

131 FERC ¶ 61,086
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Colorado Interstate Gas Company

Docket No. CP09-464-000

ORDER ISSUING CERTIFICATE

(Issued April 29, 2010)

1. On September 10, 2009, Colorado Interstate Gas Company (CIG) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations for authorization to construct and operate approximately 118 miles of 16-inch diameter pipeline (North Raton Lateral), and to modify and construct certain mainline facilities, to transport natural gas from the Raton Basin in southern Colorado and northern New Mexico to an interconnect with CIG's mainline for ultimate delivery to the Cheyenne Hub in Weld County, Colorado (Raton 2010 Expansion Project). The Commission will authorize CIG's proposals, with appropriate conditions.

I. Background

2. CIG is a natural gas company as defined in the NGA and is subject to the jurisdiction of the Commission. It is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Colorado Springs, Colorado. CIG is primarily engaged in the open access transportation of natural gas.¹ CIG's interstate natural gas pipeline system extends from supply areas in Texas, Oklahoma, Kansas, Colorado, Wyoming, Montana, and Utah to major delivery areas along the eastern slope, or front range of the Rocky Mountain in Colorado and Wyoming. CIG's system connects with other interstate pipelines in all of the states in which it operates, except Montana.

¹ CIG provides open-access transportation of natural gas pursuant to a blanket certificate under subpart G of Part 284 of the Commission's regulations. 18 C.F.R. § 284.221 (2009).

3. In 1994, CIG constructed its first facilities, the Picketwire Lateral, to transport coal-bed methane gas produced from the Raton Basin, eastward out of the Basin, which was then in the early stages of development.² Since 1998, the production of coal-bed methane gas in the Raton Basin has increased from approximately 50 million cubic feet per day (MMcf/d) to approximately 475 MMcf/d in 2008. In response to this increase in production, the Commission has authorized CIG to construct and operate several significant expansions of its Raton Basin system,³ the most recent expansion occurring in 2007 in Docket No. CP07-103-000, under CIG's subpart F blanket construction certificate.⁴ CIG currently is capable of transporting approximately 414 MMcf/d of natural gas from the Raton Basin.

II. Proposal

4. CIG states that its projections for new exploration and production in the Raton Basin in southern Colorado reflect an increase in drilling activity by 2011, which, together with potential production from recently discovered Pierre shale plays in the Raton Basin, is expected to stimulate overall Raton Basin wellhead production through 2017. CIG maintains that these projected increases in Raton Basin production demonstrate the need for additional takeaway capacity out of the Basin, and that it is proposing the Raton 2010 Expansion Project in response to this demand for additional capacity from the Raton Basin to the Cheyenne Hub in Weld County, Colorado.

A. Facilities

5. CIG proposes to construct and operate facilities to increase its natural gas transmission system capacity from the Raton Basin in Las Animas, County, Colorado to its mainline Front Range System in southern El Paso County, Colorado, by approximately 130,000 dekatherms per day (Dth/d). Specifically, CIG proposes to:

² CIG utilized its blanket certificate authority in Docket No. CP83-21-000. *See Colorado Interstate Gas Co.*, 21 FERC ¶ 62,403 (1982).

³ *See, e.g., Colorado Interstate Gas Co.*, 83 FERC ¶ 61,031 (1998); *Colorado Interstate Gas Co.*, 94 FERC ¶ 61,382 (2001); *Colorado Interstate Gas Co.*, 99 FERC ¶ 61,262 (2002); and *Colorado Interstate Gas Co.*, 111 FERC ¶ 61,331 (2005).

⁴ *See* 18 C.F.R. §§ 157.208 and 157.210 (2009).

(1) construct and operate in two segments⁵ approximately 118.6 miles of 16-inch diameter pipeline in Las Animas, Huerfano, Pueblo, and El Paso Counties, Colorado (the North Raton Lateral) to connect the Raton Basin supplies to its existing mainline Front Range System; (2) construct one meter station -- the Kennedy meter station -- in Las Animas County, Colorado; and (3) undertake modifications to several existing meter stations and to two existing compressor stations in Las Animas and Weld Counties, Colorado.⁶

6. Once gas from the Raton Basin is delivered to its existing Front Range System via the proposed North Raton Lateral, CIG states that it will utilize its existing Front Range System mainline to transport the gas north to the Cheyenne Hub in Weld County, Colorado, where the gas will be delivered to different off-system points.⁷ CIG states that, although the direction of flow on the North Raton Lateral initially will be from south to north, the Raton 2010 Expansion Project will allow CIG to operate its Front Range System as a bi-directional system, flowing gas both north out of the Raton Basin and south from the Cheyenne Hub in response to the needs of its customers. CIG explains that the North Raton Lateral facilities configuration at the mainline interconnect will permit CIG to transport gas from the Front Range System in El Paso County south to points in the Pueblo area, should that expected demand materialize over time.

7. CIG estimates that construction of the proposed facilities will cost approximately \$132 million. CIG projects an in-service date for the North Raton Lateral of December 1, 2010.

B. Market Demand

8. As a result of informal discussions with producers in the area and ongoing and projected increases in natural gas exploration and production in the Raton Basin, as well

⁵ One segment, the Spanish Peaks Lateral (Line 247A), is a 28-mile long pipeline extending from CIG's existing Line 222A in Las Animas County to the intersection with existing Line 27A near the town of Aguilar in Las Animas County. The other segment, the Aguilar Lateral (Line 248A), is a 91-mile pipeline extending from existing Line 27A near Aguilar, Colorado north through Huerfano and Pueblo Counties, Colorado to the intersection with existing Line 212A in El Paso County.

⁶ CIG proposes no new compression facilities as part of this project.

⁷ CIG states that this mainline transportation may be accomplished by displacement depending on operating conditions, but CIG is not relying on the availability of such displacement transportation to provide the firm transportation service.

as projected increases in electric power generation in the Pueblo, Colorado area,⁸ CIG posted an open season on its electronic bulletin board on February 28, 2008, soliciting shipper interest in additional take-away capacity from the Raton Basin. Unlike past open seasons that offered to transport capacity from the Raton Basin to mid-continent pipelines in a generally west to east flow pattern, CIG states that this open season, in response to shipper interest, offered capacity from the Raton Basin in a south to north flow pattern, through the proposed North Raton lateral and CIG's Front Range System to interconnects at the Cheyenne Hub.⁹ At the conclusion of the open season on March 19, 2008, two shippers, Pioneer Natural Resources USA, Inc. (Pioneer) and Cross Timbers Energy Services, Inc. (XTO), executed precedent agreements with CIG for transportation capacity on the proposed project facilities. CIG states that it has now signed transportation service agreements for the volumes of service subscribed under the precedent agreements.

9. Both the Pioneer and XTO service agreements designate receipt points within the Raton Basin and delivery points on CIG's system at the Cheyenne Hub and, therefore, include service on CIG's mainline, as well as on the North Raton Lateral. Pioneer's service agreement provides for the transportation of a maximum daily quantity (MDQ) of 100,000 Dth of natural gas per day for an initial contract term of ten years that commences on the in-service date of the project facilities. Once Pioneer's gas reaches the Cheyenne Hub, approximately 75,600 Dth per day of the natural gas deliveries to the Cheyenne Hub will be transported to the Opal Hub in Lincoln County, Wyoming via the Wyoming Interstate Company, Ltd. and the Overthrust Pipeline systems. Pioneer will make its own transportation arrangements with third-party transporters for the remaining volumes delivered to the Cheyenne Hub.

10. XTO's service agreement provides for two separate contract terms. The first provides for an MDQ of 15,000 Dth per day of firm transportation for 11 years and six months starting on the in-service date of the project, but XTO will start its MDQ at only 70 percent of its full MDQ, or 10,500 Dth per day, on the in-service date, and then "ramp up" its capacity by 10 percent of its full MDQ every six months until it reaches 15,000 Dth per day 18 months later. The second contract term provides for the transportation of an MDQ of 5,000 Dth of gas per day for five years, also starting on the pipeline in-service date.

⁸ CIG notes that the Colorado Public Utilities Commission has authorized Black Hills Energy Corporation to construct at least two natural gas-fired power plants in the Pueblo area. *See* Application at 17.

⁹ CIG's open season postings also sought turn-back capacity from its existing shippers. No shippers expressed interest in releasing their capacity.

11. CIG states that the total amount of subscribed capacity under the Pioneer and XTO agreements will be 120,000 Dth per day following the contract ramp-up period, although the total capacity of the North Raton Lateral is 130,000 Dth per day. CIG explains that it was not reasonable or cost-effective to physically size the pipe to 120,000 Dth to exactly match the maximum subscribed capacity and, therefore, it will have 10,000 Dth per day of unsubscribed capacity. CIG assumes this additional capacity will be subscribed in the future as short-term firm or interruptible capacity.

C. Rates

Incremental Rates for North Raton Lateral

12. CIG proposes a two-zone incremental recourse rate for service on the proposed North Raton Lateral, based on the cost of the facilities. North Raton Lateral Zone 1 will comprise the first 90.3 miles of the project, commencing in the Raton Basin and extending to a tap and block valve assembly to be located near Pueblo, Colorado, where the North Raton Lateral will begin paralleling CIG's existing Valley Line System. North Raton Lateral Zone 2 will comprise the remaining 28.3 miles of the North Raton Lateral, extending from Pueblo to the terminus of the project facilities in southern El Paso County, Colorado. CIG states that the two-zone rate structure recognizes that the North Raton Lateral may perform two distinct roles: a supply lateral function and a market lateral function. CIG asserts that the North Raton Lateral Zone 1 facilities will primarily function as a supply lateral, with the gas always physically flowing from south to north, while the Zone 2 facilities might over time become more of a market lateral, flowing gas both south to north and north to south, depending on day-to-day shipper nominations. CIG explains that a separate North Raton Lateral Zone 2 rate will permit other shippers on CIG's system to access additional delivery capacity to the Pueblo area without having to pay a rate that includes the cost of the supply facilities extending the additional 90 miles south to the Raton Basin.

13. CIG contends that the two-zone pricing allows for the effective development of additional potential markets and sends the right price signals as to the cost of facilities that can be easily integrated into CIG's other market facilities. Further, CIG adds that additional delivery options for CIG's shippers will encourage the efficient use and integration of all of CIG's system assets, which, over time, can reduce the anchor shippers' incremental transportation cost.

14. CIG's proposed incremental firm maximum monthly reservation recourse rates for transportation service on North Raton Lateral Zone 1 and Zone 2 are \$13.1487 and \$2.9169 per Dth, respectively, which are based on the corresponding capital costs of the segments. CIG has also derived commodity usage rates for Zone 1 and 2 of \$0.0003 and

\$0.0001 per Dth, respectively.¹⁰ The proposed combined North Raton Lateral Zone 1 and Zone 2 usage rate expressed on a 100 percent load factor basis will be \$0.5281 per Dth per day.¹¹ CIG projects the first-year cost of service for Zone 1 to be \$20,526,961, and for Zone 2 to be \$4,556,304, with reductions each year thereafter.¹² In developing the proposed recourse rates for the new North Raton Lateral facilities, CIG used the pre-tax return approved by the Commission in CIG's last general rate case.¹³ CIG states that it used the existing system-wide 2.10 percent depreciation rate in calculating the recourse rates for both zones.

15. In addition, CIG derived its rates for the North Raton Lateral using the full 130,000 Dth per day of design capacity on the lateral, even though 10,000 Dth per day of the capacity is unsubscribed. While CIG assumes that that capacity will remain unsubscribed only temporarily, it states that unless it can sell short-term or interruptible services equal to 10,000 Dth per day, CIG will not have a reasonable opportunity to recover its cost of service. CIG, however, asks the Commission to approve the rates as designed, despite this cost recovery risk.

16. Further, CIG states that the North Raton Lateral facilities do not include compression and, therefore, no fuel charge will be assessed for transportation on either of the two incremental rate zones. The expansion shippers will be assessed only one system-wide lost-and-unaccounted-for charge applicable to the transportation service.

¹⁰ See Application, Exhibit N at 5 and 10.

¹¹ While XTO has agreed to pay CIG this maximum daily recourse rate for transportation on the North Raton Lateral, Pioneer will pay CIG discounted rates for transportation on the North Raton Lateral totaling \$0.515 per Dth per day, when expressed as a 100 percent load factor equivalent daily rate, for the two applicable rate zones.

¹² CIG's proposed cost of service in year one for Zone 1 includes \$82,377 for operation and maintenance expense; \$2,219,595 for depreciation expense; \$16,481,021 for return allowance; and \$1,743,968 in taxes. The Zone 2 cost of service in year one includes \$15,728 for operation and maintenance expense; \$492,954 for depreciation expense; 3,660,301 for return allowance; and 387,321 in taxes. See Application, Exhibit N at 1 and 6.

¹³ *Colorado Interstate Gas Co.*, 116 FERC ¶ 61,126 (2006) (order approving settlement).

Rolled-in Rate Treatment for Mainline Service

17. CIG has agreed to charge the expansion shippers an initial discounted mainline monthly reservation rate of \$2.22 in order to facilitate the expansion shippers' transportation service on CIG's mainline from the interconnect of the North Raton Lateral to the Cheyenne Hub.¹⁴ CIG states that this discounted rate for mainline service reflects the competitive conditions in the marketplace for south to north capacity.

18. CIG seeks a predetermination that it can roll the costs of the mainline modifications associated with the expansion shippers' service on CIG's mainline into its system wide rates in its next section 4 rate case. CIG states that the mainline service is expected largely to be provided day-to-day by backhaul or displacement service. The mainline capital costs include costs for measurement, valve and minor piping modifications,¹⁵ and, according to CIG, will provide a significant revenue contribution to the mainline if permitted to be rolled into the existing rates for service on its system. CIG asserts that the revenues derived from the project's mainline service exceed the cost of service of the new facilities on the mainline in the first year, and in every year thereafter.¹⁶ CIG maintains that a pre-determination of rolled-in rate treatment for the mainline costs is also appropriate because the proposed facilities will enhance CIG's system-wide operational flexibility and reliability by permitting bi-directional flow on the existing Front Range System mainline.

III. Public Notice, Interventions, and Comments

19. Notice of CIG's application was published in the *Federal Register* on September 30, 2009 (74 Fed. Reg. 50,177), with comments due by October 14, 2009. Timely, unopposed motions to intervene were filed by Atmos Energy Corporation, Public Service Company of Colorado, and Tom and Diane Maddox. These timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹⁷

¹⁴ Specifically, XTO and Pioneer will pay a discounted mainline daily rate totaling, on a 100 percent load factor basis, \$0.09 per Dth, initially equivalent to a daily reservation rate of \$0.073 per Dth per day, plus a commodity charge of \$0.017.

¹⁵ See Application, Exhibit K.

¹⁶ See Application, Exhibit N at 14.

¹⁷ 18 C.F.R. § 385.214 (2009).

20. Front Range Power Company, LLC (Front Range Power) and Colorado Springs Utilities (Colorado Springs) filed motions to intervene out-of-time that included comments.¹⁸ These parties have demonstrated an interest in this proceeding and granting their late interventions will not unduly delay or disrupt this proceeding or otherwise prejudice other parties. Therefore, the Commission grants these late motions to intervene pursuant to Rule 214(d).¹⁹

21. In their motion to intervene and several subsequent comment letters, Tom and Diane Maddox, owners of approximately 414 acres of agricultural land and a working farm and ranch through which the Spanish Peaks Lateral is proposed to cross, raised concerns regarding the project's impact on the use and irrigation of their hayfield, crop production for their livestock, an historic irrigation ditch and barn, and the scenic byway north of their property. In addition, the U.S. Environmental Protection Agency (EPA) filed comments on the application raising a number of environmental concerns. These environmental issues are addressed below.

IV. Discussion

22. Since CIG will use the proposed facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, CIG's proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Certificate Policy Statement

1. Subsidization

23. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.²⁰ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy

¹⁸ In their comments, Front Range Power and Colorado Springs sought assurances from CIG that the proposed changes in the direction of flow and pressure along the North Raton Lateral under the project would not adversely impact their reliability of service or the Btu content of the gas they receive from CIG.

¹⁹ 18 C.F.R. § 385.214(d) (2009).

²⁰ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128, *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

Statement explained that in deciding whether to authorize the construction of major 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 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, 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 we proceed to complete the environmental analysis where other interests are considered.

25. As explained above, CIG's proposed project involves both the construction of the North Raton Lateral, a new pipeline, and the modification of its existing mainline facilities, and CIG proposes a different rate treatment to recover the costs of each of these facilities. Service on the North Raton Lateral is designed as an incremental service and CIG is proposing to recover the cost of the new lateral (approximately \$129 million, which represents the majority of the costs of the project) by charging incremental rates. CIG's proposal to provide service on the new North Raton Lateral at incremental rates satisfies the threshold requirement of the Certificate Policy Statement, since CIG will not rely on financial subsidies from existing shippers to support service on the lateral.

26. Moreover, CIG's provision of mainline service to the expansion shippers at rolled-in rates in the future, preliminarily approved by the Commission below, will not result in CIG's existing shippers subsidizing the expansion shippers' service. In determining the impact that rolled-in pricing for the project would have on CIG's existing customers, CIG calculated the estimated project revenue using the discounted rates which CIG is proposing to charge. As explained in more detail in the rate discussion below, the projected revenues for the proposed mainline service will significantly exceed the costs of the modified mainline facilities. Thus, existing customers will not subsidize CIG's service to the expansion shippers on the mainline.

2. Impact on Existing Customers and Existing Pipelines and Their Customers

27. As indicated above, two existing customers of CIG, Front Range Power and Colorado Springs, raised concerns regarding the impact of the project on the reliability of their service from CIG and the quality of gas provided to their electric generating stations. After CIG provided a response, Front Range Power and Colorado Springs jointly filed comments stating that due to subsequent discussions with CIG, they do not object to issuance of a certificate in this docket.²¹

28. Thus, with respect to the operational impact of the project on existing shippers, the Commission finds that the Raton 2010 Expansion Project should have no adverse effects on existing shippers. In addition, the proposals will enhance the operational flexibility and reliability of CIG's system through the addition of another gas supply source for Front Range deliveries, allowing CIG's Front Range System to operate as a bi-directional system, affording flexibility to integrate future new power generation facilities, and providing available gas supply in the event that the Cheyenne Hub is offline.²²

29. The Commission further finds that the project will impose no negative impacts on existing pipelines in the market or their captive customers, since the purpose of the proposed project is to respond to the demand for additional pipeline transportation capacity out of the Raton Basin area for ultimate delivery to the Cheyenne Hub. The proposed project is not replacing any firm transportation service on any other existing pipeline, since there is no existing interstate pipeline system performing the services proposed. Significantly, no pipelines located in CIG's market area protested CIG's application.

3. Impact on Landowners

30. The Commission finds there should be minimal adverse impact from the project on the approximately 238 landowner and land management agencies that CIG identified may be affected by the project. The North Raton Lateral traverses primarily rangeland and agricultural land, and no residential lands are crossed by the lateral or adjacent above-ground facilities. In addition, approximately 63 percent of the proposed lateral route is adjacent to existing utility or transportation rights-of-way. CIG participated in the National Environmental Policy Act (NEPA) pre-filing process and endeavored to include landowners, relevant resource agencies, environmental groups, elected officials,

²¹ March 5, 2010 Comments of Front Range and Colorado Springs.

²² See Application, Exhibit G.

and other interested parties in the early planning stages of the project to enable it to address any concerns. CIG states that it has worked with stakeholders, proactively addressing construction concerns, which included adopting a number of reroutes suggested by affected landowners. As a result, CIG was able to reach an agreement for a right-of-way easement with landowners Tom and Diane Maddox, who initially objected to the proposed routing of the project and the project's potential impact on the value of their property and ranching operation. CIG indicates that it continues to work with individual landowners regarding land cultivation, ranching operations, and hunting concerns.²³ In sum, CIG anticipates that there will be minimal adverse impacts to the affected landowners, and has not indicated that it anticipates the need to use eminent domain to acquire the necessary property rights.

4. Conclusion

31. The proposed project will satisfy the increased demand for additional take-away capacity from the Raton Basin to the Cheyenne Hub. In addition, CIG's existing customers will not subsidize the project. There will be no degradation of service to CIG's existing customers or any adverse effects on existing pipelines or their customers. Further, adverse impacts on landowners and neighboring communities will be minimal. Thus, the Commission finds that, consistent with the Certificate Policy Statement and section 7 of the NGA, approval of the proposed project is in the public convenience and necessity, subject to the conditions set forth herein.

B. Rates and Tariff

1. Incremental Rates for North Raton Lateral Costs

32. CIG proposes to modify its currently-approved tariff to incorporate the incremental rates for transportation service using the proposed new supply lateral, and submitted pro forma tariff sheets setting forth the proposed incremental recourse rates. Specifically, CIG proposes to provide transportation on the North Raton Lateral under its existing Rate Schedule TF-1, and to add the incremental two-zone rates to its existing TF-1 rates. CIG's proposed firm reservation rates for service on the North Raton lateral are \$13.1487 per Dth per month for Zone 1 and \$2.9169 per Dth per month for Zone 2. CIG states that other than the pricing terms, service on the lateral will have the same terms and conditions of service as on the rest of its system under Rate Schedule TF-1, except for the additional provision discussed below. CIG states that using the existing rate schedule will make it easier for shippers to use secondary points on other parts of its

²³ CIG states that landowners will be compensated for crop loss during construction.

system. CIG asserts that prior to the in-service date of the Raton 2010 Expansion Project, it will submit for filing and acceptance by the Commission the actual tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1.

33. The Commission has reviewed CIG's proposed Zone 1 and Zone 2 cost of service, allocation and rate design for its initial recourse rates and finds that the projected operation and maintenance expense, and other taxes and return calculations are consistent with current Commission policy. However, the Commission notes that CIG does not project any interruptible service. The Commission's policy regarding new interruptible services requires pipelines to credit 100 percent of interruptible and authorized overrun service revenue, net of variable costs, to maximum recourse rate firm and interruptible shippers, or, in the alternative, to allocate costs and volumes to these services. This is to ensure that recourse rate shippers do not pay a rate that is higher than is required to recover the costs of providing their service.²⁴ In lieu of adopting one of these approaches, CIG states that it has included a revenue crediting provision in its contracts with Pioneer and XTO (and in Article 33.6 of the General Terms and Conditions of its tariff) that would credit Pioneer and XTO (and any North Raton Lateral maximum rate recourse shippers) 50 percent of any revenues CIG receives from interruptible, secondary, and firm backhaul capacity subscriptions in the North Raton Lateral Zone 2. CIG states that it has negotiated this revenue crediting provision with Pioneer and XTO in recognition of the substantial business risk these shippers have accepted as the anchor tenants of the Raton 2010 Expansion Project.

34. As described above, in the absence of an allocation of costs to interruptible services, Commission policy requires that 100 percent of interruptible revenues, net of variable costs, be credited to firm and interruptible recourse rate shippers. However, CIG's proposal to instead credit 50 percent of such revenues (together with 50 percent of any secondary and firm backhaul revenues) is similar to the crediting proposal allowed by the Commission in *Entrega Gas Pipeline Inc.*,²⁵ where the Commission found that there was no reason to foreclose the pipeline and its customers from negotiating such a measure. The Commission reaches the same conclusion here. However, Entrega had stated that its tariff would also include a mechanism to credit its firm and interruptible cost-based recourse rate shippers with 100 percent of net revenues from interruptible services. Therefore, should CIG choose not to allocate costs to interruptible services on

²⁴ See, e.g., *Maritimes & Northeast Pipeline L.L.C.*, 80 FERC ¶ 61,136, at 61,475 (1997), *order on reh'g*, 81 FERC ¶ 61,166, at 61,725-26 (1997).

²⁵ 112 FERC ¶ 61,177, at 61,978-79 (2005), *order on reh'g*, 113 FERC ¶ 61,327, at 62,284-85 (2005).

the North Raton Lateral, it must revise its tariff to provide for a mechanism to enable its firm and interruptible recourse rate shippers on the North Raton Lateral to receive their appropriate share of interruptible revenue credits in accordance with Commission policy.

35. CIG may enter into negotiated rate agreements for the remaining capacity of the proposed lateral and mainline modifications. For any negotiated rate contracts, CIG must file either the contracts or numbered tariff sheets not less than 60 days, and no more than 90 days, prior to the commencement of service on the expansion facilities.²⁶ The tariff filing must contain the negotiated rates, all applicable charges, the applicable receipt and delivery points, the volume to be transported, the applicable rate schedule for the service, and a statement affirming that the affected service agreements do not deviate in any material aspect from the form of service agreement in CIG's tariff. CIG must also disclose any other agreement, understanding, negotiation, or consideration associated with the negotiated agreements. Finally, CIG must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future section 4 or 5 rate case. The Commission will not permit CIG to recover any revenue shortfall from existing shippers due to the imposition of negotiated rates.

2. Initial Rates and Rolled-in Rate Treatment for Mainline Modifications

36. For mainline transportation associated with service on the North Raton Lateral (essentially transportation from the terminus of the North Raton lateral to the Cheyenne Hub), CIG proposes to use as the initial recourse rate its existing system rate. In addition, as indicated above, CIG requests that the Commission grant a pre-determination that it may roll the cost of the mainline modifications it will make as part of the Raton 2010 Expansion project into its system-wide rates in its next NGA section 4 rate case. Based on CIG's transportation agreements with Pioneer and XTO, CIG projects total revenues for the expansion shippers' mainline service of over \$3 million per year for the 10 years following completion of the project. CIG projects the first-year cost of service for the

²⁶ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,241 (1996). See also *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011 (1996).

project to be \$570,874, with reductions each year thereafter.²⁷ Moreover, the 10-year total revenue is projected to be \$31,182,120, while the 10-year total cost of service is projected to be \$4,890,891. Thus, the projected revenues would exceed the projected cost of service by \$26,291,229 for the 10-year projection period.²⁸

37. Exhibit N shows that, despite the fact that CIG has agreed to provide the associated mainline transportation service to Pioneer and XTO at a discounted rate, the net revenues will exceed the cost of service in each of the first 10 years. The first-year average fixed cost of service for the incremental mainline expansion is \$0.37 per Dth per month, which is significantly less than the mainline system rate of \$9.6447 per Dth per month. Therefore, the Commission will approve the use of CIG's existing system rate as the initial recourse rate for service and grants CIG's request for a predetermination of rolled-in rate treatment for the project's mainline modification costs, absent any material change in circumstances.

C. Accounting

38. CIG proposes to capitalize a total allowance for funds used during construction (AFUDC) of approximately \$11,471,000 on the project, which includes the compounding of AFUDC on a monthly basis. The Commission's regulations do not permit monthly compounding of AFUDC. Rather, the regulations limit the compounding of AFUDC to no more than on a semi-annual basis.²⁹ Accordingly, the Commission will require CIG to modify its AFUDC estimate to reflect the compounding of AFUDC on a semi-annual basis.

39. CIG proposes to commence the accrual of AFUDC in June 2008, or 15 months prior to filing its certificate application on September 10, 2009, and to continue through

²⁷ CIG proposes a \$570,874 cost of service in year one which includes a \$1,996 operation and maintenance expense; a \$61,761 depreciation expense (at an annual rate of 2.10 percent); a \$458,590 return allowance; and \$48,527 in taxes.

²⁸ See Application, Exhibit N at 14.

²⁹ *Ingleside Energy Center, LLC*, 112 FERC ¶ 61,101 (2005); see *Amendments to Uniform System of Accounts for Public Utilities and Licensees and for Natural Gas Companies (Classes A, B, C, and D) to Provide for the Determination of Rate for Computing Allowance for Funds Used During Construction and Revisions of Certain Schedule Pages of FPC Reports*, Order No. 561, 57 FPC 608 (1977), *reh'g denied*, Order No. 561-A, 59 FPC 1340 (1977), *order on clarification*, 2 FERC ¶ 61,050 (1978).

December 2010.³⁰ The amount of AFUDC accrued prior to CIG filing its certificate application is approximately \$2,480,000. Consistent with the Commission's revised policy on the commencement of AFUDC for natural gas pipelines, the Commission will allow CIG to include its proposed AFUDC accrual in its initial rates, subject to CIG filing a representation that the proposed AFUDC accruals comply with the revised policy conditions.³¹ Furthermore, if CIG determines that its proposed AFUDC accruals should be changed in light of the Commission's revised AFUDC policy, CIG must revise all cost-of-service items dependent upon Gas Plant in Service such as income taxes, depreciation expense, return, and interest expense. CIG must file its revised rates and work papers in sufficient time for the Commission to act on the revised rates prior to filing the tariff sheets to implement those rates.

D. Environmental Analysis

40. Staff began its review of the Raton 2010 Expansion Project on June 24, 2008, when the Director of the Office of Energy Projects (OEP) issued a letter approving CIG's request to use the Commission's pre-filing procedures in Docket No. PF08-25-000. On August 27, 2008, the Commission issued a Notice of Intent to Prepare an Environmental Assessment (EA) for the Proposed Raton 2010 Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings (NOI). The NOI was published in the *Federal Register*³² and mailed to federal, state, and local officials, agency representatives, environmental and public interest groups, Native American tribes, local libraries and newspapers, and affected property owners. The NOI also announced three public scoping meetings to be held in the project area.³³

³⁰ See CIG's January 13, 2010 response to staff's December 16, 2009 data request.

³¹ See *Florida Gas Transmission Co. LLC*, 130 FERC ¶ 61,194, at P 28 (2010); *Southern Natural Gas Co., LLC*, 130 FERC ¶ 61,193, at P 36 (2010). The revised policy conditions in these orders allow natural gas pipelines to begin accruing AFUDC on construction projects when the following conditions are met: (1) capital expenditures for the project have been incurred; and (2) activities that are necessary to get the construction project ready for its intended use are in progress. In addition, AFUDC must cease once construction is complete and the facilities are ready for or placed into service.

³² 73 Fed. Reg. 51,634 (September 4, 2008).

³³ The public scoping meetings were held in Walsenburg, Avondale, and Trinidad, Colorado on September 8, 9, and 10, 2008, respectively.

41. In response to the NOI, the Commission received comment letters from eight affected landowners and two state agencies.³⁴ In addition, six individuals made oral comments at our scoping meetings. The primary issues raised by the commenters concerned the potential loss of irrigation water due to multiple crossings of the Felix Cruz Irrigation Ditch, potential impacts on water wells and water resources, impacts on elk, and potential impacts on restoration and reseeding, noxious weed control, and fugitive dust control.

42. To satisfy the requirements of the NEPA, the Commission's staff prepared and placed into the public record an EA for CIG's proposal, issuing a Notice of Availability of the EA on January 20, 2010, providing a 30-day public comment period. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, visual resources, cultural resources, air quality, noise, safety, and alternatives. As summarized below, the EA also addressed all substantive comments received in response to the NOI in Docket No. PF08-25-000, as well as the environmental comments received in response to CIG's application.

1. Irrigation of Agricultural Land

43. CIG's proposed route for the North Raton Lateral runs through the center of the irrigated hayfields of the Maddox, Valentine, and Brodie/Medley properties. The proposed North Raton Lateral also crosses in several locations the historic Felix Cruz Ditch,³⁵ which these landowners utilize to irrigate their hayfields in order to grow hay and alfalfa to feed their livestock and native wildlife grazing the land in the winter. As a result, one of the main concerns of the commenters is that the project will cause a loss of irrigation water, primarily due to the pipeline's multiple crossings of the Felix Cruz

³⁴ Among the affected landowners filing comments were Tom and Diane Maddox, Ken Valentine, owner of the 101-year-old Valentine Ranch, LLC, and Dr. Andrea Brodie and Loren Medley, owners of approximately 160 acres of agricultural land situated between the Maddox and Valentine properties, used for raising Icelandic horses. The Colorado State Historic Preservation Office and the Northern Cheyenne Tribal Historic Preservation Office, as well as one private landowner, raised no substantive environmental concerns.

³⁵ The Felix Cruz Ditch was constructed in 1868, and water rights for the ditch were adjudicated in 1891. *See* October 14, 2009 Comments of Tom Maddox. However, the ditch does not meet the significance criteria for eligibility under the National Registry of Historic Properties. *See* EA at p. 3-6.

Ditch, as well as cause damage to the historic ditch and the landowners' irrigation rights in the ditch.

44. As discussed in Section 2.4.1 of the EA, CIG plans to bore underneath all crossings of the ditch after the first half of July when irrigation water is typically no longer flowing in the ditch.³⁶ The EA finds that this method will alleviate concerns regarding water loss, and that CIG's adherence to its Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and Wetland and Waterbody Construction and Mitigation Procedures (Procedures) will ensure that construction of the project would not impact the operation of the ditch.³⁷ The EA also notes that CIG is committed to repairing any unexpected damages to the ditch, and that CIG would have adequate time to do so prior to the next irrigation season.³⁸

2. Water Resources

45. As indicated in the EA, the project crosses 106 potential waterbodies and 35 wetlands.³⁹ In its comments, the EPA provided numerous recommendations for the protection of wetland, river, stream, and riparian resources, and ground and surface water quality, which may be impacted by the project. In particular, the EPA recommended that CIG use the horizontal directional drill (HDD) method to cross all waterbodies and wetlands, requested that the EA provide information on designated water quality-impaired waters that the project would cross, and raised concerns regarding the project's impact on sole source aquifers.

46. CIG has proposed to cross three waterbodies by the HDD method, but will cross all remaining waterbodies and wetlands CIG using the open-cut method. Section 2.2.3 of the EA addresses EPA's request for use of the HDD method, but concludes that the open-cut method is acceptable for crossing wetlands and waterbodies, provided CIG adheres to its Procedures. The EA identifies the disadvantages and risks associated with the use of the HDD method to cross wetlands, and explains that because the type of wetlands crossed are quick to recover from construction disturbance and are generally less than 100 feet long, CIG's proposal to use the open-cut method is acceptable.⁴⁰ With respect to

³⁶ EA at p. 2-35.

³⁷ EA at p. 3-6.

³⁸ EA at p. 2-35.

³⁹ EA at p. 2-10 - 2-13.

⁴⁰ EA at p. 2-13.

stream crossings, the Section 2.2.2 of the EA notes that in addition to CIG's adherence to its Procedures, CIG's proposal to construct the project in the summer in 2010, during low flow (if not dry) conditions, minimizes impacts on waterbodies.⁴¹

47. Further, as requested by the EPA, in section 2.2.2, the EA provides a list of all of the waterbodies in the project area with water quality impairments and the corresponding Total Maximum Daily Load Priority. The EA concludes that CIG's adherence to its Plan and Procedures minimizes impacts on these waterbodies by preventing soils or contaminants from entering the waterbodies. In addition, the EA indicates that no sole source aquifers exist within the project area.

48. Tom Maddox and Gloria Tennis raised concerns regarding the project's potential impact on water wells on their properties and the potential for the wells to go dry due to construction. Section 2.2.1 of the EA identifies all public and private wells within 150 feet of the construction right-of-way. The EA concludes that construction impacts on groundwater supplies and wells will be minimized by the measures in CIG's Plan and Procedures and CIG's commitment to conduct pre- and post-construction well water quality testing and flow evaluations for domestic water wells within 150 feet of the edge of the construction work areas. The EA continues to explain that CIG has committed to provide a temporary source of water in the event that any well is damaged by construction and to restore the well to its original capacity or provide other remedies as agreed upon with the impacted user of the well.

3. Restoration of Vegetation and Weed Management

49. In his comments, Ken Valentine expressed concerns about the difficulty of restoration on steep slopes and compacted soils. He also raised concerns about CIG's reseeding plan. The EA identifies measures that CIG commits to implement to minimize disturbed soils and promote revegetation and concludes that CIG's adherence to the *Plan* and the *Procedures*, which address restoration, steep slope construction, and soil compaction, will minimize restoration problems. Also, the EA states that CIG has committed to seed all areas with native species using a Natural Resource Conservation Service or landowner-approved seed mix, which the EA found acceptable.

50. Mr. Valentine and the EPA expressed concern about noxious weed infestation due to construction, and the EPA recommended that CIG develop a vegetation management plan to address control of noxious weeds. Appendix G to the EA provides a copy of CIG's Noxious and Invasive Weed Management Plan, which the EA found acceptable.

⁴¹ EA at p. 2-12

4. Impacts on Elk

51. Mr. Valentine also expressed concern about impacts on elk in the project area and requested that the elk have unrestricted passage across his ranch. Section 2.3.3 of the EA notes that the project crosses known severe winter range and winter concentration areas for elk on the Spanish Peaks Lateral. However, the EA also indicates that because construction would be near completion at the beginning of winter, impacts to severe winter range and winter concentration areas for elk would be minimized. Also in its responses to individual stakeholder comments during the pre-filing process, CIG filed a response indicating that it would maintain periodic crossovers to allow wildlife travel.

5. Cultural Resources

52. Mr. Valentine identified concerns about cultural and historical artifacts and sites that could be affected by the project. Tom Maddox also expressed concerns with impacts on the historic stone barn on his property and the historic Felix Cruz Ditch. Section 2.5 of the EA identifies 166 cultural resources recorded in the course of project investigations. The EA concurs with the State Historic Preservation Officer's assessment that no adverse effect to historic properties will result from project construction with implementation of the recommended avoidance and monitoring recommendations.

53. In response to Mr. Maddox's specific sites of concern, the EA notes that the historic barn on his property is located over 500 feet north of the proposed route and will not be impacted. Also, the EA determined, as noted above, that although the Felix Cruz ditch does not meet the significance criteria for eligibility under the National Register of Historic Places, CIG will bore underneath all crossings of the ditch, thereby avoiding impacts.

6. Air Quality

54. Mr. Valentine and the EPA expressed concern about the generation of fugitive dust emissions during construction. Section 2.6.1 of the EA discusses the project impacts on air quality and concludes these impacts will be minor. The EA states that CIG has developed a Fugitive Dust Control Plan and outlines several of its mitigation measures; however, the EA also concludes that the plan should be improved. Therefore, the Appendix to this Order includes environmental condition 14, requiring CIG to revise its Fugitive Dust Control Plan to incorporate additional measures and identify individuals with authority.

55. In addition, the EPA requested that the EA include an analysis and disclosure of greenhouse gas (GHG) emissions and climate change. Section 2.6.1 of the EA identifies the quantity of GHGs construction of the project will emit, and compares this with EPA's

Mandatory Reporting of GHGs Rule. The cumulative impact discussion in the EA (Section 2.8.2) includes the effects attributable to climate change in the project region and concludes that the relatively minor amount of GHG emissions produced by construction of the project are not expected to result in significant cumulative impacts.

7. Route Variations

56. Mr. Maddox requested that CIG evaluate alternate routes across and away from his property. As a result, CIG developed six route variations to the proposed route for the placement of the pipeline across Mr. Maddox's property. Other landowners, as well, suggested or requested route variations to address their respective concerns, some of which were incorporated in CIG's proposed lateral route.

57. Section 3.4.2 of the EA evaluates these route variations to respond to the landowners' concerns regarding the location of the pipeline on their properties. The EA concludes that the Maddox Variation 6 and the Brodie/Medley Alternative 1 would not result in significant environmental impacts over the proposed route and selects these routes as preferred because they were developed in consultation with the landowners. Therefore, the EA recommends that CIG incorporate the Maddox Variation 6 and the Brodie/Medley Alternative 1 into the project, which are included in the Appendix to this Order as environmental conditions 15 and 16.

8. Comments on the EA

58. The Commission received comments on the EA from the U.S. Fish and Wildlife Service (FWS), the El Paso County Planning Commission, and Tom Maddox.

59. In its comments, the FWS concurs with the conclusions in the EA that the project is not likely to adversely affect any federally listed species. The FWS letter satisfies the EA's recommendation 13; therefore, it is not included with the environmental conditions in the Appendix to this Order.

60. In its comments, the El Paso County Planning Commission (Planning Commission) provides notice that the project must submit applicable materials and a Site Development Plan, and receive the Planning Commission's approval, prior to commencing construction. In a supplemental filing on March 5, 2010, CIG stated that it has agreed to meet with the Planning Commission to review permit requirements and address any remaining concerns. CIG has also committed to obtaining any necessary permits prior to commencing construction.

61. In his comments on the EA, Tom Maddox states that his issues and concerns regarding this project have been addressed by CIG, and that an agreement for right-of-way acquisition and damages has been reached with CIG.

62. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with CIG's application and supplement(s), 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.

63. 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.⁴²

E. Conclusion

64. As discussed above, the Commission finds that approval of the Raton 2010 Expansion Project is required by the public convenience and necessity. Further, the Commission finds that CIG will have a presumption of rolled-in rate treatment for the mainline costs associated with the project in the general rate case in which it proposes to roll those costs into system wide rates. Accordingly, the Commission issues a certificate to CIG authorizing the construction and operation of the project, subject to the conditions set forth herein.

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

The Commission orders:

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

⁴² See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

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

- (1) CIG's completing authorized construction within one year of this order;
- (2) CIG's complying with paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) CIG's compliance with the environmental conditions listed in the appendix of this order.

(C) CIG 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 CIG. CIG shall file written confirmation of such notification with the Office of the Secretary within 24 hours.

(D) CIG's request to implement new incremental rates related to the cost and operation of the North Raton Lateral facilities is granted, subject to the conditions described in the body of this order.

(E) CIG's request for a predetermination favoring rolled-in rate treatment for the mainline modification costs is granted, barring a significant change in circumstances, as discussed in the body of this order.

(F) CIG must file actual tariff sheets that comply with the requirements contained in the body of this order no less than 60 days, and no more than 90 days, prior to the commencement of service.

(G) CIG must maintain its records for the North Raton Lateral in a manner to comply with the requirements of section 154.309 of the Commission's regulations.

(H) For negotiated rate contracts, CIG must file either the contracts or numbered tariff sheets not less than 60 days, and no more than 90 days, prior to the commencement of service on the expansion facilities. The tariff filing must contain for each shipper being charged a negotiated rate, all applicable charges, the applicable receipt and delivery points, the volume to be transported, the applicable rate schedule for the service and a statement either identifying the agreement as non-conforming or affirming that the service agreement does not deviate in any material aspect from the form of service agreement in CIG's FERC Gas Tariff. CIG must also disclose any other agreement, understanding, negotiation, or consideration associated with the negotiated agreements. CIG must maintain separate and identifiable accounts for volumes

transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future Section 4 or 5 rate case. CIG will not be permitted to recover any revenue shortfall from existing shippers due to the charging of negotiated rates.

(I) CIG shall modify its AFUDC estimate to reflect the compounding AFUDC on only a semi-annual basis.

(J) CIG shall file a representation that its proposed AFUDC accruals for the project comply with the revised policy conditions. In the alternative, if CIG determines that its proposed AFUDC accruals should be revised in light of the revised policy conditions, it shall revise all cost-of-service items dependent upon Gas Plant in Service such as Income Taxes, Depreciation Expense, Return, and Interest Expense. CIG must then file its revised rates and work papers in sufficient time for the Commission to act on the revised rates prior to filing the tariff sheets to implement those rates.

(K) CIG and its representations made with respect to AFUDC accruals are subject to audit to determine whether it is in compliance with the revised policy and related Commission rules and regulations.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions for CIG's Raton 2010 Expansion Project

1. CIG 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 EA, unless modified by the Order. CIG must:
 - a. request any modification to these procedures, measures, or conditions in a filing;
 - 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 impact resulting from project construction and operation.
3. **Prior to any construction**, CIG shall file an affirmative statement, 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 locations shall be as shown in the EA, as supplemented by filed alignment sheets, and shall include all of the staff's recommended route variations and facility locations identified in the EA. **As soon as they are available, and before the start of construction**, CIG shall file any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for

modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

CIG's exercise of eminent domain authority granted under NGA Section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. CIG'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. CIG shall file 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 **prior to construction in or near that area.**

This requirement does not apply to route variations required herein or extra work space allowed by the CIG Upland Erosion Control, Revegetation, and Maintenance Plan, or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of this certificate and before construction begins**, CIG shall file an Implementation Plan for review and written approval by the Director of OEP. CIG must file revisions to the plan as schedules change. The Implementation Plan shall identify:
- a. how CIG will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how CIG would 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 per spread, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions CIG 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(s);
 - f. the company personnel (if known) and specific portion of CIG's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) CIG would 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. Beginning with the filing of its Implementation Plan, CIG shall file updated status reports on a **weekly basis until all construction and restoration activities are complete**. On request, these status reports also would be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update of CIG's efforts to obtain the necessary federal authorizations;

- b. the 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;
 - c. 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);
 - d. descriptions 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 Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by CIG from other federal, state, or local permitting agencies concerning instances of noncompliance, and CIG's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, CIG shall file documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).
9. CIG must receive written authorization from the Director of OEP **before commencing service** on each pipeline segment. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, CIG shall file an affirmative statement, certified by a senior company official:
 - a. that the facilities have been constructed/installed 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 CIG has complied with or will comply with. This statement also shall 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. **Prior to construction**, CIG shall provide updated distances to the final centerline location for all wells identified within the construction right-of-way as identified

in Table 2.2-1 of the EA, and identify whether the wells would be located within the permanent right-of-way, based on verification with landowners or surveys.

12. CIG 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**, CIG shall mail the complaint procedures to each landowner whose property would be crossed by the project.
 - a. In its letter to affected landowners, CIG shall:
 - 1) 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;
 - 2) instruct the landowners that, if they are not satisfied with the response, they should call CIG's Hotline; the letter should indicate how soon to expect a response; and
 - 3) instruct the landowners that, if they are still not satisfied with the response from CIG's Hotline, they should contact the FERC's Enforcement Hotline at (888) 889-8030.
 - b. In addition, CIG shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
 - 1) the date of the call;
 - 2) the identification number from the certificated alignment sheets of the affected property;
 - 3) the description of the problem/concern; and
 - 4) an explanation of how and when the problem was resolved, would be resolved, or why it has not been resolved.
13. CIG shall file site-specific justification for the use of extra temporary work space locations SP1, SP3, and SP14 on the Spanish Peaks Lateral, for review and written approval by the Director of OEP, **prior to use of the workspace**.
14. **Prior to construction**, CIG shall file a revised Fugitive Dust Control Plan, for review and written approval of the Director of OEP, that includes:
 - a. the individuals with the authority to determine if/when water needs to be reapplied for dust control;

- b. the individuals with the authority to determine if/when a palliative needs to be used;
 - c. the individuals with the authority to stop work if the contractor does not comply with dust control measures;
 - d. measures to limit trackout onto the roads;
 - e. a speed limit that would be required on unsurfaced roads; and
 - f. a requirement to cover open-bodied haul trucks, as appropriate.
15. **Prior to construction**, CIG shall incorporate the Maddox Alternative 6 between MP 15.41 and 16.39 along the Spanish Peaks Lateral into the Project route. CIG shall file revised alignment sheets for this variation to show the pipe centerline, right-of-way width, and any extra temporary work spaces.
16. **Prior to construction**, CIG shall incorporate the Brodie/Medley Alternative 1 between MP 16.39 and 16.84 along the Spanish Peaks Lateral into the Project route. CIG shall file revised alignment sheets for this variation to show the pipe centerline, right-of-way width, and any extra temporary work spaces.