project area. The EA describes that the pipeline route crosses mule deer seasonal ranges at various locations, but determines that the project schedule (May – November 2009), as well as construction timing constraints on federally administered lands, are expected to preclude any conflicts with wintering big game. The project would not occur within the known distribution and/or habitat of the black-footed ferret.

39. In its comments, the CDRW recommended that Northwest consult with the local Water Commissioners regarding any activity that might affect the flow of water to any stream system. The EA reports that Northwest subsequently contacted both Water Commissioners and that neither Commissioner foresees any adverse impacts on water resources or vested water rights.

40. The EA also discusses Northwest's proposal to acquire a 75-foot-wide permanent right-of-way (ROW) for the new pipeline on private land and notes that the permanent ROW width will be limited to 50 feet on public lands. The EA finds that a 50-foot-wide permanent ROW is typical in the industry (when space is not limited), and Northwest has made no compelling argument for requiring additional width on private land. While Northwest may purchase as much land as it chooses to buy (if a landowner chooses to sell), it would be inappropriate to enable a certificate holder to acquire more private land than is necessary under the authority of eminent domain. Environmental Condition 12 allows Northwest to purchase as much land as a landowner will sell, but without the exercise of, or the threat to exercise, eminent domain for more than a 50-foot-wide permanent ROW. The Commission agrees with the EA's conclusion on this issue.

41. To connect the new pipeline to its mainline system, Northwest will construct about 0.9 mile of the new pipeline within the Canyon Pintado National Historic District, an area administered by the BLM and noted for its rock art and buried cultural resources. In order to mitigate the adverse impact associated with construction within the District, Environmental Condition 13 provides that Northwest cannot begin construction on the project until comments from the Advisory Council on Historic Preservation are received by the Commission and until a cultural resources mitigation/treatment plan is finalized. The Commission concurs.

behavior.

42. Based on the discussion in the EA, the Commission concludes that if constructed and operated in accordance with Northwest's application and supplements thereto, 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.

43. We further note that 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/replacement or operation) of facilities approved by this Commission.²⁰

VII. Conclusion

44. The Commission finds that Northwest's proposed Colorado Hub Project is required by the public convenience and necessity. Further, we find that Northwest will have a presumption of rolled-in rate treatment for the costs associated with the project in the general rate case in which it proposes to roll those costs into its systemwide rates. Accordingly, we will issue a certificate to Northwest authorizing the construction and operation of the project.

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Northwest in Docket No. CP08-477-000, authorizing the construction and operation of the facilities described more particularly in this order and in the application.

(B) The certificate issued in Ordering Paragraph (A) is conditioned on Northwest's compliance with all applicable Commission regulations under the NGA, particularly those set forth in Parts 154, 157, and 284 and paragraphs (a), (c) and (e) and (f) of section 157.20 of the regulations.

²⁰See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm.*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(C) The facilities authorized in this order shall be constructed and made available for service within one year of the date of the order in this proceeding in accordance with section 157.20(b) of the Commission's regulations.

(D) The certificate issued in Ordering Paragraph (A) is conditioned upon Northwest's compliance with the environmental conditions set forth in the Appendix to this order.

(E) Northwest is granted a presumption favoring rolled-in rate treatment for the facilities authorized by this order in a future NGA section 4 rate proceeding, provided there are no significant changes in the relevant facts and circumstances forming the basis for this presumption.

(F) Northwest shall execute firm contracts equal to the level of firm service and terms of service represented in the precedent agreements prior to commencing construction.

(G) If the transportation service agreements for service provided under the project contain nonconforming provisions, Northwest shall comply with section 154.112 of the Commission's regulations, and make the necessary filings at least 30 days, but no more than 60 days, prior to the in-service date of the project.

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

By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

ENVIRONMENTAL CONDITIONS

1. Northwest Pipeline GP (Northwest) shall follow the construction procedures and mitigation measures described in its application and supplement (including responses to staff data requests) and as identified in this Environmental Assessment (EA), unless modified by the Commission order. Northwest 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 measures; and
 - d. receive approval in writing from the Director of Office of Energy Projects (OEP) **before using that modification.**

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Commission 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,** Northwest shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EIs), 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 location 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,** Northwest 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 order. All requests for modifications of environmental conditions of the order or site-specific clearances must be written and must reference locations designated on the alignment maps/sheets.

Northwest's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the order must be consistent with these authorized facilities and locations. Northwest'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 ROW for a pipeline to transport a commodity other than natural gas.

5. Northwest 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 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 Commission order and before construction** begins, Northwest shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP. Northwest must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Northwest will implement the construction procedures and mitigation measures described in its application (including responses to staff data requests), identified in the EA, and required by the Commission order;

- b. how Northwest 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 training and instructions Northwest 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;
 - f. the company personnel (if known) and specific portion of Northwest's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Northwest will follow if noncompliance occurs; and
 - h. 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. Northwest shall employ at least two EIs. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Commission order and other grants, permits, certificates or 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 documents;
 - c. empowered to order correction of acts that violate the environmental conditions of the order, and any other authorizing documents;
 - 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. Beginning with the filing of its initial Implementation Plan, Northwest shall file updated status reports with the Secretary on a **weekly** 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 Northwest's efforts to obtain the necessary federal authorizations;
 - b. 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 sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs 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 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 Commission order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Northwest from other federal, state, or local permitting agencies concerning instances of noncompliance, and Northwest's response.
9. Northwest 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 ROW and other areas of project-related disturbance are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Northwest 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 would be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Northwest has complied with or would 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. Northwest shall not begin construction activities **until**:
 - a. the staff receives a Biological Opinion from the U. S. Fish and Wildlife Service regarding project-related water depletion issues in the Colorado River system; and
 - b. Northwest has received written notification from the Director of OEP that construction may begin.

12. Northwest shall limit the land acquired by eminent domain under the NGA for its permanent pipeline easement to a width no larger than 50 feet. This does not place a limit on Northwest's ability to purchase land on the open market for a wider permanent easement.

13. Northwest shall not begin implementation of any treatment plans/measures (including archaeological data recovery); construction of facilities; or use of staging, storage, and temporary extra work areas and new or to-be-improved access roads **until**:
 - a. Northwest files with the secretary a cultural resources survey report for any outstanding or newly identified areas requiring a survey (e.g., yards, etc.) and the State Historic Preservation Office's (SHPO) and Bureau of Land Management's (BLM) (as appropriate) comments on the report;
 - b. Northwest files any BLM and SHPO comments on the Canyon Pintado National Historic District revised mitigation/treatment plan;
 - c. the Advisory Council on Historic Preservation is afforded the opportunity to comment; and
 - d. the Director of OEP reviews and approves all reports and plans and notifies Northwest in writing that it may proceed with 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.**"