

127 FERC ¶ 61,087
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

CenterPoint Energy Gas Transmission Company

Docket No. CP09-29-000

ORDER ISSUING CERTIFICATE

(Issued April 27, 2009)

1. On December 5, 2008, CenterPoint Energy Gas Transmission Company (CenterPoint) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ for a certificate to construct and operate the Phase IV expansion of CenterPoint's Carthage to Perryville pipeline (Line CP).² The Phase IV expansion project would create additional capacity by installing additional compression at two existing compressor stations on Line CP. For the reasons discussed herein, the requested certificate is granted subject to certain conditions.

I. Background and Proposal

2. CenterPoint is a wholly-owned subsidiary of CenterPoint Energy, Inc. CenterPoint is an NGA jurisdictional interstate pipeline that transports natural gas on behalf of shippers to destinations in Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas.

3. CenterPoint proposes to install an additional 15,000 horsepower turbine-driven compressor unit at both the Westdale and Vernon compressor stations located in Red River and Jackson Parishes, Louisiana, respectively. The additional compression added by the Phase IV expansion project would increase the capacity on Line CP by approximately 274,000 dekatherms per day (Dth/d) to a total capacity of approximately

¹ 15 U.S.C. § 717f (2006).

² The Phase I and II expansions of Line CP were authorized by the Commission in 2006. *CenterPoint Energy Gas Transmission Co.*, 117 FERC ¶ 61,003 (2006). The Phase III expansion was authorized in 2007. *CenterPoint Energy Gas Transmission Co.*, 119 FERC ¶ 61,138 (2007).

1.87 billion cubic feet per day (Bcf/d). The expansion capacity would be used to deliver additional Haynesville Shale gas supplies to pipelines at the Perryville Hub.

4. The estimated construction cost of the Phase IV expansion is \$68 million. As reflected in its February 27, 2009 supplement to its application, CenterPoint has executed a precedent agreement with one shipper for 230,000 Dth/d of the 274,000 Dth/d proposed design capacity, or approximately 84 percent.³ CenterPoint states that it is negotiating with multiple shippers for the remaining expansion capacity.

5. CenterPoint proposes to provide services using the proposed expansion capacity on Line CP under its existing Part 284 rate schedules. CenterPoint also proposes to charge expansion shippers the same fixed Fuel Use charge and Lost and Unaccounted for Gas (Lost Gas) charge as previously approved by the Commission for Line CP shippers. CenterPoint states that it does not seek a predetermination supporting rolled-in rate treatment for the Phase IV expansion costs.

II. Notice and Interventions

6. Notice of CenterPoint's application was published in the *Federal Register* on December 24, 2008 (73 Fed. Reg. 79,074). The Arkansas Public Service Commission filed a timely notice of intervention, which is granted by operation of Rule 214(a) of the Commission's Rules of Practice and Procedure.⁴ The Arkansas Electric Cooperative Corporation filed a timely motion to intervene. Its timely, unopposed motion to intervene is granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.⁵

III. Discussion

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

³ In its February 27, 2009 filing, CenterPoint requests confidential treatment for the precedent agreement. Based on the information in the non-confidential portion of the filing, the precedent agreement is for 230,000 Dth/d of firm transportation service for at least 10 years.

⁴ 18 C.F.R. § 385.214(a)(2) (2008).

⁵ 18 C.F.R. § 385.214(c) (2008).

A. Certificate Policy Statement

8. To determine whether a proposed project is required by the public convenience and necessity, we consider whether the proposal meets the criteria set forth in our Certificate Policy Statement addressing new facilities.⁶ In this policy statement, we establish criteria for determining whether there is a need for a proposed project, balance the public benefits against potential adverse impacts of the project, and determine whether the proposed project will serve the public interest. Our goal in evaluating proposed projects 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, avoidance of unnecessary disruptions to the environment, and avoidance of the unnecessary exercise of eminent domain.

9. Under the Certificate Policy Statement, the threshold requirement for existing pipelines proposing a new project is that the pipeline 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 impacts the new 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 location of the new facilities. If residual adverse impacts on these interest groups are identified after efforts have been made to minimize them, we evaluate the project by balancing the public benefits to be achieved against the residual adverse impacts. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

1. Subsidization

10. We find that CenterPoint meets the threshold requirement that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. CenterPoint intends to provide expansion service under its existing tariff and approved Part 284 tariff rates. Accepting CenterPoint's proposal to charge these rates as initial rates for services using expansion capacity created by the project will not result in subsidization by existing customers since none of the project costs are included in CenterPoint's currently effective rates. Further, as discussed below, projected revenues from the service called for under the precedent agreement for 230,000 Dth/d will exceed the projected cost of service associated with the expansion capacity in each of

⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

the first 10 years of service.⁷ Therefore, although not requested by CenterPoint, a predetermination supporting rolled-in rate treatment for the project's costs is warranted. Since such a finding in a section 7 certificate proceeding is subject to material changes in circumstances between the certificate proceeding and when the pipeline files under NGA section 4 to recover a project's costs, the presumption will not apply if revenues from services using CenterPoint's Phase IV expansion capacity are not sufficient to recover the associated cost of service. In such event, CenterPoint would have the burden of proof to demonstrate why rolled-in treatment would nevertheless be appropriate.

11. The Commission previously approved a separate, fixed Fuel Use charge and Lost Gas charge for Line CP.⁸ CenterPoint proposes to charge Phase IV expansion shippers on Line CP the existing fixed Fuel Use charge and Lost Gas charge. Since the existing charges do not include any fuel costs associated with the expansion, those costs will not be subsidized by existing Line CP shippers. Moreover, shippers on CenterPoint's existing core system will continue to pay only the Fuel Use and Lost Gas charges associated with those facilities. Thus, no system shippers will subsidize the expansion through their fuel usage, nor is there any evidence that their existing service will be adversely affected.

2. Benefits and Impacts

12. CenterPoint's proposed Phase IV expansion of Line CP is for new incremental service, and is not intended to replace existing customers' services on any other existing pipeline. No pipeline company in the CenterPoint market area has protested CenterPoint's application. Therefore, we find no adverse impacts on existing pipelines in the market or their captive customers. Further, CenterPoint's proposed expansion facilities are located within its existing compressor station yards. Therefore, impacts on adjacent landowners should be minimal.⁹ Accordingly, consistent with the Certificate Policy Statement and NGA section 7, we find that the proposed Phase IV expansion of Line CP is required by the public convenience and necessity.

⁷ Consistent with Commission policy, we will condition commencement of construction on CenterPoint executing final agreements reflecting levels and terms of service equivalent to those reflected in its precedent agreement filed on February 27, 2009. *See, e.g., Texas Eastern Transmission, LP*, 125 FERC ¶ 61,342, at P 16 and Ordering Paragraph (D) (2008).

⁸ *CenterPoint Energy Gas Transmission Co.*, 117 FERC ¶ 61,003, at P 19 (2006).

⁹ We note that Environmental Condition No. 9 in Appendix A of this order is included to ensure that approval of the additional compressor units does not result in noise attributable to the operation of either station at full load exceeding an Ldn of 55 dBA, the current maximum allowable level, at any nearby NSA.

B. Rates

13. CenterPoint proposes to provide services using the Phase IV expansion capacity on Line CP under its existing Part 284 rate schedules, and to use the separate Line CP fixed Fuel Use and Lost Gas charges for the expansion shippers.

14. Exhibit N to CenterPoint's application, as revised in its February 27, 2009 supplemental filing updating its 10-year revenue/cost of service comparison to reflect its new precedent agreement for 230,000 Dth/d of firm service, indicates that revenues will exceed the additional cost of service associated with the Phase IV expansion capacity each year during the initial ten-year period. The precedent agreement for 230,000 Dth/d of the 274,000 Dth/d design capacity would generate revenues of \$138.5 million based on the negotiated rate over the initial ten-year period.¹⁰ This exceeds the \$102.1 million projected cost of service over the same time period by \$36.4 million.¹¹ The cost and revenue study further shows that if the Phase IV costs and revenues are rolled-in, generally applicable rates would decrease by approximately \$0.0182 per Dth on a 100 percent load factor basis.

15. In view of the above findings, we will approve CenterPoint's proposal to provide services using the Phase IV expansion capacity on Line CP under its existing Part 284 rate schedules, and to use the separate Line CP fixed Fuel Use and Lost Gas charges for the expansion shippers. In addition, when CenterPoint files under section 4 to recover the project's costs, there will be a presumption that the costs should be rolled into CenterPoint's generally applicable rates, absent significantly changed circumstances, as discussed above.

16. All service agreements containing a negotiated rate must comply with the Commission's Alternative Rate Policy,¹² the decision in *NorAm Gas Transmission*

¹⁰ The full capacity of Line CP would generate \$179 million in revenues based on the negotiated rate for 230,000 Dth/d and the recourse rate for the remaining 44,000 Dth/d of capacity, thereby exceeding the cost of service by \$76.9 million.

¹¹ The projected cost of service in revised Exhibit N is identical to that in Exhibit N over the initial ten-year period.

¹² *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,194, order denying reh'g and clarification, 75 FERC ¶ 61,024, reh'g denied, 75 FERC ¶ 61,066 (1996), *pet. for review denied*, *Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, et al., U.S.A. App. Lexis 20697 (D.C. Cir. July 20, 1988).

Company (NorAm),¹³ and the *Modification of Negotiated Rate Policy*.¹⁴ Consistent with *NorAm*, CenterPoint must file either its negotiated rate contracts or numbered tariff sheets at least 30 but not more than 60 days prior to the commencement of service on the new pipeline. For each shipper paying a negotiated rate, the filing must state the exact legal name of the shipper, the negotiated rate, the applicable receipt and delivery points, the volume to be transported, the beginning and ending dates of the contract term, and a statement that the agreements conform in all material respects with the *pro forma* service agreements in CenterPoint's FERC Gas Tariff. CenterPoint must also disclose all consideration linked to the agreements, and 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 NGA section 4 or 5 rate case.

C. Environmental Analysis

17. On January 15, 2009, Commission staff issued a *Notice of Intent to Prepare an Environmental Assessment (EA) for the Proposed Carthage to Perryville Project – Phase IV and Request for Comments on Environmental Issues (NOI)*.¹⁵ The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; local libraries and newspapers; and affected property owners. The NOI comment period ended on February 17, 2009. In response to the NOI, we received one comment from the U.S. Fish and Wildlife Service (FWS) stating that it does not anticipate any impacts would occur to FWS trust resources as a result of the project and that it sees no need for further consultation.

18. To satisfy the requirements of the National Environmental Policy Act (NEPA), staff prepared an EA, which was placed in the public record on March 17, 2009. The analysis in the EA included the project's impacts on water resources, vegetation, wildlife, threatened and endangered species, land use, visual impacts, air quality and noise, reliability, cumulative impacts, and alternatives.

¹³ *NorAm Gas Transmission Co.*, 75 FERC ¶ 61,091 (1996), *order on reh'g*, 77 FERC ¶ 61,011, at 61,037 (1996).

¹⁴ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

¹⁵ The NOI was published in the *Federal Register* on January 26, 2009 (74 Fed. Reg. 4427).

19. Based on the analysis in the EA, we have determined that if CenterPoint constructs the facilities in accordance with its application and supplements, and the staff's mitigation measures listed in Appendix A to this order, approval of this project would not constitute a major federal action significantly affecting the quality of the human environment.

20. 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.¹⁶

IV. Conclusion

21. For the reasons discussed above, we find that the benefits of CenterPoint's Phase IV expansion of Line CP outweigh any potential adverse impacts. Accordingly, we conclude that the proposed project is required by the public convenience and necessity.

22. 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 authorization sought herein. Upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to CenterPoint Energy Gas Transmission Company pursuant to section 7(c) of the Natural Gas Act to construct, own, and operate facilities for the Phase IV expansion of Line CP, 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) CenterPoint's completing construction of the authorized 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) CenterPoint's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20 of the

¹⁶ See, 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); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

Commission's regulations; and,

- 3) CenterPoint's compliance with the environmental conditions listed in the Appendix to this order.

(C) Prior to commencing construction, CenterPoint shall execute service agreement(s) reflecting levels and terms of service equivalent to those represented in its precedent agreement filed on February 27, 2009.

(D) CenterPoint must file its negotiated rate contracts in accordance with section 12 of the General Terms and Conditions of its tariff.

(E) CenterPoint must file revised tariff sheets at least 30 days but not more than 60 days prior to commencement of Phase IV expansion service on Line CP.

(F) There will be a presumption of rolled-in rate treatment for the Phase IV expansion costs in CenterPoint's next section 4 general rate proceeding, absent significant or material changes in circumstances.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Environmental Conditions

1. CenterPoint shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment, unless modified by the Order. CenterPoint must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impacts resulting from project construction and operation.
3. **Prior to any construction**, CenterPoint shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector'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. CenterPoint 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 route variations required herein or 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:

- 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.

5. **Within 60 days of the acceptance of this certificate and before construction** begins, CenterPoint shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. CenterPoint must file revisions to the plan as schedules change. The plan shall identify:

- a. how CenterPoint will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
- b. the training and instructions CenterPoint will give to all personnel involved with construction; and
- c. provide a Gantt or PERT chart (or similar project scheduling diagram) and dates for the start and completion of the project.

6. **Beginning with the filing of its initial Implementation Plan**, CenterPoint shall file updated status reports with the Secretary on a **monthly 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 CenterPoint's efforts to obtain the necessary federal authorizations;

- b. the construction status of the project, work planned for the following reporting period, and any schedule changes;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by CenterPoint from other federal, state or local permitting agencies concerning instances of noncompliance, and CenterPoint's response.
7. CenterPoint 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 is proceeding satisfactorily.
8. **Within 30 days of placing the certificated facilities in service**, CenterPoint shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed/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 CenterPoint 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.
9. CenterPoint shall file noise surveys with the Secretary **no later than 60 days** after placing the new compressor units at the existing Westdale and Vernon Compressor Stations into service. If the noise attributable to the operation of either station at full load exceeds an Ldn of 55 dBA at any nearby NSAs, CenterPoint shall install additional noise controls to meet these levels **within 1 year** of the in-service date. CenterPoint shall confirm compliance with these requirements by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.